

THE GREEN PAPER ON THE REVISION OF CONSUMER ACQUIS: SOME OBSERVATIONS

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FILIP KŘEPELKA

Key words

Green paper – consumer acquis – revision - harmonization – horizontal instrument

Introduction

The aim of the presented paper was to examine proposals of the Commission of the European Communities concerning revision of eight directives of the European Communities on consumer protection (the so-called consumer acquis), which were introduced by the Commission in the Green Paper on the Revision of Consumer Acquis in February 2007. The structure of the paper followed content logic of the Green Paper - divided into two major parts, the first one was dedicated to possible methods of revision of consumer acquis – with special regard to so-called horizontal instrument as a revolutionary change in the regulation of consumer protection on Community level, the second one dealing with the most suitable levels of harmonization of legal norms regulating consumer protection in the EC/EU. Each method of revision and level of harmonization were assessed, comparing the current state with the proposed amendment, and conclusions and recommendations were made.

Approaches to revision of consumer acquis

The Commission presented three alternative approaches to revision of consumer acquis - vertical approach lying in the amendment of individual directives, mixed approach lying in the creation of a so-called horizontal instrument functioning as a general basis of harmonization for all revised directives, and preservation of the existing state. The vertical approach – which expected revision of individual directives one after another – did not seem as a very clever solution of current situation. It is true, on the one hand, that individual approach to each directive would guarantee a really quality revision. However, such means of revision would not constitute a real improvement to current state of affairs (the level of protection within the EC/EU would remain ambiguous) and it would definitely present a

burden for the Community institutions in the legislative process. Therefore, this approach to revision had to be rejected as inconvenient.

As far as the second (mixed) approach is concerned, the situation looks much more promising. The core idea of this approach – creation of a so-called horizontal instrument – suggests that consumer acquis could gain a terminology basis common for all eight directives. Furthermore, purchase contracts should form part of the instrument, and – last but not least – main institutes of consumer protection legislation (such as the length of cooling-off periods or the possibility to exercise the right of withdrawal) would be removed from individual directives and incorporated in the instrument. The idea of the instrument is in general naturally praiseworthy, however, some trouble occurs here. First of all, in case basic institutes really were to form a part of the instrument (while at the same time they would „disappear“ from the directives), it would be crucial to secure that these institutes become so to say applicable to all eight revised directives. Another problem might occur if purchase contracts became part of the instrument and at the same time relevant directives would be repealed – the question here being which are the relevant directives and whether the provisions on purchase contracts could apply also to „remained“ directives. Suggested solution here was either to create a general instrument (with definition of basic terms and major institutes of consumer protection legislation) applicable to all eight directives or create one instrument and repeal the eight directives at the same time. As far as the scope of the instrument is concerned, the Commission suggested three alternatives – applicability of the instrument both to national and cross-border transactions, to purely cross-border transactions or to all distance contracts (no matter whether national or cross-border). This paper argues that the best solution regarding the scope of the instrument would be the first one, i. e. a universal applicability to all consumer transactions carried out within one or more of the eight revised directives.

The last proposal of the Commission – maintenance of the current state – is quite naturally not satisfactory. As argued at the very beginning of the Green Paper, current situation of consumer protection in the EC/EU is discriminatory. Due to principle of minimum harmonization, consumers as well as professionals from different member states do not have sufficient legal certainty when entering into mutual relations. Therefore, absence of a revision seems not a solution.

Levels of harmonization

In its second part – as well as the second part of the Green Paper – the paper dealt with level of harmonization of consumer acquis. The Commission suggested three alternatives – revision of the acquis leading to full harmonization, minimum harmonization together with principle of mutual recognition and minimum harmonization together with the country of origin principle. As far as the second and the third proposals are concerned, their first weak point is the maintenance of minimum harmonization. As indicated above, minimum harmonization does not seem a suitable method in the field of consumer protection, as it brings non-equal position of consumers and professionals across the EC/EU. Furthermore, the conception of both mutual recognition and country of origin is in my opinion not applicable to consumer matters. We can hardly expect the member states to refrain from creating obstacles to consumers or – especially – professionals from other member states. This applies especially to principle of country of origin, where also the reluctance of more protectionist member states to accept professionals from other member states with less strict (minimum) rules plays its role. Therefore, the conception of full harmonization together with revision of the acquis appears to be the most suitable one, although one might argue that full harmonization hardly leaves any space for the activity of member states and – in the current state – is contrary to the EC Treaty.

Conclusion

After having examined all Commission proposals concerning methods and levels of harmonization, we came to the conclusion that in order to ensure the same level of consumer protection within the EC/EU, the revision of consumer acquis – by creating a horizontal instrument - together with full harmonization are necessary.

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