



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

Position for the Commission Consultation on the Doorstep Selling Directive (85/577/EEC)

Introduction

The Doorstep Selling Directive is part of the ongoing review of the consumer regulatory framework, which was dealt with in the Green Paper on the Review of the Consumer Acquis.

As stated in our response to the Green Paper, UEAPME believes that it is of the utmost importance to find a balance in the review of European consumer policy between consumer protection and the need to protect SMEs in their economic role. This means avoid burdening SMEs with increased regulations that might hinder intra-community trade.

Therefore, UEAPME has recommended full harmonisation of consumer law and a mutual recognition clause for issues not fully harmonised.

Question 1: *Do you think that specific issues should be addressed in relation to the current definitions of “consumer” and “trader” in the field regulated by Directive 85/577/EEC? If so, please specify which ones. Please note that the general issue of defining "consumer" and "trader" is being considered in the Green Paper on the review of the acquis. Therefore only issues specific to doorstep selling are relevant to this consultation.*

Question 2: *Are any other notions in need of definition?*

UEAPME believes that the definitions should be kept identical in all consumers-related pieces of legislation. There is no need for a specific definition on “consumer” and “trader in the field regulated by Directive 85/577/EEC.

Question 3: *Are the doorstep situations which are listed at Article 1 of the Directive still up to date? Do they need to be amended, expanded, repealed and/or harmonised in any way to reflect new market realities? Please explain how and on which aspects.*

Question 4: *Have you encountered any problems with the application of Article 1? If so, which problems have you encountered and how do you feel these could be solved.*

UEAPME would like to underline that doorstep selling is a very useful method for a large part of consumers, such as disabled or not self-ambulant people. This must be taken into account.

The scope of the directive is in many cases, for instance in Belgium and France, larger than the national law transposing it. We are not aware of any problems until now.

In our opinion, however, several categories such as ambulant commerce or milk distribution as still practiced in some regions should be explicitly excluded from the scope of the directive.

On the other hand nowadays there are forms of publicity made by telephone. Therefore it is important to explicitly exclude from the scope of the directive those contracts made following the invitation of the consumer at the trader place by a telephone call.

In particular there would be absolutely no justification for covering contracts which are concluded e.g. at fairs or markets where a surprise element does not exist and the initiative for the conclusion of a contract comes without doubt from the consumer. Concluding a contract means being legally bound to what the parties have promised. The principle of “pacta sunt servanda” is fundamental for commercial transactions in general and has to be acknowledged and maintained in B2C-contracts as well. It must not be rendered meaningless by excessive rights of cancellation which are not justified because of specific circumstances and situations.

Question 5: *Should the regulatory option at Article 3(1) which allows Member States to exclude contracts of a value of less than 60 euros be modified and/or harmonised further? Please explain why and how.*

Question 6: *Is the current threshold adequate taking into account the present reality of the direct selling market?*

The directive leaves to Member States the decision to fix a minimum sum for the application of the directive. This sum must be under 60€ UEAPME would like to underline that the harmonisation of this minimum sum would be the best option both for the consumer and the trader. The current threshold should be raised taking into account that the present limit was introduced more than 20 years ago. But, on the other hand, cost of life is not the same in all Member states. Therefore this element should be deleted. For the same reasons a maximum sum should not be foreseen.

For the same reasons UEAPME believes that the Commission should avoid that Member States forbid the possibility for the trader to require an advance payment in cash. This would, in fact put the risk of the trade only on the traders' side.

Question 7: *Should the regulatory option at Article 3(3) which allows Member States to derogate from the provisions on solicited visits at Article 1(2) be modified and/or harmonised further across the EU? Please explain why and how.*

Question 8: *What is your practical experience of the application of the exclusion (or where applicable the inclusion) of solicited visits from the scope of the Directive and in order to improve legal certainty and consumer protection, should the Directive be extended to all solicited visits?*

The directive gives to Member States the option to exclude from the scope of the directive contracts for the supply of goods or services having a direct connection with the goods or services for which the consumer requested the visit of the trader.

This choice for Member States should be deleted in favour of an explicit clause aiming at harmonising the national laws. In UEAPME's opinion, the exception should be kept only when the consumer could not at all foresee what the trader would propose to him and that would not have any link with the goods for which the trader visited the consumer.

It is still extremely adequate to exclude solicited/requested visits. Under such circumstances an element of surprise which is – according to the recitals - the central reason for granting a right of withdrawal within the scope of Directive 85/577/EEC does not exist.

Question 9: Do the current exemptions need to be modified in the light of new market developments or interpretation problems? Please explain.

The judgements of the European Court of Justice mentioned in the Commission's Discussion Paper have brought sufficient clarifications on how the exemptions have to be interpreted. Therefore we can see no need for new rules in this context.

Question 11: Can Article 4 be improved, in particular with respect to the modalities for providing notice? If so, how?

The information of the consumer on his providing notice should be kept in writing. UEAPME thinks that a standard European notification form should be created.

Question 12: Do the rules concerning the exercise of the right of withdrawal and its consequences need to be clarified in the field of doorstep selling; if so which aspect(s) should be treated differently from the field of distance selling and why?

The right of withdrawal should be subject to the same conditions in terms and form in all Member States. The Commission should forbid to Member States to introduce additional conditions for enterprises.

UEAPME would like to express its opposition towards tendencies of expanding the time periods for the exercise of the right of withdrawal in this Directive and other Directives as well. It would though be meaningful to harmonize the method of calculation in so far as it should be based on "calendar days" instead of "days".

Furthermore for reasons of legal certainty it is essential to establish an absolute limitation in time for exercising the right of withdrawal. According to a judgement of the European Court of Justice the right of withdrawal is granted in perpetuity if the consumer has not been or not properly been given notice of his/her right. We consider this consequence excessive and disproportionate and therefore measures are needed to reduce this long-lasting legal abeyance.

Question 13: *Does the interaction of this Directive with the Distance Selling Directive need to be clarified further?*

Question 14: *Is there scope for further harmonisation of this Directive with the Distance Selling Directive?*

UEAPME believes that the definitions should be the same used in other directives to simplify the legal environment both for consumers and traders.

Question 15: *Do you feel necessary to introduce at European level restrictions on the hours during which direct sellers can make visits to a consumer's home?*

The idea of Europe-wide time-restrictions on doorstep selling is not compatible with the principle of subsidiarity.

Question 16: *Do you think that the introduction in Belgium and France of restrictions or bans on payments (and other types of consideration) during the cooling off period was necessary for consumer protection and has been workable for traders? Do you think that similar restrictions or bans on advance payments should be or should not be introduced at European level? Why?*

The introduction of Europe-wide restrictions or bans on payments during the cooling off period would be neither necessary nor proportionate. We have to bear in mind that in many cases the right of withdrawal is irrelevant because the contract concluded meets the consumer's expectations. But even if the right of withdrawal is applied the consumer has sufficient rights to get the money back according to national laws.

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