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REPORT

Prospects for legal protection of the consumer in the light of the Commission
Green Paper on European Union Consumer Protection
(COM(2001) 531 – C5-0294/2002 – 2002/2150(COS))

Committee on Legal Affairs and the Internal Market

Rapporteur: Marianne L.P. Thyssen

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PROCEDURAL PAGE

By letter of 4 October 2001, the Commission forwarded to Parliament its Green Paper on European Union Consumer Protection (COM(2001) 531 – 2002/2150(COS)).

At the sitting of 1 July 2002 the President of Parliament announced that he had referred the Green Paper to the Committee on Legal Affairs and the Internal Market as the committee responsible (C5-0294/2002).

The Committee on Legal Affairs and the Internal Market appointed Marianne L.P. Thyssen rapporteur at its meeting of 8 October 2002.

At its meeting of 22 April 2002 the committee decided to include in its report the following motion for a resolution:

- B5-0108/2002, by Salvador Garriga Polledo, on a European Consumer Arbitration Tribunal, referred on 8 April 2002 to the Committee on Legal Affairs and the Internal Market as the committee responsible, and the Committee on the Environment, Public Health and Consumer Policy

for its opinion.

It considered the Commission Green Paper and the draft report at its meetings of 2 December 2002, 27 January 2003 and 20 February 2003.

At the last meeting it adopted the motion for a resolution by 16 votes to 8.

The following were present for the vote: Willi Rothley, acting chairman; Marianne L.P. Thyssen, rapporteur; Paolo Bartolozzi, Luis Berenguer Fuster (for Maria Berger), Ward Beysen, Michel J.M. Dary, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, Malcolm Harbour, The Lord Inglewood, Carlos Lage (for Carlos Candal, pursuant to Rule 153(2)), Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Hans-Peter Mayer (for Rainer Wieland), Arlene McCarthy, Manuel Medina Ortega, Ria G.H.C. Oomen-Ruijten (for Joachim Wuermeling, pursuant to Rule 153(2)), Marcelino Oreja Arburúa (for José María Gil-Robles Gil-Delgado), Carlos Ripoll y Martínez de Bedoya (for Giuseppe Gargani), Dagmar Roth-Behrendt (for François Zimeray), Anne-Marie Schaffner et Ioannis Souladakis (for Ioannis Koukiadis, pursuant to Rule 153(2)).

The Committee on the Environment, Public Health and Consumer Policy decided not to deliver an opinion.

The report was tabled on 21 February 2003.

MOTION FOR A RESOLUTION

European Parliament resolution on the prospects for legal protection of the consumer in the light of the Commission Green Paper on European Union Consumer Protection (COM(2001) 531 – C5-0294/2002 – 2002/2150(COS))

The European Parliament,

- having regard to the Commission Green Paper on European Union Consumer Protection (COM(2001) 531)¹
 - having regard to the Commission follow-up Communication to the Green Paper on EU Consumer Protection (COM(2002) 289)²
 - having regard to the opinion of the Economic and Social Committee on the Green Paper³
 - having regard to the motion for a resolution by Salvador Garriga Polledo, on a European Consumer Arbitration Tribunal⁴
 - having regard to Articles 95 and 153 of the EC Treaty,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0054/2003),
- A. whereas, ten years on, the internal market is operational, but the regulatory process has still not been concluded in all areas,
- B. whereas the internal market is an economic success, but the consumer is still not using it to full advantage,
- C. whereas the number of cross-border legal relationships can be expected to increase further, not least on account of the acceleration in electronic means of communication, the arrival of euro notes and coins and EU enlargement;
- D. whereas the EU Treaty aims at high level of consumer protection,
- E. whereas there is no contradiction between completing the internal market and achieving a high level of consumer protection,
- F. whereas efforts to achieve both those objectives can and must be pursued so as to ensure that they effectively support each other,
- G. whereas, apart from what applies to measures to support, supplement or monitor Member State policies, the basis for introducing legislation to protect the consumer at

¹ Not yet published in OJ.

² Not yet published in OJ.

³ OJ C 125, 27.5.2002, p. 1.

⁴ Not yet published in OJ.

Community level is derived from the rules of the internal market,

- H. whereas completion of the internal market will consist in particular in removing judicial obstacles to free movement, not only for business operators but also in the daily life of the citizen-consumer,
 - I. whereas any intervention by the EU can, in accordance with the subsidiarity principle, only be justified in the event of confirmed substantial obstacles to cross-border transactions,
 - J. whereas European and national legislation, and the connection between them, must create consumer confidence in the judicial status and legal certainty of cross-border transactions,
 - K. whereas the consumer must be able to rely on efficient and affordable dispute settlement options in relation to cross-border transactions,
 - L. whereas consumer protection and the promotion of fair trading practices between competitors can often be two sides of the same judicial coin,
 - M. whereas there is reluctance on the part of many small and medium-sized enterprises to become involved in cross-border trading for the same reasons as those that inhibit consumer confidence,
 - N. whereas Community legislation must be clear, simple and to the point, must provide legal certainty, preferably be of high legislative quality, be able to stand up to the challenges of a rapidly changing market, and must lend itself to being readily incorporated into Member State legal systems, since it will otherwise be perceived by consumers as an external intrusion that will undermine acceptance of Community law,
 - O. whereas in addition to judicial restrictions, there are other obstacles that dissuade the consumer from making cross-border purchases, including the language barrier, geographical distance, an unfamiliar consumer culture and journey time; whereas these set natural boundaries to market integration that European regulation neither can change nor should seek to change, making it appropriate, before initiating legislative action, to identify the real obstacles and quantify their impact on cross-border transactions,
1. Welcomes the Commission Green Paper, which invites all parties concerned to consider and express their views on future developments in consumer protection at the level of trading practices, and in particular on possibilities for improving the operation of the internal market of business operators and consumers (the so-called 'B-to-C' relation);
 2. Is convinced that it is appropriate for the sphere of operation of the instruments that the Commission is considering using and the impact-test of the measures adopted not to be confined to so-called 'B-to-C' relations, not least because the distinction between 'B-to-C' and 'B-to-B' cannot be taken for granted and might well not be compatible with the objectives of simple and consistent legislation and legal certainty;
 3. Considers that it is particularly important to establish a harmonious legal concept

covering the whole spectrum of economic transactions within the internal market, and to boost consumer confidence, in order to make e-Europe into a reality, particularly as regards cross-border transactions;

4. Notes that a great deal has been achieved at Community level in the matter of consumer protection, but that the total arsenal of legislation applicable to the internal market should be aimed, not at securing full legislative approximation, but at setting minimum norms and standards, in order to inspire consumer confidence;
5. Points out that any proposals for legislative measures resulting from the debate on the Green Paper must actually lead to simpler, more understandable and better targeted legislation that will be easier to enforce;
6. Takes the view that maximum harmonisation can be an effective means of eliminating the fragmentation of business-practice and consumer-protection legislation applicable to the internal market, the better to enable the latter to operate more smoothly and thereby raise the confidence of the consumer; stresses to the commission that the suitability of minimum or maximum harmonising provisions be appropriately assessed when amending existing legislation, or developing new legislation, on a case by case basis;
7. Insists that maximum harmonisation must be aimed at a high level of consumer protection, which is one of the objectives of the Treaty and a prerequisite of promoting consumer confidence;
8. Is convinced that the principles of mutual recognition and law of country of origin can only be fully implemented to all-round satisfaction once a sufficient degree of harmonisation and a high level of protection have been achieved;
9. Advocates the establishment of a consistent legal framework and affirms its preference, on the basis of the information currently available to it and in the undermentioned conditions, for the so-called 'mixed approach' over continuing with the series of specific directives often unconnected to each other;
10. Recognises that any framework directive will have to be supplemented by a full range of specific directives or regulations, but believes that the relationship between the framework directive and the specific directives or regulations will have to be defined extremely precisely;
11. Considers that the relationship between the framework directive and contract law ought to be clarified;
12. Inclines to the view that the objective of consistency, simplification and comprehensibility presupposes that the required changes to existing specific directives will be made at the same time as a proposal for a framework directive is being drawn up, thereby ensuring that the legislation can be drafted on the basis of a complete picture and the assurance given that the legislative package will in fact simplify the internal market rather than making it more complex;
13. Does not rule out the option of incorporating a general condition into the framework directive based on the principle of outlawing unfair trading practices, but emphasises

the need for a clear definition of unfair practice backed up by expert opinions, while insisting that the implementation of such a framework directive will result in simpler, streamlined and better legislation guaranteeing legal certainty to both consumers and business;

14. Does not advocate non-binding guidelines on interpretation for fear of thereby further increasing confusion, and urges a different approach so as to rule out divergent interpretations; proposes, in order to facilitate interpretation, that the framework directive be accompanied by a non-exclusive black-list of practices considered as jeopardising consumer interests;
15. Assumes that a framework directive will contain definitions of the basic terms of consumer law;
16. Agrees with the Commission's approach of establishing a uniform legal basis in the framework directive within which European codes of conduct would be enshrined;
17. Considers it necessary, in the interests of legal certainty and democratic legitimacy, that with the use of European codes of conduct on consumer protection, the following conditions will be taken into consideration:
 - a) A code of conduct can play only a supplementary part and can be no substitute for legislation;
 - b) it must come into being on a voluntary basis;
 - c) it can apply only to those natural and legal persons who have subscribed to it;
 - d) the enforceability of a code of conduct must be ensured by introducing the rule whereby any infringement of a voluntarily accepted code of conduct will be treated as equivalent to an unfair practice and will be sanctioned accordingly by the appropriate authority (arbitration body or court);
18. Calls, being concerned fundamentally with legal questions, for additional expert research into the approval mechanism suggested by the Commission that could lead to a contestable assumption of the legality of codes of conduct, because:
 - a) It cannot act as a generally valid test of the law, so that market participants might well be given a false impression of legal certainty;
 - b) it can lead to enormous bureaucracy in the Commission, whereas other policy areas have been switched to a new approach (competition policy) order to prevent just that;
 - c) it will confuse the consumer, who must be able to distinguish between approved and non-approved codes of conduct and, in addition, be able to assess their importance correctly;
 - d) it will undermine the flexibility of the 'code of conduct' mechanism;
19. Advocates the development of rules for better treatment of Community law in cross-border relations, and agrees that an internal market calls for coordinated market supervision;

20. Supports, consequently, the idea of intergovernmental cooperation by national enforcement authorities, which can operate to the advantage of mutual information and mutual assistance in specific cases;
21. Calls on the Commission to provide detailed information on the nature of the obstacles encountered, to quantify their impact on cross-border purchases and, on that basis, to continue consultations with all concerned parties, on both the production and the distribution sides, and with representatives of SMEs and consumer organisations;
22. Reiterates its call for a coordinated approach of the consumer protection framework directive and the regulation on sales promotions, which must dovetail perfectly with each other;
23. Urges the Commission to make good its intention to appeal to experts to conduct preparatory studies and to draw up the extended impact study announced in its 2002-2003 programme of work, and to do so before submitting proposals for legislation;
24. Calls upon the Commission to draw up an extended impact study on the suitability of the maximum-harmonisation approach and, as long as this impact study is not available, to indicate for each proposal in a case-by-case approach why a particular option has been chosen;
25. Urges the Commission to engage in a broad and focused consultation to ensure the best possible input from interested parties;
26. Reserves the right to issue a definitive opinion when the necessary additional information is available and specific proposals can be submitted;
27. Instructs its President to forward this resolution to the Council and Commission, and to the parliaments of the Member States and the accession states.

EXPLANATORY STATEMENT

Your rapporteur points out that this report by the Committee on Legal Affairs and the Internal Market is confined to considering those aspects of the Green Paper on European Union Consumer Protection that, in accordance with the agreement between the committee chairmen, (Legal Affairs and the Internal Market, and Environment, Public Health and Consumer Policy) fall within the competence of the Committee on Legal Affairs and the Internal Market¹.

On the assumption that readers of the report are familiar with the substance of the Green paper, your rapporteur considers it appropriate to devote the explanatory statement entirely to providing information that will explain and contextualise the choices made by the Committee on Legal Affairs and the Internal Market.

The following points are relevant:

1. In general, the Committee on Legal Affairs and the Internal Market attaches great importance to continuing sufficient consultation with all concerned parties. It also calls for a searching impact study of the proposals and for a sound, realistic analysis of the limitations on the development of more cross-border consumer activity. Not all the factors that induce the consumer to stay with the home market can be dispelled by making changes to legislation. Nor is it desirable for all of them to be removed. Differences in consumer culture or other natural limits to market integration need not be harmonised. A fundamental analysis should identify those factors, and a searching impact study should quantify them.
2. The Committee on Legal Affairs seeks to ensure that Community legislation will be clear, simple, consistent and of high legislative quality, and can be easily incorporated into Member-State legislation. The latter is important for ensuring acceptance of European legislation. In order to ensure this, the Committee on Legal Affairs is asking the Commission to provide Parliament with a comprehensive approach (by way of, say, a framework directive and a set of specific directives).
3. The scope of the instruments that the Commission is considering using to improve EU consumer protection, together with the associated impact studies, should not be confined to the undertaking-to-consumer relationship. The Committee on Legal Affairs and the Internal Market is convinced that consumer protection and the promotion of fair trading practices between competitors can often be two sides of the same judicial coin.

Nor can anyone fail to recognise that consumer legislation can exert an influence on competition relations between operators who have to apply it. That is true in particular of small and medium-sized enterprises.

4. The Committee on Legal Affairs does not consider it appropriate to state a preference for minimum or for maximum harmonisation. In line with the report by Mr Phillip Whitehead for the Committee on the Environment, Public Health and Consumer Policy

¹ Letter of 31 May 2002 to Mrs Palacio, Chair of the Conference of Committee Chairs

on consumer-policy strategy for 2002-2006, it is better to opt for a case-by-case approach.

It will of course be desirable for the Commission to arrange for a fundamental study to be conducted into the problem as a whole. The Committee on Legal Affairs, moreover, takes the realistic position that, if the choice falls on an instrument of maximum harmonisation, it must be for the purpose of achieving a high level of consumer protection, which is an EC-Treaty objective.

5. The Committee on Legal Affairs and the Internal Market takes a position, cautiously and subject to a number of reservations set out in the motion for a resolution, in favour of the so-called 'mixed approach'. It of course reserves the right to adopt a detailed and duly justified position once specific proposals for a directive or other legislative texts have been submitted.
6. If a framework directive is submitted, the Committee on Legal Affairs will prefer to see a general clause containing a 'prohibition on unfair trading practices'. That option is preferred to the general clause operating on the basis of 'fair trading practices', because it provides greater legal certainty.

It is also out of concern for legal certainty that the Committee on Legal Affairs is unwilling to support non-binding guidelines on the interpretation of the general clause in any framework directive. The committee strongly prefers the addition of an annex containing a black list of examples of practices that should be outlawed.

7. The Committee on Legal Affairs considers some form of embedding of cross-border codes of conduct in any framework directive as an attractive idea. It thinks otherwise, however, about the suggestion of establishing an approval mechanism for such codes that would create the supposition they were in compliance with EU consumer law.

The committee assumes that it will be impossible to reach agreement with the same level of certainty on compatibility with EU competition law, which also must be complied with.

The potential lack of legal security both for the consumer and for business operators, and the associated bureaucracy, are sufficient reasons for rejecting the idea of an approvals procedure. A false sense of security is of no use to anyone.

8. The Committee on Legal Affairs and the Internal Market shares the Commission's view that an efficient, affordable and accessible disputes-settlement procedure is necessary. It also agrees with the Commission on the position that European coordination of market supervision mechanisms operating in Member States can be expected to lead to better structuring and consistent implementation of EU consumer law.

13 March 2002

B5-0108/2002

MOTION FOR A RESOLUTION

pursuant to Rule 48 of the Rules of Procedure

by Salvador Garriga Polledo

The European Parliament,

- A. whereas the pilot phase of the European Extra-Judicial Network (EEJ Net) is now under way,
- B. whereas the purpose of this network is to settle consumer disputes out of court and to make it easier for consumers to seek redress in conflicts with suppliers from another country in the EU,
- C. whereas, in order to do so, each country has set up a 'clearing house' where consumers can obtain information and assistance in accessing alternative dispute resolution (ADR) systems,
- D. whereas this should pave the way for the establishment of a European Consumer Arbitration Tribunal,
 - 1. Expresses the hope that the EEJ Net pilot phase will facilitate the establishment of a European Consumer Arbitration Tribunal;
 - 2. Calls for businessmen and retailers as of now publicly to declare that they will settle future disputes with consumers through the EEJ Net;
 - 3. Recommends that a European register of undertakings that have made such a declaration in respect of the EEJ Net be drawn up and that a European logo be introduced to identify undertakings which have publicly declared that they will settle disputes through alternative dispute resolution (ADR) systems.