

The 2nd Consumer Rights Directive Forum Gaining Trust in the Internal Market?

2nd June 2010 . Sofitel Europe . Brussels



Conference Report

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On the 2nd June 2010, Forum Europe organised a half day debate on the Consumer Rights Directive. This document contains the outcomes of the event.

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The 2nd Consumer Rights Directive Forum

Gaining Trust in the Internal Market?

2nd June 2010

On Wednesday 2nd June 2010, Forum Europe held an afternoon of discussion and debate in partnership with Amway and FEDSA and with the support of Strategis Communications. The debate looked at the current state of play and focused on the future of European contract and marketing law. Over 100 delegates from across the EU institutions, the stakeholder community and press attended the event in Brussels.

The conference was delighted to welcome **Viviane Reding, Vice-President of the European Commission and Commissioner of Justice, Fundamental Rights and Citizenship** and **Evelyne Gebhardt MEP**, both of whom gave keynote addresses.

This conference report provides a summary of the questions raised and outcomes reached at the conference.

Introduction

Conference Chair, **Virginie Alloo, Senior Analyst at Cullen International** opened the conference and welcomed participants. She began by briefly explaining the objectives of the Commission's proposed Consumer Rights Directive and the current state of play of the dossier. She stated that the Spanish Presidency would produce a

new document by 24 June, before handing over the reins to the Belgian Presidency on 1 July. Virginie welcomed the keynote speakers and panellists and thanked them for taking the time to join the discussion.

Keynote Speech

Evelyne Gebhardt MEP and Shadow Rapporteur for the Consumer Rights Directive for the S&D group gave the first keynote address. Mrs Gebhardt explained that it would be impossible to foresee the outcome of discussions in the European Parliament, as there is still much work to be done and many issues to overcome.

She explained that consumer policy is a topic that is of great importance to her. That the Consumer Rights Directive has been discussed since 2008 highlights the level of importance attached to the issue, but also underlines how difficult it is to find common ground on the Directive. Mrs Gebhardt strove to remind all delegates that she will work on behalf of consumers and will endeavour to equip them with more rights and better protection.

In Mrs Gebhardt's view, gaining the confidence of the European consumer is the cornerstone of a successful single market. In her opinion, the philosophy of the single market must change;

it must exist to serve the consumer. The single market is not only an economic structure, but its legislation is in place to protect its citizen's rights. In addition, if Europe wants a single market, it needs the right foundation to do so. She noted that currently, due to unclear European regulation and a lack of information, consumers neither feel secure nor confident shopping cross border. In order to change this, Gebhardt states that we need to be aware of the different cultural and legal situations throughout Europe. She explained that although the harmonisation of consumer rights is imperative in order to make the consumer better understand them, this harmonisation must happen step by step. Rushing the process does not build trust in the single market.

On a more positive note, Mrs Gebhardt noted that everyone agrees that the regime needs to be simplified and inconsistencies removed, but she does not consider full harmonisation to be the way forward on this occasion. The long standing legal habits and behaviour of both consumers and sellers have to be taken into consideration and finding compromises would be difficult. Therefore full harmonisation should only be applicable in certain areas, so as not to lose the consumer's confidence.

In an unsurprising move, Mrs Gebhardt welcomed the fact that Commissioner Reding has distanced herself from the Commission's original proposal. Responding to the main question of the conference, how to gain trust in the Internal Market?, she noted that the Consumer Rights Directive is not the only instrument that can be used to gain trust, and stated that other actions need to be taken in order to encourage consumer trust and participation in the internal market. Mrs Gebhardt finished her keynote speech by noting

that the more trust consumers have in the internal market, the more efficiently it will work. The market and the consumer are mutually dependent.

Keynote Speech

Viviane Reding, Vice-President of the European Commission and Commissioner for Justice, Fundamental Rights and Citizenship gave the second keynote address. She expressed her desire to enhance consumer trust in the single market and referred to the Commission's newly announced Digital Agenda, which hopes to encourage more people to shop online and take advantage of the single market. She explained that the single market does not currently work as it should and that Europe is in need of a more understandable



contract law, which would allow consumers and businesses to benefit from an integrated business environment. Mrs Reding noted that, in order for businesses to benefit, confidence is needed and therefore businesses would profit from consumers having pan-European rights.

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With regard to the Consumer Rights Directive, Mrs Reding stressed the need for targeted full harmonisation rather than the initially proposed maximum harmonization. She stressed that it is imperative to begin by making progress in those areas in which the case for the single market is the strongest by paying special attention to off-premises and distance contracts.

As for the regulation of distance and off-premises contracts, Reding proposed full harmonisation of rules on pre-contractual information for these contracts, a 14-day cooling-off period and standard withdrawal forms. However, with regard to common rules on the remedies and guarantee for faulty goods, Reding suggested that she would be prepared to raise the level of protection and introduce new remedies.

With regard to unfair contract terms, Mrs Reding was adamant that there needed to be uniform rules that are harmonised as far as possible, whilst giving Member States some flexibility to add to the black or grey terms.

Mrs Reding also raised the idea of the optional 28th regime, which could apply across all contracts as an alternative to applying national laws and would be parallel with national contract law and offer standard terms and conditions.

She also emphasised the importance of data protection and that privacy must be protected. According to Mrs Reding, research shows that the most confident internet users continue to use the internet in spite of the fact that they mistrust it. In her final remarks, Mrs Reding expressed that her role is to overcome this mistrust and to prove that every citizen has control of their fundamental rights.

She stated that she will modernise Europe's data protection rules so that they meet the needs of 21st century Europe.

Session 1

[Will the final Consumer Rights Directive meet stakeholder expectations?](#)

Monique Goyens, Director General, BEUC, opened the panel debate by stating that answering the question would be impossible while the final text is not yet known. However, the text as it currently stands does not meet stakeholder expectations. She underlined that the single market does not exist purely for cross-border sales and she is concerned that national legal frameworks are being destroyed in order to open up markets, raising the question as to why all domestic contracts should be endangered in order to accommodate the European dream.

Mrs Goyens welcomed Mrs Reding's pragmatic, step-by-step approach but suggested that she does not wholly agree with the Commissioner on what should be fully harmonised, and what is best left to minimum harmonisation. She stated that, above all, consumers want a consistent legal framework.





She also called for legal remedies to be constant regardless of how the contract was concluded and a much more efficient legal framework regarding legal remedies.

BEUC, represented by Mrs Goyens, are calling for longer periods of guarantees, the reversal of the burden of proof, the ability of the consumer regarding the initial choice of remedies, and producer liability. She also suggested that the consumer needs more comprehensive protection from unfair contract terms. Furthermore, she believes that long term contracts should be prohibited and consumers should always have the right to rescind the contract. Regarding collective redress Mrs Goyens would like to see not only a system available in every Member State but for collective redress to be available cross-border.

Michael Meissner, Vice President Corporate Affairs Europe, Amway, was the next panellist to speak. He stated that although the existence of 27 nations brings with it a level of legal uncertainty, in reality when Amway is faced with various levels of consumer rights in all the Member States, the company has simply found its own level of consumer rights, which goes above and beyond most of the levels in Member States. This is a choice made by each company that cannot be regulated nor imposed by any law.

He stressed the need to find a pragmatic approach and expressed concern that maintaining the status quo would be a major missed opportunity for business, growth and competitiveness.

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Patrice Pellegrino, Senior Adviser on Internal Market & Consumer Affairs and Fiscal Affairs, Eurocommerce was the next panel member to speak. Mr Pellegrino expressed his disappointment at the long timetable which the Consumer Rights Directive is faced with. He believes that the Directive should contain both rights and duties for consumers. With regard to the 28th regime, he argued that such a regime would represent a shift in the political understanding of Europe and would pose various problems.

He fears that it may have been a mistake not to include all stakeholders in the initial discussions,

as problems could have been solved and issues resolved before a Directive were created.

Mr Pellegrino reminded participants that the draft Consumer Rights Directive applies to non cross-border as well as cross-border sales and that a balance must be found between business and consumers. He stated that if there is a duty to buy then there is also a duty to sell.

Guillaume Delvallée, Counsellor at the French Permanent Representation to the EU spoke next.

He note that the Council Working Group had already held 41 meetings on the dossier and described the situation as extremely painful and stated that it would not be easy to continue work based on the current text. Furthermore he noted that the Court of Auditors was very damaging regarding the impact assessment carried out by the Commission.

MrDelvallée defended the need for the single market and said that France is strongly in favour of the Small Businesses Act. Mr Delvallée's biggest concern with the Directive is that he is not persuaded that anyone knows what is being harmonised. No one



is certain what will be lost and what will remain, and Mr Delvallée is concerned that the full impact of the Directive has not been taken into consideration. Furthermore, it may take many years and any number of cases at the European Court of Justice before the entire impact of the Directive is known

Mr Devallée argued that people turn to their national authorities for help in finding solutions. He gave the example of travellers looking to their national government for aid during the ash cloud crisis. The public does not want to be told to see Mrs Reding in the Commission for help with their consumer rights as they want help at a national level. This is where people turn when they want solutions.

More specifically Mr Delvallée feels that there is a need to look more closely at the distinction between on and off premises, and questioned whether off-premises is a cross border issue.

Monique Goyens agreed with the panellists that the step by step approach is needed and pointed out that Europe itself was created step by step. However, she argued that the markets are not

currently made for integration and that an alternative approach would be to bring the legal systems as close as possible. She also believes that it is extremely important to allow national authorities to step in and regulate the market.

Session 2

Harmonisation of contract and marketing law: necessary or a step too far?

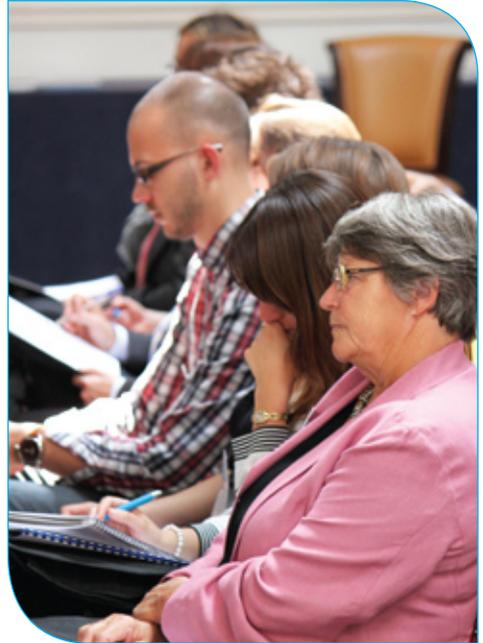
Opening Remarks:

View of the forthcoming Belgian Presidency

Michael Aendenhof, Counsellor for Consumer Affairs, Belgian Permanent Representation to the EU, began the session by noting that the Consumer Rights Directive is very interesting for the incoming Presidency. The Belgians will take into account everything that has been achieved so far. He explained that the political landscape has altered with the arrival of the new Commission and a new Commissioner who has brought some fresh air to the dossier. He welcomed the flexible and helpful attitude that the Commission is displaying.

He acknowledged that in Council, an overwhelming number of Member States have opted for a pragmatic approach and a working method to discuss the Directive chapter by chapter and article by article. Concerning the different approach for on and off premises which has been proposed by the Commission, Mr. Aendenhof does not see how this could work in practice.

Under the Spanish presidency the Council has discussed the whole text except chapter V and the working group will be receiving a new text with footnotes on 24 June, which will be used to help build a compromise.



Quoting Mario Monti's call to come to an agreement on this Directive without delay, Mr Aendenhof said that he believes an agreement at the end of the Belgian Presidency should be achievable.

Next to take the floor was **Cornelia Kutterer, Senior Manager – EU Regulatory Policy Corporate Affairs, Microsoft**, who also spoke about the need for a pragmatic approach. She spoke of the need for trust which is paramount for the online world. She emphasised that the Consumer Rights Directive cannot be seen in isolation and that it ties in with the E-Commerce Directive, the Unfair Commercial Practices Directive and the E-Signature Directive.

Contract law is important for Microsoft because of cloud computing and the SMEs who use this need

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to have an easily understandable set of contract laws to use. Fully harmonised consumer rights help Microsoft's business users in their daily business lives. The EU needs to have legal certainty and end to end trust online. The whole chain needs to be trusted and Mrs Kutterer believes that the E-Signature Directive is a key tool for trust online and for the digital online market.

The next panellist, **Jens Karsten, Director European Regulatory Affairs, FEDSA**, spoke of needing a vision for the retail single market. At the moment, the Consumer Rights Directive simply reworks four different pieces of legislation into one. He also highlighted Mario Monti's report calling for a pan European single retail market by 2012, and asked what the challenges for the retail market will be in 10 years time.

Referring to the Common Frame of Reference and the 28th Regime, Mr Karsten commented that Mrs Reding's arrival has helped to break the ice. He is convinced that the 28th Regime is useful but that we should not forget that we are discussing a Directive and not a Regulation.

Ursula Pachi, Deputy Director General, BEUC, lamented the lack of strategy behind the development of legislation of consumer law in relation to contract law in general and that the Consumer Rights Directive has been presented in isolation. She also expressed her disappointment that there has been no proper impact assessment regarding the Consumer Rights Directive and the lack of evidence to back up statistics.

Highlighting that consumer trust is about many different issues, which have nothing to do with the



differences in consumer legislation between EU countries, Mrs Pachi said that BEUC considers that it is disproportionate to reduce consumer rights when it is not clear at all how the Directive will benefit consumers.

With regard to chapter IV on legal guarantees, Mrs Pachi put forward her idea on how to harmonise this chapter. She suggested a European right to reject, which would mean increasing the level of protection in 19 countries while at the same time increasing legal certainty for business. The few remaining countries which currently provide for better protection should be able to maintain their legislation. However, she noted that the problem is more political and gave the examples of Germany, who do not seem to want to increase their level of protection and the UK, who will not agree to certain aspects if they do not keep their right to reject.

Moving on to the 28th regime, Mr Pachi is concerned that the regime would be confusing and consumers would never know which set of rules would be better. Furthermore, BEUC do not want to see a patchwork of optional schemes.

Responding to comments from the other panellists, Michael Aedenhof said that discussions in Council regarding the 28th regime have been very difficult and are predicted to continue to be so. The problem with the 28th regime is that the legislator will have to implement it in practice, and this is difficult to envisage.

He highlighted that currently the only thing that lies on the table is the Consumer Rights Directive and it is important to focus on this. The Consumer Rights Directive is an instrument that can be used so it must be adapted and shaped in order to ensure the best possible outcome.

Responding to a question from the audience regarding the burden of fragmentation, Ursula Pahl said that for BEUC, there are bigger issues to discuss than legal fragmentation, which for them is not the most important topic. BEUC believes that the Commission's proposal is disproportionate. She also expressed BEUC's readiness to share with the Commission a list of points they would like to see included, which they believe would improve the rights of consumers.

Jens Karsten commented that Direct Selling does have an internal market perspective which has greatly evolved with the increased use of the Internet and the various social networks. With regard to the cross border single retail market, Mr Karsten highlighted the pragmatic idea of drawing up a list of 50 to 100 points of regulatory bottlenecks which people encounter when they are creating e-shops and reaching out to the all 27 Member States. This exercise would be very useful to help pave the way towards 2020 and the retail single market. In his concluding remarks, Mr Karsten suggested that

one should take into account that the notions of consumer and seller are changing as well as the retail environment. The internet has a democratic effect on retail markets as it is now possible for an individual to open an eShop and start selling with very low entry thresholds.

The debate on this issue is far from over. As such, a further event will be organised by Forum Europe in 2011 to chart the progress of the Consumer Rights Directive, and to debate the issues which will arise if the legislation is to be implemented. Full details will be circulated shortly.

We were very grateful to all those who attended for making the afternoon such an interesting and wide-ranging debate and look forward to seeing you all again at the next Consumer Rights Directive Forum.

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FEDSA is the main organisation representing the direct selling industry in Europe. Through its 26 member Associations (out of which 22 in EU Member States) and 13 companies, FEDSA represents over 500 direct selling companies. European direct selling businesses account for sales in excess of €20 billion achieved by 12 million direct sellers. FEDSA and its members promote the European Code of Conduct governing direct selling methods and the recruitment of direct sellers. What is direct selling? It is the marketing of consumer goods and services directly to consumers on a person-to-person basis, generally in their homes or the homes of others, at their workplace and other places away from permanent retail locations. Direct selling encourages innovation, entrepreneurship and competition whilst offering flexible and equal employment opportunities for all. Why do businesses adopt direct selling? Businesses adopt direct selling for

those products or services which benefit from explanation or demonstration in the environment where they are used, may be novel, are significantly different to retail brands, and/or may not respond to conventional advertising. Direct selling is also adopted by small and medium sized businesses which cannot afford using conventional advertising or big retail chains to increase their market visibility and distribute their products or services. Why do consumers choose direct selling? Careful and professional explanation, demonstration and advice by well-trained sales representatives ensure that the customer will be satisfied with the purchase. The direct selling industry aims at the highest possible quality standards. Products are always backed-up by a guarantee and after sales services that may exceed legal requirements and often extend a product's life-time or a 100 % consumer satisfaction guarantee.



Amway is a global leader in the Direct Selling industry with annual sales of over 6 billion in 2008 selling more than 450 products directly to consumers in their homes in 25 EU countries. Jay Van Andel and Rich DeVos, co-founders of Amway, launched their business in the 1950s selling NUTRILITE® Dietary Supplements door to door. A unique business model was created that allowed others to join Amway and participate in the benefits of the expanding business. What they discovered over 50 years ago still remains true today – that people and relationships are at the core of any successful business. Customer satisfaction has always been at the core of Amway's

direct selling of its wellness, body & beauty and home care brands. This is still being demonstrated by Amway's industry leading 'money-back' satisfaction guarantee on its consumable products - even if used. Today, Amway includes more than 3 million Amway Distributors with a global portfolio of brands that can be found wherever Amway operates: NUTRILITE®, the world's leading brand of vitamin, mineral, and dietary supplements (based on 2008 retail sales), ARTISTRY® Skin Care, L.O.C.®, SA8®, GLISTER® Oral Care, iCook®, eSpring®.



Amway is proud of its 50-year history of creating change for people and communities. We've enjoyed five decades of success, participating in the lives of more than 3 million Amway Distributors. Our 2008 sales exceeded US \$8 billion. Our fundamental principles – freedom, family, hope, and reward – hold as true today as they did in the very beginning. Amway has a long-standing tradition of corporate citizenship. At the heart of the Amway global commitment of caring is the One by One Campaign for Children that helps disadvantaged children around the world live, achieve, learn, and – of course – play. Amway and UNICEF join forces for children. Together we're building preschools in Anatolia (Eastern Turkey).

Co-founded in 1959 by Jay Van Andel and Rich DeVos, **Amway** is one of the world's largest and **most successful** direct selling companies headquartered in Ada, Michigan, USA.

1960s
1970s

Direct selling provides a client with an opportunity to study the product in details, to test it in a convenient place and time. A **direct selling activity** is "the marketing of products and services directly to consumers in a person to person manner, generally in their homes [or] other places away from permanent retail locations" (FEDSA). Direct Selling also provides a seller with a flexible income opportunity where hours, skills and efforts devoted to the activities are based on his choices and objectives.



1980s
1990s

Amway created a unique business model that allowed others to join Amway and participate in the benefits of the expanding business. It became a model for **reward and recognition** based on the sales of quality products that continues to be developed around the world.



Today
Brands

Today, Amway includes more than 3 million Amway Distributors. We have a global portfolio of brands that can be found wherever Amway operates. These are the brands from which Amway distributors build their businesses: **NUTRILITE®**, the world's leading brand of vitamin, mineral and dietary supplements based on 2008 retail sales, **ARTISTRY® Skin Care**, **L.O.C.®, SA8®, GLISTER® Oral Care**, **iCook®, eSpring®**.



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