



Kehl, 17th May 2010

**Euro-Info-Consommateur's and  
the French and German European Consumer Centres' opinion about  
the proposal for a directive on the consumer rights**

**- some practical aspects -**

***Preliminary comments:***

**The consumer right belongs to the fundamental rights of the European citizen**

The consumer protection is part of the European social model. It constitutes, according to Mr Jacques Toubon an ex Member of the European Parliament, a social « bumper », which offers an essential protection to the weakest, for instance in case of a purchase.

Besides, as part of the daily life the consumer rights concern every citizen of the European Union.

**Towards an European consumer code?**

The purpose of the proposal for a Directive is to bring together in one text 4 existing European directives relevant to the consumer rights.

- 85/577/EEC of 20 December 1985 - to protect the consumer in respect of contracts negotiated away from business premises -
- 93/13/EEC of 5 April 1993 - on unfair terms in consumer contracts -
- 97/7/EC of 20 May 1997 - on the protection of consumers in respect of distance contracts - and
- 99/44/EC of 25 May 1999 - on certain aspects of the sale of consumer goods and associated guarantees

**Challenges of the proposal for a directive: balance between interests and modernisation**

It is not only a question of creating a text of law which applies equally to consumers and professionals and which really meets the consumer needs for security within the internal market. A regulation should also be created, taking into account the evolution of the marketing methods, notably the increase of e-commerce and thus the growth of cross-border transactions.

***Euro-Info-Consommateurs is the only “binational structure” within the network of European Consumer Centres (ECCs)***

It hosts the European Consumer Centres France and Germany, which are members of a network composed of 29 centres - 27 centres in the EU Member States, plus Iceland and Norway -.

In 2009, the binational structure in Kehl registered more than 12 000 cross-border complaints including almost 4,000 normal complaints. It intervened in more than 42% of the whole normal complaints and disputes<sup>1</sup> registered by the European network. 74% of the complaints and disputes could be resolved out of court to the satisfaction of the consumers. Thus, it has become a real observer of the cross-border trade and on this account takes stand in favour of:

**A targeted full harmonisation**

The full harmonisation of the European consumer rights - as it was provided for initially –is only justified if, in the end, it is helpful in reinforcing the consumer protection.

In the consumers' general interest we believe that a more balanced approach is essential: EIC gives priority to a truly targeted harmonisation – enabling a high level of protection – while letting the Member States the possibility to keep their national regulations considered as essential to meet specific needs.

**Legal guarantee**

EIC approves a harmonisation of the regulations at European level, so long as it doesn't harm the consumer.

Indeed, some national regulations provide for a consumer protection system, which is worthy of being extended at the European level instead of being given up because of a full harmonisation.

**EIC is for instance convinced that the two statutory rights, which the French give importance to, must be maintained: on one hand, the ten-year compulsory insurance for builders -“garantie décennale”- on the other hand, the guarantee against latent/hidden defects - “vices cachés” -.**

It is important that the general liability rules can also be invoked by a consumer. When it comes to a defective product, the difference between the

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1 Normal complaint: a statement of dissatisfaction from a consumer concerning a cross-border transaction with a seller or supplier in which the ECCs intervene in order to find an amicable solution with the trader.

Dispute: a referral of a normal complaint to a notified amicable dispute resolution (ADR) scheme.

A Simple Complaint means a 'complaint' which requires no intervention by the ECCs towards the trader.

guarantee against hidden defects is of particular interest when considering the delay in which both have to be actioned. Whereas the guarantee against hidden defects can be initiated within two years of the defect discovery, the guarantee of conformity must be initiated within two years of the product delivery.

Besides, the latent defects are also applicable to private transactions.

The consumer can also take legal action against one of the production chain links (manufacturer, intermediary, reseller). This could be particularly helpful if the seller goes bankrupt. Thus the consumer can turn to the producer/manufacturer.

EIC believes that this kind of national rules, if they cannot be widespread at the European level, must in any case continue to be valid at the national level. An additional/different guarantee scheme will then continue to exist within the European Union.

The English law as to it provides for a right to reject, which offers the consumer the possibility for instance to withdraw from the contract within a reasonable short period after purchase in case of a defect product. This regulation should also be taken into account as to its introduction in the proposal for a directive.

In any case, it is inconceivable that the professional only can decide how to eliminate the defect in the event of non-conformity of the product.

### **Definition of fundamental concepts: a prerequisite for legal security**

A harmonisation of the consumer rights within the European Union requires first a clear and uniform definition of the fundamental concepts, such as the concept of a “consumer” or a “trader”, a “good” or a “service”, and so on. The Directive proposal must clearly define common terms, so that it can be applied uniformly, efficiently and effectively by Member States. The same is true for **the deadlines calculation** - remedies and right to withdraw – which may differ from one Member State to another. In this field Euro-Info-Consommateurs will be committed to harmonising deadlines with a clear calculation mode - for instance 14 calendar days for withdrawal in case of distance selling, applicable to all the Member States -.

### **Transparency in consumer information**

As regards distance selling - and door-to-door selling - Euro-Info-Consommateurs requires a high protection level, notably going via a **harmonised and clear information given to the consumers** about the content of the contract (double-click) and as regards the right to withdraw.

Euro-Info-Consommateurs promotes the “export” of the double-click in the

French e-commerce legislation – which does not exist in all of the Member States of the European Union in this form notably in Germany – and offers a standardised withdrawal form, usable in all the distance selling and/or door-to-door contracts.

As regards **unfair terms** in contracts, Euro-Info-Consommateurs approves the idea of a common definition of the “unfair term concept, but thinks that harmonisation must remain targeted in order to be effective. In this field, the Member States must keep a room for “national” manoeuvre – legislator, national jurisdiction – to react rapidly and properly in case of a problem.

A procedure including European Court of Justice proceedings is inappropriate, considering the procedure deadlines - extremely long -. Besides, the interpretation power will fall any way within the competence of the national Courts, before any prejudicial proceedings.

Furthermore, Euro-Info-Consommateurs calls attention to the **passing of risk related to transport and complaint deadlines**. These issues are not treated in the present proposal for a directive, but would be very helpful. Indeed, it is advisable to definitely regulate the time-limit, in which the consumer must indicate a damage that occurred during the transport of the goods and the way it must be reported.

Must he compulsorily express written reservations on the delivery note and against whom must such reservations be reported to - carrier, seller or both? -

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According to the French Commercial Code, one has a three-day time-limit to lodge a complaint against the carrier. This issue is not mentioned in the Consumer Code. And what about the other Member States of the European Union if another national law is applicable? In this field there is a complete lack of transparency regarding consumer rights and an overlap with the legal guarantee of conformity.

A harmonisation in this field would constitute a real advance and a legal security for the consumers, but also for the professionals - sellers and carriers

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