

Brussels, 10 November 2009

Proposal for a Directive on consumer rights - COM (2008) 614

Orgalime supports the Commission's proposal for a directive on consumer rights in order to unify and simplify the existing legislation and to further promote the functioning of the Single Market.

Orgalime believes that the initial proposal of the Commission to reform the consumer acquis achieved an acceptable balance between a high level of consumer protection and the competitiveness of traders, though some clarifications and amendments would still be needed in order to secure that full harmonisation of the acquis is not disproportionately burdensome and complex for business. The initial Commission proposal was the result of a lengthy discussion on the review of the consumer acquis.

Orgalime is however very concerned about three points that are currently under discussion in the Council with regard to consumer rights specific to sales contracts:

- Firstly, the **immediate right to terminate** the sales contract within the first fifteen days from the day of delivery in the event of a lack of conformity:
The trader should first be given the opportunity to remedy the defect by repair, in particular if there is only a minor defect which may easily be remedied. Furthermore, in allowing immediate termination of a contract within the first fifteen days, we see the risk that this would increase electronic waste since companies will not be able to resell the often only marginally defective products. This is very much opposed to the general policies of the European Union.
- Secondly, the extension of the **warranty period to up to ten years**:
We question the purpose of such long warranty periods, bearing in mind that the expected life-span of many consumer products is rarely that long. Any changes to the warranty period should take into account the main reasons for its existence, which is that consumers should have sufficient time to discover any defects in the purchased product. Furthermore, overregulation in this area would distort competition since companies compete not only on prices, but also on other competition parameters, such as quality and durability of their products. Many producers go beyond the regulated warranty period in order to "surpass" their competitors, for example by way of commercial guarantees.
- Thirdly, the extension of the **reversal of the burden of proof** with respect to a lack of conformity from **six to twelve months**.

Orgalime, the European Engineering Industries Association, speaks for 34 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 11.1 million people in the EU and in 2008 accounted for some €1,885 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

We believe that these measures will lead to a substantial financial burden for traders and thus ultimately for consumers.

Orgalime would like to propose the following measures in order to maintain equilibrium between consumers and traders:

- a **clear hierarchy of remedies for lack of conformity** whereby, in particular, repair takes precedence over price reduction or contract termination;
- **no presumption of the trader's liability for lack of conformity** in the case of replacement of a defective product and no new liability-period for the lack of conformity of spare-parts;
- a **period of warranty limited to two years** and
- an **allocation of the burden of proof between trader and consumer** as laid down under the **current Consumer Guarantee Directive**.

Orgalime hopes that these concerns will be taken into account in further inter-institutional discussions. We remain available for any further information.



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