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Malcolm Harbour and Andreas Schwab (EPP-ED):

Consumer Rights Directive: Step forward for cross-border shoppers but further safeguards needed

"The EU proposal on consumer rights will simplify complex and different rules across Member states, reduce barriers that impede business from selling cross-border, increase consumer choice and lower prices. It will be a further important step towards the completion of the Internal Market for consumers and business", said Malcolm Harbour, Coordinator of the EPP-ED in the Internal Market Committee.

The Directive will allow for a comparable high level of consumer protection across the European Union by requiring clear information on the good, rights on late delivery and non-delivery, cooling off periods, returns, refunds, repairs and guarantees. This will facilitate cross-border purchases, allowing consumers to exploit more fully the advantages offered by the Single Market. There will be no reason to claim that one member state is more protective for his consumers than another; there will be no justification to block business from another Member State from being active on domestic markets by abusive consumer legislation. This in turn will produce significant improvements in cross border competition, in particular for Small and Medium sized enterprises.

"However, the proposal only provides for the harmonisation of core contractual aspects between the trader and the consumer. The draft directive therefore fails to address other important aspects of a contract, which will continue to be regulated by the Member States. This distinction between core and non-core aspects not only presents an obstacle to cross border trade but will also serve to undermine the aim of the proposal, which was to increase cross-border consumer confidence and legal clarity", added Andreas Schwab, vice-coordinator of the EPP-ED-Group in the Internal Market Committee.

A mutual recognition mechanism, which has been described as the *Internal Market Clause*¹ by the European Parliament, is essential if the problems surrounding consumer confidence and legal uncertainty are to be fully addressed, the MEPs said. Therefore, whilst the EPP-ED broadly supports the proposal, they call for a bolder and more comprehensive Directive to include those aspects left outside the full harmonisation process. Such a provision is necessary if this proposal is to completely address both the key aspects and major problems surrounding consumer contract law.

¹ European Parliament report on the Green Paper Review of the Consumer Acquis.

Questions and Answers:

Doesn't Rome I already allow sufficient consumer protection in contract law?

Rome I has not been adapted to address consumer law and therefore fails to deal with the specific nature surrounding consumer contracts. This is why, a mechanism which has been referred to as both the Internal Market Clause and the Mutual Recognition Clause would be adapted to the specificities of consumer contractual law and ensure a high degree of consumer protection by European standards without impeding cross border activities of consumers and business.

Does the commission proposal offer less protection to Consumers?

There are some concerns that some Member State's existing consumer protection measures go beyond the terms in the new directive, and that such measures could be lowered as a result. For example, in terms of guarantees, the new Directive would provide a 2 year period whereby the trader would be legally required to repair or replace the good that does not conform to the contract. In some countries, such as the UK, current legislation does not reasonably restrict the time period within which a consumer can exercise their right to withdrawal. Therefore, some elements of consumer protection would be changed in several member states through full harmonisation, but other new elements would be introduced so that the level of consumer protection would be guaranteed. If the proposal was to be supplemented to include a mechanism for non-essential contractual aspects, consumer protection across the EU would be increased.

What would be the implications of excluding a mechanism such as the internal market clause or mutual recognition clause outside the directive?

It would ultimately impact negatively on consumers if it were not addressed. The distinction between core and non core aspects is not clear, it is difficult to ascertain and certainly not desirable given that this Directive needs to improve consumer protection. For example, whilst the Directive standardises the period of withdrawal in consumer contracts and ensures that a standard withdrawal form will be provided if the consumer exercises their right of withdrawal; the Directive makes no provisions for harmonising the delivery of the standard withdrawal form. This means that it would be left to Member State legislation rather than harmonising across the EU and would certainly not give the legal clarity to consumers and businesses which is needed. A mechanism is therefore necessary if consumers are to be more protected and cross-border barriers to trade are to be fully removed.

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