



Press Release

The Notaries of Europe call for targeted harmonisation to protect consumers

Brussels, 8 October 2009

Echoing debates on the draft Directive on consumer rights, the Council of Notariats of the European Union (CNUE) organised a discussion evening on Thursday 8 October, at the European Parliament in Brussels, on the theme 'What protection to EU consumers need?'. On this occasion, the Notaries of Europe felt that, in the interest of effective protection of EU consumers, it would be imperative to promote 'full targeted harmonisation' at community level concerning the definition of specific concepts and the extent of the rights of withdrawal. **Mr Bernard Reynis**, President of the CNUE, considered that *"it is difficult today to identify the repercussions that a full harmonisation approach could have on the various Member States' legal systems. This is why targeted harmonisation would be a more prudent approach."* Thus, on other aspects, the Member States would have the opportunity to retain or take national measures stricter in consumer protection.

In their previously adopted position paper, the Notaries of Europe recall that one of the most important tasks of notaries, as public officials and delegates of official authority, is to ensure that the contracting parties are correctly informed and fully conscious of what they are engaging in. Hence, the authentic notarial instrument is a particularly efficient means of protecting consumers. Another advantage of notarial authentication is the lasting and irrefutable nature of the concluded instrument which then provides legal certainty to contractors and third parties that do not directly participate in the instrument, but suffer its consequences.

It is for this reason that the Notaries of Europe believe that it would be harmful, both for consumers and businesses, to apply the concept of the right of withdrawal without any differentiation in respect of authentic notarial instruments. The right of withdrawal aims to protect the consumer against unfair commercial practice, which could catch the consumer off guard. The right of withdrawal therefore fulfils a valuable task, in that it helps the consumer to rethink his or her decision. However, when a notary or other public official is involved, the consumer is comprehensively informed of the consequences of his or her engagement before entering into the agreement. When requesting notarial authentication, both parties expect and wish that the contract can enter into force unconditionally and without delay, unless agreed otherwise in the contract.

In this context, a mandatory right of withdrawal would make no sense and would only lead businesses to charge the consumer for the costs generated by the additional delays. Also, the Notaries of Europe request that the right of withdrawal does not apply to instruments concluded before a notary or tribunal, such as already provided in the Directive 85/577/CEE on the protection of consumers in the event of contracts negotiated away from business premises.

Furthermore, for the sake of legal certainty, the Notaries of Europe request the clarification of the Directive's scope, regarding the sale of property or other rights relating to real estate. Indeed, the Notaries of Europe find that it is not clear from the Directive proposal to what extent this applies to real estate. This clarification is necessary to prevent the Directive from inadvertently encroaching on the powers reserved to Member States.

The Notaries of Europe place particular importance on the efforts of the European institutions in consumer protection. By bringing together key figures in the world of politics and civil society, such as the MEPs **Luigi Berlinguer** (PES; Italy), **Kurt Lechner** (EPP-ED, Germany), **Jean-Paul Gauzès** (EPP-ED, France) and **Cristian Silviu Busoi** (ALDE, Romania), the Notaries of Europe intended to thus do their bit in the ongoing work.



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The CNUE in brief:

The Council of the Notariats of the European Union (CNUE) is an official organism representing the notarial profession at the European institutions. Speaking for the profession, it handles negotiation and decision-making for all civil law notaries in the European Union.

The CNUE includes 21 notarial organisations in the European Union. The European notariats are represented in the CNUE by the presidents of the national notariats. The CNUE operates under the authority of a President, the CNUE's spokesperson, who has tenure for one year.