

17 September 2010

## **PROPOSAL FOR A DIRECTIVE ON CONSUMER RIGHTS**

BUSINESSEUROPE which represents 40 national business and employers' federations from 34 countries supports the objective of removing obstacles caused by fragmentation of national consumer contract rules while ensuring an appropriate common level of consumer protection across Europe.

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. This situation of legal uncertainty and regulatory fragmentation became more evident with the entry in to force of the Rome I regulation on the law applicable to contractual obligations.

BUSINESSEUROPE continues to strongly support the proposal's aim to improve the Single Market for businesses and consumers. However, BUSINESSEUROPE would like to reiterate its priorities for the difficult and complex debate ahead.

### **BUSINESSEUROPE PRIORITIES for the directive on consumer rights**

#### **Level of harmonisation**

In BUSINESSEUROPE's view it is key to keep a targeted full harmonisation approach throughout the directive as currently foreseen by Article 4 of the proposal. This is the best tool to create a level playing field, ensure more legal certainty and remove key national regulatory divergences.

#### **Avoiding more legal fragmentation and burdens on companies**

Still, given the wide scope and the many types of goods and services covered, BUSINESSEUROPE is aware that full harmonisation, even targeted, will be difficult to achieve in a certain number of areas and that changes to the Commission's initial proposal will be needed.

However, BUSINESSEUROPE would oppose adoption of a proposal introducing new minimum harmonisation provisions. This will not solve the problem of lack of legal certainty for businesses and consumers. In addition, new minimum provisions are not only likely to preserve existing fragmentation. They will also pose an immediate risk of further divergences in connection with transposition into national law.



Where full harmonisation is not possible, BUSINESSEUROPE would strongly advocate to keeping the current legal framework for those aspects for the time being and reflect later on how best to address them.

BUSINESSEUROPE sees positively the approach of targeted full harmonisation taken by the *Rapporteur* concerning the definitions, distance and off-premises contracts, conformity and passing of risk. Nevertheless, it regrets that the draft report has opted for a mixed approach in Chapters IV and V and added new minimum harmonisation provisions. We believe that this will add more confusion.

In spite of this, BUSINESSEUROPE believes that the mutual evaluation clause proposed by the draft report could be a valuable tool to ensure future revision of those aspects of the proposal remaining under the status quo.

### **A more harmonised and comprehensive set of rules for both face-to-face and online contracts**

Future amendments to the proposal must not undermine its targeted full harmonisation approach with the introduction of additional derogations, exceptions or unclear wording due to political bargaining. Furthermore, BUSINESSEUROPE strongly calls for a clarification of the scope regarding the range of goods and services covered by the proposal.

BUSINESSEUROPE has reservations about the inclusion of financial services in chapters II and III of the proposal. The financial services area is already highly regulated at the EU level<sup>1</sup> and regulatory overlap should be avoided.

With regard to the idea of creating a specific regime for online/distance sales contracts different from that for face-to-face contracts, BUSINESSEUROPE 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 put at risk any innovative distribution concepts. In addition, a dual regime would be utterly confusing for consumers, as well as for SMEs.

### **Striking a fair balance**

It is key to strike the right balance between the interests of companies and those of consumers avoiding unnecessary burden on traders. Even more crucial is to set an appropriate common level of consumer protection across Europe which will be the common denominator in the subsequent national transposition laws. Neither the most protective models nor the most fragile should be chosen as the pattern at EU level. This directive needs to be both reasonable and balanced for both contracting parties.

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<sup>1</sup> Consumer Credit Directive 2008/48; Distance Marketing of Financial Services 2002/65; Markets in Financial Instruments Directive (MiFID) 2004/39; and Payment Services Directive 2007/64.



In BUSINESSEUROPE's view, if such balance is not achieved there is little added value to the whole exercise.

**Impact assessment**

Any substantial amendments introduced by the legislator should be accompanied by an impact assessment to ensure legal clarity and avoid unnecessary burden on traders.