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PUBLIC HEARING “THE CONSUMER RIGHTS DIRECTIVE” EP COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION, BRUSSELS, 2 MARCH 2009

SESSION 1 – EXPERIENCES ON BUYING AND SELLING CROSS- BORDER: THE SCOPE AND HARMONISATION APPROACH OF THE PROPOSED CONSUMER LAW FRAMEWORK

BUSINESSEUROPE’S VIEWS BY CARLOS ALMARAZ

Good afternoon Members of the European Parliament, Ladies and Gentlemen.

Let me first thank the Committee on the Internal Market and Consumer Protection and its Chairwoman Mrs McCarthy for having organised this hearing, and for inviting BUSINESSEUROPE to bring some views of the business community on this important proposal.

I will start by explaining why the business community believes there is a need for EU action, followed by the importance of a constructive and well informed debate and I will conclude with specific comments on the content of the proposal.

Nobody questions that the Single Market is not working optimally regarding business-to-consumer cross-border sales. A number of factors have a strong impact on cross-border trade namely the relevant applicable legislation, administrative formalities, language, taxes but also personal choice or cultural habits. The great diversity that exists at national level in relation to those factors often creates obstacles and barriers to the free movement of goods and services and impairs trade across frontiers.

The myriad of regulatory obligations that companies selling cross-borders have to conform with are of special importance. Divergences between national consumer protection rules, especially those deriving from the transposition of the EU consumer *acquis*, make it particularly difficult for companies to operate out of their domestic markets.

This means more compliance costs to adapt to the various laws and legal uncertainty about foreign legal orders. Companies, especially SMEs sometimes simply cannot afford to engage in cross-border trade or are certainly more reluctant to do so.

Consumers are also losing from this situation, particularly with a narrower choice and access to goods and services from other Member States, uncertainty and less



confidence in foreign markets due to the different national levels of consumer protection.

Finally, the economy and the Single Market lose from the lack of competition and the existence of barriers to free movement.

The Commission's proposed directive aims to improve the functioning of the Single Market and to implement the better regulation agenda. This will be done through the reduction of certain national regulatory divergences governing business-to-consumer contracts while ensuring an adequate common level of consumer protection across Europe.

For BUSINESSEUROPE and its 40 national federations from 34 countries, the case for harmonisation in this field is clearly made. This is why we strongly support the proposal and its targeted full harmonisation effect which is the best tool to achieve the objectives just mentioned.

However, we acknowledge that the debate on this proposal will not be clear cut. Turning diversity into some degree of uniformity is never easy, especially in the consumer policy area. But it is a debate worthy of having and more importantly it is necessary especially in the context of the serious economic crisis that we face today.

Before entering into the details of the proposal, I would like to emphasise how important it is to have a constructive and well-informed debate among all interested parties to achieve a satisfactory outcome.

We fear that in some quarters particularly at national level, the proposal is being examined from an almost exclusively domestic angle. If the purpose of the debate is to reach a consensus on what common European rules can be provided to facilitate commercial transactions, the sole use of a national perspective does not seem the way forward to us.

The legislative debate should be improved by seeking the following:

- To provide clear information including solid and objective evidence about the impact of full harmonisation on national legal orders.
- To clarify several key aspects:
 1. Scope of the directive (which services and goods are covered/excluded)
 2. General effects of full harmonisation
 3. Interaction with existing Community legislation (e.g. the unfair commercial practices directive, e-commerce directive, Rome I regulation, etc).
- To search for the European interest and consider the proposal as a package avoiding to focus on maintaining the national status quo and regarding any changes to national legislation systematically as a step backwards.



On the details of the Commission' proposal, I would highlight 3 elements:

1. Importance of full harmonisation. It is the right tool to ensure a truly harmonised and clear legal framework that can provide a level playing-field and a common level of consumer protection.

During the legislative process, both the European Parliament and the Council should do their utmost to avoid its dilution and introduction of carve-outs.

It should be clear that Member States cannot regulate differently on the aspects fully harmonised by the proposal and that the directive does not undermine parties' freedom of contract which is a central principle in contractual relations in all EU legal orders.

2. Key areas for harmonisation. The scope of the proposal already covers aspects on which national divergences pose problems to companies in cross-border contractual dealings, namely:

- Definitions (art 2.)
- Consumer information (Chapter II)
- Right of withdrawal for distance and off-premises contracts including a EU wide length, a model withdrawal form, conditions for its exercise (starting point, obligations of the consumer and the traders, exceptions) or delivery conditions.
- Legal remedies/guarantees in case of defective products.

However, there are also aspects which we believe should not be harmonised:

- The contractual effects of failure to provide information should continue to be regulated differently for different types of contract.
- Provisions on the right to damages should be decided at national level.
- Content of commercial guarantees. EU harmonisation regarding the content is not appropriate and the status quo should be maintained.

3. Level of consumer protection

We agree that the proposal has to ensure an appropriately high common level of consumer protection. This is important so consumers feel confident in cross-border trade.

The challenge is to agree on a level that for the aspects covered by the directive will be the same across Europe. When discussing the appropriate level of consumer protection, neither the most protective national models nor the most fragile should be chosen.

The level of protection will be the result of the political process, and should be based on sound and objective evidence and on adequate stakeholder consultation. It should also be borne in mind that the notion of "consumer" in



this debate needs to embrace both the rights and obligations that a consumer has in the market.

The consumer associations have an important role to play in providing the evidence and input on what the common level could be. The business community is prepared to discuss on balanced proposals for a European level of protection other than the one foreseen in the proposed directive.

To end, I would like to encourage national and EU legislators and the relevant stakeholders to hold a constructive and pragmatic debate so that this proposal effectively represents a win-win situation for consumers and businesses and creates added value to the Single Market.

BUSINESSEUROPE will issue in the coming days more detailed comments on the proposal and will continue its active and constructive work on this important matter.

I thank you for your attention!