

Consumer rights

2008/0196(COD) - 01/02/2011

The Committee on the Internal Market and Consumer Protection adopted the report by Andreas SCHWAB (EPP, DE) on the proposal for a directive of the European Parliament and of the Council on consumer rights. It recommended that the European Parliament's position at first reading under the ordinary legislative procedure should be to amend the Commission proposal. The main amendments are as follows:

Degree of harmonisation: Contrary to the initial Commission proposal for full harmonisation of EU legislation in all consumer rights fields, the committee voted by 22 votes to 16 against and 1 abstention to adopt a **mixed approach of minimum and maximum harmonisation**, which would **fully harmonise areas such as information requirements, delivery deadlines and a right of withdrawal from distance and off-premises sales** (online, postal orders, etc.). The aim is to ensure transparency for businesses and consumers, while leaving Member States free to retain higher standards in other areas, notably in relation to remedies for "lack of conformity", e.g. goods that are not as described in the contract. The text notes that the full harmonisation of some key regulatory aspects is justified in order to secure a single regulatory framework for consumer protection and in order to considerably increase legal certainty for both consumers and traders in cross-border business.

Scope: whilst the Council has announced that it favours narrowing the original Commission proposal to focus on online sales only, the committee has maintained the Commission proposal to cover almost all sales, with only a few exclusions, e.g. in financial services, social services, health care and online gambling.

Off-premises contracts under which the payment to be made by the consumer **does not exceed EUR 40** should not be included in the scope, so that for instance street traders, whose goods are supplied immediately, are not overburdened with obligations as regards information. A right of withdrawal is also unnecessary in such cases, since the implications of such contracts are readily understandable. Nevertheless Member States should remain free, and be encouraged, to set a lower value.

Digital content: digital content transmitted to the consumer in a digital format, where the consumer obtains the possibility of use on a permanent basis or in a way similar to the physical possession of a good, should be treated as goods for the application of the Directive which apply to sales contracts. However, a withdrawal right should only apply until the moment the consumer chooses to download the digital content.

Pre-contractual information requirements for distance and off-premises contracts: the text states that before the consumer is bound by any distance or off-premises contract or any corresponding offer, the trader or the person acting on his behalf shall provide the consumer with certain specified information in a clear and intelligible manner. This information forms an integral part of the distance or off-premises contract, and Member States shall not impose any other requirements on the content of the model instructions on withdrawal set out in Annex I (A).

Consumers will also be protected and enjoy a **right of withdrawal for solicited visits**, such as when the trader called beforehand and pressed the consumer to agree to a visit. In addition, a distinction no longer needs to be made between solicited and unsolicited visits; circumvention of the rules will thus be prevented

Withdrawal: the consumer shall have a period of fourteen days to withdraw from a distance or off-premises contract, without giving any reason. The committee specifies that in the case of a distance or off-premises contract, the withdrawal period shall begin from the day of the conclusion of the contract or on the day on which the consumer receives a copy of the signed contract document on a durable medium, if different from the day of conclusion of the contract.

If the trader has not informed the consumer on the right of withdrawal prior to the conclusion of a distance or off-premises contract, the withdrawal period will be extended. In order to ensure legal certainty over time, **a one-year limitation period is introduced**. However, Member States are allowed to maintain existing legislation to extend that limitation period.

After withdrawal, the consumer will have the right to be reimbursed (including the costs of delivery) without undue delay and within 14 days. The period for reimbursement shall begin when the trader receives notice of withdrawal.

Delivery: Members state that the main difficulties encountered by consumers and the main source of disputes with traders concern delivery of goods, including goods getting lost or damaged during transport and late or partial delivery. Therefore the text harmonises the national rules on delivery and passing of risk. Where the trader has failed to fulfil his obligations to deliver, the consumer may call upon him to make the delivery within no less than seven days and notify him of his intention to withdraw from the contract if delivery does not take place. The consumer is deemed to have withdrawn from the contract if no action has been taken by the time the deadline expires. Without prejudice to his rights to damages, the consumer will be entitled to a refund within seven days of withdrawal if payment has already been made. Member States may maintain provisions of national law, in order to ensure a higher level of consumer protection.

In the context of consumer sales, the delivery of goods can take place in various ways: either immediately or at a later date. If the parties have not agreed on a specific delivery date, the trader should deliver as soon as possible but in any event not later than thirty days from the day of the conclusion of the contract.

Differing political stances: it should be noted that some MEPs said that the Commission proposal should have been rejected from the outset, as its proposed full harmonisation approach could not be supported by any of the political groups, and left little room to define a middle course. Achieving the right balance between full and minimum harmonisation in the directive has been a crucial issue throughout the talks among the political groups within the committee.

In general, S&D and Greens favoured minimum harmonisation, which would allow Member States to have higher standards in some areas whilst ensuring a high level of consumer protection throughout Europe. EPP and ALDE, however, argued that a general EU-wide harmonisation with a number of exceptions is necessary to create transparency that would benefit businesses and consumers alike, by simplifying life for businesses and allowing them to expand their market shares while also ensuring broader choice, price competition and clarity on rights for consumers.