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Obligations of cross-border service providers

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European Parliament resolution of 27 September 2007 on the obligations of cross-border service providers (2006/2049(INI))

The European Parliament ,

- having regard to Articles 95 and 153 of the EC Treaty,
 - having regard to the Commission proposal for a Council directive on the liability of suppliers of services (COM(1990)0482),
 - having regard to the communication from the Commission on new directions on the liability of suppliers of services (COM(1994)0260),
 - having regard to Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the internal market ⁽¹⁾ (the Services Directive),
 - having regard to the Commission Green Paper on the Review of the Consumer Acquis (COM(2006)0744),
 - having regard to the communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the EU Consumer Policy strategy 2007-2013 (COM(2007)0099),
 - having regard to the report from the Commission to the European Parliament and the Council on the safety of services for consumers (COM(2003)0313),
 - having regard to the study on obligations of cross-border service providers of March 2007, requested by the European Parliament's Committee on the Internal Market and Consumer Protection,
 - having regard to the Commission's reply of 12 January 2006 to the written question of Diana Wallis MEP ⁽²⁾ ,
 - having regard to its recommendation of 19 June 2007 based on the report of the Committee of Inquiry into the Crisis of the Equitable Life Assurance Society ⁽³⁾ ,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Legal Affairs (A6-0294/2007),
- A. whereas the economic and social development of the EU depends to a large extent on the services sector, which is constantly growing and makes up nearly 70 % of EU GDP,
- B. whereas European consumer confidence in cross-border consumption is low, as evidenced by the fact that only 6 % of consumers made an online cross-border purchase in 2006,
- C. whereas figures for cross-border trade in services are extremely low compared to the figures for trade in goods,
- D. whereas a directive on liability for defective products ⁽⁴⁾ was adopted in 1985 and a directive on general product safety ⁽⁵⁾ in 2001,
- E. whereas the status of consumer safety and the level of consumer protection differ between Member States with regard to the cross-border provision of services, whilst in the goods sector, both international and Community law ensure satisfactory consumer protection,
- F. whereas a recent Eurobarometer survey showed that 33 % of consumers report that businesses refused to sell or deliver services because the consumer was not resident in the country of the business,
- G. whereas consumer policy is as important as competition policy to the extent that well-informed consumers create competitive pressure on markets,
- H. whereas the current EU consumer acquis is fragmented: in line with the allocation of competence in the Treaties, the EU has laid down clear rules only in certain sectors or services, such as distance contracts, unfair commercial practices, consumer credit, package holidays and timeshares,
- I. whereas there is evidence to suggest that the current fragmentation of the legislative framework may act as a deterrent to engagement in cross-border transactions on the part of consumers and that that fragmentation could provide unwelcome opportunities for cross-border scams and fraudsters,
- J. whereas the Green Paper on the Review of the Consumer Acquis does not address the obligations of service providers,
- K. whereas neither the consumer nor the service provider are always able to determine with clarity which legal regime is applicable to each aspect of their activities, that is to say, whether the law of the host or home country applies or whether the regulatory regime of the host or home country applies,
- L. whereas, in some Member States, users of services provided by private entities are better protected than users of services provided by public entities,
- M. whereas existing legislation does not, as a rule, address the substantive obligations of service providers, nor does it provide specific remedies for the consumer, in contrast to measures that have been adopted concerning the free movement of goods,
- N. whereas the lack of any legal structure at Community level allowing consumers to take collective action on a cross-border basis against fraudsters and deficient service providers constitutes both a gap in the regulatory regime and more importantly a barrier to consumers obtaining cost-effective legal redress and compensation cross-border,
- O. whereas, in some Member States, there is no body competent to assist in out-of-court dispute resolution and existing structures at Community level, namely the ECC-Net (European Consumer Centres Network) and FIN-NET (Cross-Border Out-of-Court Complaints Network for Financial Services in the European Economic Area), are both insufficiently well-known and under resourced,

Internal market for services

1. Encourages the development of measures that will complete the internal market for services;
2. Is convinced that a more uniform system of obligations for service providers is needed as the market in services becomes increasingly cross-border in order further to facilitate the development of a seamless internal market for services;
3. Is aware that the Services Directive, to be transposed into national law in all Member States by 28 December 2009, should have a considerable impact on the cross-border provision of services, but notes that the Directive does not address the substantive obligations of service providers;
4. Believes that clarifying the legal system of obligations of service providers in the EU will bring more competition as well as greater choice for consumers and at the same time should not create unjustified obstacles to the free movement of services in the internal market;
5. Believes that the different laws, regulations and administrative practices in the Member States cause uncertainty and lack of transparency for both service providers and consumers and make the use of the EU's common resources more difficult, but also provide an opportunity for competition in consumer protection;
6. Regrets that the present mix of legislative instruments between rules on conflict of law and internal market instruments and the failure clearly to determine their interaction mean that neither the consumer nor the service provider is always able to know with clarity which legal regime is applicable to each aspect of their activities, that is to say, whether the law of the host or home country applies or whether the regulatory regime of the host or home country applies;
7. Is convinced that when consumers feel uncertain about the safety and quality of a service, they tend to erect mental barriers to foreign suppliers, which deters them from making use of cross-border services, and that when a consumer has a negative experience, it frequently is made to reflect unfairly on all foreign service providers;
8. Points out that when it comes to the performance of a service, consumers are not as well protected under the Community acquis as consumers who purchase goods;
9. Expresses its reservations, nonetheless, pending full implementation of the Services Directive, as regards far-reaching new horizontal tools for the completion of the internal market for services;
10. Is aware that services are often complex structures involving human interaction and choice;
11. Is convinced that not only consumers, but also and in particular small and medium-sized enterprises (SMEs), could, both as buyers and sellers of cross-border services, benefit from additional legal certainty, simplicity and a reduction in costs;
12. Recalls that, as stated in the General Agreement on Trade in Services, cross-border services are provided in many different ways (such as selling online, travelling to another country for the service, or through a visit by the service provider to the consumer's home country), which should be taken into consideration;
13. Notes that there are several pending legislative initiatives aimed at ensuring legal certainty as regards the rights and especially the obligations of cross-border service providers, namely the proposal for a regulation on the law applicable to contractual obligations (Rome I) (COM(2005)0650), Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) ⁽⁶⁾ and the Green Paper on the Review of the Consumer Acquis;
14. Points out that Article 5 of the Rome I proposal is essential in order to determine whether the consumer protection legislation of the country of origin (of the service provider) or of the client (consumer of the service) applies; stresses that it is important to await the outcome of this legislative procedure;
15. Is convinced that the establishment of an internal market for services, the legal framework for which is based on the fundamental freedoms of establishment and to provide services, as set out in the EC Treaty and as defined in the Services Directive, depends on the relevant measures being clear from both a legal and a practical perspective;

Public and private service providers

16. Calls on the Commission to bear in mind that, when it comes to the obligations of services providers, no difference should be made between public and private service providers, which should both be equally subject to the application of the directives on consumer protection;
17. Recognises that, even though existing legislation in the EU, such as the Services Directive and the Unfair Commercial Practices Directive ⁽⁷⁾, does not contain any specific provisions aimed at regulating the cross-border liability of service providers, it may have an indirect effect on national legislation in this field;
18. Calls on the Commission to monitor thoroughly the transposition and implementation of existing and forthcoming horizontal and sectoral legislation relating to the liability of cross-border service providers;
19. Calls on the Commission to examine measures, such as the introduction of standards at EU level, for promoting the safety of services and for guaranteeing consumers' rights in the field of cross-border services provided by Member States;
20. Calls on the Commission further to develop, resource and promote the work of the ECC-Net and of FIN-NET and, in the event that alternative dispute resolution systems remain unavailable in key service sectors in Member States, to consider at least a recommendation on that subject;
21. Calls on the Commission to continue active consideration of the introduction of a legal instrument at Community level to facilitate collective action by consumers on a cross-border basis so as to allow greater access to legal redress;
22. Recognises that liability regimes for service providers exist, albeit to varying degrees, in all Member States, but believes that in the interests of clarity and so as to create consumer confidence there needs to be some convergence, especially in key cross-border sectors; believes also that there is a need for greater co-operation between national regulatory bodies and professional organisations, where appropriate;

Request for a proposal for a horizontal instrument on the obligations of service providers

23. Calls on the Commission, whilst continuing work on a sectoral basis in key areas, to submit, within 12 months, a work programme for an appropriate assessment of the impact of existing and forthcoming legislation in the internal market on the obligations of cross-border service providers and of the need for a possible broad horizontal instrument to align the rules on cross-border service provision in order to provide a high level of consumer protection;
24. Considers that such an assessment should examine a possible broad instrument which should at least contain basic general rules requiring adequate information on pricing, contract terms and remedies in the case of defective or delayed services;
25. Calls on the Commission to define clearly the interaction between private international law instruments and internal market instruments with a view to leaving no doubt as to when home or host country legislation or regulation applies and so, as far as possible, to leave no gaps in the liability regime applicable to service providers;
26. Considers that the Commission should take into account the impact of any initiative on SMEs;
27. Calls on all those Commission Directorates-General involved in legislation for the service sector to participate in the continuing work on the Common Frame of Reference with a view to including sections on service contracts, especially in those areas where there is already, or there is likely to be, cross-border activity, such as, by way of example only, financial services and the health sector;

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28. Instructs its President to forward this resolution to the Council and the Commission.

(1) OJ L 376, 27.12.2006, p. 36.

(2) P-4797/05.

(3) Texts adopted, P6_TA(2007)0264.

(4) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).

(5) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4).

(6) OJ L 199, 31.7.2007, p. 40.

(7) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive) (OJ L 149, 11.6.2005, p. 22).