



## PROPOSAL FOR A DIRECTIVE ON CONSUMER RIGHTS

### KEY MESSAGES

- 1** We support the proposal which offers a genuine opportunity to improve the Single Market for businesses and consumers.
- 2** The current situation regarding business-to-consumer contracts is unsatisfactory and needs to be improved. National laws transposing EU Directives have resulted in too many divergences, legal uncertainty and extra compliance costs for companies.
- 3** Added value can be created with a more harmonised legal framework that provides a single set of core consumer rights and obligations.
- 4** The proposal's full harmonisation effect is the best tool to create a level playing field, ensure more legal certainty and remove key national regulatory divergences.
- 5** However, the Commission's initial proposal needs important amendments. The full harmonisation effect of the proposal should be better targeted and the scope more clearly defined.
- 6** We would oppose adoption of a proposal introducing new 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.
- 7** 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.
- 8** Any substantial amendments introduced by the legislator should be accompanied by an impact assessment to ensure legal clarity and avoid unnecessary burden on traders.

### BACKGROUND

Further to its Green Paper consulting on the review of the EU consumer legislation acquis, the Commission proposed a Directive on consumer rights on 8 October 2008.

The proposed Directive merges and turns into full harmonisation law four existing directives on consumer contractual rights, namely those relating to contracts negotiated away from business premises, unfair terms in consumer contracts, distance contracts and consumer sales and guarantees. These directives are based on minimum harmonisation, and have resulted in divergent national laws since Member States can legislate beyond the directives' provisions.

A recent Communication by the Commission<sup>1</sup> signals that regulatory barriers resulting from national obstacles among other in consumer protection laws constitute an important barrier to the development of cross-border trade, especially in e-commerce. It reveals that 61% of cross-border Internet shopping orders could not be completed by consumers because the trader did not ship the product to their country or did not offer adequate means for cross-border payment.

For consumers, the new proposal should boost their confidence since consumers will benefit from more common rights and consequently a more even level of protection no matter where they buy from. Enforcement of and information about those common rights will be easier and more comparable from one country to another.

Finally, the Single Market and the economy at large will win from a more harmonised regulatory framework that will enhance competition and transparency. This will most likely result in greater choice, better prices and easier access to goods and services from other Member States.

The European Parliament aims at completing its first reading by the end of 2010. The Internal Market and Consumer Protection Committee has the lead and the rapporteur is Andreas Schwab (EPP, D).

## **WHAT DOES BUSINESSEUROPE AIM FOR?**

- This Directive must bring the expected benefits for companies:
  - ⇒ reducing compliance costs for adapting to the divergent national legal orders;
  - ⇒ increasing legal certainty;
  - ⇒ harmonising to some extent the level of consumer protection provided in national legal orders, without creating excessive burden on companies;
  - ⇒ facilitating cross-border opportunities, especially in e-commerce.
- Future amendments to the proposal must not undermine its full harmonisation approach with the introduction of too many derogations, exceptions or unclear wording due to political bargaining.
- Certain improvements need to be made, ensuring that:
  - ⇒ the scope and definitions are clarified
  - ⇒ the concept of “consumer” encompasses not only his rights but also his obligations as a responsible and active player in the market
  - ⇒ a fair balance between the level of consumer protection and the interests of traders is struck avoiding unnecessary burden on traders, and the parties’ freedom of contract is respected.

<sup>1</sup> Communication from the Commission on Cross-Border Business to Consumer e-Commerce in the EU (Brussels, 22.10.2009, COM(2009) 557 final).