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ALDE Seminar on Consumer Policy

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PART 1: CONSUMER CONFIDENCE, ITS IMPORTANCE FOR THE INTERNAL MARKET AND THE ROLE OF EU CONSUMER POLICY

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BUSINESSEUROPE VIEWS ON EU CONSUMER POLICY

1. INTRODUCTION

Consumer policy is important for a well-functioning Internal Market and that is why consumer protection aspects are taken into account in elaboration of Internal Market policies (competition, transport, telecoms, etc). This is enshrined in article 95 par. 3 of the EC Treaty which deals with measures necessary for establishment and functioning of the Internal Market.

A strong economy and competitiveness of companies are highly dependent on consumer confidence and satisfaction. The market does not work if consumers do not feel confident to shop. This is why companies strive to do their best to meet consumers' needs and need adequately protected consumers.

A sound and balanced EU consumer policy that ensures an adequate high level of consumer protection and promotes competitiveness of companies can also help to reap the full potential of the Internal Market and respond to today's challenges coming from an enlarged EU, greater use of new technologies and globalisation.

2. CONSUMERS AND BUSINESS IN TANDEM FOR A WELL-FUNCTIONING INTERNAL MARKET

The Internal Market does not exist for business or for consumers alone. It is a tremendous instrument for economic development and a pillar of the European well-being. Since the 90s it has created numerous advantages and opportunities:

Consumers are better informed and protected and they enjoy wider choice and lower and more transparent prices.

Citizens can choose to live, study, work and retire in any EU country.

The economy offers a more competitive, dynamic and transparent environment resulting in more growth and higher employment. 2.75 million extra jobs have been created and EU GDP has risen an extra 225 billion euros (2%) thanks to the Internal Market.

Companies can grow more easily and have easier access to a market which now comprises almost 500 million people in 30 countries (EU-27 plus Iceland, Liechtenstein and Norway). European companies' competitiveness and their position in the global market have been reinforced. For example, the opening of EU telecommunications markets has contributed to productivity in this sector, which has increased by 60% more than in the US since the beginning of the 90s.

Consumers and business are partners within the Internal Market. Their interests are compatible and must be taken into account in Internal Market policy-making. Internal Market policies must meet business and consumer needs alike and take account of their impact on competitiveness and the economy at large.

BUSINESSEUROPE thus supports a balanced consumer policy that ensures an adequate level of consumer protection and promotes competitiveness and growth in Europe.

3. RECOMMENDATIONS FOR A BALANCED EU CONSUMER POLICY THAT WILL INCREASE CONSUMER CONFIDENCE

EU consumer policy should not translate into overprotective policies or regulations. This will hamper the smooth functioning of the Internal Market, creating excessive regulatory burden on companies to the ultimate detriment of consumers who will have less choice and probably higher prices.

Creation of new legislation is not the panacea to create consumer confidence in cross-border shopping. There are more important drivers which are "non-policy induced obstacles" which influence our shopping behaviour than rules and legislation: consumer choice, price, quality, language, experience, convenience, easy access to after-sales service, close to where we live, access to problem-solving mechanisms, etc.

A balanced consumer policy should focus on:

Clear and more harmonised regulatory framework:

A clear and understandable regulatory environment is essential for legal certainty and effective consumer protection. The Commission's approach seeking full harmonisation of national consumer laws when appropriate is the way forward in a increasingly integrated Internal Market. This will result in increased legal certainty and

less regulatory burden, a more common level of consumer protection and easier enforcement.

Coherence and compatibility of consumer legislation with other Community legislation is of paramount importance as well as the impact that consumer policy proposals may have on the Internal Market and competitiveness of enterprises.

The Commission, as the main guardian of the treaties and hence also of Internal Market principles and legislation, should ensure that there are no contradictions between proposals and that the well-functioning of the Internal Market is not at risk. New proposals must not put at risk the objectives and the good implementation of other existing legislation. Examples: e-commerce, financial services or the forthcoming Community rules on the applicable law governing contractual obligations (Rome I).

Regarding the review of the consumer acquis: the debate on how to improve the regulatory framework in the field of consumer policy is welcome, particularly its objectives of implementing the better regulation agenda and improving the functioning of the Internal Market.

However, before any decision is taken, there are questions that need to be answered particularly on the justification for the review. We consider that the case for the proposed overhaul of the consumer acquis has not been fully made. There is no adequate evidence about existing gaps in consumer protection. Specific cross-border difficulties must be identified. This information is essential in order to deliver the right regulatory environment and look for the best instruments to address the problems, be they legislative or non-legislative. Constant dialogue with representative stakeholders is indispensable to identify where the problems lie.

Should any legislative proposal be justified, BUSINESSEUROPE supports full harmonisation providing legal certainty, a more common level of consumer protection and regulatory simplification. The scope of full harmonisation should be pragmatically defined so that it focuses on targeted and proportionate solutions to the problems identified. Any new measures should apply to both domestic and cross-border transactions and be backed up by impact assessments with a genuine economic component.

Effective and even enforcement:

Disparate enforcement of consumer protection rules between national jurisdictions may lead to distortions of competition and undermine the confidence of market players. Adequate enforcement of existing legislation should be the priority especially in an enlarged EU. Member States should play a decisive role for efficient enforcement.

The effectiveness of EU legislation already adopted should be analysed and its enforcement improved before further proposals are put forward. Special reference should be made to the injunctions directive, the recently adopted regulation on small claims that will allow the enforcement of cross-border claims up to EUR 2,000 and will apply from 1 January 2009 and the regulation on consumer protection cooperation should strengthen the effectiveness of consumer protection legislation.

Proposals for a more court-oriented approach to enforcement of consumer laws (collective action, etc) must be treated with extreme care. Business is in favour of adequate consumer redress but believes the emphasis should be put in improving and reinforcing existing mechanisms particularly non-judicial mechanisms such as arbitration, mediation, complaint-handling and information schemes (SOLVIT, etc.).

Promotion and consolidation of extra-judicial dispute settlement tools

Whenever possible, disputes should be settled via out-of-court procedures, in the interest of both consumers and business, and therefore more emphasis should be placed on promotion and reinforcement of ADRs. Member States have implemented various forms of ADRs which are fine-tuned to their specific situation. It is therefore particularly at Member-State level that the discussion on ADRs should take place.

Non-judicial means of redress make it possible to reach a solution acceptable to both parties more rapidly, at a lower cost and helping to maintain a less confrontational atmosphere between parties.

There are different levels of out-of-court procedure including: direct negotiation, mediation, arbitration and, in some countries, an ombudsman designated on the basis of specific legislation. These mechanisms which offer the possibility of providing case-by-case solutions and are better suited to the particular circumstances of each situation may be further improved where necessary as also recommended by the Commission.

Mechanisms for problem resolution such as SOLVIT, the free-of-charge online problem-solving network that helps citizens and businesses to enforce their rights in cases of misapplication of EU rules by national authorities, should also be made better known and adequately resourced, especially at national level.

Promotion of alternatives to traditional legislation:

Consumer protection is an area where self-regulation and co-regulation can offer a more suitable alternative to traditional legislation. Codes of conduct have proved valuable and innovative tools to enhance responsible business self-discipline and to offer added value for consumers in a fast-changing market. Effective codes of conduct must remain voluntary, flexible, and transparent, and should be coupled with appropriate review, monitoring and enforcement mechanisms (good example: EASA codes in the advertising sector).

Promotion of informal dialogue between business and consumers:

Dialogue between representative business and consumer organisations at EU level should be promoted. Such a culture of dialogue will help mutual understanding, reduction of confrontation, sharing of expertise and will pave the way for further dialogue and productive debate. This dialogue can be articulated in different ways: a consumer/business exchange day, workshops, seminars, expert groups, etc.

Improve consumer information and education:

In addition to the initiatives led by companies and consumer organisations, EU and national authorities should invest more in education and information campaigns from school onwards making use of modern technologies and online educational tools. Consumers need to be aware of their rights and obligations to make an informed choice in the market.

Consumer data, statistics and knowledge:

Consumer policy should be more evidence-based. More efforts are needed to streamline collection, use and assessment of meaningful information on consumer patterns and attitudes. Better cooperation and exchange of experiences between existing sources should be ensured and procedures harmonised. Accuracy and representativeness of data is central if information collected is to serve as a basis for policy proposals.
