1. Conclusions and Recommendations

1.1 The Commission’s transposition checks have shown significant divergences between national laws transposing the Directive 1999/44/EC. Some of these may be due to regulatory gaps in the Directive, others can already be considered as incorrect transposition of the Directive. It is unclear at present to what extent these divergences affect the proper functioning of the Internal Market and consumer confidence. The EESC recommends that the Commission study the implications for both the Internal Market and consumer confidence as a matter of urgency (1).

1.2 As a consequence of the above, the EESC urges the Commission to take enforcement action against those Member States who have, as yet, failed to implement the Directive 1999/44/EC correctly.

1.3 The Green Paper on the Consumer Acquis reveals a number of cross-cutting issues. The Commission has identified during its review some problems relating to the implementation of the Consumer Sales Directive, especially in so far as the issue of Direct Producers’ Liability (DPL) is concerned.

1.4 The EESC believes that the Consumer Sales Directive is also defective in dealing with the regulation of manufacturers’ and retailers’ guarantees, for example, the conformity requirements under Article 2 of the Directive.

1.5 There is no overwhelming evidence for amending Directive 1999/44/EC in isolation to introduce DPL. The Green Paper on the Review of the Consumer Acquis (2) initiated public consultation on this and other issues, which were identified by the European Commission during the review of the EU consumer protection legislation (i.e. the eight Consumer Directives (3)). The EESC recommends therefore that the Commission considers the desirability of introduction of DPL in a possible

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(1) The University of Bielefeld (Germany) has developed a comparative analysis of the different national regulations, including possible barriers to trade or distortions of competition resulting from the eight directives listed under footnote 3 (this comparative study is available under http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/comp_analysis_en.pdf).

(2) COM(2006) 744 final (‘the Green Paper’).

legislative follow-up to the Green Paper (e.g. 'horizontal' directive) favoured by bodies such as UGAL (*) and BEUC. However, the EESC emphasises that the results of this initiative should not put an undue burden on the business sector as requested by Eurocommerce.

1.6 Before the Commission introduces a horizontal directive, the EESC believes that an Impact Assessment is needed.

1.6.1 This is the case of the scope of the Directive. The EESC agrees that the Directive shall apply to additional types of contracts under which goods are supplied to consumers (e.g. car rental) and to contracts under which digital content services are provided to consumers (e.g. on line music). This is also the case of the second-hand goods sold at public auctions where the consumer attends the sale in person. Other aspects such as the definition of delivery, the passing of risk, the notion and extension of time limits of conformity of goods, the coverage of recurring defects, the regime of the burden of proof and even certain remedies should be considered as part of an horizontal instrument in the framework of a mixed approach to the revision of the Consumer Acquis, and the discussion of the details on these topics should take place when a proposal on such an instrument will be disclosed for consultation and public discussion.

1.7 Stakeholders and Member States have diverging opinions as to the impacts of DPL on the level of consumer protection and the Internal Market. A majority of the Member States and a number of stakeholders consider that DPL potentially increases consumer protection. Some consider that the producer is better placed than the seller to bring goods into conformity with the contract. Others believe that DPL would not increase consumer protection but rather cause legal uncertainty and significant burdens for businesses. The EESC believes that more information is necessary on these points (*)

2. Introduction

2.1 On 24 April 2007, the European Commission adopted the Communication on the implementation of Directive 1999/44/EC (the 'Consumer Sales' Directive) on certain aspects of the sale of consumer goods and associated guarantees including analysis of the case for introducing direct producers' liability as provided by Article 12 of the Directive.


(*) UGAL: Union des groupements de détaillants indépendants de l’Europe.
(*) See footnote 1.

2.2.1 Annex 1 of the Green Paper also poses a number of questions on specific rules applicable to Consumer Sales. This opinion is intended to give guidance to the Commission in response to its Communication COM(2007) 210 final ‘on certain aspects of the sale of consumer goods and associated guarantees including analysis of the case for introducing direct producers’ liability’. The EESC delivered its opinion on the Green Paper (’) at its Plenary of 11 and 12 July 2007 and decided at that time not to give any opinion on the specific matters, namely on the questions raised by the Commission about the consumer sales directive, which will be covered in the Commission proposal for a framework directive on consumer contractual rights.

2.2.2 In its Green Paper the Commission presents a number of cross-cutting issues for public consultation. These include issues relating to gaps and regulatory shortcomings the Commission has identified during the review of the consumer acquis, including those stemming from the Directive 1999/44.

2.3 All Member States have transposed the Directive (’). The purpose of the Communication is to examine how Member States have implemented it. The Communication forms part of the process of reviewing the consumer acquis, which is consistent with the better regulation objectives pursued by the Commission, the European Parliament and the EESC in terms of simplification of the regulatory environment.

2.4 The Directive aims at harmonising those parts of consumer sale contract law that concern legal guarantees (warranties), and to a lesser extent, commercial guarantees.

2.5 All Member States were required to implement the Directive into their national law by 1 January 2002 and were also allowed to adopt more stringent provisions in favour of the consumer.

2.6 The Commission draws attention to the shortcomings of some Member States in implementing the Directive.

3. Summary of the Commission Communication

3.1 This Communication is concerned with the implementation of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (the 'Consumer Sales' Directive) across Member States and examines the case for introducing, at Community level, direct producers' liability, as provided by Article 12 of the Directive itself.

3.2 The Commission Communication highlights difficulties experienced by some Member States in implementing the Directive. In particular problems arise from diverging definitions of ‘consumer’ and ‘seller’ where there are different definitions in other Community acts.

3.3 Similarly the definition of ‘consumer goods’ in Article 1(2) (b) of the Directive determines its scope. Member States have transposed the definition in different ways. In some Member States the relevant laws also apply to consumer sales of real property.

3.4 Some Member States exclude ‘second-hand goods sold at public auctions where the consumer has the opportunity to attend the sale in person’. Some have made use of this option. Others have chosen to limit the sellers’ liability for such goods.

3.5 All Member States have introduced national laws transposing the requirements of the Directive. Article 12 provides that the Commission submit to the European Parliament and the Council (within a specified period), a report on the application of this Directive across Member States, in particular examining, inter alia, the case for introducing direct producers’ liability and, if appropriate, be accompanied by proposals. This Communication discharges that obligation.

3.6 Part I of this Communication reports on the implementation of the Consumer Sales Directive across Member States and Part II examines the case for introducing the direct liability of producers towards consumers in the EU legislation.

3.7 The transposition of the Directive has raised a number of problems. Some of them may be due to regulatory gaps in the Directive, but others can already be considered as incorrect transposition of the Directive. The Commission checks have shown up significant divergences between national laws as a result of the use of the minimum clause and the various regulatory options provided by the Directive. However, it is not clear at present to what extent those divergences affect the proper functioning of the Internal Market and consumer confidence.

3.7.1 The Green Paper presented for public consultation a number of cross-cutting issues relating to gaps and regulatory shortcomings the Commission has identified during its review of the consumer acquis, including those relating to the implementation of the Directive. For these reasons, the Commission decided not to submit any proposal at this stage in respect of the Directive.

3.7.2 So far as the issue of DPL is concerned the Commission has concluded that it has insufficient evidence to determine whether the lack of EU rules has an adverse effect on consumer confidence in the internal market. The issue is being considered further in the context of the Green Paper.

3.8 In its opinion on the Green Paper on the Review of Consumer Acquis (1) the EESC concludes that it has doubts that the approach put forward can lead to a high and uniform level of consumer protection across the EU. Genuine democratic legitimisation of the revised consumer acquis is necessary together with a clear legal and conceptual basis. The EESC draws attention to the poorly regulated digital environment. Any proposals for harmonised rules in the field should be backed by a proper impact assessment, and pursue simplification and clarification of existing rules. Better enforcement measures and strengthening or introducing clear and simple processes for achieving redress should be emphasised as a priority. Harmonisation of consumer legislation across the EU must take, as a guiding principle, the adoption of the best and highest level of consumer protection to be found in the Member States.

4. Transposition problems

4.1 The Commission’s transposition checks have shown up significant divergences between national laws transposing the Directive 1999/44/EC. Some of these may be due to regulatory gaps in the Directive, others can already be considered as incorrect transposition of the Directive. It is unclear at present to what extent those divergences affect the proper functioning of the Internal Market and consumer confidence. The EESC recommends that the Commission study the implications for both the Internal Market and consumer confidence as a matter of urgency and take enforcement action against those Member States who are in default (2).

5. Direct Producers’ Liability (DPL)

5.1 Some Member States have introduced various forms of Direct Liability of Producers. These differ considerably as to the conditions and modalities. The Directive of 1999 requires the Commission to examine the case for introducing Direct Producers’ Liability and, if appropriate, to submit a proposal. Of the 17 Member States which responded to the Commission’s questionnaire, 7 have introduced some form of DPL though the conditions for making direct claims against producers vary considerably. There are also strong objections to the concept from some Member States and from some stakeholders some of whom suggest that it is too early to assess its effects on the need for an amendment to Directive 1999/44/EC in isolation (2).

(2) See footnote 1.
(3) See footnote 3.
5.2 Stakeholders and Member States have diverging opinions as to the impact of DPL on the level of consumer protection and the Internal Market. A majority of the Member States and a number of stakeholders consider that the DPL potentially increases consumer protection. However, there is disagreement between Member States about DPL some considering that the producer is better placed than the seller to bring goods into conformity with the contract. Others believe that DPL would not increase consumer protection but rather cause legal uncertainty. The EESC believes that more information is necessary on these points.

5.3 A number of stakeholders and some Member States consider that DPL would cause a significant burden for businesses since producers would need to develop systems for handling complaints and make financial provision for exposure to this liability. There is no unanimity, however, other Member States and other stakeholders disagree.

5.4 The existence of diverging regimes of DPL is a potential problem for the Internal Market. At this stage, the Commission has not been able to draw final conclusions. There is not enough evidence to determine whether the lack of EU rules on DPL has a negative effect on consumer confidence in the Internal Market.

5.5 The case for making DPL obligatory across all Member States is far from clear cut. DPL would introduce an extended chain of liability compared with a claim against the seller. It depends on the product or service concerned. Cross-border shopping for big ticket items such as cars directly involves the manufacturer. However, thanks to European Community legislation, sales agents or distributors for cars have to respect the manufacturer’s warranty no matter from where the vehicle is purchased. Cross-border purchases of wines and spirits which are becoming an increasingly significant part of the Single Market are difficult to enforce either against the seller or the ‘manufacturer’ unless the purchaser is making frequent visits to another Member State where the goods were purchased. For consumer products in general the introduction of a DPL may add to the consumer protection and the consumer’s reliance on the Single Market.

5.6 The issue of DPL requires much closer study accompanied by a detailed Impact Assessment.


The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS