

SELDIA POSITION ON THE REFIT EXERCISE RELATED TO EU CONSUMER POLICIES

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INTRODUCTION

Seldia welcomes the recent Commission commitments aiming to update and harmonize the EU consumer acquis, driven by the initiatives such as the fitness check of consumer acquis (REFIT) as well as the proposal for the Directive on certain aspects concerning contracts for the online and other distance sales of goods).

In response to the publication of the online consultation on the fitness check (REFIT) of consumer protection laws on 12 May 2016, Seldia has prepared this position paper (in addition to responses given in the public consultation). The purpose of the present paper is to better explain the position of Seldia members on issues which are not mentioned in the questionnaire or on questions which are too complex to answer in the online publication questionnaire.

GENERAL VIEWS

1) EU Consumer acquis works well, but implementation checks would be useful

Seldia believes that, despite of some existing gaps, the general objectives of the EU consumer acquis have been met and that current EU legislation works well. Members of Seldia generally question the purpose and added value of the REFIT exercise if it were to mean opening up these Directives for complete review. For example, if you take the information requirements currently existing in three directives (Unfair Commercial Practices Directive, Price Indication Directive and Consumer Rights Directive) Seldia members agree that the acquis here is functional and that there therefore is no need to re-open the Directives only to address these issues.

However, Seldia believes that better implementation and enforcement of EU legislation is necessary. We will give you a particular example - there is a discrepancy in Sweden between the definition of pyramid scheme in the Market Law (which transposed UCPD Directive to B2B and B2C) and the definition of chain letters existing in the Lottery Act (*"Chain letter game shall in this Act mean a game where the possibility of winning principally depends on the number of participants that gradually enter the game."*).

The definition of pyramid schemes (under UCPD) is fully harmonized in the EU meaning that stronger rules are disallowed. However, the Lottery Inspection has started to go after direct selling companies operating Multi-Level-Marketing compensation plans (members of the Swedish direct selling association), disregarding that the main source of income is the sale of products for final consumption and not recruitment fees.

General amendments of the Swedish Lottery act are being discussed but are not expected to be adopted before 2018. Those amendments are however not focused on the definition of chain letters.

Another example - Articles L 121-21 and L 121-25 of the French Consumer Code prohibit the acceptance of any payment, or promise of payment, within the first 7 days after a direct sales transaction (except for home party sales). This results in direct sellers having to wait until the 8th day after concluding a transaction before being allowed to collect payment. This can, in many cases, involve having to physically return to the home of the consumer in order to collect payment.

This restriction is extremely problematic, as it obliges direct sellers to make multiple trips to the home of a customer to present/demonstrate products/services, to deliver and subsequently to collect payment. This applies even when the relationship between the direct seller and the customer is well established and continuous. In comparison to in-store retail, this places direct sellers at a clear disadvantage. Thus, in these circumstances the problems lay not in the EU consumer legislation, but in the implementation issues which harms the principle of EU Single Market and the whole purpose of the EU legislation of maximum harmonization.

2) Same legal regimes for online and offline transactions

Seldia believes that, besides the implementation checks at national EU Member State level, the Commission should also focus on the elimination of the legislative distinction between contract rules for online and offline legal regimes within the EU, i.e. the recent proposal for the *Directive on certain aspects concerning contracts for the online and other distance sales of goods*.

The proposal, as it stands now, would, if adopted, apply only to online (distance) sales (Article 1 (1) of the Proposal). The idea is that for offline (face-to-face) sales the Directive 1999/44 on Sales and Guarantees ("Sales Directive") would still apply, resulting in two different sets of consumer rights which will be used depending on how consumers buy goods: offline or online. This would result in increased uncertainty for consumers and a legislative burden for multi-channel businesses, which would outweigh the potential benefits of full harmonization of the rules of liability and remedies for defected goods if it is applicable to ONLY online sales.

Seldia believes that the purpose of the REFIT exercise and other initiatives happening in parallel should be to ensure legally solid and comprehensive EU consumer rights while simultaneously aim to reduce bureaucratic burden for businesses operating in the EU single market.

3) B2C rules should not be extended to B2B relations

Seldia believes that B2B relationships are different from B2C relationships and the scope of consumer acquis should NOT be extended to B2B relations. We support the freedom of contract between businesses and the interference of the regulator here might mean a potential detrimental impact on consumer welfare through higher prices and/or lower choice. Furthermore, we believe that this would mean the end of the entrepreneurship in Europe.

4) Full harmonisation is desirable but hardly possible

Seldia, like others, would like to see the full harmonisation in the key areas of the trader-consumer relationship which would be a major step forward to decrease fragmented consumer protection rules across the European Union.

However, the various pieces of consumer legislation are very different from each other and would hardly be suitable to be codified in one single instrument. In order to reach full harmonization, Regulations should need to be implemented instead of Directives (all minimum harmonization Directives are, *per se*, barrier to the Single Market). We have already seen attempts of the Commission to harmonise consumer protection rules and these have so far failed. Another attempt risks going down the same road. In addition, the current trends are to increase legal protection of consumers without sometimes due regard to business realities, competition and ensuring level playing field for EU companies competing with global players.

5) Need for strengthened and harmonized enforcement as one of the best tools protecting consumers

We believe that EU consumer law needs better enforcement and its goals cannot be achieved if there are no effective remedies available to the consumer.

As the Commission rightly points out in the Study on the application of the Directive 2009/22/EC, the injunction procedure is very important for the enforcement of consumer rights. Consumer organisations in the Member States have successfully applied injunctions in order to stop illegal practices, for example relating to unfair contract terms. However, as mentioned in the REFIT roadmap, the Injunctions Directive has not proven to be a useful tool for consumer when it comes to cross-border infringements. It can be explained by many reasons: different level of powers given to national authorities, high costs involved in cross-border actions, procedural obstacles, such as problems to obtain evidence or slow-paced proceedings.

Thus, Seldia would like to point out that it is very important to exploit the potential for enforcement cooperation of national authorities in Europe. The review of the CPC Regulation is the tool which could help supporting it.
