

Brussels, 21 May 2007

Review of the consumer acquis: Input to the Green Paper COM (2006) 744 final and on Communication COM (2006) 210 final

I. Introduction

Orgalime welcomes the public debate launched by the Green Paper on the review of the consumer acquis and the opportunity to provide comments. In general, Orgalime supports the objectives of a coherent and simple European consumer regulation.

II. General Remarks on the revision of the consumer acquis

Although we share the view that the internal market would benefit from a more coherent consumer acquis, we nevertheless fear that on some sensitive subjects, it seems the Commission is trying to steer the discussion in a specific direction.

Before answering some parts of the questionnaire which are relevant to the engineering industries, we would first like to outline a number of essential principles which we feel should be borne in mind before considering any amendments to the consumer acquis:

- 1. The Green Paper should launch a debate about the effectiveness of existing consumer rules; the outcome of that debate has to remain open.*

Orgalime strongly supports the position of the European Commission that the review has to be made under the “Better regulation” framework. This means that the Commission should privilege a simplification and harmonisation of the existing texts instead of creating new ones. Orgalime expects an open debate in which the results should be absolutely open.

Any amendments to existing legislation should be in line with and fully respect first the subsidiarity principle and underpin the goals of the Lisbon strategy. The decision to introduce *new* legislation should be a “last resort” and should be taken with care and without haste. Orgalime strongly opposes any introduction at Community level of direct producers' liability. The Commission should, in our opinion, work on developing stronger and more efficient techniques to “control” existing legislation (e.g. enforcement of transposition in Member States) and to avoid the introduction of additional legislation at national level during the transposition of European law (gold plating).

Orgalime, the European Engineering Industries Association, speaks for 36 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.6 million people in the EU and in 2006 accounted for some €1,779 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.

1. *Protection of the interests of both consumers and business.*

The aim of the review should be to achieve a healthy balance between the interests of consumers and businesses. It should be a chance for the Commission to:

- bring into line the level of consumer protection only in those Member States where it is currently at an unsatisfactory level;
- make access to the entire European market easier for companies.

Cross-border sales are likely to be increased and consumers to benefit more from a policy which makes it easier for businesses to sell to customers in other countries. Consequently the level of protection should not be increased but should be harmonised at a level which does not discourage businesses.

2. *The freedom of contract has to be respected.*

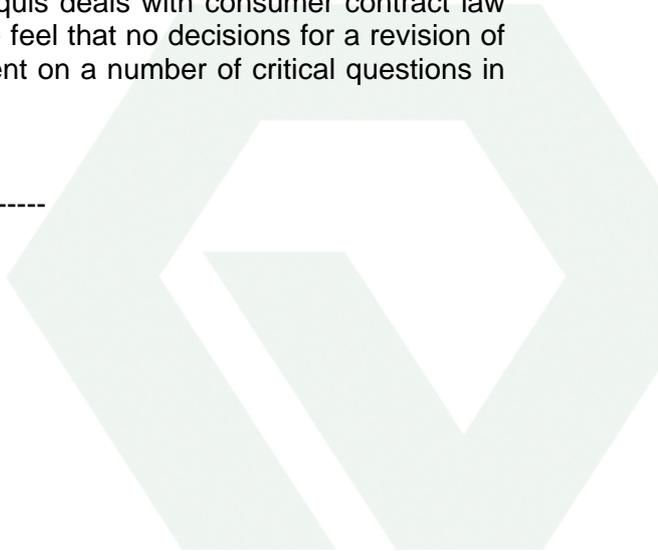
Orgalime is somewhat disappointed that the Green Paper only speaks about creating new or adjusting existing regulations. *Freedom of contract* and its meaning for a competitive European economy are not mentioned. We are worried about certain suggestions and comments in the Green Paper which could lead to too much state intervention and a violation of the market economy.

3. *The review must be backed up by impact assessments.*

It is very important to keep in mind that business and consumers need a stable legal framework. This means that every change must be justified by adequate evidence that highlights the gaps or incoherencies between Member States' national regulations.

4. *With a view to simplification, the review should take into account other European initiatives.*

The Commission has launched the revision of the consumer acquis at the same time as similar questions are being discussed within the European contract law initiative and the Common Frame of Reference (CFR) - network. It is clear that the work of the CFR-Network has only just started and still needs to mature, especially bearing in mind that the positions of researchers and industry representatives vary considerably. Since, the consumer acquis deals with consumer contract law and therefore is directly linked with the work in the CFR, we feel that no decisions for a revision of consumer legislation should be undertaken before agreement on a number of critical questions in the CFR has been reached.



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I. Orgalime answers to some questions asked in the Commission questionnaire

In the light of the principles above, we comment only on those questions of interest to our industries:

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

Orgalime supports a vertical approach. For some questions, horizontal principles could be considered, e.g on the definitions of "consumer", "professional". However, under no circumstances should new Directives or Framework directives be created.

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

The minimum horizontal approach mentioned above should apply to all consumer contracts whether they concern domestic or cross-border business. Other options will create new categories and will not lead to simplification of European legislation.

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

The main issues of the revised legislation should be based on full harmonisation. Non-major issues may be partially harmonised and complemented with a mutual recognition clause.

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

Option 1: The existing definitions in the *acquis* should be aligned without changing the scope. "Consumer" could be defined as "natural persons acting for purposes which are outside their trade, business or profession". "Professionals" should be defined as "persons (legal or natural) acting for purposes related to their trade, business or profession". The existing Directive 99/44 already provides such a definition.

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

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

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

Orgalime is in favour of the status quo (option 2). We would not be in favour of the Commission or courts deciding on the "adequacy of the price" as we feel that this would violate basic principles of a market economy and the freedom of contract.

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

Orgalime supports the status quo (Option 1) and also thinks that, in future, consumers should 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 oppose a change of the order in which remedies may be invoked. It would have a significant negative impact on business if, after introducing such a practice in B-2-C, it could then in a further step also apply to the B-2-B field.

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

We strongly oppose any plan to introduce direct producer liability (as suggested in Option 2) and are strongly in favour of the status quo (Option 1). Orgalime is worried that introducing direct producer liability would considerably harm the competitiveness of the European economy and, furthermore, discriminate against European companies vis-à-vis their non-European competitors who would not need to operate under such conditions. We find it highly doubtful whether the introduction of direct producer liability would in any significant way motivate consumers to purchase goods across borders, and thus the contribution to the integration of the internal market would be marginal. Furthermore, it is common practice today for many products, especially those of high value, to provide "worldwide guarantees" which sufficiently cover the needs of consumers.

Against this background, we urge the Commission to consider the negative impact such a measure would have:

- (i) it would seriously affect B-2-B sales by creating difficulties for the relations between the companies in the distribution chain;
- (ii) it would mean a significant deviation from the principle of privity of contract, which is a basic principle of contract law and ensures that a contract will only create rights and obligations between its parties;
- (iii) it is doubtful whether consumers would gain any advantage by having a right of direct claim. We fear that the contrary might happen, since increasing the liability risks of manufacturers would probably lead to additional costs - e.g. for additional insurance, setting up infrastructures for dealing with claims for defects, other transaction costs - which in the end will have to be borne by the consumers.

Questions on commercial guarantee in section M:

Orgalime does not support the introduction of additional community legislation on commercial guarantees. Such guarantees go beyond the mandatory requirements and are an additional, voluntary service from the distributor to the consumer,

We fear that if legislation regulating these voluntary commercial guarantees comes into force, distributors would be discouraged from giving such an additional voluntary guarantee, since they would no longer have any control over its content. We think that creating new legislation in this domain would not increase the level of protection of consumers but would, on the contrary, place them at a disadvantage.