



CONSUMER RIGHTS : NO CONSENSUS ON FIRST THREE CHAPTERS OF SCHWAB'S REPORT

926 words
4 June 2010

Europolitics
EURREP

3991

English

Copyright 2010 Europe Information Service All Rights Reserved

A report by German MEP Andreas Schwab (EPP) on the draft directive on consumer rights merges two chapters into one (information and right of withdrawal) and endorses the general principle of targeted total harmonisation. Drawing on the total harmonisation recommended by the European Commission in 2008, his approach prohibits the member states from maintaining or introducing into national law provisions other than those set by the directive, unless otherwise specified in the directive. On 3 June, Schwab presented to the European Parliament's Committee on the Internal Market (IMCO) the first part of his freshly translated report, which tackles the first three chapters of the proposal (1. Definition; 2. Information; 3. Right of withdrawal). The last three chapters (4. Other rights specific to sales contracts; 5. Contract terms; 6. General provisions), certainly the most controversial, will be analysed in the second part of the report, to be presented on 23 June.

CHANGES

Schwab adds to the harmonised definitions already proposed by the Commission the concept of a mixed contract'. He also recommends the concept of an off-premises' contract, namely a contract between the trader and a consumer concluded on business premises but whose key elements have been determined off-premises in the simultaneous presence of both the trader and the consumer. "The term face-to-face' used by Commissioner Viviane Reding is not the best suited. In my view, there is a need to harmonise cross-border and off-premises contracts. Contracts concluded on business premises or daily contracts are excluded from the directive because the consumer is not faced with a different system," he explained before presenting Chapters 2 and 3, which he merges under the title Consumer information and withdrawal right for distance and off-premises contracts'. This chapter establishes that the trader or, as appropriate, the person acting in his name or on his instructions, must provide clear and comprehensible information to the consumer on a permanent medium (he excludes websites and e-mail). Subject to additional requirements foreseen by Directive 2006/123/EC on services, the trader is obliged to provide information, such as the main characteristics of the good or service, the address and identity of the trader, the price, arrangements for payment, duration of the contract and of the consumer's obligations, and information on the right of withdrawal. The consumer has 14 days to withdraw without having to give reasons for his decision and the trader is obliged to reimburse any payment received from the consumer within 15 days following withdrawal. If the trader neglects to inform the consumer of his right of withdrawal prior to conclusion of the contract, the withdrawal period is prolonged. However, to guarantee legal certainty, the withdrawal period should expire after 12 months (not three).

CONVINCING PARIS

In response to French concerns (the French General Assembly recently sent a letter to the MEP), the rapporteur met French journalists, on 2 June, to discuss the sensitive points of the directive. "There is a lot of agitation on this subject in France. That was justified with regard to the initial proposal, but is no longer justified," he commented. He used the following arguments:

- Definitions: on French concerns about the lack of provisions on legal persons and mixed contracts, Schwab noted that France is free to apply its national provisions to such contracts due to the exclusion of these two concepts from the directive

- Information obligation: on the definition of consumer, which does not include legal persons, he states that specific formal obligations could be maintained due to the change in the titles of Articles 10 and 11 on formal requirements for meeting the information obligations.

- Withdrawal system: according to Schwab, the directive as amended would make the French system easier and more comprehensible, which would strengthen the level of consumer protection in France. The rapporteur proposes a withdrawal period of 14 days, rather than the existing period of seven days.

On the extremely sensitive subject of guarantees in Chapter four, Schwab told Europolitics that he could consider "not making any changes. We could consider a process of mutual evaluation, which would enable us to discuss from concrete cases". On Chapter 5, he mentioned a black list of unfair terms that

could be completed in the future.

BEUC: TOO EARLY

For the European Consumers' Organisation (BEUC), it is still too early to take a stand because the most difficult chapters are missing. On the principle, "we do not fully agree with targeted total harmonisation. [] Certain points cannot be totally harmonised unless they have a harmful impact on consumers," noted Ursula Pahl, deputy director-general of BEUC. Asked about the positive and negative points of the Schwab report, she mentioned several examples: "We welcome the introduction of a provision stating that the consumer is not obliged to pay the costs of returning the goods in case of withdrawal if these are more than €50. On the other hand, we are concerned about other points". Among these are the concept of goods', which does not include gas and electricity, for example, and the wording "where appropriate" with regard to the obligation to provide information on a permanent medium for off-premises contracts.

To recall, the proposal merges four existing directives into a single horizontal instrument. The four are the directives on: 1. contracts negotiated away from business premises, 2. unfair terms in consumer contracts, 3. distance contracts, and 4. consumer sales and guarantees.

The report by Schwab is available at www.europolitics.info > Search = 273599

27359920100604

Document EURREP0020100603e6640000h