

# THE CONSUMER RIGHTS DIRECTIVE In Need of Revival...



## BEUC PRESS PACK

European Parliament vote

Thursday . March 24 . 2011

Brussels

All material included is quotable, with attribute to BEUC

Comment/info/interviews:

[press@beuc.eu](mailto:press@beuc.eu)

+32 (0) 2 789 24 01

John Phelan



The European Consumers' Organisation

# Introduction to the CRD

## What?

The Consumer Rights Directive aims to revise the 4 major EU consumer policy Directives in operation over the last 20 years into one horizontal piece of legislation. These are:

- The Unfair Commercial Practices Directive
- The Unfair Contract Terms Directive
- The Sales and Guarantees Directive
- The Distance Selling and Doorstep Selling Directive

Organised in 5 Chapters:

- I. Definitions ●
- II. Information requirements (on businesses to consumers) ●
- III. The Right of Withdrawal ●
- IV. Delivery and Legal Guarantees ●
- V. Unfair Contract Terms ●

## Who?

Parliament Lead Committee = Internal Market & Consumer Protection, (IMCO)

Enhanced Cooperation Committee = Legal Affairs (JURI), jurisdiction over Chapter 5

Opinion Committee = Economic & Monetary Affairs (ECON)

CRD Parliament rapporteur = Andreas Schwab (EPP, Germany)

Shadow rapporteurs = Evelyne Gebhardt (S&D, Germany), Robert Rochefort (ALDE, France), Adam Bielan (ECR, Poland) Emilie Turunen (Greens, Denmark), Kyriacos Triantaphyllides (GUE, Cyprus), Matteo Salvini (EFD, Italy)

## When?

European Commission proposal - October 2008

Parliament Committees - Early 2009

JURI and ECON committee votes - Autumn 2010

Council proposal (under Belgian Presidency) - December 2010

IMCO Committee vote - February 1, 2011

Parliament Plenary - March 24, 2011

## Why?

- Only 9% of sales in the EU are cross-border. The European Commission claimed these lamentable numbers were due to the “legal fragmentation” of different national laws dissuading traders and so sought to harmonise many via this Directive. No evidence has since been offered to substantiate this. Indeed, in the Commission’s own 2010 statistics:
  - Only 8% of sellers think full harmonisation would lead to big increase in their cross-border sales (down from 16% in 2008).
  - 54% believes total harmonisation will have no effect (up from 41% in 2008).
  - 79% believes total harmonisation will have no or little effect (up from 74% in 2008).
- Clearly misguided, proven by evidence and the difficult political process until now, it is time this Directive earned its name and did the right thing for the Internal Market by boosting consumer confidence, not reducing it further.

# What is at stake for Europe?

**A**fter more than two years of tough negotiations, on Thursday March 24 the proposal for a Consumer Rights Directive will be voted on by all MEPs in the European Parliament.

The proposal began with the Commission in October 2008 by gathering the 4 major existing consumer law Directives into one. The existing Directives provide for a minimum set of consumer rights and so allow Member States to improve or go beyond the level of protection they provide for.

## The risks

In contrast, the current proposal to be voted upon on Thursday applies the principle of ‘full harmonisation’ – a very problematic approach in consumer policy as it impedes Member States in two ways: they cannot either maintain or introduce a higher level of consumer protection on the affected issues.

The possibility of the European Parliament voting in favour of a law which would see European consumers’ rights diluted in core areas is a stark possibility and of grave concern. MEPs must help this Directive earn its name.

Despite new European Commission statistics demonstrating 79% of European traders insist full harmonisation of consumer laws will have “little or no effect on their cross border sales” (up from 74% in 2008), the Parliament is likely to impose full harmonisation on a broad scale risking a decrease in consumer protection on important issues.

The rights in question are Europeans’ daily shopping rights and they are precious. Consequently, this Directive and the vote is hugely important for many Member States’ consumer protection laws, both now and in the future.

## The best way forward

BEUC has consistently put forward a more nuanced approach on harmonisation - by applying a ‘mixed-approach’ i.e. combining minimum harmonisation and full harmonisation on a case by case basis, depending on the issue at stake. Why is this better and MEPs should vote accordingly?

On more technical and uncontroversial elements such as time limits or legal definitions, ‘full harmonisation’ could bring clarity to EU consumer law by ensuring the same meaning in each Member State.

However, on the critically important issues such as unfair contract terms, delivery etc. Member States should not have to reduce protections in the name of clarity and standardisation of laws – nor should they be shackled from moving with the times, unable to introduce new laws.

It is of crucial importance that issues closely linked with national contract law and core consumer rights are allowed to be more flexible so they can reflect commercial, social and technological advances. By definition, the principle of full harmonisation is inappropriate to govern such issues.

## Council & Parliamentary Committee stance

After two years of negotiations among Member States, the Council of Ministers agreed in a rush at the tail end of the Belgian Presidency (December 2010) a position which resulted in a fully harmonised approach for distance and doorstep selling contracts and the deletion of 2 sections on the rights of consumers (including Guarantees) in cases of defective goods (Chapter IV) and in relation to Unfair Contract Terms (Chapter V).

The scope of the Directive therefore in the Council’s position is considerably reduced to essentially a Directive applying to distance selling and off-premises contracts (dealing mainly with information requirements and the right of withdrawal).

# What is at stake for Europe?

In January, the lead committee (IMCO committee) in the European Parliament held its vote and adopted amendments via which some of the weaknesses of the original Directive were corrected. Notably, their Report is based on a mixed-approach and it contains some elements of added value for consumers. On the contrary, the Legal Affairs committee (opinion committee) approved a text that would subject the main rules on unfair contract terms to the principle of full harmonisation without inserting any significant improvements to such rules in relation to the existing Directive.

## No harm to basic rights, MEPs must improve instead

In view of the vote in the Plenary, BEUC's main priorities are the following:

- 1 The rules on unfair contracts terms (Chapter V) should not be accepted by the Parliament, as full harmonisation is what is currently recommended by the Legal Affairs Parliamentary committee and it should be resisted at Plenary. Otherwise, the result would be a significant reduction of consumer rights in relation to unfair contracts terms in many Member States (e.g. Germany, Spain, Austria, Sweden, Finland, Denmark, Portugal, Latvia and Slovenia etc.).
- 2 Despite the fact consumers who buy on their doorstep (i.e. 'off-premises') are often the most vulnerable and the target of enticement or unfair marketing practices, the rules governing 'off-premises' (e.g. all sales concluded at home, on doorstep, at work or at a temporary business stand within a shopping centre) do not yet provide a high level of consumer protection. This Directive would apply full harmonisation. BEUC is particularly critical of recommendations to exclude from these basic protections off-premises contracts worth under €200 (e.g. if a consumer hires a craftsman for home renovation work).  
  
Numerous new and detrimental exceptions from the right of withdrawal have been added and/or extended for off-premises contracts. No justifying evidence has been offered. Indeed, many of the new exceptions refer to products most often sold in off-premises situations e.g. cosmetics. So for example, if consumers buy a Package Holiday off-premises, they will no longer be able to withdraw from the contract.
- 3 The newly proposed rule prohibiting disproportionate costs for the use of certain payment means would represent an important step for consumer protection (e.g. in the field of air transport - many airlines request highly exaggerated extra fees on credit card payments for financing their business model e.g. an obligation to pay €12 as a credit card 'transaction fee' when booking airline tickets). Consumers also often do not have the choice to pay by Debit Card which would be substantially cheaper – a basic choice which they should be given enabling them to book free of charge.
- 4 The application of minimum harmonisation to the vital rules on delivery, (particularly late delivery) needs to be upheld. If this does not happen, there will be a reduction of better protections currently existing in many Member States (e.g. France, the Netherlands, Estonia etc.).

Just 2 weeks ago, the European Commission's Consumer Scoreboard survey again showed delivery to be the no.1 complaint for European consumers: 49% of consumers who had not made a cross-border distance purchase said that they were worried about delivery. This is yet another clear area of the EU market where there is a lack of consumer confidence. European rules should provide for a minimum entitlement for consumers, but not preclude better national rules.

# What is at stake for Europe?

5 In the 'Digital Era' in which we now live, more and more goods are purchased or downloaded in an intangible, digital format. However, EU and national law have been very slow to reflect this – lacking protections in case of problems. In recent weeks, the Parliament has made efforts to correct this, and we strongly hope that these improvements will be maintained in the final vote.

BEUC insists that the coverage of digital content within the definition of “goods” should be maintained, as adopted in February’s IMCO Report. This would ensure certain problems encountered by consumers when buying digital content are addressed in the Directive as major legal uncertainty currently exists in national laws and even a minimum entitlement to protection when buying online is lacking at EU level.

6 The list of information requirements for 'on-premises' contracts (e.g. if a consumer orders a fridge in a shop) needs to be upheld on a minimum harmonisation basis, as this provides an added value and future protection for consumers throughout the EU.

7 The same principle of minimum harmonisation should be upheld in the field of legal guarantees and particularly on the definition of 'lack of conformity' of the goods, otherwise the same double-effect of reduction and restriction will occur, particularly in France and its longstanding protective rules for hidden defects.

8 On the rule limiting the length of contracts (e.g. if consumers wish to join a gym or subscribe to a magazine), they should not have to agree to do so for more than one year. The Parliament hopefully will stick to its recommendation of 1 year as a new EU ceiling.

## Behind the terms – a guide:

### Review of the Consumer Acquis

Launched by the Commission in 2004, it encompasses 8 of the main consumer protection Directives. Commission's stated aim of the review was to achieve a real consumer Internal Market striking a fair balance between a high level of consumer protection and the competitiveness of enterprises. BEUC is concerned this is not achieved by the current Consumer Rights Directive.

### Minimum harmonisation

Minimum harmonisation standardises the regulatory consumer protection level at a basic standard which Member States *must* implement. However, if their national laws exceed this standard they do not need to reduce. Crucially, Member States are free to improve upon or exceed this level of protection in future legislation.

### Full (or Maximum) harmonisation

- 1) Member States cannot deviate from the standard established. Should their current law exceed this level, they must repeal them in order to get in line.
- 2) They are also unable to exceed the level in future laws or introduce any new rules in the field covered by this EU legislation.

### Right of Withdrawal

This entitles consumers who bought a good or service in an off-premises or 'distance' situation (e.g. online) to cancel the contract within a fixed time period ('cooling-off' period) after the purchase.

### 'Cooling off' period

The time period within which a consumer is entitled to use their right of withdrawal.

### 'Off-premises' contract

Any sales or service agreement concluded away from the company's premises e.g. in the street, on your doorstep, etc. Also known as 'direct selling'.

### 'Distance' contract

Any sales or service agreement concluded while seller and consumer are not simultaneously physically present. Sales by phone, post and the internet comprise the vast majority of such contracts.

### Unfair contract terms

Terms which are prohibited when forming contracts. They create an imbalance of power between the rights and obligations of the contracting parties (in this case, consumer and seller). Many Member States have accumulated long legal 'lists' of unfair contract terms e.g. Germany, Spain, Austria.

### Lack of conformity

When a good or service either does not fit the purpose for which it was bought (e.g. it has a defect) or does not match the description provided in the contract or pre-sale statements.

AT -	Arbeitskammer - AK	FR -	Organisation Générale des Consommateurs - OR.GE.CO
AT -	Verein für Konsumenten-information - VKI	HR -	Croatian Union of the Consumer Protection Associations – Potrosac
BE -	Test-Achats/Test-Aankoop	HU -	National Association for Consumer Protection in Hungary - OFE
BG -	Bulgarian National Association Active Consumers - BNAAC	IE -	Consumers' Association of Ireland – CAI
CH -	Fédération Romande des Consommateurs - FRC	IS -	Neytendasamtökin - NS
CY -	Cyprus Consumers' Association	IT -	Altroconsumo
CZ -	Consumers Protection Association - SOS	IT -	Consumatori Italiani per l'Europa - CIE
CZ -	Czech association of consumers - TEST	LU -	Union Luxembourgeoise des Consommateurs – ULC
DE -	Verbraucherzentrale Bundesverband - vzbv	LV -	Latvia Consumer Association - PIAA
DE -	Stiftung Warentest	MK -	Consumers' Organisation of Macedonia - OPM
DK -	Forbrugerrådet - FR	MT -	Għaqda tal-Konsumaturi - CA Malta
EE -	Eesti Tarbijakaitse Liit - ETL	NL -	Consumentenbond - CB
EL -	Association for the Quality of Life - E.K.PI.ZO	NO -	Forbrukerrådet - FR
EL -	General Consumers' Federation of Greece - INKA	PL -	Polish Consumer Federation National Council – Federacja Konsumentów
EL -	Consumers' Protection Center – KEPKA	PL -	Association of Polish Consumers - Stowarzyszenie Konsumentów Polskich
ES -	Confederación de Consumidores y Usuarios - CECU	PT -	Associação Portuguesa. para a Defesa do Consumidor - DECO
ES -	Organización de Consumidores y Usuarios - OCU	RO -	Association for Consumers' Protection – APC-Romania
FI -	Suomen Kuluttajaliitto	SE -	The Swedish Consumers' Association - Sveriges Konsumenter
FI -	Kuluttajat-Konsumerterna ry	SI -	Zveza Potrošnikov Slovenije - ZPS
FI -	Kuluttajavirasto	SK -	Association of Slovak Consumers- ZSS
FR -	UFC - Que Choisir	UK -	Which?
FR -	Consommation, Logement et Cadre de Vie - CLCV	UK -	Consumer Focus

## THE CONSUMER RIGHTS DIRECTIVE

# The European Consumers' Organisation

- Broadcast interviews available in English, French, German, Spanish, Dutch
- Represents 44 national consumer organisations across the EU, EEA and also accession countries
- 49 years in operation working at the heart of the EU legislative process
- 8 teams including:
  - Food
  - Digital Rights
  - Health
  - Financial services
  - Energy
  - Consumer Contracts (incl. CRD, European Contract law, Air Passengers' Rights etc.)
  - Collective Redress
  - Safety & Sustainability
- Director General, Ms. Monique Goyens
- Deputy Director General (Consumer Contracts and CRD team leader), Ms. Ursula Pacht