

European Commission
Directorate-General Health and Consumer Protection
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GREEN PAPER ON THE REVIEW OF THE CONSUMER ACQUIS

The European Commission intends to revise the Consumer Acquis and therefore with the Green Paper requests all interested persons to give their views on it. The Central Chamber of Commerce of Finland submits the following answers to the questions included in the Green Paper.

Question A1: In your opinion, which is the best approach to the review of the consumer legislation?

Option 2: A mixed approach combining the adoption of a framework instrument addressing horizontal issues that are of relevance for all consumer contracts with revisions of existing sectoral directives whenever necessary.

The Central Chamber of Commerce of Finland finds the mixed approach as the only possible alternative in practice. Vertical approach consisting of the revision of all individual directives would be too time-consuming and would cause unnecessary costs. The present acquis is fragmented and thus harmonisation is necessary.

Question A2: What should be the scope of a possible horizontal instrument?

Option 1: It would apply to all consumer contracts whether they concern domestic or cross-border transactions.

The review effort would be partially useless if it applied only to certain types of transactions. It is important that domestic and cross-border consumer transactions are regulated in a uniform manner.

Question A3: What should be the level of harmonisation of the revised directives/the new instrument?

Option 1: The revised legislation would be based on full harmonization complemented on issues not fully harmonised with a mutual recognition clause.

In order to create an efficient European market, it is essential that the consumer legislation in different member states is uniform. Consequently, the only possible approach is full harmonisation of consumer legislation. The present fragmented situation leads to uncertainty. Also, it can be seen as a deterrent to competition.

Question B1: How should the notions of consumer and professional be defined?

Option 2: The notions of consumer and professional would be widened to include natural persons acting for purposes falling *primarily* outside (consumer) or *primarily* within (professional) their trade, business and profession.

The present Finnish consumer legislation defines consumer as a natural person who acquires a consumer product for mainly other purpose than for his or her business activities. This definition has functioned well and has been reasonably interpreted by courts and the Consumer Complaint Board.

Question B2: Should contracts between private persons be considered as consumer contracts when one of the parties acts through a professional intermediary?

Option 1: Status quo: consumer protection would not apply to consumer-to-consumer contracts where one party makes use of a professional intermediary for the conclusion of the contract.

The only possible and reasonable approach is to keep contracts between private persons outside the scope of consumer legislation despite the use of professional intermediary. It would be unreasonable to treat a consumer as a business merely because a professional intermediary has been used.

Naturally, if a professional intermediary has an assignment, he or she is liable for handling it in a proper manner. In many cases consumer legislation is applicable to the assignment itself.

According to the Finnish consumer legislation an intermediary is personally liable for the contract unless he or she informs the consumer the he or she is acting on behalf of a consumer.

Question C: Should a horizontal instrument include an overarching duty for professionals to act in accordance with the principles of good faith and fair dealing?

Option 3: A general clause would be added which would apply both to professionals and consumers.

According to the present Finnish consumer acquis it is clear that both parties to a consumer contract have duties including that of good faith and fair dealing. It is unthinkable that consumers or professionals would not be expected to act in good faith as a par-

ty to a contract. However, it must be noted that the Green Book doesn't offer much information on the purpose of the question.

Question D1: To what extent should the discipline of unfair contract terms also cover individually negotiated terms?

Option 1: The scope of application of the Directive on Unfair Terms would be expanded to individually negotiated terms.

It should be accepted that even individually negotiated terms may be unfair. However, it should be noted that some regulations should be stricter concerning standard contract terms than individually negotiated terms. According to the Finnish consumer acquis, a surprising and strict term in a standard contract may be deemed invalid. Additionally, an unclear standard contract is interpreted to the advantage of the consumer. These differences are well accepted.

Question D2: What should be the status of any list of unfair contract terms to be included in a horizontal instrument?

Option 1: Status quo: To maintain the current indicative list.

The Central Chamber of Commerce of Finland does not consider grey or black lists well-functioning.

Question D3: Should the scope of the unfairness test of the directive on unfair terms be extended?

We refrain from answering to this question as the real meaning of the options seems uncertain.

Question E: What contractual effects should be given to the failure to comply with information requirements in the consumer acquis?

Option 3: Status quo: The contractual effects of failure to provide information would continue to be regulated differently for different types of contract.

A failure to comply with information requirements should not as a rule result in automatic remedies. Remedies should only be awarded when the failure is such that a remedy is necessary. We are satisfied with the Finnish legislation concerning misleading information and remedies resulting from it.

Question F1: Should the length of the cooling-off periods be harmonized across the consumer acquis?

Option 1: There would be one cooling-off period for all cases when the consumer directives grant consumers a right to withdraw from the contract, e.g. 14 calendar days.

The present state of different cooling-off periods is confusing to both consumers and businesses.

Question F2: How should the right of withdrawal be exercised?

Option 2: One uniform procedure for the notice of withdrawal across the consumer acquis would be established.

The Central Chamber of Commerce of Finland finds it essential that the procedure for withdrawal is uniform. The consumer should be required to provide proof of having fulfilled the requirements concerning withdrawal. Mere passivity should not be considered as withdrawal.

Question F3: Which costs should be imposed on consumers in the event of withdrawal?

None of the options seems to be an adequate answer to the question. According to the Finnish legislation, consumers do not carry the costs of returning the goods when they withdraw. This has led to problems as some consumers' behavior has recently become irresponsible. Some consumers have taken a habit of ordering for example the same product from several retailers and they have accepted only the one they have received first and all other orders have been returned at the retailers' costs. Some consumers have taken a habit of ordering goods like furniture, clothes and jewelry before Christmas or other major holidays and returning them after the holidays at the retailers' costs.

Even the Finnish Ministry of Justice recognizes this as a serious problem (letter 27.3.2007 OM 3/912/2007).

Question G1: Should the horizontal instrument provide for general contractual remedies available to consumers?

Option 2: A set of general contractual remedies available to consumers in the case of a breach of any consumer contract would be provided. These remedies would include: the right of a consumer to terminate the contract, to ask for a reduction of the price and to withhold performance.

The option does not, however, include the all correct remedies. The foremost remedy in consumer contracts is repair or replacement. This is unmentioned in the option.

Question G2: Should the horizontal instrument grant consumers a general right to damages for breach of contract?

The horizontal instrument should not grant right to economic damages.

Question H1: Should the rules on consumer sales cover additional types of contracts under which goods are supplied or digital content services are provided to consumers?

Option 4: Combination of Option 2 and 3.

The scope of general provisions should be all types of contracts.

Question H2: Should the rules on consumer sales apply to second-hand goods sold at public auctions?

Option 1: Yes.

However, the special nature of public auctions should be taken into account. Consequently, consumers should be responsible of due diligence when purchasing goods at public auctions. Price reduction is not a suitable remedy in public auctions.

Question I1: How should delivery be defined?

Option 3: Delivery would mean, by default, that the consumer takes physical possession of the goods, but the parties can agree otherwise.

There is no reason to prevent parties from agreeing what delivery means in a specific contract.

Question I2: How should the passing of the risk in consumer sales be regulated?

Option 1: The passing of the risk would be regulated at Community level and be linked to the moment of delivery.

The passing of risk should be harmonized as well as other general rules.

Question J1: Should the horizontal instrument extend the time limits applying to lack of conformity for the period during which remedies were performed?

Option 1: Status quo: no changes would be made.

Question J2: Should the guarantee be automatically extended in case of repair of the goods to cover recurring defects?

Option 1: Status quo: The guarantee would not be extended.

Question J4: Who should bear the burden to prove that the defects existed already at the time of delivery?

Option 1: Status quo: During the first six months it would be up to the professional to prove that the defect did not exist at the time of delivery.

There is no need to tighten the present regulation.

Question K1: Should the consumer be free to choose any of the available remedies?

Option 1: Status quo: consumers would be obliged to request repair/replacement first, and ask for a price reduction or termination of contract only if the other remedies are unavailable.

We are satisfied with the present Finnish legislation that includes the principle in option 1.

Question K2: Should consumers have to notify the seller of the lack of conformity?

Option 2: A duty to notify in certain circumstances would be introduced (e.g. when the seller acted contrary to the requirement of good faith or was grossly negligent).

It is unreasonable for businesses if consumers have no duty to notify the seller of the lack of conformity. The seller's possibility to offer remedies is better if the seller receives notification of the problem in a timely manner.

Question L: Should the horizontal instrument introduce direct liability of producers for non-conformity?

Option 2: A direct liability for producers would be introduced under the conditions described above.

We are satisfied with the present Finnish legislation that includes the principle in option 2.

Question M1: Should a horizontal instrument provide for a default content of a commercial guarantee?

Option 1: Status quo: the horizontal instrument would contain no default rules.

It should not be a question of legislation what sort of commercial guarantees sellers offer. This sort of legislation may even prevent competition among sellers.

Question M2: Should a horizontal instrument regulate the transferability of the commercial guarantee?

Option 2: A mandatory rule that the guarantee is automatically transferred to the subsequent buyers would be introduced.

Question M3: Should the horizontal instrument regulate commercial guarantees limited to a specific part?

Option 1: Status quo: the possibility to provide commercial guarantee limited to specific part would not be regulated by the horizontal instrument.

Question N: Is/are there any other issue(s) or area(s) that requires to be explored further or addressed at EU level in the context of consumer protection?

According to our opinion there are no other issues or areas that require to be addressed at EU level in the context of consumer protection.

THE CENTRAL CHAMBER OF COMMERCE OF FINLAND

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