

BUSINESSEUROPE



Session 2: What should be included in a fully harmonised framework directive on consumer contracts?

Carlos Almaraz
Deputy Director, BUSINESSEUROPE

BUSINESSEUROPE: 39 members in 33 countries

							
Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Denmark
							
Estonia	Finland	France	Germany	Germany	Greece	Hungary	Iceland
							
Iceland	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Norway
							
Poland	Portugal	Portugal	Rep. San Marino	Romania	Slovakia	Slovenia	Spain
							
Sweden	Switzerland	Switzerland	The Netherlands	Turkey	Turkey	United Kingdom	



What is BUSINESSEUROPE?

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 45 persons
- ✓ Supporting network of 34 companies (ASGroup)
- ✓ Alliance for a Competitive European Industry
- ✓ European Employers Network



Commission's review objectives:

- “to achieve a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring the strict respect of the principle of subsidiarity” (p.3, Commission's GP)
- “wherever you are in the EU or wherever you buy from it makes no difference: your essential rights are the same” (p.3)



BUSINESSEUROPE expectations from the review

- Better functioning of the Single Market
- Reduction of regulatory fragmentation
- Genuine simplification at EU and national level
- Legal certainty
- Correct transposition/ no gold-plating
- Effective enforcement
- Unambiguous commitment from the Commission and legislators to respect these principles and the good of the Internal Market



Before new legislation is adopted (1)

- Full respect of Better Regulation principles:
 1. Internal Market Test: identification of cross-border problems
 2. Simplification of existing rules
 3. Reduction of administrative burden
 4. Strike right balance between the competitiveness of companies and an appropriate common level of consumer protection
 5. Compatibility with existing legislation and policies
 6. Impact assessment by EU institutions
 7. Full consultation of representative stakeholders



Before new legislation is adopted (2)

- Ensure coherence between future and existing legislation: Rome I, UCPD, etc
- The link with the ongoing research on European contract law should be clarified:
 - BUSINESSEUROPE strongly opposes creation of a European civil code for consumer contracts



Content of future legislation (1)

- We support targeted full harmonisation:
 - more legal certainty (less room for national divergences)
 - similar level of consumer protection
 - reduce obstacles to SMEs in cross-border activities
 - easier enforcement

- Be pragmatic: do not go beyond the scope of the relevant acquis directives

- Scope of full harmonisation must be clearly defined:
 - focused on targeted and proportionate solutions to the problems identified
 - no discrimination between domestic and cross-border transactions
 - mutual recognition for non harmonised aspects



Content of future legislation (2)

It should contain:

- Internal Market clause/legal clarity
- Basic common definitions
- Modalities for exercise of the right of withdrawal
- Calculation method of time limits
- Obligations for consumers, e.g. general duty to notify seller of the lack of conformity
- Screening and simplification obligations
- Transposition assistance provisions



Content of future legislation (3)

- It must not contain:
 - Direct liability issues
 - (Un)Fairness test or general clauses of good faith on substantial rights, duties or pricing
 - Judicial redress/damage claims
 - Additional limits to the freedom to contract
 - Amendments to choices of remedies



Conclusions: “the way forward” (1)

- No new laws if no Internal Market added value
- It must result in true EU and national regulatory simplification
- Strike a balance between interests at stake
- Be proportionate, practical and targeted, based on real evidence of need for better functioning of the internal market
- Backed up by impact assessment based on a competitiveness test



Conclusions: “the way forward” (2)

- Flanking measures to ensure correct and timely national transposition and implementation (e.g. services directive)
- Better enforcement via:
 - Improve out-of-court problem-solving mechanisms
 - Better market surveillance and administrative cooperation including adequate and effective sanctions
 - Better education and information of consumers

What next? A WHITE PAPER should follow, there is no need to rush!



Thank you for your attention!

For more information:
www.businessseurope.eu

