Consumer rights

2008/0196(COD) - 23/05/2017 - Follow-up document

The Commission presents a report on the application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights (CRD). In accordance with the CRD, the report must assess in particular, the provisions on digital content and the right of withdrawal.

Transposition and implementation: the Directive had to be transposed into the national laws of the Member States by 13 December 2013, with a view to become applicable in all EU Member States from 13 June 2014. Nevertheless, 17 Member States were late with their transposition and the Directive became applicable in all 28 Member States only from the end of 2014.

Following several bilateral structured dialogues with the national authorities concerned (EU Pilot cases), Member States made significant changes to their transposition laws. However, the Commission **continues its bilateral dialogue with most of them to ensure full compliance**. In June 2014, the Commission services issued a guidance document aiming to help national authorities and courts to apply the Directive in a uniform and consistent way.

Main results of the evaluation: the comparative analysis of the legislative situation in all Member States before and after the Directive was transposed has also highlighted that consumer protection has been **strengthened** in most, if not all, Member States.

The Directive has reduced the regulatory fragmentation among Member States, thereby helping to **increase consumer trust in cross-border sales**. Analysis by Eurostat shows an increase of online cross-border purchases between 2012 and 2016.

Overall, the Directive is considered to be **coherent** with other EU legislation, and no major problems have been identified. The evaluation also concluded that the original objectives of the Directive remain valid.

However, the evaluation highlighted **some factors that limited the effectiveness of the CRD**, such as a lack of awareness among consumers and traders of the Directive’s provisions. There are also difficulties in interpreting some provisions such as:

the definition of the 'basic rate';

the notion of outside the 'business premises' in off-premises contracts;

the distinction between a digital content contract and a contract for paid online services;

the moment from which the 14-day cooling-off period starts as regards contracts containing elements of both sales and services contracts;

the calculation of the diminished value of goods in cases where consumers exercise their right of withdrawal after having used the goods more than necessary to establish their nature, characteristics and functioning.

A lack of compliance by traders, and the different levels of penalties put in place by Member States for breaches of the Directive might also be problematic.

Rules on digital content: for the first time in EU consumer and marketing law, the Directive lays down specific pre-contractual information requirements for digital content and rules on the withdrawal from contracts for digital content that is not supplied on a tangible medium.

Some interested parties consider that **the application of the CRD to 'free' digital content is not absolutely clear**.

Digital content remains a key area where consumers do not feel as protected as in sales and

service contracts. The data showed that the lowest level of awareness was reported for **pre-contractual information requirements** on digital content and digital content withdrawal rules. In particular, traders do not generally inform consumers of when the latter would lose their right of withdrawal.

The evaluation also found that there could be scope for re-assessing some of the CRD rules on digital content to better match them with current needs within the EU. In particular, the CRD does not currently apply to the **provision of 'free' online services**, allowing the creation, processing, storing or sharing of data that is produced by the consumer.

Way forward: the Commission will follow up the evaluation's findings by:

promoting consumers' and traders' awareness of their rights and obligations through a pilot project for training SMEs in 2016;

considering further guidance on the provisions which the evaluation found to be perceived as lacking clarity;

steering a self-regulatory exercise with a view to reach a multi-stakeholder agreement on a set of key principles for a better presentation of both pre-contractual information under the CRD and standard contract terms;

further examining possible targeted amendments to the Directive regarding:

) extending its scope to include contracts for 'free' digital services and thus applying the pre-contractual information requirements and the right of withdrawal to any digital services;

) simplifying some of the existing information requirements, for example by allowing traders to use more modern means of communication for their exchanges with consumers;

) reducing the burden on traders, especially SMEs;

) increasing the transparency of the information that online marketplaces provide consumers about the identity and quality ('trader' or 'consumer') of the supplier, and about the differences in the level of consumer protection when contracting with a trader rather than another consumer.

Lastly, the Commission will step up the enforcement of the Directive, including through common actions in the framework of the Consumer Protection Cooperation Regulation.