



ЕВРОПЕЙСКИ ПАРЛАМЕНТ    PARLAMENTO EUROPEO    EVROPSKÝ PARLAMENT    EUROPA-PARLAMENTET  
EUROPÄISCHES PARLAMENT    EUROOPA PARLAMENT    ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ    EUROPEAN PARLIAMENT  
PARLEMENT EUROPÉEN    PARLAIMINT NA HEORPA    PARLAMENTO EUROPEO    EIROPAS PARLAMENTS  
EUROPOS PARLAMENTAS    EURÓPAI PARLAMENT    IL-PARLAMENT EWROPEW    EUROPEES PARLEMENT  
PARLAMENT EUROPEJSKI    PARLAMENTO EUROPEU    PARLAMENTUL EUROPEAN  
EURÓPSKY PARLAMENT    EVROPSKI PARLAMENT    EUROOPAN PARLAMENTTI    EUROPAPARLAMENTET

IMCO-09-0121

## **INTER-PARLIAMENTARY COMMITTEE MEETING European Parliament - National parliaments**

***"EU Consumer Law, its Transposition and Implementation"***

***2 April 2009***

**INTERNAL MARKET AND CONSUMER PROTECTION COMMITTEE**

### ***DETAILED SUMMARY NOTE***



## OPENING SESSION

**Mrs ARLENE McCARTHY**, Chair of the Committee on the Internal Market and Consumer Protection (IMCO), European Parliament (EP), welcomed the participants to the inter-parliamentary meeting and the Co-Chair representing the Parliament of the Czech Republic during the first session, **Mr ADOLF JÍLEK**, Vice-Chairman of the Committee on National Economy, Agriculture and Transport, Senát (Czech Republic)

### **SESSION I: DEBATE ON CURRENT AND FUTURE DEVELOPMENTS IN EU CONSUMER LAW**

#### Presentation on the proposed Directive on Consumer Rights by Mrs MCCARTHY



**Mrs McCARTHY** pointed out that the Financial Crisis has had a major impact on both consumers and businesses in the EU and that consumer confidence has become more fragile and many European businesses are struggling to survive the crisis. She pointed out that we want to offer businesses simpler rules when offering goods and services in the internal market, but equally we should not compromise on consumer protection. Lower prices and a higher level of protection of consumers are necessary preconditions for restoring consumer confidence in the EU that will help to put the EU on the road to recovery.

Mrs McCARTHY highlighted that the proposal is of central relevance for the European Parliament. On 10 November 2008, the IMCO Coordinators decided to allocate the legislative report on the proposed Directive on Consumer Rights to the Chair on behalf of the Committee, working in a close structured cooperation with the Bureau of the Committee, including the Coordinators. The working group agreed that due to the complexity and breadth of the proposal and the limited time available in the Parliament's legislature, the Parliament should not conclude its first reading prior to the end of the term. The approach of the IMCO Committee is to produce a Working Document, to be used as a basis for an Oral question to the Commission and have a resolution to be used for a debate windup. When ready, the Working Document will be forwarded to the national parliaments.

#### Speech on Current and Future Developments in the EU Consumer law by Mrs MEGLENA KUNEVA, European Commissioner for Consumer Affairs



**Mrs KUNEVA** welcomed the input of national parliaments to the discussion on the Consumer Rights directive proposal. She pointed out that, today, a trader in one EU Member State wishing to sell to consumers in another Member State is obliged to adapt his or her standard terms and practices to 27 different sets of legislation. Therefore, it is hardly surprising that traders sometimes decide not to sell to foreign consumers online. She stressed that the proposed Consumer Rights Directive aims to change this situation. It aims at unlocking the European retail market and building consumer confidence. The proposal is a cornerstone of the New Consumer Strategy, which is based on the twin objectives of maximising consumer welfare and delivering a very high level of protection for consumers.

Mrs KUNEVA provided examples of concrete benefits for consumers from the Consumer Rights directive proposal. These include tough new rules on delivery, an end to hidden charges, a strengthened EU wide 14-days "cooling-off" period and a new ban on default pre-ticked boxes. The Directive also foresees a new black list and grey list of unfair and abusive contract terms so that consumers are no longer caught out by hidden clauses in the small print.

She pointed out that the Directive proposal is good for both consumers and businesses. Under the Directive, the consumers would in general benefit from a better choice and better price levels. Businesses would benefit from legal certainty, predictability and be able to considerably drive down their compliance costs.

Mrs KUNEVA emphasised that the Commission is working closely with Member States to ensure the correct and timely transposition of Directives into national legislation. The Commission is also active in helping national authorities apply the legislation in a uniform manner. She pointed out that the Commission is currently working on the interpretation guidelines for the application of the Unfair Commercial Practices Directive. These guidelines would answer the various questions of interpretation that the Commission has come across both in the transposition process and following the first year of application – with a view to clarifying and creating a common interpretation and understanding of key concepts in the Directive.

Concerning enforcement, she pointed out that it is important to European consumers that they are protected by a set of clear and solid rules and that these rules are enforced efficiently and fairly. Mrs KUNEVA admitted that although a lot has been done so far, a lot more can still be done. The Commission continues to ensure that enforcement in specific sectors is co-ordinated at EU level. It is building on the lessons learnt and, in this respect, is preparing a Communication on the Enforcement of the Consumer Acquis. Planned for June, later this year, this Communication will take stock of actions that have already been taken in the field of consumer enforcement, identify the main challenges ahead and, where appropriate, address any shortcomings so as to ensure a more effective enforcement of EU consumer law.

On redress, Mrs KUNEVA admitted that consumers, in practice, face substantial barriers in bringing their cases to the courts mainly because of the high costs, the risk of litigation as well as long and complex procedures. In particular, the Commission has been examining the problem that consumers face in obtaining redress for mass claims and came to the conclusion that there is room to improve the current systems in place for redress. The recently published Green Paper outlines a number of options to tackle this issue.

#### Debate with Members of the European Parliament and Members of national parliaments



**Mr ANGELO FARRUGIA**, *Member of Parliament, Il-Kamra tar-Rappreżentanti, (Malta)*, pointed out that numerous Maltese citizens have protested, asking for refunds in VAT paid on the registration of cars in Malta between March 2004 and December 2008. He condemned the behavior of the Maltese government which did not comply with EU law and pleaded for separate and independent regulators in areas such as electricity and water services across the EU and for harmonising enforcement measures to ensure that consumers are truly protected.

**Mrs MARIETTA KARAMANLI**, *Member of the Committee for European Affairs, Assemblée Nationale, (France)*, pointed out that whereas there is a general support for the Commission's proposal, all the consequences of the ambitious choice for maximum harmonisation have not been fully measured. There is an impression that the proposal favours the traders and not the consumers. Some of the questions have not been given reliable answers. In particular, the scope of application of the Directive seems to vary from one chapter to another and the derogations and the exceptions do not seem to have the same scope either. Also the formalist approach of the Directive seems problematic, considering that it would apply to daily purchases of items, such as newspapers or bread. In France, there is also a concern whether one can continue to benefit from the same conditions of guarantee as foreseen in the French civil code in the case of hidden defects. One of the main problems is the application of the unfair contract terms which could lead to decreasing the level of consumer protection in France. The Directive proposal needs to be improved, taking into account these issues.

**Mr MALCOLM HARBOUR**, *Member of the IMCO Committee, European Parliament*, stressed the importance of involving the national parliaments in the discussion on how to move forward with the Consumer Rights directive proposal. He said that the discussions between the EP and the national parliaments should be continued after the European Parliament elections. It is important to take into account the impact of maximum harmonisation on the ground in order to assess the appropriateness of the Commission's proposal. He highlighted the Commission's impact assessment as the key document to be discussed.

**Mrs KATARINA BRÄNNSTRÖM**, *Deputy Member, Committee on Civil Affairs, Riksdagen, (Sweden)*, pointed out that generally Sweden is positive about the proposal and supports full harmonisation. However, Sweden would like to avoid lowering the level of protection for consumers. The advantage of harmonisation should be that it allows an increase in the level of consumer protection across all Member States. She also pointed out that some provisions of the proposal are not clear, such as the difference between the purchase of goods and the purchase of services, adding that rules should not only be harmonised but also clear and predictable. Common rules should lead to an increase in confidence and trust for both consumers and businesses and thus boost cross-border trade.

**Mrs SILVA ČRNUGELJ**, *Member of the Committee on the Environment and Spatial Planning, Državni zbor, (Slovenia)*, pointed out that Slovenia agrees with the proposal in principle. The proposal should not jeopardise the high level of consumer protection that has been already achieved in Slovenia and other Member States. She suggested that the definition of "trader" should also cover public bodies and the definition of "goods" should include gas and electricity and that the definition of "intermediary" does not reflect Slovenian legislation or indeed other EU legislation. The proposal should make it binding that the official language of the country is used in contracts. She also welcomed the fact that internet activities are included in the scope of the directive. Finally, she mentioned that Slovenia has a reservation on Chapter 4, Article 26 (remedies in case of lack of conformity) which would worsen consumer protection in Slovenia. Under current Slovenian legislation the consumer can choose whether to ask for a refund, a cheaper price or an exchange in the case of a default in goods. The proposal does not foresee this choice. The proposal should cover commercial guarantees and the fixing of deadlines with regard to working or calendar days. At the backdrop of the crisis that is affecting both consumers and traders, the objective of the Directive should not be maximum harmonisation but optimisation.

**Mr JACQUES TOUBON**, *Member of the IMCO Committee, European Parliament*, pointed out that this is not an area where it is possible to make progress without a lot of political will. He emphasised that the European Union cannot use the crisis as an excuse to jeopardise its social achievements. It is important that the Commission provides a very precise study as to the impact of the proposal in each country article by article. He also stressed the need to involve national parliaments in the discussion.

**Mrs JIŘINA RIPPELOVÁ**, *Member of the Committee on Constitutional and Legal Affairs, Senát, (Czech Republic)*; pointed out that the Czech Senát has put emphasis on the need to take into account the relation between the directive and other European instruments when simplifying consumer law. She reported that the draft directive was debated by the Czech Senát in its recent meeting held

on 26 March 2009. In its resolution the Senát supported the principle of full harmonisation in order to reduce the fragmentation of the current legislation and provide for a high level of consumer protection. The Senát has also welcomed the focus on informing consumers in line with ECJ case law. It believes that the common European consumer protection standards should be based on the concept of a well-informed and reasonably vigilant and cautious consumer. Only such a consumer can make a well-informed decision whether to make a certain cross-border transaction.



**Mrs EVA SONDISSON**, *Member of the Committee on Civil Affairs, Riksdagen, (Sweden)*, pointed out that Sweden is very proud of its high standards of consumer protection. When harmonising consumer protection in the EU, there is a need to ensure that this will be to the benefit of consumers. The scrutiny of the proposal has revealed that there are some issues which are very good but there are certain risks as well. Different factors need to be taken into account, such as cultural differences, language, payment systems, security, which are very important for consumers and which they take very seriously. The social democrats would like to ensure that Sweden can keep its very high level of consumer protection because they feel that this is particularly important for the consumers.

**Mrs ANNA HEDH**, *Member of the IMCO Committee, European Parliament*, emphasised that there is a need to ensure that the consumers get the best possible protection and it is important to take time and work properly together with consumer organisations and national parliaments to make sure that maximum harmonisation will not reduce the level of consumer protection.

**Mr MANOUSOS VOLOUDAKIS**, *Member of the Committee on Production and Trade, Vouli ton Ellinon, (Greece)*, admitted that the fragmentation of national legislation and the complexity of the directives in force are obstacles to cross-border trade. He emphasised that the Commission's initiative is justified, but the proposal is more favourable to businesses and does not sufficiently take into account the interests of consumers. Whereas the interests of businesses and consumers are the same, full harmonisation might not necessarily deliver the best results in terms of consumer protection. Greece has already a good and effective consumer protection regime which was reviewed recently in 2007. Greek consumer law is very comprehensive. Adopting the Commission's proposal would lead to the reduction of the level of consumer protection in Greece. This has to be avoided because it would not only harm consumers but also traders. Consumer confidence would be reduced and there would be fewer transactions in the market. He summarised that the most important issue during the deliberations of the Commission's proposal is that the level of consumer protection in the Member States should not decrease and that a number of problems of detail, such as withdrawal deadlines will be solved.

**Mrs GIUSTINA MISTRELLO DESTRO**, *Member of the Committee on Economic Activities, Trade and Tourism, Camera dei Deputati, (Italy)*, pointed out the importance of the potential for cross-border e-commerce. Access to the Internet has the advantages of accessing a much broader array of goods, catalogues and brings a cut in mediation and brokering costs. Analysis shows that e-commerce could even grow much faster if certain obstacles would be removed. On the other hand, internet operations are more exposed to fraud and abuses. There are also problems in protecting consumers because it is left up to each Member State to decide on more stringent measures to protect their own consumers and as a result we have fragmentation of respective legislation in the EU. The divergent consumer protection regimes in the Member States create obstacles for cross-border trade and are to the detriment of consumers. She concluded that there is a need to move towards a system of complete harmonisation so that we can ensure uniformity. Harmonisation is also needed in the area of consumer redress.

**Mr ANDREAS SCHWAB**, *Member of the IMCO Committee, European Parliament*, pointed out that it is important to find a decent balance between the interests of consumers and businesses. The consumers would benefit from a wider choice of products. He stressed that it is also important to increase consumer confidence throughout the EU. The proposal should be scrutinised from the European and not from the national perspective. He emphasised that the overall picture is the most important and the ultimate criterion to assess the proposal should be whether it is going to help citizens throughout the union, even if in some Member States there might be one or two changes upwards or downwards in the levels of consumer protection.

**Mr STANISLAW JURCEWICZ**, *Member of the National Economy Committee, Senat, (Poland)*, pointed out that if the proposal is adopted, then some of the risks after six months will be shifted onto the consumer and it would be worth reconsidering if this should be the case and that the claim should reflect the terms of the contract. He also said that it was important not to interfere with the functioning of a business. The consumer needs security and trust but businesses should also try to build trust by providing quality. The legal environment should be simple and understandable to the consumer, but it should also not result in an excessive burden to businesses to avoid any increases in prices of goods and services. The most important thing in the relations between the consumer and the business is proper information being provided to the consumer about the service of goods being sold. He finally pointed out that market monitoring or the introduction of new rules and the impact assessment thereof should be based on the same criteria, so that it can be implemented in the same way throughout the European Union.

**Mr SIGISBERT DOLINSCHKEK**, *Chairman of the Committee for Consumer Law, Nationalrat, (Austria)*, pointed out that consumer rights is a difficult subject at both national and international level, but there is a general impression in all national parliaments that there should be a community directive unifying or harmonising some aspects. Nevertheless, it is particularly difficult to opt for maximum harmonisation. He stressed that it is better to aim for minimum harmonisation, combined with the principle of country of origin. He supported progressing in small steps in areas such as the right of withdrawal, the different deadlines for returning goods and calendar or working days. There should be also comparability of gas, electric, petrol prices and insurance for different products. He concluded that some things can be pushed along but without a full scale harmonisation right from the start, because that would create problems.

**Mrs HEIDE RÜHLE**, *Member of the IMCO Committee, European Parliament*, pointed out that the initiative is a very good one. There is a need to have a more detailed discussion on the subsidiary and proportionality of the proposal. The problem with full harmonisation is the loss of flexibility in the Member States as they would no longer have the possibility of reacting quickly to market changes. The advantage of full harmonisation is that this would solve the problem of fragmentation. Unfortunately the text of the Commission is not precise enough about the pros and cons of all issues for the Member States. She emphasised that the MEPs take the principles of subsidiarity and proportionality very seriously. The directive should be investigated in this context. In addition, the scope of the directive should be revised in order to ensure more consistency with other Community legislation in this field.

**Mr ERICH GUMPELMAIER**, *Chairman of the Committee for Consumer Law, Bundesrat, (Austria)*, pointed out that the proposal undermines Austria's high level of consumer protection. He pleaded for a gradual regulation approach, a differentiated approach with minimum harmonisation and perhaps full harmonisation in a few sectors. Austria would like to keep the principle of minimum harmonisation and at most only a few definitions of national law could be fully harmonised. As regards to sales, certain provisions would have to be amended to cover internet auctions. Also there should be no differential treatment of orders of newspapers and magazines and there should be a more favourable regulation for the consumer in the case of services where the right of withdrawal starts with the provision of the respective service. He also pleaded for the inclusion of lottery services and for the prolongation of the withdrawal period in the case where the consumer has not been informed about the right of withdrawal. It is also very important to foresee sanctions in the case of aggressive practices of cold calling. He suggested that we shouldn't be creating competition where companies are developing a

market to protect consumers and he emphasised that the main issue is to protect the consumer as the weaker party on the market. We ought not to be modest in terms of promoting high level conditions because that is something that will shine through at international level as well. If companies are asked to comply with appropriate rules, it will also boost innovation and technological development while creating confidence for our citizens. Consumer protection is a great subject for getting the trust of our citizens. This would be a signal for a Europe of citizens instead of a Europe of companies if our legislation and directives can protect the weaker party on the market.

**Mrs MARIA MANUEL OLIVEIRA**, *Member of the European Affairs Committee, Assembleia da República, (Portugal)*, pointed out that the directive is an important step forward for the protection of consumers. In order to bring this important piece of legislation closer to the citizens, information has to be properly disseminated to the citizens. She pointed out that there are considerable problems with misleading advertising in the banking and financial sectors. There are instances of advertising where insufficient information is supplied and which results in fraud and abuse. There is a need to take action regarding these misleading practices.

**Mr OSKARS KASTENS**, *Chairman of the Human Rights Committee, Member of the European Affairs Committee, Saeima, (Latvia)*, explained that there is a discussion on distance selling and the withdrawal periods in Latvia. Latvia supports the idea of full harmonisation, but it has to be clarified that standards will not in any way be lowered by adopting this measure. The European Affairs committee of the Latvian Parliament has also looked at the issue of complaints and consumer issues related to food labelling. The complaints were about misleading information on food labels, the fact that the writing on the labels was not large enough and also the question of GMOs and labelling of GMOs in foodstuffs. The consumers were asking for more information and felt that their rights had been infringed. In May of last year, Latvia tabled an opinion on this and we did ask to be able to participate in the standardisation work because we do want to ensure that the consumers do have every opportunity to get the information that they need about food products. It is also important to ensure that manufacturers are involved because sometimes it is only the manufacturer who can give the appropriate information to consumers. Given the current economic crisis, it is particularly important that legislation on the collective protection of consumers is adopted. He emphasised that the level of protection for consumers in the directive proposal should not in any way be reduced.

**Mr TIMMY DOOLEY**, *Vice-Chair of the Joint Committee on European Affairs, Houses of the Oireachtas, (Ireland)*, pointed out that the current economic crisis has the potential to generate or to engender protectionism within some Member States and clearly smaller States with open economies need every support possible to ensure that the internal market works well and effectively. Consumer confidence is essential to the continuing development of the internal market. Ireland supports the initiative to consolidate and update the directives in the field of consumer contract rights. It has some reservations which relate mainly to the provisions on sales contracts. These concern the loss of the right to reject faulty goods as a remedy of first resort and indeed the substitution of a 2 year time limit on liability for faulty goods for the 6 year time limit which is applicable under Irish contract law. There is also a broader concern that the content of chapter four which has been mentioned by others maybe too minimal for a maximum harmonisation instrument. The provisions in the Irish 'sale of goods' legislation on matters such as the delivery and risk for example are considerably more detailed than those in the directive with the result that we believe that full harmonisation of Irish law on the basis of the present proposal would leave very considerable significant gaps in the regulation of these and other matters.

**Mr PETER HAUK**, *Minister for Nutrition and Rural Areas of Baden-Württemberg, Bundesrat, (Germany)*, pointed out that the SMEs should play an important role in the internal market. The internal market should materialise in citizens shopping cross-border. There are certain areas in the directive which need improvement. It is not appropriate to restrict the scope of application to distance selling and doorstep selling and general sales conditions. A horizontal directive should cover all consumer protection measures so that we can have coherent framework measures to protect all consumer rights at EU level aiming at full harmonisation. When it comes to the process of implementation in the internal market, I think we can help the consumer and that partial sectors can achieve full harmonisation. In other areas there could be harmonisation up to a decent level and so then nationally we can still react more quickly and more swiftly to market changes. There should be full harmonisation in certain areas and partial harmonisation elsewhere. There are also reservations

regarding unfair contract terms and the lists of black and grey clauses which are lagging behind German levels of protection. The comitology system that is proposed in the directive is also worrying because it would be possible to incorporate at committee level other clauses which would be added to the black and grey list and he suggested that this be left up to the Commission, however, at the same time, far reaching changes should be subject to Parliamentary monitoring. In the future there should still be a margin of manoeuvre at the national levels so that we can react to what is happening on the markets.

**Baroness HOWARTH**, *Chairperson, EU Sub-Committee G (Social Policy and Consumer Affairs), House of Lords, (United Kingdom)*, explained that the House of Lords intends to carry out a full enquiry into the directive. She emphasised that the government of the UK does see a benefit in a directive which draws all Member States together across the European Union in terms of being able to encourage a full harmonisation but not full harmonisation on the basis of the present directive. There are a number of quite serious flaws in the directive in relation to consumer rights and the first impression is that this would in fact remove some of confidence consumers had rather than increase it. The legal implications of the directive are extraordinarily complex and some of those need to be ironed out. It was suggested if this had have been a white paper there would have been more time to perhaps look at it. Indeed, a number of the directives that are not included, particularly those related to services, had been included in the thinking around the directive. Consumers don't just have goods or services, but they tend to have both together and the directive risks to cause considerable difficulties in the future.

**Mr GYÖRGY ALEXA**, *Chairman of Committee on Consumer Protection, Országgyűlés, (Hungary)*, pointed out that a lot of work has been done in order to increase the level of protection for consumers in Hungary. He stressed the need to streamline implementation. Hungary would support the Commission's proposal to go for maximum harmonisation as a concept, but all the individual provisions should be very precise and clear, so that their interpretation does not differ. There are some concerns that maximum harmonisation may water down stricter regulation.

**Mrs McCARTHY** thanked the participants for their comments and invited **Mrs KUNEVA** to respond in general to the comments made.

**Mrs KUNEVA** pointed out that there is a good level of consumer protection everywhere in Europe. She emphasised that in a globalised world there is a need for a common European policy in order to be taken as a serious partner in the negotiations with partners like China.

She pointed out that surveys indicate that the main reason why consumers are reluctant to shop cross-border is not language but different rules in different countries. As regards businesses, 50% of businesses selling in the countries online openly express their desire to sell in other countries. The Commission's impact assessment showed that in order to do that, a business must invest 70,153 EUR in 26 Member States (besides his own national one). If the Consumer Rights Directive would be adopted, there would only be a one-off cost of 2063 EUR.

Mrs KUNEVA agreed with **Mr DOOLEY** that consumer protection should not be used as a protectionist measure. As to Article 26 on remedies in case of a lack of conformity, she indicated that she is willing to reconsider it, as long as it will be based on full harmonisation and takes into account the possible cost aspects from the point of view of businesses. She also pointed out that it should be considered that although the proposal foresees a 2 year legal guarantee instead of the 6 year legal guarantee as in some Member States, what really matters for consumers is that the burden of proof lies with the trader for the first 6 months. If necessary this guarantee can be extended, for example, to 12 months instead of 6. Similarly, the legal guarantee could be extended from 2 years to 6 years, depending on the costs of such a change.

Referring to **Mrs KARAMANLI's** intervention, Mrs KUNEVA pointed out that she is aware of different problems regarding the interpretation of the directive and in the following months she intended to clarify these issues. For example, France will be able to keep the system of "vice cache", on the unfair



commercial terms, the Council is already discussing a more comprehensive list and she is open to improve the list.

Referring to **Mrs ČRNUGELJ's** intervention, she pointed out that European consumers will be able to rely on a common optimal level of protection across the EU. She also assured that on the remedies, the discussions are ongoing and still open. On the inclusion of public authorities and in the definition of trader, the Council is discussing it. For example, Member States will be able to apply part of the directive of guarantees to gas and energy. Although electricity, gas and water contracts are not covered by the sales provision, various parts of the proposal still apply on these contracts, including rules of unfair terms in consumer contracts, general pre-contractual information and specific rules on distance and off-premises service contract. Various parts of the proposal also apply to consumer service contracts. With certain exceptions those contracts are covered by the rules of unfair terms and general pre-contractual information.

Referring to **Mr TOUBON's** intervention, Mrs KUNEVA explained that the Commission will be very soon providing a table analysing the impact of every issue in each Member State.

Referring to **Mrs RIPPELOVÁ's** intervention on the Common Frame of Reference (CFR), Mrs KUNEVA reported that the proposal is the result of a long preparatory work and public consultation and the draft CFR has been an important source of inspiration and has served as a toolbox for the revision of consumer *acquis*.

Mrs KUNEVA refuted the comments that the proposal is tilted towards businesses' interests, she emphasised it is based on a high level of consumer protection. The aim of the Commission has been to base the proposal on an optimal level of protection, a high enough level to achieve a consensus and to make consumers confident without imposing unreasonable costs for businesses. She added that she is nevertheless ready to discuss some issues, such as guarantees and redress, passing the risk where the level of protection could be even improved.

She agreed with the proposal of **Mrs MISTRELLO DESTRO** and with **Mr JURCEWICZ**, that the right balance has to be stressed not to overburden business and at the same time to protect consumers.

Referring to **Mr GUMPELMAYER's** intervention, she reported that according to the Commission's survey, 78% of businesses do not sell cross-border because rules are not harmonised. She stressed that she will not compromise on creating a citizens market and in having one set of rules for 500 million consumers.



This market should be seen as a market for consumers. The second stage of completing the internal market in Europe and the 21st century is much more about consumers because they can shape the economy much more rapidly than before and we need to take this opportunity and make maximum out of this.

**Mrs ZUZANA ROITHOVÁ**, *Vice-Chair of the IMCO Committee, European Parliament*, thanked **Mrs KUNEVA** for her answers and pointed out that it is important to circulate the questions and answers to all national parliaments. She then invited Mr JÍLEK to conclude the session.

**Mr JÍLEK** pointed out that the discussion had been extremely fruitful. He summarised that there are certain concerns that relate to redress, whether there is really free choice for the consumers and there also still seem to be some loopholes in the directive proposal. Certain participants also mentioned the principle of subsidiarity. Overall, there seems to be a consensus that about the need to have a single legal harmonisation all across the EU that strikes the right balance.

## **SESSION II: TRANSPOSITION, IMPLEMENTATION AND ENFORCEMENT OF EU CONSUMER LAW**

**Mrs Zuzana ROITHOVÁ** welcomed the guest Co-Chair representing the Parliament of the Czech Republic during the second session, **Mrs Soňa PAUKRTOVÁ**, *Member of the Committee on Legal and Constitutional Affairs, Senát of the Parliament of the Czech Republic* and **Mr Geraint HOWELLS**, *Professor of Commercial Law, University of Manchester, School of Law* as a high-level expert on Consumer Law and asked him to give an introductory Presentation on "Transposition, Implementation and Enforcement of EU Consumer Law"

### Introductory presentation on Transposition, Implementation and Enforcement of EU Consumer Law by Prof HOWELLS

**Prof HOWELLS** started with pointing out that there are three important dimensions to the problems that he will discuss: Issues related to European *acquis*, Issues related to domestic implementation and the relationship between maximum and minimum harmonisation. He emphasised that the choice between minimum and maximum harmonisation is the most fundamental issue out of the three.

**Prof HOWELLS** outlined that it might be difficult to harmonise when using general clauses. In practice several Member States simply replicate their national concepts to bring their legislation in line with EU law. The transposition or implementation of EU law in the Member States is also heavily influenced by different regulatory systems and different approaches to implementation. Austria and Germany have maintained their national one-track approach where businesses and consumers are covered by the same provisions. Other countries, such as Belgium and Italy adopted their specific consumer laws, creating possibly islands of consumer law separated out from the general principles of law. He also pointed out that what is very often negatively described as "gold-plating" is not necessarily to be seen as a negative development because it aims at finding a proper fit of the European law into national legal concepts. He summarised that there are many positive aspects of the impact of EU consumer policies but there is a need to find the right balance between EU and national competencies.



He discussed the relationship between general contract law and maximum harmonisation. He pointed that maximum harmonisation is not compatible with the fact that Member States are allowed to maintain their general contract law principles. The less an area is connected to general contract law, the more effective maximum harmonisation is likely to be. Areas where maximum harmonisation could be reasonable include, for example, information and withdrawal rights in doorstep and distance selling.

**Prof HOWELLS** highlighted that choosing a maximum harmonisation might result in a situation where in some Member States consumers might want to "opt-out" from their status as consumers. He mentioned the example of implementing the sales directive in Poland via a free set of standing rules where a consumer would be in certain cases better off in relying on the Polish civil code instead of on the rules which transpose the directive. A similar situation would occur if the Consumer Rights directive was to be implemented in the UK. The UK general law of sales would provide a better protection for businesses as regards to certain sales provisions than the respective provisions of the Consumer Rights directive applicable for consumers. It would not be normal that the EC consumer protection regime is weaker than the national regime for the protection of businesses.

He argued that a more differentiated approach to maximum harmonisation is needed. There are contexts in which maximum harmonisation is a necessary precondition for establishing the internal market, such as rules on product composition, labelling, content of advertisement and even standard

form of contract. There are also other rules where harmonisation is desirable, for example the right of withdrawal and information duties. However, there are other rules, such as general quality rules and general remedies which don't affect the ability to market in other countries and only have a marginal impact on ones obligations and hence don't need to be harmonised.

He summarised that it needs to be taken into account that maximum harmonisation has significant advantages but also serious costs and there needs to be clarity about what full harmonisation can and cannot deliver.

**Prof HOWELLS** was critical of how much complete uniformity of law can be achieved when using general clauses, implemented in different national institutional contexts and when having different forms of access to justice. He pointed out that even in the case of injunction which is the only uniform system of enforcement across the EU there are considerable differences in its practical application in the Member States. There are also different actors acting on behalf of consumers in different countries. In some countries, consumer organisations take the fore in protecting the consumers, in other countries it is more the State institutions. We also have a different emphasis on civil law as opposed to criminal law. There also seems to be a need to motivate regulators and enforcers to adopt a European perspective. Cross-border problems need to be put higher on the agenda of national authorities. European, national and local levels of enforcers need to improve their exchange of information and raise awareness of each others activities. It is especially important to embrace the lowest level national authorities.

#### Debate with Members of the European Parliament and Members of national parliaments

**Mrs ROITHOVÁ** thanked **Prof HOWELLS** for his presentation, and emphasised the importance of striking the right balance between harmonisation and flexibility at national level.

**Mr NIKOLAY MLADENOV**, *Member of the IMCO Committee, European Parliament* recalled that the IMCO Committee has made an own-initiative report on the implementation of the Unfair Commercial Practices directive and said this provides an interesting case study, even though it was difficult to gather practical examples at this early stage. He emphasised that the EP needs to be more closely involved together with the national parliaments along some sort of a common set of standard practices in reviewing the transposition and implementation of the directives. He highlighted the importance of the new EU Sweep system and encouraged the Commission to continue the work along these lines. He pointed out that despite that the Consumer Protection Cooperation network is a useful tool, its implementation in different Member States varies. Particularly new Member States need assistance in this network. He stressed the importance of European Consumer Centres in getting feedback about the actual problems of cross-border enforcement. Finally, he underlined the importance of information campaigns to inform consumers about their rights. Member States should also provide sufficient guidance to companies at national level.

**Mrs PAUKRTOVA** pointed out that compared to national governments, national parliaments take a rather passive stance regarding transposition and enforcement of EU law. She reported that the current fragmented directives have led to an increase in consumer protection in the new Member States. According to the Czech experience, the information campaigns for consumers are vital. She also underlined the importance of an effective functioning consumer protection network between Member States.

**Prof HOWELLS** pointed out that many of the issues about cross-border enforcement do not relate to the substantive but to the procedural law. The *Duchesne* case which got embroiled in complicated legal debates about which law applies is a good example which shows how procedural law might impede cross-border actions. There are also legal difficulties involved in a situation in which a body from a Member State is supposed to take action on behalf of consumers in a different Member State. He said that besides legal issues there are a number of practical measures which are important. It is important to inform consumers but also to inform businesses of their legal rights and obligations.

**Baroness HOWARTH** gave an overview of the UK House of Lords experience in working with EU legislation. She underlined the importance of National Parliaments getting involved early on in the implementation process and to scrutinise controversial EU proposals in detail. She pointed out that a

more detailed scrutiny of the actual effects of the proposal on the consumers and some of the complications of contract law would help to inform the Commission to end up with a proper directive that would really give encouragement to businesses as well as consumer protection.

### **CLOSING SESSION**



In her conclusions, **Mrs PAUKRTOVA** pointed out that there is a need to work on cross-border cooperation. She underlined the importance of contacts between the European Parliament and National Parliaments, especially with a view to adopting the Lisbon Treaty. She also said that the approach of the House of Lords to European directives was very interesting and inspiring.

In her concluding remarks **Mrs ROITHOVÁ** pointed out that the current fragmentation of consumer legislation is a shared concern. She summarised that the importance of the proposal for a Directive on Consumer Rights was underlined in most of the interventions, especially in the actual financial context. Only an effectively functioning internal market can help the European Union in its economic recovery.

She pointed out that there seems to be a general consensus on the necessity of harmonisation. It was underlined by a large majority of interventions that this European harmonisation should not lead to a lower level of consumer protection. A first important step was made today, as it seems a large majority of participants agree on the twin objectives of this proposal: ensure a high level of consumer confidence across all Member States (1) and easier and less costly access for businesses to markets all over the EU (2)

It was also underlined that a proper assessment of the consequences of full harmonisation on national economies and legislations should be undertaken before going any further.

In general, participants asked for more clarity (on definitions and scope), a better understanding of the interactions between this proposal and other Community legislation.

In addition, reservations were made on Chapter IV (unfair contract terms), especially as it could lead to a lack of flexibility in adapting the black list of unfair terms.

The IMCO Committee shares these concerns and they will be duly taken into account when revising the Commission proposal.

Finally **Mrs ROITHOVÁ** reminded the participants of the upcoming work of the IMCO Committee on the proposal. A working document will be released and published by the end of the month. It will of course be circulated to Members of National Parliaments for comments.