



Ministero dello Sviluppo Economico
Consiglio Nazionale dei Consumatori e degli Utenti

**OPINION ON THE PROPOSAL FOR THE DIRECTIVE OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CONSUMER
RIGHTS 2008/0196 (COD)**

The proposal for the Directive should have as objective to introduce real and effective improvements of the juridical outline of consumers protection in the sphere of the contractual relationship.

With this object in view, the current directives on the contracts negotiated away from business premises, on distance contracts, on unfair terms and on consumer sales and guarantees, should be revised in order to improve the content and to offer a wider and more effective protection to the consumers in all the Member States, increasing in this way their trust also in the cross-border buying.

The proposal will have an impact on everyday life of all the European consumers. It represents a **fundamental turning point in the EU approach towards politics and legislation for consumers' rights**, as it drops the principle of the minimal harmonization, adopted for over 25 years, that has allowed the Member States to keep or introduce in their systems provisions of higher level of consumer protection than that provided by the Directive. Now this approach is substituted by the principle of the full harmonization¹, according to which the Member States will not be able to offer to the consumers a higher protection than that provided by the Community regulation .

In order to guarantee the effective consumer protection in the treated matters, we deem that the present proposal for the Directive can not leave out of consideration the 10 following points:

¹ The **full harmonization principle** is included in the article 4 of the proposal for the directive according to which "the member States can not maintain and adopt in their national right, provisions differing from that stated by current directive, including more or less strict provisions to guarantee to the consumer a different level of protection.

1. no payment before the expiry date of the renunciation right: to protect better the consumers and to avoid the difficulty to obtain the return of deposited money, obligation that is often violated in doorstep selling and in distance sales (in particular, television and internet sales system)

2. consumers' right to choose among the provided remedies in case of conformity defect of the purchased good (repairing, substitution, price reduction, repayment): it is necessary to guarantee the free choice of consumers and the reduction of disputes caused also by the complexity of the current provisions, that the proposal for the directive will increase and not decrease;

3. the conformity defect must be presumed to exist at the time of delivery for the whole guarantee period (24 months): the contrary prove has to be charged to the seller, eliminating a burden of proof at expenses of the consumer because it is extremely complex and sometimes impossible to accomplish for him;

4. direct responsibility of the producer for the conformity defects: producers should have the same level of responsibility than sellers for each quality or running defect of the product. Only in this way, consumers could really take advantage from the home market, being able to buy a product abroad and to obtain their repairing or maintenance in their country, thanks to a local representation of the producer, instead of being bound, as it is currently provided, to exert the conformity guarantee exclusively towards the seller, also when it is provided in another country;

5. hotel and car hire contracts should be included in the Directive: in particular, in the provisions related to distance sales (renunciation right, informative obligation and so on);

6. digital products must be subject to the conformity guarantee: a growing number of consumers buy software and music online, but a community provision does not exist yet to ensure the substitution, repairing and repayment of defected products, even though the consumers have identified and pointed out conformity problems. We find it is paradoxical that Committee's will is to conform the current directives to the new consumers' requirements and to the market process, promoting the cross-border buying too (even if, not only on the web) digital products are excluded (software, music/video on line) from the sphere of application of the directive.

The sphere of application of contractual clauses that are considered unfair can not be restricted to a standard prearranged contract. A contractual clause drawn up in the moment of the stipulation of a contract but that has not been negotiated, has to be able to be declared unfair. As it should be also when contractual terms traces administrative and statutory provisions that do not have the same weight as the mandatory provisions or international conventions in the hierarchy of the sources of the law.

8. general obligations of information, that are part and parcel of the sale contract, must always include not only the outlines of the product but also trader references and address, the conditions of delivery and payment, the form of the assertion of the guarantee, the modalities for the assertion for renunciation's right and the terms for the withdrawal from a contract, the price and the additional expenses, including the link cost for a distance communication and the delivery charges for the shipping agency to be paid by the consumer.

9. it is important to remember that terms regarded as unfair when state the **cognisance of a law – Court** different from the consumer legal residence or domicile of choice, has constituted the juridical basis to introduce the “ Consumer law-Court principle” into the Italian legal system. It represents a considerable advantage for consumers for the management of disputes and for the access to the justice.

10. Though its name “ consumers’ right” ,the proposal, above all, intends to eliminate barriers for the trader who wishes to sell within the single European market considered its legal basis.(article 95 of EU agreement) .As its legal basis is not the article 153, we would like that the home market will be promoted getting the consumers felt at home, making easier their every life , increasing their trust in purchasing choices, the cross-border too.

To realize all that, it is necessary to avoid that the full harmonization principle bring about the lowering in levels of consumers’ protection in member States today.

We believe that the adoption of the full harmonization principle should be considered but on condition that the level of harmonization provided by the prevision does not cause a restriction or a lowering in the protection level offered to consumers by their national legal system.

It is possible if we introduce in the directive, provisions more in favour of consumers that are now part and parcel of the single national legal systems.

If it is not possible , we believe that the Directive should provide, all or in part, the adoption of the minimal harmonization principle, letting in this way to the member States the possibility to maintain or introduce more favourable provisions to consumers on single matters that are subject to the harmonization.

The **consumer trust** is at stake not only towards European market , but also towards the same Community institutions and it is the idea of a “Europe of citizens” as well , that should be reintroduced and reinforced to go beyond the crisis of credibility that the citizens have showed in repeated recent occasions. (non-ratification of a constitutional treaty on France, Ireland and so on)

We hope **that all the Community institutions (Committee, Parliament, Council) will be able to get ready a text that will represent a success for all European consumers** and it will be able to stand future challenges.

It is with this constructive spirit that we enclose a first estimation card of the paragraph of the proposal that gives an idea of the impact of the measures on Italian legal system end that is based above all on years of the experience of consumers’ associations that have tested in the field the enforcement of the directives , subject of our revision.