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### **EPP PUBLIC HEARING ON “THE CONSUMER RIGHTS DIRECTIVE” 15 APRIL 2010, BRUSSELS**

### **BUSINESSEUROPE’S VIEWS ON THE PROPOSAL AND THE RAPPORTEUR’S WORKING DOCUMENT**

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

First I would like to thank the Group of the European People’s Party and in particular Mr Andreas Schwab, rapporteur on the proposed directive for holding this hearing and continuing its extensive stakeholder consultation on this important proposal.

It is now more than a year and a half since this proposal was adopted. There has been a lot of discussion by the legislators and stakeholders to understand the proposal, analyse the consequences and reflect on the necessary changes to address the various concerns. It is high time to make decisions so that the debate progresses.

In BUSINESSEUROPE, which groups 40 national business and employers’ federations from 34 countries, we have thoroughly studied the proposal from a horizontal perspective, putting together the common interests and views of the various business sectors, sizes and types of companies we represent. This task has been complex and challenging given the wide scope of the proposal, the difficulty of understanding its impact and the many types of goods and services covered.

This is why it is important to reiterate that despite the complexities and difficulties of the debate, BUSINESSEUROPE and its national members continue to strongly support the proposal because it offers a genuine opportunity to improve the Single Market for businesses and consumers.

The current regulatory situation regarding consumer contracts in the EU is unsatisfactory and needs to be improved. The transposition of the relevant EU Directives, based on minimum harmonisation, has resulted in many differences in national laws which create obstacles to the single market in the form of increased compliance costs and legal uncertainty. Recent Commission reports show that national divergences in consumer laws act as a deterrent to cross-border commerce.

It is undeniable that added value can be created with a more harmonised legal framework that provides a single set of basic and core consumer rights and obligations which are relevant in business-to-consumer contracts.

The proposal’s full harmonisation effect is therefore the best tool to create a level playing field, ensure more legal certainty and remove key national regulatory divergences.



We acknowledge that the Commission’s proposal is far from being perfect. It needs important changes and improvements to clarify its scope and definitions, its impact on national legal orders and to set a better balance between the interests of traders and consumers. The role of the European Parliament in this regard will be of utmost importance.

Having said that and while we support a more targeted full harmonisation proposal, we would oppose adoption of a new law with a mix of full and minimum harmonisation provisions. This will not solve the problem of lack of legal certainty nor will it remove legal fragmentation affecting businesses when providing their goods and services to consumers across Europe.

If full harmonisation is not possible on certain aspects, we would prefer to keep the current legal framework for those aspects for the time being and reflect later on how best to address them.

With regard to the idea of creating a specific regime for online/distance sales contracts different from the one for face-to-face contracts, we would not support this differentiation. Such a regime not only would lead to distortions of competition, it would also contradict the essence of an internal market which is defined as a space without internal frontiers and puts at risk any innovative concepts of distribution.

As regards **Mr Schwab’s working document**, we welcome the pragmatic and constructive approach taken by the rapporteur.

The document provides an informative summary of the state of the discussions and where the difficulties lie and proposes some interesting ideas to move the debate forward.

We are happy in particular of the rapporteur’s support for targeted full harmonisation as the basis of the proposal and agree with him that changes are necessary to make the proposal more acceptable both politically and technically.

Regarding the rapporteur’s ideas on the different Chapters:

On **Chapter I**: we agree that it is an essential part of the proposal that needs to be clearly drafted since it affects the rest of the provisions.

<b>CHAPTER I – SUBJECT MATTER, DEFINITION AND SCOPE</b>	
<b>Article 2 – Definition “consumers”</b>	BUSINESSEUROPE fully supports the definition of consumer of the directive which applies exclusively to individual natural persons and not to small businesses or other legal persons.
<b>Article 2 – Definition “off-premises contracts”</b>	The definition of off-premises contracts should not cover contracts concluded off-premises at the consumer’s express request (e.g. renovation work, rental agreements).
<b>Article 3 – Scope</b>	We agree that this article should be simplified and better structured providing clarity as to the relationship between certain provisions of the



	<p>proposal themselves and the interaction with other relevant EU laws (e.g. the E-commerce Directive, the Services Directive and sectoral legislation).</p> <p>It should also be clarified to what extent and how services are covered, for example, social services, financial services, transport services or tourism. Concerning dual usage contracts, there is too much uncertainty as to how national courts are going to determine the predominance of the private purpose in a contract which would make the proposal applicable.</p>
<p><b>Article 4 – Full harmonisation</b></p>	<p>This is a very important article. The full harmonisation approach is the pillar of the proposal to ensure legal certainty and less regulatory fragmentation which are primary objectives of the directive.</p> <p>It is key to clarify that full harmonisation would be targeted so it would apply only to the selection of aspects of national laws covered in the proposal.</p>

On **Chapter II**, we broadly agree with the rapporteur’s views that further research is needed to understand the proposal’s impact on precontractual obligations existing both in national legal orders and in other Community laws. Also, some special provisions for specific services such as social and health services might be justified.

Regarding **Chapter III**, we believe this chapter needs various amendments to clarify some aspects and correct provisions that create excessive burden on traders. A number of provisions need also revision to respond to the specificities of mixed-purpose contracts and those that concern high value products.

<p><b>CHAPTER III – CONSUMER INFORMATION AND WITHDRAWAL RIGHTS FOR DISTANCE AND OFF-PREMISES CONTRACTS</b></p>	
<p><b>Article 9 - Information requirements for distance and off-premises contracts</b></p>	<p>The article should be amended so that it provides that as in article 5 the trader can refrain from providing the consumer with the information in this article if this information is already apparent from the context. For some contracts concluded over the internet the information referred to in article 9 which refers also to article 5 will be superfluous and/or apparent from the context.</p> <p>It must be clarified at what moment in the contractual relationship (prior to the conclusion of the contract, after the conclusion of the contract or provided in the content of the contract) the information referred to in <b>article 9(b) to (f)</b> should be given or made available to the consumer.</p>



<p><b>Article 12 - Length and starting point of the withdrawal period</b></p>	<p>Although a single EU withdrawal period might not suit adequately the great variety of goods and services covered by the directive, BUSINESSEUROPE would be prepared to support the proposed 14-day withdrawal period. However, this article should clearly indicate when the withdrawal period begins in the case of a distance contract having as its object both goods and services (so-called mixed-purpose contracts).</p>
<p><b>Article 16 - Obligations of the trader in case of withdrawal</b></p>	<p>It is not clear from the article which payments or sums are covered by the provision. Particularly, situations where consumers explicitly ask for express or special delivery of the goods and/or product installation at home are not well taken into account. In these cases costs are often higher and it is therefore inappropriate to require traders to pay back the additional price difference between express and “standard” delivery, and for the installation.</p> <p>An amendment is necessary to provide that traders do not to have to reimburse payments received to cover costs for specifically requested product installation and supplements for special delivery modes.</p>
<p><b>Article 17 - Obligations of the consumer in case of withdrawal</b></p>	<p>Article 12.3 on the length of the withdrawal period provides that the deadline of the withdrawal period is met if the communication concerning exercise of the withdrawal right is sent by the consumer within the 14-day withdrawal period. In this case and according to article 17 the consumer must return the goods within 14 days from the day on which he communicates his withdrawal to the trader.</p> <p>This may mean in certain cases that the consumer can be in possession of the good for around 28 days (14 days to communicate withdrawal plus 14 extra days to return the goods). This is disproportionate and too burdensome on the trader.</p> <p>An amendment should be made in this regard.</p> <p>The consumer during the time of possession of the good and during the withdrawal period should be obliged to treat the good with due care and due diligence and avoid making the normal use that a full owner of the good would do.</p> <p>According to article 19.1(a) the right of withdrawal does not apply to distance contracts on services where performance has begun, with the consumer’s prior consent, before the end of the 14-day period. Article 17.2 stipulates that for service contracts subject to a right of withdrawal, the consumer shall bear no cost for services performed during the withdrawal period.</p> <p>The combination of these two articles is disproportionate on the trader. For instance, if the consumer wants to withdraw from a mixed-purpose contract having as its object both the possession of a mobile telephone and a telephone subscription. If the consumer has used the telephone</p>



	during the withdrawal period, the consumer should be obliged to pay for this service. Article 19.1(a) and article 17.2 should be revised to address those situations.
<b>Article 19.1 - Exceptions from the right of withdrawal</b>	According to article 19.1(a), the right of withdrawal does not apply to distance contracts concerning services where performance has begun, with the consumer's prior express consent, before the expiration of the 14-day period. This exception should also apply to services performed according to a mixed purpose contract having as its object both goods and services
	It is not clear how the requirement for the consumer's prior express consent in Article 19.1(a) is to be met. It should be made clear in the relevant recital that this does not mean that a compulsory written consent is required.
<b>Article 19.2 - Exceptions from the right of withdrawal</b>	19.2 (b) should be amended in order to cover all contracts for which the consumer has requested the immediate performance of the contract by the trader, and not only contracts made in order to "respond to an immediate emergency" as provided in the proposal.
	19.2(c) should be amended in order to cover also situations where the consumer has request the trader to visit his home by other means than "means of distance communication", but also situations where the consumer has made such a request by other means, e.g. a request made on the traders business premises with the simultaneous presence of the trader and the consumer.

On **Chapter IV**, I would like to highlight the importance of this chapter for traders since it deals with essential and very important rights and obligations in the day-to-day dealings between companies and consumers.

We are well aware of the particular difficulties around this chapter. This is certainly due to the relevance of the rights and obligations concerned and the very wide divergences in the national laws when transposing EU directives.

We nevertheless believe that the targeted full harmonisation effect should cover all chapters proposed including Chapter IV and that a special effort should be made to find a compromise for this chapter.

If full harmonisation cannot cover all the aspects in Chapter IV, we should envisage the harmonisation of only certain aspects (e.g. rules of delivery, passing of risk or duty of the consumer to notify the lack of conformity) and the maintenance of the status quo for the aspects not covered. This would at least bring some improvement from the current situation characterised by across-the-board national differences on many aspects.



The proposal could also contain a system of future review to assess possible avenues on how to tackle those aspects that are not subject to full harmonisation in the proposal and for which the status quo remains applicable.

Finally on **Chapter V**, we believe the rapporteur's ideas can improve the Commission's proposal offering more legal certainty.

We support in particular:

- full harmonisation of the general clause so that every Member State would have a general clause drafted in the same way,
- removal of the grey list and
- removal of the Comitology provisions.

The rapporteur's proposal on the black list is interesting and worth exploring although questions still arise on the interaction with existing national black terms.

We also believe that for the sake of transparency, the proposal should provide a system of notification whereby Member States would have to notify and inform the Commission about their national black terms, existing and future, that they intend to use together with the ones contained in the EU-wide black list. This information should be publicly available via an EU registry managed by the Commission.

To conclude, I would like to congratulate Mr Schwab for his constructive approach and encourage him and the Members of the Parliament to continue their work aimed at further improving the Commission's proposal and to deliver a clear and balanced piece of legislation that truly improves the Single Market.

I thank you for your attention!

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