

Consumer remedies in CESL and CRD: BUSINESSEUROPE's perspective

ERA Annual Conference on European Consumer Law

What is BUSINESSEUROPE?



- ✓ The Confederation of European business, representative of more than 20 million small, medium and large companies
- ✓ A Social Partner

Mission

- ✓ “Actively promote and represent business in Europe”
- ✓ “Advocate a favourable and competitive business environment to foster sustainable economic growth”

Purpose

- ✓ Influence EU policies to create a business-friendly environment

Pillars

- ✓ Members FIRST
- ✓ Staff: about 50 persons
- ✓ Supporting network of 33 companies (ASGroup)
- ✓ Alliance for a Competitive European Industry
- ✓ European Employers Network



20 years of single market – our flagship

WORLD'S LARGEST ECONOMY

→ **GDP = €12.6 TRILLION**

ADDING €600

BILLION A YEAR TO

EUROPE'S ECONOMY

3 MILLION NEW

JOBS CREATED

2.5 MILLION ERASMUS STUDENTS

MORE COMPETITION

ACCOUNTS FOR 20% OF GLOBAL EXPORTS AND IMPORTS

WIDER CHOICE OF GOODS AND SERVICES

PRICE AIRLINE

TICKETS DROPPED BY 40%

6 MILLION PEOPLE WORKING IN

ANOTHER MEMBER STATE

€2,800 BILLION TRADED IN GOODS IN 2011

500 MILLION PEOPLE



Fragmentation in the Internal Market :

Identifying the problem:

Consumer laws differ widely from Member State to Member State resulting from the transposition of minimum harmonisation directives

- difficulties for consumer to ascertain their rights
- costs for companies, in particular for SMEs, which need to be able to apply a mosaic of 27 different consumer protection regimes

Among other well known barriers, legal fragmentation can have a hampering effect in delivering the full benefits of the internal market



Fragmentation in the Internal Market :

The cure?

Consumer Rights Directive provided for further harmonisation in important areas:

- Information requirements
- Distance and off-premises
- Delivery and passing of risk

BUT

Remedies and **unfair clauses** were left out



Remedies

- fundamental importance for businesses
- no solution found during CRD discussions.
- nevertheless, latest CJEU rulings on the Alpenhof and Yusufi cases demonstrate that legal fragmentation is a real concern for companies

CESL: a solution?

- New way of legislating
- A voluntary approach
- To succeed:
 - Substantial simplification and reduction of costs
 - Attractive for businesses and consumers
 - Well-balanced rights and contract stability
 - Usable, understandable and workable
 - Legally tight and certain



CESL: remedies/prescription

Business views on different choices:

- Free choice of remedies
- Overly extensive right to terminate
- Absence of duty of notification by consumer
- The missing ‘cure’ or right to cure
- Prescription periods



CESL: replace or waste?



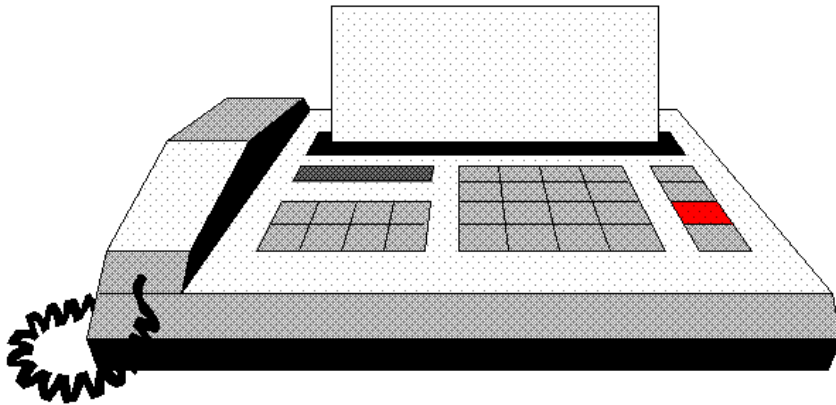
CESL: replace or waste?



CESL: the missing 'cure'



CESL: Long prescription



CESL: other concerns

- Requiring performance of buyer's obligations (clarification)
- Commencement of the prescription period
- Relevant time for establishing conformity
- Conformity of the goods
- Consistent terminology with acquis



Conclusions

- The creation of an European common set of contract rules to achieve the internal market is an attractive idea, but it is doubtful that the proposal as it stands is able to reach such an objective.
- The success of the proposal mainly relies on its economic appeal for enterprises, which implies:
 - Simplification
 - Legal certainty
 - Stability of contracts



*THANK YOU
FOR YOUR ATTENTION!*

More information can be found at
www.business europe.eu

