



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

CALL FOR EVIDENCE on the Proposal for a Directive on Consumer Rights

(European Parliament, Internal Market and Consumer Protection Committee)

NAME of the organisation:

UEAPME (European Association of Craft, Small and Medium-sized Enterprises)

- **What organisation or interest do you represent (SME, other business, academic, consumer group, individual etc)?**

UEAPME is the European SME umbrella organisation with 83 member organisation from 36 countries. UEAPME represents more than 12 million enterprises, which employ around 55 million people around Europe. UEAPME is one of the recognised European Social Partners.

- **What is your specific interest in consumer law (trading cross border, trading in one Member State, largely local consumer, regular online consumer within MS/ from other MSs etc)?**

Consumer law is part of the legal framework in which all kind of SMEs have to operate (retail, production, craft, services, liberal professions,...) and influences their competitive situation.

SMEs are mostly active at **regional and local level**. Cross border activities are not typical for enterprises in this size, except in smaller countries and in cross-border regions. The regulations of the consumer law are essential for SMEs. SMEs are in daily contact with consumers on a personal basis. Developing a trustful relation towards the consumer is significant for SMEs and is on the top of their priorities. Micro and small enterprises can only win the trust the consumers' if they behave on a responsible way. Because of this, enterprises in this size put more effort on the performance.

- **What practical experiences do you have of incidents involving buying or selling in cross border transactions?**

As already mentioned above, cross border transactions are not characteristic for SMEs. If it happens it is more that there is an opportunity which the SME uses. UEAPME would like to point out that there is too much attention, more than needed, given for the cross border issue and the so called problems linked with it. The future directive would not only effect cross border activities. If the full harmonisation approach, which UEAPME fully supports, would become reality, the directive will have more impacts for national and local business activities then for cross borders.

- **Consumers: Do you think (elements of) the proposal will help/ encourage you to access goods and services cross border? In what way?**

- **Businesses: Do you think (elements of) the proposal will help/ encourage you to provide goods and services cross border? In what way?**

The proposal will not help and encourage SMEs to provide goods and services cross border. From this point the new proposal would be not crucial for SMEs. If they have the possibility, because of the situation on the market and their financial and personal resources to act cross border, they will make use of it. Their decision would not be influenced by this proposal/directive.

• **Do you believe that the proposal is sufficiently "future proof"? Does it cover emerging types of products, services, marketing and distribution practises?**

On the whole the proposal covers emerging types of products, services, marketing and distribution. But there are still issues which are not mentioned in the proposal. One of these is the right of redress which is regulated in Article 6 of the Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. The proposal has dropped completely this topic. This means that the right of redress will not be regulated at European level in the future at all. Apart from this, the contents of the proposed rules of the future directive are problematic as well. The proposal changes several legal constellations e.g. the definition of off-premises contracts. This would put more demands on SMEs and would not support the business activities of small and medium-sized enterprises at all. Furthermore, the topic of the service contracts is not covered appropriate. There are several points introduced in the proposal concerning service contract which are not acceptable for SMEs (please find more detailed explanation in the last point).

• **Can you identify alternative approaches to achieving the objectives of high consumer protection and development of a cross border market which benefits business and consumer alike?**

UEAPME is convinced that for the functioning of the Internal Market a directive with a level of full harmonisation is appropriate and needed. UEAPME is on the opinion that alternative approaches would not lead to success and development with respect to consumer law at European level.

• **Are there specific measures you would like to see included in the proposal?**

As already mentioned it is essential to include regulations concerning the right of redress. UEAPME is on the opinion that a redrafted version of the current regulation must be in any case included in the proposal. Another possible solution could be the introduction of the direct liability of the producer into the proposal.

• **Do you have concerns about some of the detailed elements included in the proposal (specific unfair terms, specific rules on right of return, rights of guarantee etc)?**

1) The scope of the off-premises contracts, article 2:

It is unacceptable to expand the scope of off-premises contracts twice, firstly through a general definition as concluded in article 2 paragraph 8a) and b) and secondly by not making any distinction in the proposal between "solicited" and "unsolicited" visit by the consumer. The current Council Directive 85/577/EEC makes an exclusive list of contracts negotiated away from business premises to which the directive can apply and of the cases in which the directive does not apply. The introduction of a more precise and detailed definition concerning "*off-premises contracts*" would lead to more certainty.

2) Formal requirements for off-premises contracts, article 10:

In article 10 paragraph 2 the Commission proposes that agreements concluded off the business premises shall only be valid, if the consumer signs or receives an order confirmation on durable medium. This is unacceptable and against the basic principle of contractual right that an oral

agreement is just as legally valid as a written agreement. This paragraph would make the majority of agreements concluded in everyday business life void even though recital 15 explains that market stalls and fair stands should be treated as business premises. At least this exemption should be mentioned in the article to avoid legal uncertainty.

3) The length and starting point of withdrawal period, article 12:

A withdrawal period of 14 days would put too much demand on traders, especially on small enterprises, for example with respect to accounting processing, stock management, follow up of invoicing and the collection of outstanding payments. This would have in addition a very negative effect on the market and would not support the aim of the Commission to promote cross-border activities. It is also not in line with the Small Business Act as it imposes a considerable increase of administrative burdens for SMEs and brings economic insecurity for small companies.

4) Right of withdrawal, article 12, 17:

According to article 12 paragraph 1, the proposed 14 days can be used to withdraw from a distance or off-premises contract, without giving any reasons. Due to the fact that the consumer does not have to give any reason for his withdrawal, the 14 days withdrawal period could lead to an irresponsible behaviour by the consumer. This brings to much uncertainty for SMEs especially due to the absence of reasons for the withdrawal.

Furthermore, according to article 17 paragraph 2 the directive ensures that *"for service contracts subject to a right of withdrawal, the consumer shall bear no costs for services performed, in full or in part, during the withdrawal period."* Both proposed regulations cannot be introduced in this way. If these articles are not modified traders will not have any other possibilities than to wait until the end of the withdrawal period and to start with the performance of the services only after the expiration day. Although there is an exception in respect of distance contracts in article 19 paragraph 1 a) in the case of services where performance has begun, with the consumer's prior express consent, it will not solve the problem mentioned above.

5) Delivery, article 22

As stated before the delay of the trader is considered as an essential breach of contract which gives the consumer a right to cancel the contract. Not in all cases where delay is more than 30 days (even though the parties have not agreed otherwise) can be said that the delay equals to essential breach of contract. The right to cancel the contract should be considered case by case.

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