

FIRST READING NEGOTIATIONS ON THE CONSUMERS' RIGHTS DIRECTIVE

BEUC position

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With regard to the negotiations towards an agreement in first reading on the Consumers' Rights Proposal, BEUC wishes to highlight a number of issues that are important to ensure a high level of consumer protection and confidence in the Internal Market. Our concerns listed below try to ensure that the future directive brings real added value for European consumers and that no reduction of existing consumers' rights results from its adoption. Only then would the directive contribute to fostering consumer confidence in the Internal Market.

DELETION OF CHAPTER V (UNFAIR CONTRACT TERMS)

We strongly reject the adoption of chapter V under the principle of full harmonisation as adopted by the JURI Committee as this would entail a significant reduction of consumers' rights in many member states in relation to the rules on unfair terms. We therefore call on the Parliament and the Council to stand firm in the position to delete the entirety of chapter V.

DIGITAL PRODUCTS (ARTICLES 2.2, 5.1 AND 9.1 OF THE PARLIAMENT'S TEXT)

In the digital era in which we now live, more and more goods are purchased or downloaded in an intangible, digital format. However, national legislations have been very slow to reflect these changes in the market and consumers suffer from lack of protection when confronted with problems with digital products.

The adoption by the European Parliament of some new rules to address consumer concerns in the digital environment is very welcome. In particular, the rules on consumer information about interoperability and technical protection measures (in articles 5 and 9) would contribute to addressing basic concerns of digital consumers. Thus BEUC urges the Council to support the rules in articles 2 point 2, article 5 para 1. ia) and ib) and article 9 para 1.fe) and ff) of the European Parliament text.

INFORMATION REQUIREMENTS FOR ON PREMISES CONTRACTS (ARTICLE 5)

BEUC welcomes the adoption by the European Parliament of a provision setting up a list of information requirements in on premises contracts (e.g. if a consumer buys a fridge in a shop). We are convinced that these information obligations provide added value and an element of horizontal protection for consumers throughout the EU. We therefore call on the Council to support the inclusion of this innovative provision in the future directive. The minimum harmonization character of this provision must be maintained and is justified due to the fact that this rule deals with on-premises contracts.

DEFINITIONS (ARTICLE 2)

“Consumer” (article 2.1): The definition of consumer proposed by the Council does not encompass situations in which a consumer buys a good or a service partly for personal and partly for professional purposes (dual purpose). This would have the result that a person who buys, for instance, a computer for mixed purposes (he works with it but also plays games or watches films on it) will not be considered a consumer and thus will not receive the protection provided by consumer legislation.

Therefore, we call on the Council to support the definition of consumer adopted by the European Parliament which includes dual purpose contracts.

“Off-premises” (article 2.8): BEUC supports the definition adopted in the Council text. The definition of off-premises contracts in the Parliament text includes narrowly defined conditions (i.e. the consumer has to make an offer off-premises or the main components of the contract have to be agreed away from business premises) which would unduly limit the protection in many situations.

SCOPE (ARTICLE 3)

We regret that both the Council and the EP have excluded package travel contracts (Council directive 90/314) from the scope of this directive and that the contracts for transport, accommodation, car rental and leisure services do not benefit from a right of withdrawal which they should, at least in case of early bookings.

We furthermore ask you to delete article 3 para 4c of the Parliament’s text which exempts the trader from the obligation to confirm his offer (on a durable medium) in contracts for the provision of transport, accommodation, car rental and leisure services concluded over the phone.

OFF-PREMISES CONTRACTS (ARTICLE 10)

The off-premises sector is particularly sensitive, with vulnerable consumers being often the target of unfair marketing techniques. For this reason the rules applying to this sector should be tightened and their scope should not be limited.

In particular, BEUC urges the Council and the Parliament to agree on the following rules in article 10 of the directive:

- ✓ Uphold the trader’s obligation to give the information to the consumer on paper and only if the consumer agrees on another durable medium (as adopted by the EP in Art 10.1).
- ✓ The trader should seek the express consent of the consumer for any extra payment added to the main remuneration (prohibition of pre-ticked boxes: article 10.1a of the Council text).
- ✓ These rules should apply to all off-premises contracts. The limitation adopted by the European Parliament (Article 10. 2a) to exclude contracts under a monetary threshold (200,- €) should be omitted.

DISTANCE CONTRACTS (ARTICLE 11)

We welcome the improvements to article 11 introduced by the Council and the Parliament, in particular addressing the issue of cost-traps on the I-net. However, we regret that the Parliament's text has been weakened with regard to contracts concluded through web-sites (article 11.1a. (b) last sentence).

Therefore, BEUC has a preference for the text of the Council. On this basis and in order to prevent consumer detriment when concluding distance contracts, the following rules should be included in article 11:

- ✓ The protection against cost traps should apply to all electronic contracts: the contract must not be binding until the consumer has confirmed to be aware of the costs involved. For I-net based contracts, websites should present the information in such a way that the placing of an order is (technically) not possible unless the consumer has confirmed to be aware of the costs involved. In this respect the text of the EP is not satisfactory as the condition of confirmation by the consumer can be linked to a preliminary registration on the website of the trader. This is already now a technique very often used by traders and will not solve the problem of cost traps, but rather to the contrary.
- ✓ The trader should seek the express consent of the consumer for any extra payment added to the main remuneration (prohibition of pre-ticked boxes: article 11.1aa of the Council text).
- ✓ The exclusion of individually negotiated contracts (in EP para1a) should be deleted. Awareness of the paying nature of an offer is not necessarily linked to any potential negotiations between the consumer and the business.

RIGHT OF WITHDRAWAL (ARTICLES 13-17)

The right of withdrawal is a crucial element of consumer protection and as such its exercise has to be facilitated, all the more in a cross-border scenario. The merger of the rules of the door-step selling with the distance selling directive should not lead to unjustified limitations of consumer protection, which is particular relevant for door-step selling contracts.

An extension of the period of withdrawal to 1 year in case the trader has omitted to inform the consumer about the right of withdrawal (**article 13**), - as it is the case in the timeshare directive – is a minimum in order to provide for a sufficient sanction for traders who do not respect information obligations. Yet, applying the period of 1 year under the principle of full harmonisation would entail a reduction of consumer rights in a number of member states where longer extension periods are currently allowed (e.g. Germany, Austria, Spain...). Thus, these member states should in addition be allowed to maintain their existing legislations.

We support the approach of the Council text, which includes not only the information on right of withdrawal, but also the core elements of the contract such as price and the main characteristic of goods/services.

Regarding the formalities to exercise the right of withdrawal (**article 14**), BEUC supports a solution according to which the mere sending back of the good clearly qualifies as withdrawal. In fact, in the majority of member states the consumer does not have to fulfil any kind of formalities (e.g. a telephone call may suffice).

In order to facilitate the sending back of the good in case of withdrawal, in particular in a cross-border scenario, BEUC strongly welcomes the rule adopted by the European Parliament according to which the trader bears the return costs when the price of the good is above 40 Euros (article 17.1).

Once the consumer has exercised the right of withdrawal, the trader should immediately reimburse the consumer of the amounts paid. BEUC urges the Council to support the amendment of the Parliament that does NOT grant a right to the trader to withhold reimbursement until he receives the goods from the consumer (**article 16.2**). The traders' right to withhold payment would clearly place the consumer at a manifest disadvantage as the consumer would have to carry the double risk of not possessing the good anymore nor having received the money back. In addition the trader is explicitly allowed to withhold reimbursement until he receives the proof that the consumer has sent back the good.

We welcome the alignment of the time period for the trader's obligation to reimburse the money received from the consumer (article 16) and that for the consumers obligation to send back the goods (article 17) - 14 days in both cases -. This is a fair solution for both parties as it would in most cases make the return of the good and the reimbursement of the money paid, coincide.

Finally, we support the rule introduced by the Council (article 17.1 in fine) that requires the trader to collect the goods himself if by their nature the goods cannot be normally returned by post. This rule will in many cases facilitate the exercise of the right of withdrawal by the consumer.

EXCEPTIONS FROM THE RIGHT OF WITHDRAWAL (ARTICLE 19)

The Commission proposal contained a list of exceptions from the right of withdrawal that merged the exceptions of both door step and distance selling directives without assessing the need and legitimacy for applying certain exceptions for both contract types. In addition all exceptions now are subject to the principle of full harmonisation without an assessment of their legitimacy.

Unfortunately, both the Parliament and the Council have added new exceptions from the right of withdrawal and other exceptions have been somewhat broadened (foodstuffs, beverages...).

As a result and following a survey made among BEUC members, we conclude that if all the exceptions are maintained many European consumers would lose the right of withdrawal in numerous occasions particularly in off-premises situations, without clear factual evidence of the legitimacy or necessity of the new exceptions.

In the light of this, BEUC welcomes the deletion of the exception in article 19.1a regarding services where performance begun before the end of the period of withdrawal. This would allow the consumer to withdraw after performance has begun in the case of continuing obligations (e.g. internet provider); the specific rule adopted by the Council (article 17.3) in case of withdrawal in services contracts prevents any undue enrichment of the consumer.

Furthermore, in order to avoid a reduction of consumers' rights we consider that the list of exceptions should differentiate between distance and off-premises situations. In respect of off-premises contracts only the following exceptions should apply to: contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace; and to contracts for the purpose of carrying out repairs and maintenance if the consumer has called the trader and asked for the immediate performance of the contract,

In respect of distance contracts the right of withdrawal shall not apply as regards:

- a) the supply of goods or services for which price is dependent on fluctuations in the financial market which cannot be controlled by the trader;
- b) the supply of newspapers, periodicals and magazines, with the exception of subscriptions contracts for the supply of such publications;
- c) the supply of goods made to the consumer's specifications or clearly personalised, requiring the trader to make individual arrangements which he can make no use of.

PAYMENT MEANS (ARTICLE 22B OF THE PARLIAMENT'S TEXT)

The newly proposed rule prohibiting disproportionate costs for the use of certain payment means is an important step for consumer protection (e.g. in the field of air transport). The new rule would prohibit traders to overcharge consumers for using certain payment means. Often no choice is offered to them to use other (free or cheaper) payment means (e.g. debit cards).

We therefore call on the Council to support the rule in article 22b of the Parliament text.

THE RULE ON DELIVERY (ARTICLE 22)

The rule on delivery adopted by the Council under full harmonisation does not provide for a high level of consumer protection. If adopted, our members consider that it would be detrimental to consumers in many member states; rather than increase consumer confidence in e-commerce it would bring about legal uncertainty and reduce consumer protection in many cases. For instance, in many online purchases, there is no ability for consumers to inform the trader of an essential delivery date unless they telephone the customer services. Also, many retailers provide an estimated delivery date, so consumers might not think of contacting the retailer to say they need it by a particular date because they think they're allowing enough spare time anyway.

Therefore BEUC calls on the institutions to improve the rule while leaving member states leeway to maintain their better legislations on the issue of delivery.

The following principles should be reflected in the rule on delivery:

- ✓ A maximum period allowed for delivery should be set up in the text, or alternatively traders should always be required to specify a date after which consumers can reject the purchase if the product is not delivered. Otherwise there would be legal uncertainty as to when the consumer can exercise his rights (what means “undue delay” or “as soon as possible”).
- ✓ After the maximum period set up in the law or after the period specified in the contract, consumers should immediately have the choice between rescission of the contract or allowing for an additional period of delivery. It is only normal that it is the consumer who decides whether the good/service purchased is still of any use after a delay in delivery. Also, it is not always easy for the consumer to indicate to the trader that the time agreed for delivery is essential for him.

PASSING OF RISK (ARTICLE 23)

We support the rule adopted by the Council to deal with the issue of passing of risk. Consumers should be fully protected against the risk of loss or damage to the goods purchased before they are in their possession, in particular during the transport.

The rule proposed by the European Parliament unduly restricts the rights of the consumer in this regard and would create legal uncertainty in many cases (e.g. when the consumer agrees with the transport arrangements proposed by the seller).

DURATION OF CONTRACTS (ARTICLE 23A OF THE PARLIAMENT'S TEXT)

We ask you to agree on the newly proposed rule that limits the mandatory duration of contracts to 1 year. This provision would put an end to consumer detriment in a number of market sectors, where consumers are locked into long term contracts with the same service provider for too long a time. This is detrimental for competition and ultimately has an effect on prices and on the quality of services.

We therefore call on the Council to support the new article 23a of the European Parliament text.

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