



CONFEDERATION
FISCALE
EUROPEENNE

**Opinion Statement of the CFE
on the proposed Consumer Rights Directive**

Submitted to the IMCO Committee in November 2010

CFE (Confédération Fiscale Européenne) is the umbrella organisation representing the tax profession in Europe. Our members are 33 professional organisations from 24 European countries (21 EU member states) with 180,000 individual members. Our functions are to safeguard the professional interests of tax advisers, to assure the quality of tax services provided by tax advisers, to exchange information about national tax laws and professional law and to contribute to the coordination of tax law in Europe.

A large number of tax advisers' clients are consumers, in particular in those countries where most tax advisers work in small practices.

1. General remarks

CFE recognises that consumers should be well-informed about any goods or services they purchase and that they shall have the time to (re-)consider whether a product is useful for them. Most individual members of CFE member organisations are subject to rules, be they of legislative nature, derived from case-law or professional codes of conduct, which oblige them to duly inform their clients in advance of their services and fees. Therefore, the principles set out in the draft Directive are common to the European tax profession.

a) The specific situation with complex customised services

One of the flaws of the proposed Directive is that although it would also apply to individually negotiated consumer contracts, it appears that it been primarily designed for “bulk” contracts to be concluded between one provider and a large number of clients in an unchanged, standardised way. Consequently, where it concerns customised services designed for the individual needs of a client, some of the rules contained create an excessive burden for both contractual parties:

With such “tailor-made” services, the exact scope of the contract is often not clear from the beginning but would only appear in the course of performing the service, e.g. when a tax adviser has looked through his client’s documents and determined his legal and financial situation. In this case, the tax adviser would get in contact with the client to inform him if a change of the original assignment is needed or advisable. For tax advisory services, this is the rule rather than the exception.

It remains largely unclear to what extent changes to an existing contract will be considered the conclusion of a new contract and will give rise to new formal requirements, will require the service provider to send a new information package and will give the consumer a new right of withdrawal.

We believe that in particular for services that often require an adjustment at a later stage due to the individual needs of the consumer, the service provider should have some degree of legal certainty and delays of several days through administrative effort for both sides should be avoided. In tax services, delays in the service performance are usually to the client’s disadvantage as in practice, many consumer clients only seek assistance shortly before deadlines expire.

b) The SME impact

Another problem of the proposal is that in the area of tax advice, it affects SME firms much more than large advisory firms: While large tax firms more often advise enterprises, consumer contracts are mostly concluded by local small, often one-man firms who do not have staff specifically responsible for compliance with information duties and therefore find it much more difficult to comply with such obligations, as experience shows from similar duties recently introduced by European legislation (see Art.22 Services Directive 2006/123/EC, Art.9 Recognition of Professional Qualifications Directive 2005/36/EC, Art.5 e-Commerce Directive 2000/31/EC).

2. Definition of off-premises contracts (Art.2 (8) Commission proposal):

a) We consider that the definition of off-premises contract should not include visits on the express request of the consumer. This view has been shared by MEPs Anja Weisgerber, Cathérine Soullie, Constance Le Grip, Eija-Riitta Korhola, Emma McClarkin, Jürgen Creutzmann and Othmar Karas (amendments 454, 460, 461, 464 – 466).

We note that the Commission proposal would widen the definition of off-premises contracts considerably if it included the situation where the tax adviser visits the consumer on the consumer's express request. Under the Directive 85/577/EEC ("Doorstep Selling Directive"), this situation was not considered an off-premises contract:

Article 1

1. This Directive shall apply to contracts under which a trader supplies goods or services to a consumer and which are concluded:

- during an excursion organized by the trader away from his business premises, or

- during a visit by a trader

(i) to the consumer's home or to that of another consumer;

(ii) to the consumer's place of work;

where the visit does not take place at the express request of the consumer.

This is important for the consumer's right of withdrawal. The rationale behind the right of withdrawal is to prevent consumers from being taken by surprise by the trader and to enable them to consider whether they actually need a service or product offered. Consequently, the Directive 85/577/EEC deals with situations where the trader has, in one way or another, taken the initiative to address the consumer who remains "passive".

Recital 14 of the Commission proposal states that the consumer is under psychological pressure when the contract is concluded or negotiated outside the trader's premises. The amendments by rapporteur Andreas Schwab state that he was lacking the possibility to compare goods and prices outside the trader's premises, regardless of whether the visit is a surprise visit or has been requested by the consumer.

We do not find this convincing. A consumer that actively requests the trader's visit has had the possibility to inform himself of other goods/services and their prices and can avoid being taken by surprise. As

regards the possibility to compare with competing products, this possibility often does not exist in the trader's premises either. It appears doubtful whether an *active* consumer feels psychological pressure to purchase a product or service.

3. Information duties

We believe that the information duties in Art.5 should only apply to off-premises and distance contracts, like suggested by rapporteur Andreas Schwab, Wim van de Camp, Anna Maria Corazza Bildt, Lara Comi and Pablo Arias Echeverría (amendment 567), similar Jürgen Creutzmann (amendment 570).

The standard information on the identity and contact details of the trader and on the main features of the contract as contained in draft Art.5 is essential where the consumer cannot directly ask the trader because the trader is either not physically present (distance contracts) or the contract is concluded in a situation where the consumer is not prepared to negotiate ("surprise" off-premises situations). Where this is not the case, the added value of a compulsory information package appears limited.

This applies a fortiori where the scope of an assignment is agreed on in individual negotiation and is frequently subject to later amendment. As set out in paragraph 1a), this is often the case with complex customised services like tax advice. Therefore, for the services our profession offers, a compulsory information package as proposed in draft Art.5 would bring more burden to the provider than benefit to the consumer.

4. Right of withdrawal

The following considerations should apply if our suggestion explained in 2. is not followed:

a) We would welcome the inclusion of off-premises contracts in Art.19 (1) as suggested by rapporteur Andreas Schwab (amendment 116) and supported by Anja Weisgerber and Jürgen Creutzmann (amendments 956 and 957).

This would have the consequence that clients can give their consent to immediate service performance and lose their right of withdrawal. This possibility is essential as otherwise, many tax advisers (and other providers of high-value services) would prefer to wait for the expiry of the withdrawal period before starting to work on an assignment as they would not want to risk losing their remuneration. This would slow down services for the client. "Immediate emergency situations" as referred to in Art.19 (2) lit.b) would occur extremely seldom in tax cases. That provision would only become relevant in criminal proceedings against a client.

b) We would welcome a rule on the compensation for services provided until a right of withdrawal is exercised in Art.17 (2), 3rd sentence, as proposed by Kurt Lechner and Othmar Karas (amendments 937 and 941).

The Commission proposal states that no remuneration would have to be paid for services (or parts of a service) provided until the right of withdrawal is exercised. That provision discriminates service providers compared to providers of goods: Where goods are delivered and the right of withdrawal is exercised, the consumer cannot benefit any longer from the product as he will have to return it to the trader who can resell it. As a consequence, both parties would be in the position they were in before the deal was concluded. In case of services provided, this is not possible. The consumer keeps the benefit from the service received which cannot be resold to another person. Therefore it would be inappropriate if as a general rule, he did not have to pay for the service.

If our suggestion to adopt amendment 937 is not followed, we would ask to delete Art.17 (2), 3rd sentence as proposed by rapporteur Andreas Schwab (amendment 113).

We would be happy if these observations were considered and remain at your disposal for any questions that you may have.

Contact Persons:

Henk Koller: *Chairman of the Professional Affairs Committee of the CFE: tel +32 2 761 00 91*

Rudolf Reibel: *Fiscal and Professional Affairs Officer of the CFE Brussels office: rreibel@cfe-eutax.org, tel: +32 2 761 00 91*