

ETNO Reflection Document in Response to the Green Paper on the Review of Consumer Acquis

Executive Summary:

While recognising the need for review of the existing Consumer Protection Acquis, ETNO believes that DG SANCO needs to approach the exercise with care. In particular, there is a need to ensure consistency with legislation on which other DGs have the lead. Attention must also be given to the possibility that the benefits of new one-size-fits-all measures may be outweighed by their costs. The focus should instead be on specific problems where application of Better Regulation principles shows an unambiguous case for action at EU level. In the e-commerce sector, there is a need to consider adaptation of consumers' traditional rights to new technology in a number of areas.

ETNO represents 41 major telecommunications operators from 34 European countries. While these companies have an obvious interest in almost all aspects of the Consumer Acquis, they have particular experience of issues relating to e-commerce. From this perspective, the Association has a number of observations to offer in reply to DG SANCO's consultation:

1. ETNO fully supports the underlying objectives of the existing Consumer Acquis. The Association considers that the Directives in question have generally been successful in creating a high level of protection of consumers while facilitating the creation of a working internal market. While recognising the need for a review, it believes the exercise needs to be approached with caution.
2. The Association is concerned that further efforts in this field may be characterised by a lack of coordination. In particular, the relationship between the Common Frame of Reference Initiative, the Rome I proposal, the E-Commerce Directive, and prospective consumer protection rules in the regulatory framework for Electronic Communications is not clear.
3. There is a risk that new "one-size-fits-all" measures will create additional sources of legal uncertainty, or limit flexibility of the regulatory framework in ways that are prejudicial to both

consumers and companies. In a number of areas, it is not clear that the benefits of EU action will outweigh its costs:

- Introduction of a general right to damages and good faith rules which impact national contract law by going beyond consumer protection objectives.
 - Harmonisation of “cooling-off” periods which need to accommodate widely varying types of transactions.
 - Harmonisation of definitions of “delivery”.
 - The extension of the Consumer Sales Directive to digital content services.
4. In the place of ambitious horizontal initiatives, ETNO would advocate a pragmatic approach to further harmonisation. The focus should be on specific problems where application of “Better Regulation” principles demonstrates that there is an unambiguous case for action at EU level.
5. With this last point in mind, the Association would highlight a number of areas where there is a need to consider adaptation of consumers’ traditional rights to new technology:
- Definitions of “consumer” and “professional”
 - Application of consumer information duties to mobile commerce
 - Definition of “durable medium”.

ETNO looks forward to more detailed engagement with DG SANCO on all of these issues as its review progresses.