



EUROPEAN COMMISSION

Brussels, 8/10/2009
C/2009/7047

Mrs Elsa PAPADEMETRIOU

Chairwoman of the Special Standing
Committee on European Affairs of the
Hellenic Parliament

Dear Mrs Papademetriou,

Thank you for your opinion on the proposal for a Directive of the European Parliament and the Council on Consumers' Rights {COM(2008)614}.

In line with the Commission's decision to encourage National Parliaments to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response and hope you will find these a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

Yours sincerely

Margot WALLSTRÖM
Vice-President of the European Commission



EUROPEAN COMMISSION

Brussels, September 2009

COMMENTS OF THE EUROPEAN COMMISSION ON AN OPINION FROM THE HELLENIC PARLIAMENT

COM (2008)614 - Proposal for a Directive of the European Parliament and the Council on Consumers' Rights

The Commission thanks the Standing Committee on Production and Trade and the Special Standing Committee on European Affairs of the Hellenic Parliament (the "Committees") for their valuable contribution on the proposal for a Directive on Consumers' Rights ("the proposal"). It welcomes the Committees' support to review the consumer acquis in light of the new market and technological developments and to merge four community directives into one.

First of all, the Commission fully agrees with the Committees that an **appropriate balance between a high level of consumer protection and a competitive market for businesses** has to be found in order to enhance consumer confidence in the internal market and to reduce businesses' reluctance to engage in cross-border trade. The proposal aims to unlock the potential of cross-border trade within the internal market for the benefit of consumers. The Commission therefore does not share the Committees' view that the Commission's proposal places more emphasis on facilitating cross-border trade for business than on consumer protection. The Commission has carefully analysed what **impact** the various issues in the proposal will have on consumers and the EU internal retail market. The analysis of the responses to the Green Paper formed an important part of this exercise. Indeed, consumers' views, mainly transmitted by consumer organisations, were fully taken into account. The 2008 Eurobarometer findings, which the Committees mention, have only been one of multiple sources of information relied on in the compilation of the report.

Secondly, the Commission does not agree with the Committee's argument that cross-border trade is hindered primarily by factors such as **consumers' concerns** about the security of online transactions rather than by the **legal fragmentation**. Following the wide-ranging impact assessment, the Commission found that legal fragmentation translates into low levels of consumer confidence in shopping cross-border. There are a number of reasons for low consumer confidence, including insufficient knowledge by consumers of their rights; their perception that they would be less protected if they buy from foreign traders and that enforcement and mediation would be more difficult to carry out abroad. The problem of consumer perception is currently difficult to resolve. Indeed, the said legal fragmentation and the consequent uneven level of consumer protection across the EU make it difficult to conduct pan-European education campaigns on consumer rights, mediation or other

alternative-dispute resolution (ADR) mechanisms. Introducing a set of harmonised contractual rights valid across the EU will contribute to remedying this problem.

Furthermore, the effects of the fragmentation are felt by business because of the conflict-of-law rules, and, in particular, the Regulation on the law applicable to contractual obligations (Rome I – No. 593/2008), which obliges traders not to go below the level of protection afforded to foreign consumers in the consumer's home country. Traders wishing to sell cross-border into another Member State will incur legal and other compliance costs to make sure that they are respecting the level of consumer protection in that country. Such costs are either eventually passed on to consumers or, in the worse case, businesses refuse to sell cross-border. In both cases consumer welfare is below the optimum level.

In sum, the fragmentation of national laws hinders businesses from selling across borders and increases considerably the costs of such cross-border sales. It restricts the development of enterprises which would like to expand their business across the EU, especially small and medium enterprises. Consequently, this deprives consumers from reaping the benefits of the internal market, such as the increased choice and better price competition from cross-border offers.

In the Commission's view, the proposal enshrines a **high level of consumer protection** which compares favourably with the existing directives. The overall improvement of consumer protection will apply equally to all Member States like Greece where there is already high level of consumer protection: Greek consumers will benefit from the expanded definition of off-premises contracts, the increased length of the withdrawal period, from the rules on hidden charges and an EU-wide ban on pre-ticked boxes.

The Committees have expressed concern that some of the proposed rules might **decrease the level of consumer protection** in Greece providing the following examples: the omission of pre-contractual information for the consumer, the Greek list of 32 unfair contract terms (five of them being unfair under all circumstances, the rest being presumed unfair) and the consumer's choice between remedies for faulty goods.

In the course of the negotiations on the proposal in the Council and the European Parliament, such concerns will be discussed and evaluated. The Commission assures the Committees that, insofar as the Commission can influence the negotiations, sufficient time will be allocated to discuss these issues in detail. The Commission is open to clarifying, improving and strengthening the proposal's provisions. At the same time, the Commission is not ready to compromise on the principle of having a single set of rules which will apply across the board to all businesses and all European consumers.

The Committees have expressed their reservations about **full harmonisation**: they consider full harmonisation not to be in line with the principles of subsidiarity and proportionality. They argue that the current minimum harmonisation approach, allowing Member States to keep or create higher levels of consumer protection than foreseen in the directive, should be maintained.

As explained in the explanatory memorandum to the Proposal (COM (2008)614) and the Report on the Impact Assessment (SEC(2008)2544 and 2547), the Commission considers that the proposal fully respects the EC Treaty and the **principles of subsidiarity and proportionality**.

The proposal is limited to harmonising certain aspects of consumer protection law in contracts between businesses and consumers (B2C). These aspects concern mainly the trader's obligation to provide the consumer with (pre-contractual) information, the right to withdrawal for distance and off-premises contracts, the legal rights and guarantees for sales contracts and the unfair terms in consumer contracts. The proposal is not designed to harmonise the Member States' general contract law nor all aspects of consumer protection. For example, the rules on the conclusion of contracts (offer and acceptance), on invalidity of contracts or on damages for late delivery or for faulty goods will still be regulated by national law. The full harmonisation proposed in the draft is therefore "targeted".

The impact assessment and the thorough consultation of stakeholders have shown that the above mentioned aspects – and only these aspects - are crucial to improve the functioning of the Internal Market in the interests of consumers and businesses. Their positive impact on the retail market would be considerable. As shown by the Impact Assessment Report, the savings in terms of administrative burden on business wishing to sell cross-border would be high. The Commission has refrained from regulating any other aspect, even to the detriment of higher uniformity of European Consumer Law. On the other hand, limiting full harmonisation to issues of a technical nature like those proposed by the Committees would not lead to effective and sufficient improvements.

Full harmonisation is the only regulatory option satisfying the dual objectives of the review i.e. the improvement of consumer confidence in cross-border shopping and the minimisation of compliance costs for businesses wishing to sell cross-border. Minimum harmonisation in combination with the applicable private international law (Article 6 of the Rome I Regulation) and (positive) competition between national consumer laws might, on a first sight, favour consumers. However, as explained above, it would hinder the development of competitive businesses which wish to expand their business across the EU, resulting in less choice and higher prices for consumers.

The legal fragmentation problem cannot be solved by the Member States individually since it is the very same uncoordinated use by the Member States of the minimum harmonisation clauses contained in the existing Directives that is at the root of the problem. The proposal's objectives cannot therefore be sufficiently achieved by the Member States.

As explained in the Impact Assessment Report, the Commission has correctly observed the principle of proportionality in pursuing the objectives under the EC Treaty in the field of consumer protection. The Commission's goal was to propose a legal instrument that strikes the right balance between business' interests and consumer rights, on the basis of a high level of consumer protection.

As to the choice of the legal instrument, the Commission prefers, even though it involves fully harmonising the law in this area, a Directive to a Regulation. This will make it easier to transpose and implement the provisions into national contract law. Further, it will give Member States the necessary margin of appreciation to maintain national legal concepts and basic principles of national contract law thus addressing certain of the Committees' concerns.