

## **Response by The Advertising Association to BERR consultation**

### **on EU Draft Directive on Consumer Rights**

The Advertising Association represents the common interests of the advertising and marketing business, including advertisers, advertising agencies and the media.

In principle, we support the bringing together of consumer contract law into one legal instrument. The impact of a single regime of consumer contract law across Europe should give both traders and consumers greater certainty and increased confidence, so facilitating trading of tangible, moveable consumer goods within and across borders.

However, in some instances the Directive will create unnecessary administrative burdens affecting the various ways in which some of our members trade and sell goods to consumers. For example, it could impact on the purchase by consumers of low cost advertisements which may require immediate publication before the cancellation period allowed under the Directive ends. It could also impact on the selling of goods to consumers by small businesses and individual trades-people, by direct marketers, by telephone and mobile telephone sales, and also on the purchasing of newspapers and magazines from street kiosks and elsewhere that may fall within the definition of “off-premises contracts”.

We do not agree with the Government’s view that the Directive should cover all consumer sales. It would be illogical to apply the Directive’s information requirements to sales of services (eg the sale of advertising space or time), where the service is performed immediately and a 14 day right of withdrawal would be unreasonable. Similarly, it should not apply to services such as digital downloads and software which are ‘used’ with immediate effect. Applying the Directive to perishable goods including newspapers and magazines would also not logical, because they can be read and returned after the date on which they are published.

The DSA’s examples of John, the home handyman, and Mary, the ladies’ hairdresser who works in her customers’ homes, also graphically demonstrate the unnecessary red tape and additional uncertainty that would be caused to individual trades people and direct sellers, as compared with a high street store, by the extension of the definition of “distance selling” to “off-premises contracts” (for example, those concluded by John and Mary in their customers’ homes).

In summary, The Advertising Association believes that:

- The Directive could be simpler, for example it should stick to the current definition of “distance contract” (exclusive use of distance communications) rather than extending it to include off-premises contracts.
- Harmonisation should not make our existing UK rules more restrictive (adding additional administrative burdens).
- Existing UK exemptions from consumer information requirements (such as the £35 exemption, and the exemption from distance selling contracts for magazines, newspapers) should not be removed.

None of these are favourable to free enterprise, self-employment, and the creation of new small businesses. In the current economic climate, Government should be wary about imposing any new regulatory burdens on business.

Such issues have been set out in the submissions by the Direct Marketing Association, the Direct Selling Association, the Newspaper Society and the Periodical Publishers Association, all of which have made points that The Advertising Association fully supports.

To comment in more detail, the following requirements will be onerous and in some cases simply not viable, particularly for small businesses, local newspapers etc:

1. Question 15: The consumer information requirements in Article 5 (requiring that a trader must provide the purchaser of goods with the product characteristics, the geographical address and other details of the trader, the price and delivery charges, the arrangements for payment and delivery etc, the existence of a right of withdrawal, the after-sales service, the duration of the contract and conditions for terminating it, the minimum duration of the consumer obligations, and the existence and conditions of deposits etc,) are unnecessarily lengthy and we question whether there is a need to add content and timing requirements in addition to the current ones. Secondly, the fact these consumer information requirements would also apply to small consumer transactions, such as sales at a news stand or in a newsagent or supermarket (Articles 9 and 10) is impractical and unnecessary for consumer protection purposes. Thirdly, it should be made clear that any voluntary or self-regulatory code should not automatically become part of the contract with the consumer (under Article 9) as this would be a disincentive to the creation of voluntary codes and self-regulation.
2. Question 12: The definition of “durable medium” (article 2(10)) should include emails and website pages. It may not be viable to provide the consumer with personally-addressed information in a durable form if they are ordering by phone or online. In an age of e-commerce, the provision of information electronically should be sufficient, and the information should not need to be personally addressed. This is unnecessarily bureaucratic and burdensome for small transactions. It would not be practical, for example, to require individually-addressed notices to be sent to people booking at low cost in a local newspaper small ads which they want published the next day.
3. Question 22: Article 11, containing requirements for the information supplied with the goods sold by distance contracts (price, address etc) has little leeway for media limited in space and time. 11.3 should contain the word “where appropriate”.
4. Questions 23 and 24: The “right of withdrawal” or cancellation deadline for consumers to return goods has increased from 7 to 14 days. We do not regard this as a particularly necessary enhancement of consumer protection, particularly for low cost goods, though many large businesses in the UK already provide to customers a longer period for return of goods. However, we do support the standardisation of the withdrawal period to “calendar days” (Question 23).
5. Question 33: In terms of the exceptions from the right of withdrawal in Article 19, it is most important, as far as our members are concerned, to retain the one for contracts begun before the end of the cancellation period, with the consumer’s written consent (19.1.a) – this is particularly important for individuals and small traders. It is also essential to maintain Article 19.1.c – the exemption for the supply of newspapers, periodicals and magazines.
6. Question 41 and 42: The Directive should not impose information and withdrawal requirements on traders selling small value items because this would place an unreasonable burden on business and because there is no evidence of consumer detriment in the existing situation. We support the Government’s position to try and restore the current exemption from these requirements for low value off-premises

contracts worth less than £35. In fact, we urge the Government not only to negotiate this but to increase the sterling threshold in UK law, as the current threshold permitted under European legislation is 60 euros.

7. Question 53: Article 27 – “remedied free of any cost” should be amended to read “reasonable cost”.
8. Question 54: The two year period during which the trader can remain liable for a lack of conformity of goods (Article 28) is too long.
9. Question 62: Unfair contract terms (Annex III) – these appear to differ from the current UK regime and could therefore negatively impact on standard term contracts. There should be a reasonableness requirement, as there is at present in the UK Unfair Contract Terms Act. The word “inappropriately” has been excluded, but this is normal in standard term contracts and is required to cover situations where unavoidable minor errors occur.

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