



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 December 2010

17390/10

**Interinstitutional File:
2008/0196 (COD)**

LIMITE

**CONSOM 118
JUSTCIV 220
CODEC 1452**

NOTE

from : Presidency
to : Permanent Representatives Committee (Part 1)
No. Cion prop. : 10888/1/10 CONSOM 59 JUSTCIV 118 CODEC 544
No. prev. doc.: 15311/10 CONSOM 92 JUSTCIV 179 CODEC 1113
Subject : Proposal for a Directive of the European Parliament and of the Council **on
consumer rights**
– *General approach*

I. INTRODUCTION

After the agreement reached on 1 December 2010 by Coreper on the approach for the proposal for a Directive on consumer rights (CRD), the Working Party on Consumer Protection and Information has thoroughly examined the text on 2 December 2010 . The modifications have been inserted in the consolidated text (DS 1886/10).

The Presidency considers that in the current status of the negotiations there are six outstanding discussion points left. Its proposals, as explained below, are already inserted in doc. DS 1886/10.

Coreper is invited to address these issues as outlined below.

II. OUTSTANDING POINTS

1. **Relation with the existing EU-acquis (Article 3(4) and Recital 10aaa/Article 11(4b))**

The Working Party agreed that sector-specific legislation should be considered as "lex specialis" in regard of the CRD and therefore should prevail in case of a conflict (see Article 3(4a)).

With regard to the horizontal legislation, i.e. Directive 2006/123/EC (Services Directive) and Directive 2000/31/EC (E-commerce Directive), the relationship has to be clarified as well, taking into account the overlaps on information requirements and the provisions on the conclusion of distance/e-contracts and the placing of e-orders.

Concerning the information requirements, the Presidency proposes the following approach:

- the different Directives "complement" each other, meaning that the information requirements of the CRD should be seen as additional to the Services Directive and to the E-Commerce Directive,
- if any conflict were to arise between the Directives on the information requirements or the manner in which they are communicated, the provisions of the CRD should prevail,
- the possibilities foreseen in the Services Directive and the E-commerce Directive which provide for a possibility for Member States to impose additional information requirements on service providers established on their territory should remain open.

Concerning the conclusion of e-contracts and the placing of e-orders, the Presidency proposes to move to Article 11(4b) Recital 25 which states that the relevant provisions set out by Articles 9 and 11 of the E-commerce Directive should remain untouched by the CRD.

2. Additional information requirements for utility services (Article 9)

During the Working Party meeting of 2 December 2010, some Member States could support a specific provision on utility services (water, gas, electricity and distance heating) in Article 9 on the information requirements. This would allow Member States to maintain or introduce additional information or presentation requirements for these services.

A significant number of Member States were opposed to introducing this clause in the Article, stating that it is important to have a clear and harmonized framework on information requirements.

The Presidency proposes not to take this exception on board.

3. Confirmation of contracts concluded by telephone (Article 11(3a))

A significant number of Member States did not agree to leave the possibility to national legislation to provide for obligatory written consent by the consumer before he is bound by a contract negotiated by telephone. On the other hand, another significant number of Member States agrees to allow for such a possibility. A harmonised provision on this basis does not seem to generate a lot of support among Member States.

The Presidency proposes therefore to allow for Member States to maintain or introduce such a provision in their national legislation.

4. Performing obligations during the withdrawal period (Article 12(4))

A certain number of Member States prefers to leave the possibility to Member States to provide for a ban on payments during the withdrawal period. A large number of Member States do not agree with that.

The Presidency proposes the following compromise: only those Member States that already have similar provisions in their national legislation would be allowed to maintain them. Other Member States would not be allowed to introduce a similar system.

5. Exercise of the right of withdrawal (Article 14)

Discussions in the Working Party have revealed that a significant number of Member States wants to remove the obligation for the consumer to use a durable medium when he withdraws from a contract. Another significant number of Member States thinks that this is however important in order to be able to prove that the consumer has withdrawn from the contract.

The Presidency is of the opinion that the consumer himself is responsible and should act with prudence and with respect to his contractual obligations; if he withdraws via a telephone call or by sending back the goods to the trader, he should always realise that he will have to be able to prove, in the event of litigation, that he has withdrawn within the time limits set.

The Presidency proposes, in the light of paragraph 2a, which states clearly that the burden of proof is incumbent on the consumer, to take out the reference to "durable medium".

6. Delivery and the transfer of risk (Articles 22 and 23)

Articles 22 (delivery) and 23 (transfer of risk) have been transferred from the deleted Chapter IV to Chapter III. This changes their scope as they will only apply to distance and off-premises contracts in the latter. This has been criticised by some Member States which prefer to delete these articles as they would imply different regimes for different types of contract. Some other Member States have a preference for keeping them in Chapter III as they would create a harmonised provision with added value in the internal market.

Article 23 paragraph 2, provides that when the consumer has failed to acquire possession of the goods the risk will pass to him from the moment when he should have acquired them. Some Member States would like to indicate that this would not be the case if the consumer has taken reasonable steps to acquire the goods. Some other delegations would like to delete this paragraph.

The Presidency proposes to keep both Articles in the Directive and to keep in Article 23(2) the wording which states that when the consumer has failed to acquire possession of the goods the risk will pass to him as this is a clearer criterion.

III. CONCLUSION

The Coreper is invited by the Presidency to agree with this approach with a view of submitting the text to the Council for general approach as an "A" item.

=====