

## JOINT SESSION

- **STANDING COMMITTEE ON PRODUCTION AND TRADE**
- **SPECIAL STANDING COMMITTEE ON EUROPEAN AFFAIRS**

On Thursday, June 18, 2009, at 13.30, the aforementioned committees of the Hellenic Parliament convened to a Joint Session in order to adopt an:

## OPINION

On the Proposal for a Directive of the European Parliament and of the Council  
on Consumer rights  
COM (2008) 614 final

The members of the aforementioned Committees having considered:

- the Proposal for a Directive of the European Parliament and of the Council on **Consumer rights** COM (2008) 614 final
- the Commission Staff Working Document accompanying the Proposal for a Directive of the European Parliament and of the Council on Consumer rights, **Summary of Impact Assessment** [SEC (2008) 2545]
- the Opinion of the Committee on Regions on **Consumer rights** [DEVE-IV-038]
- the memoranda provided by the Ministry for Development and by Consumer Organisations
- the oral contribution and observations of the Deputy Minister for Development, Mr. Ioannis Bougas, of the Secretary General of Consumer Mr. Ioannis Oikonomou, as well as those provided by representatives of Consumer Organisations, who attended the joint committee meeting,

Have reached the following conclusions:

- the legal fragmentation resulting from national laws concerning the protection of consumer rights, as well as the observed overlapping of relevant community directives encumber internal market integration, as there is confusion concerning contracting partner rights in certain commercial transactions, especially cross-border ones. From this point of view, the European Union's

initiative to proceed to the re-examination of the *acquis communautaire* and to substitute four community directives merging them in one new, is positive in principle.

- The Proposal for Directive sets as its general objective the enhancing of consumer confidence in the internal market and reducing business reluctance to cross-border trade. The general objective's two terms (consumer confidence- reducing business reluctance) must be treated in a balanced way. Yet, it seems in practice that the Proposal for Directive places more emphasis on the general objective's second term, which concerns businesses and puts less emphasis on the first that concerns consumers.
- The Proposal's aforementioned over-emphasis on the business side results first and foremost from its rationale. The Proposal's for Directive content documentation is based to a large extent on the 2008 Euro barometer's finding that legal fragmentation constitutes substantial barrier to cross-border trade. That finding results from businesses' answers and does not adequately take into account the consumers' side. For consumers, as results from the European Consumers Organisation's (BEUC) market research show, cross-border trade is primarily hindered by concerns on the security of internet transactions, by language difficulties and by questions concerning compensation and award of damages rights. From this point of view, what is to be pursued first is the consolidation of consumers' sense of security in what concerns their rights' protection, especially with regard to the new transaction forms allowed for by technology (e-commerce, m-commerce). The said asymmetry in the Proposal's for Directive documentation in turn leads to asymmetry in its very content, as demonstrated below in the paragraphs on subsidiarity and proportionality.
- Facilitation of cross-border trade is certainly a sought-after objective, from which both consumers and businesses will jointly benefit, the first due to the strengthening of business competition and the second due to the expansion of their potential field of action. However, in no case is that objective served by lessening the level of consumer rights protection.

- In our view, the Proposal for Directive lacks compatibility with the subsidiarity principle. It is a fact that issues relating to commercial transactions' freedom are better regulated at the Union level. However, if the specific Proposal, in the form of “ Full harmonization directive”, is adopted, this will lead to a lower than the current level of Consumer Rights protection in many countries, including Greece. Therefore, action at the Union level is not clearly advantaged compared to individual Member-State actions. The following illustrative cases are mentioned below:
  - According to Greek law, the violation of consumer's pre-contractual information obligation constitutes ground for the contract's invalidity. There is no respective provision in the Proposal for Directive.
  - The Greek law characterizes as improper and unfair- and explicitly forbids- thirty-two cases of standard contract terms. The Proposal for Directive divides all standard terms deemed as unfair into two categories: the first lists five cases of terms which automatically and in all circumstances are considered unfair. The second contains a list of terms which are presumed unfair unless the trader proves otherwise. It is obvious that the second category includes cases where the consumer is deemed as needing lower level protection than the ones of the first category. Most of the terms considered unfair according to our national law fall into this second category of the relatively lessened consumer protection.
  - In case of goods not being in conformity with the contract or damaged, the Greek law furnishes the consumer with the alternatives of replacement, repair, price reduction or even sale reversal. The Proposal for Directive renders the right of choice to the trader only, reducing it to repair or replacement .
- In analogy, we deem the Proposal for Directive as not complying with the **proportionality** principle either, as for the purpose of facilitating cross-border trade, it creates social cost limiting consumer rights' protection level in certain cases of countries, including Greece. It is not possible to assess whether the cost from lessening protection levels in certain countries is counter-balanced by the benefits of cross-border trade facilitation.

- For the purpose of cross-border trade facilitation, legislation simplification should focus on the harmonization of issues of a technical nature or the application of a uniform time limit of withdrawal right at the Union level and not “downwards equalization” of the protection levels of existing Consumer Rights in member-states.
- The examination of the said directive on the part of our Committees has instigated the issues of a more general examination of the “Full Harmonisation Process” concept as well. It is the view of our Committees that the “Full Harmonisation Directive” creates both notional and institutional confusion between Directive and Regulation. This issue will be examined in detail at a later meeting, taking into consideration a relevant report by our Parliament’s Legal Experts.

Therefore, they call the Government

- To reject the Proposal for Directive at the Council
- To proceed to the necessary actions in order for the revision process of the Consumer Acquis to proceed accordingly, to the direction of simplification and unification of existing Directives, considering the need for further strengthening of Consumer Rights Protection mechanisms, especially in the frame of new transaction forms enabled and spread by technology.
- To pursue materialization of the aforementioned revision in the form of a ‘minimum harmonization directive’, giving member-states the possibility of applying stricter terms on consumer rights’ protection in the context of their national law.