



LEASEUROPE

The Director General

Mrs. Agne Pantelouri
Director
Directorate-General for Health and Consumer Protection
EU Commission

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and Monika.Smolorz@ec.europa.eu

Brussels, 15 February 2008

Re: European Car rental Industry

Dear Mrs. Pantelouri,

Leaseurope, the Federation representing, *inter alia*, the short term car rental industry in Europe, hereby would like to come back to an issue currently being looked at by your services, that of a possible (extra) regulation of the car rental industry in the European Union.

The envisaged extension of the scope of both the Distance Contracts and Consumer Sales Directives is a source of particular concern to the car rental industry.

Consumer Sales Directive (199/44/EC)

We are of the opinion that the Consumers Sales Directive is ill-suited for car rental transactions.

This is because, *inter alia*, a car rental transaction is fundamentally different from a sale of goods contract.

Most provisions currently applying to consumer sales by virtue of Directive 1999/44/EC duplicate the legal or contractual remedies already available to customers of car rental companies.

Most strikingly some provisions of the said Directive are completely inappropriate in a car rental context.

This is especially the case of Article 5 (time limits) of the Directive according to which:

1. The seller shall be held liable under Article 3 where the lack of conformity becomes apparent within two years as from delivery of the goods. If, under national legislation, the rights laid down in Article 3(2) are subject to a limitation period, that period shall not expire within a period of two years from the time of delivery.

2. Member States may provide that, in order to benefit from his rights, the consumer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity.

(...)

3. Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity.

In a car rental transaction title to the car does not pass to the customer and the latter only uses the car for a limited period of time (average duration is 5 days) before returning it to its owner. The time limits of Article 5 are therefore irrelevant.

Renting a car has much more to do with the provision of a service than with the selling of a good.

(Protection of Consumers in respect of) Distance Contracts Directive (97/7/EC)

As indicated in our comments of 21 November 2006 on the EC's Communication on the implementation of Directive 97/7/EC, car rental companies would, like other transport service providers whose services are booked at a distance, be affected in an exaggerated manner by, notably, the right of withdrawal provisions of the Directive. This is because a booking leads to the setting aside of capacities that can no longer be used in other instances (a car hired by a customer for a certain period can obviously not be hired by another customer for the same period).

Rental companies would be deprived of the opportunity to deliver the service to another renter in case the first renter would withdraw his commitment earlier than at the end of the contractual period. The said other renter would inevitably turn to someone/something else. The car rental company originally approached would therefore lose a customer and the business potential associated to it.

Also one should take due account of the competitive impact for the car hire industry of an inclusion of car hire under the scope of the Directive. It is vital to avoid putting car hire companies at a disadvantage against competing providers of other transport services.

We fully acknowledge the need for customers of car rental companies to be adequately protected.

However for the reasons indicated above we think that extending the scope of the Consumer Sales and Distance Contracts Directives is not the way to achieve this objective.

We take the view that consumers can be best protected in this area by:

- Ensuring proper implementation and/or enforcement of:
 - o Directive 97/55 of 6 October 1997 on Comparative Advertising amending Directive 84/450 concerning Misleading Advertising
 - o Unfair Commercial Practices Directive 2005/29 of 11 May 2005
 - o Unfair Terms in Consumer Contracts Directive 93/13 of 5 April 1993
 - o Package Travel, Package Holidays and Package Tours Directive 90/314 of 13 June 1990
 - o Car rental agreements and applicable contract laws
 - o Existing Codes of best Practice
- Establishing ADRs and better advertising their existence
- Investing in consumer education
- Encouraging self regulation by the industry
- Ensuring proper consumer information

In case the Commission was to pursue its idea of extending the scope of the Consumer Sales and Distance Contracts Directives, we hope that it will live up to its commitment to Better Regulation and that it will commission a study to better understand the existing situation in the various Member States.

The said study should allow stakeholders to assess whether there is a problem and, if so, the extent thereof and -most importantly- whether the problem can be best solved at EU level (subsidiarity). Also it should include a detailed analysis of the remedies already available to the consumers.

The November 2005 report of the European Consumer Centers Network “Car Rental Contracts, an analysis of European cross-border complaints” does reveal a number of practices that are not acceptable. Yet it is based on a very limited number of reported cases and can therefore not, by itself alone, justify regulatory intervention.

We further hope that any Commission’s proposal in this area will be subject to a thorough impact assessment.

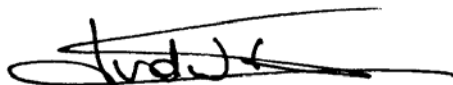
More generally we feel that the European Commission should only propose industry-specific Directives (or, in this case, should only extend the scope of existing Directives to include a specific industry) if there is clear evidence that the customers of that industry are not sufficiently protected by the existing (self-)regulatory environment as properly enforced.

I would welcome the opportunity to discuss these issues with you.

I will contact you in the coming weeks in that regard.

I remain at your entire disposal.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T. van de Werve', with a long horizontal flourish extending to the right.

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