Green Paper on the review of the consumer acquis

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The Committee on the Internal Market and Consumer Protection adopted the own-initiative report drawn up by Béatrice **PATRIE** (PES, FR), and welcomed the Commission's Green Paper on Review of the Consumer acquis, particularly the stated goal of modernising, simplifying and improving the regulatory regime for professionals and consumers, thus facilitating cross-border trade and strengthening consumer confidence.

With regard to the **general legislative approach**, the report expressed its preference for the adoption of a mixed approach, i.e. a horizontal instrument with the primary goal of ensuring the coherence of the existing legislation and enabling loopholes to be closed by grouping together, in consistent law, cross-cutting issues common to all the directives. Specific questions which are outside the scope of the horizontal instrument should continue to be considered separately in the sectoral directives. The report was against the review of the Community acquis being used as a pretext to extend the scope of the legislation in the existing sectoral directives or to bring in additional directives. Members pointed out that harmonisation must not lead to a decline in the level of consumer protection achieved under certain national arrangements.

Scope: the horizontal instrument should be applied as widely as possible to all consumer contracts, whether for national or cross-border transactions, in order to avoid introducing a further element of complexity by imposing different legal arrangements on consumers depending on the nature of the transaction. Sectoral tools that were being reviewed should be based on the principle of minimum harmonisation, combined with the principle of mutual recognition where the coordinated area is concerned. The report noted, however, that this does not exclude full targeted harmonisation where this proves necessary in the interest of consumers and professionals. Members opposed the insertion of a general clause of good faith and fair dealing applicable to consumer contracts.

With regard to the content of the horizontal instrument, the report discusses the following points:

Definitions of “consumer” and “professional”:the definitions of 'consumer' and 'professional' are not consistent either in Community legislation or in national legislation. A 'consumer' should be defined as any natural person acting for purposes which are outside their trade, business or profession; and a 'professional' should be defined as any person acting for purposes relating to their trade, business and profession.

Unfair terms: it was not considered appropriate to apply the rules on unfair terms to individually negotiated terms so as not to restrict the freedom of the contracting parties to conclude contracts. In order to boost consumer confidence in the internal market, arrangements affording more protection should be introduced while retaining a degree of flexibility. The Commission is requested to carry out further examination of the use of a combination of a black list of banned terms, a grey list of terms presumed to be unfair and other terms which consumers could demonstrate to be unfair by means of legal action, on the basis of previously determined and uniform criteria. The report rejected the idea of extending the unfairness test to all the core terms of a contract, including the main subject matter of the contract and the assessment of the price, having regard to the principle of contractual freedom.

The right of withdrawal: the report underlined the need to standardise the methods for beginning and calculating the withdrawal period by giving priority to calculation according to calendar days in order to

enhance the legal certainty of transactions. The length of the periods should be harmonised where this is justified by the circumstances. The horizontal instrument should provide for the consumer to be able to withdraw from a contract, and the means for withdrawal should be harmonised to improve legal certainty for both consumers and economic operators. The horizontal instrument should also affirm that consumers should not bear any costs other than the direct cost of returning the goods. The introduction of a 'standard withdrawal form' in all the Community languages would simplify procedures, reduce costs, and increase transparency and consumer confidence.

Specific rules on consumer sales: the report makes a series of recommendations on this matter, and proposes the inclusion in the horizontal instrument of a common definition of delivery, in which in principle priority should be given to a contractual agreement. The horizontal instrument could also:

- extend the length of the statutory guarantee to include the period when the goods are out of use for repair;

- establish an order of available remedies in the case of wrong performance, with termination of contract being reserved for complete non-performance or particularly serious breaches of contract;

- eliminate the existing divergences concerning the notification of lack of conformity, which are currently a source of confusion;

Members felt that it was not appropriate to introduce direct producers' liability for nonconformity.

Lastly, the issues relating to commercial guarantees (content, transfer, limitation) were subject not to a legal framework but to the principle of contractual freedom, and these issues should not be part of the horizontal instrument.