

B.P. Nr. 811 din 18.06.2010

Informare

cu privire la participarea în perioada 23-24 februarie 2010 la întâlnirea delegaților Parlamentelor Naționale cu Comisia piața internă și protecția consumatorului din Parlamentul European în calitate de reprezentant al Camerei Deputaților din Parlamentul României, organizată la Parlamentul European Bruxelles

Deputat Adrian Nițu

În perioada 23-24 februarie 2010 am participat la Bruxelles la Comisia piața internă și protecția consumatorului din Parlamentul European (PE) care a luat în discuție principiile de armonizare a regulilor de protecția consumatorilor instituite de proiectul de directivă elaborate de Comisia Europeană și care se afla în dezbateră PE.

Discuție au participat reprezentanți ai comisiilor de specialitate din parlamentele naționale și membrii comisiei din PE.

În urma discuțiilor Domnul Andreas Swab raportor pentru această directivă a tras următoarele concluzii ale întâlnirii:

„Proiectul de directivă are multe chestiuni de detaliu nerezolvate, dar este nevoie și de discutarea conceptelor (principiilor) care să definească directiva. Din discuții a rezultat că nu se poate realiza o armonizare totală, dar nici nu au fost relevate domeniile ce pot fi armonizate. Nu există o presiune de armonizare, dar pe de altă parte să nu armonizăm este o greșală

Sunt necesare studii și evaluări suplimentare pentru detaliile directivei precum și un audit pentru a compara dispozițiile din legislația țărilor membre

Este deci nevoie de o nouă propunere care să asigure consens. Pentru aceasta sunt propuse studii aprofundate relativ la piața și consumatori ai diferitelor state membre, armonizarea comerțului on-line. „

Pentru a pregăti participarea la această întâlnire și pentru a cunoaște stadiul dezbaterii europene cu privire la această directivă am consultat Autoritatea Națională pentru Protecția Consumatorilor respectiv pe dl. Samuel Calota vicepreședinte și am formulat următoarea poziție pe care am transmis-o domnului Andreas Swab:

“Dear mister Schwab,

Please find attached the Romanian Chamber of Deputies observations regarding the proposal of directive on Consumer Rights.

Best wishes,

Adrian Nițu MP

secretary of Budget and Finance Commission

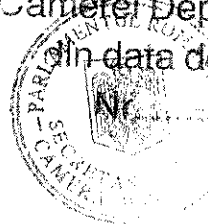
Romanian Chamber of Deputies

APROBAT

În ședința Biroului permanent al
Camerei Deputaților

În data de 23.06.2010

Nr. 811



The general status of Romania

Romania is part of the group of member states that have systematically supported the necessity of a complete harmonization in accordance with the rights of consumers gained through the implementation of the acquis stipulations.

Chapter 1 – The purpose of the directive, field of use and definitions

Due to the fact that the consumers frequently use international transportation services, Romania maintains that the stipulations regarding the right of withdrawal should be applied to transportation contracts for those cases in which settlements are not specified in the community legislation.

Regarding definitions, the aspect of the goods guarantees is of major interest for Romania, respectively the clarification of the terminology used; for instance, the introduction of definitions for "delivery" as well as for "legal guarantee".

Chapter 2 – Informing the consumer

Romania has been flexible regarding the information flow, not excluding the possibility of settlement through the national legislation.

Chapter 3 – Informing the consumer and the right of withdrawal in the case of distance and outside commercial area contracts

According to article 10, which gives a pre-contractual reference regarding completed contracts concluded outside commercial areas, many Member States, including Romania, request their supply on a durable medium.

Moreover, many of the Member States have requested precise explanations regarding the delivery concept and the exact moment of the beginning of the period in which the consumer can withdraw from a contract (especially for the distance, online and outside the commercial area contracts).

Romania considers that within the area of this chapter, at least in the case of distance contracts, the stipulations should also be applied to the purchase of plane tickets. Even though there is European legislation that settles the rights of airline passengers, this does not contain references to consumer's right of withdrawal in the case of distance contracts.

Romania and the majority of Member States support the 14 days period of withdrawal.

Chapter 4 – Other consumer rights within sale contracts

Some Member States consider that this chapter does not bring added value in the sense of risk transfer, claiming that this is only accomplished through the physical transfer of the good. Regarding the possible damage of goods during transportation, it is not clearly specified which party will be held responsible for that. There are certain propositions concerning the arrangement of national risk transfer.

Concerning remediation in cases of lack of conformity with the contract, the main cause of these differences consists of the distinct regime of Member States.

Concerning this chapter, Romania upholds the necessity to introduce the term "legal guarantee" in opposition with "commercial guarantee", a necessary term with the aim of clarifying the content and adjusting with the explanatory texts which use this expression.

Because the term "guarantee" is used in the situation in which the seller voluntarily offers consumer rights, it does not exist a similar legal term for consumer rights granted by law during the 2 year period (similar with legal "guarantee") which implies the risk of diverging interpretations in the Member States. For the consumer benefit, especially in the case of international commerce, there appears the need for a clear and precise terminology, respectively "legal guarantee".

The extension of the period in which the seller is responsible for any lack of conformity encountered in the case of the goods purchased from 6 to 12 months, represents a step forward, but the main problem remains unsolved. In this way, the consumer could benefit from his/her legal rights for 12 months as from the transfer of the risk to consumer. However, for the second year, the possible necessary costs in order to prove the lack of conformity are not in the consumer's benefit. The extension of the period from 1 to 2 years is an issue that can be taken into consideration.

Romania maintains that the commercial guarantee should be automatically transferred to the buyer (if he/she is also a consumer). As long as the contract refers to the commercial guarantee of the product regarding its quality and not the buyer as an individual, there should not be a limitation of the transfer right to another buyer.

Chapter 5 – The consumer's rights regarding the contract's stipulation

The main discussions between the Member States refer to the annexes that contain a so called "black list" which states the prohibited clauses in every situation and a "grey list" which mentions the prohibited clauses only in the situation in which the seller cannot prove their fairness. There had been different opinions regarding these two lists, respectively whether they should be limited or not.

The stipulations from this chapter are applicable in the case of contracts signed by the seller or a third party before hand, contracts which the consumer has accepted them per se excluding the possibility to influence their content, especially in the case of reproduced standard contracts.

Romania supported the unlimited character of the "grey list", demanding the exact explanation of this stipulation. Thus, after the evaluation of a contractual clause, the national authorities could decide upon the degree of abusiveness, the merchant having the task of proving otherwise.

Adrian Nitu

Romanian Parliament, The Chamber of Deputies
Secretary of the Committee of Budget Finance and Banks

Cu ocazia acestei delegatii am purtat deasemenea un dialog cu privire la rolul parlamentelor nationale in urma Tratatului de la Lisabona cu mai multi reprezentanti ai Romaniei la Parlamentul European si la PPE.

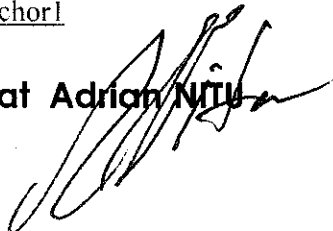
Am fost invitat de Eudeputatul Iosif Matula la sedinta Delegatiei Romaniei la PPE unde am participat la discutii.

Am asistat la lucrarile Comisiei Regi unde Eudeputatul Matula a avut un schimb de opinii cu presedintele BEI, Philippe Maystadt

Dezbaterea de la Comisia piata interna si protectia consumatorului din Parlamentul European din data de 23 februarie 2010 poate fi urmarita la adresa:

www.europarl.europa.eu/wps-euoparl-internet/frd/vod/player?eventCode=20100223-0900-COMMITTEE-IMCO&language=en&byLeftMenu=researchcommittee&category=COMMITTEE&format=wmv#anchor1

Deputat Adrian NITU

A handwritten signature in black ink, appearing to read 'Adrian NITU', is written over the printed name.