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Future of EU consumer policy

European Parliament resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (COM(2001) 531 – C5-0295/2002 – 2002/2151(COS))

The European Parliament,

- having regard to the Commission Green Paper (COM(2001) 531 – C5-0295/2002),
 - having regard to the Commission's follow-up Communication (COM(2002) 289),
 - having regard to the opinion of the Economic and Social Committee on the Green Paper (CES 344/2002) of 20 and 21 March 2002¹,
 - having regard to Articles 95 and 153 of the EC Treaty,
 - having regard to the Rome Convention of 1980 on Law Applicable to Contractual Obligations,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy (A5-0423/2002),
- A. whereas the shortcomings in European consumer law, which are due in particular to the fragmentation of national and Community rules, hinder the implementation of a genuine internal market for consumers as a result of the lack of consumer confidence in the legal certainty of cross-border transactions,
- B. whereas fair business practices help to protect not only consumers but also competitors, in the interests, in particular, of small and medium-sized undertakings,
- C. whereas it would be useful to conduct research in order to better understand the way in which business and consumers behave with regard to cross-border trade and to pinpoint the obstacles to the development of the internal market,
- D. whereas there is a need to achieve a high level of consumer protection, which is a precondition for establishing the climate of confidence that is required if the internal market is to function as it should,
- E. whereas it is important to provide consumers with a simple, standardised, reliable and efficient legal framework that is applicable whatever the nature of the commercial practice in question,

¹ OJ C 125, 27.5.2002, p.1.

- F. whereas there is a particular need to protect the most vulnerable consumers, including the elderly, children and persons suffering from a disability,
 - G. whereas the ability of consumers to exercise their rights hinges, among other things, on the quality, completeness and reliability of the information they are provided with, which must be made available in a language which each individual consumer understands,
 - H. whereas producers must be able to substantiate all claims concerning products or services,
 - I. whereas traders and consumers should collaborate so as to produce appropriate and balanced rules,
 - J. whereas, however, it is the responsibility of the public authorities to establish an appropriate level of consumer protection and to enforce its application,
 - K. whereas the role of consumer organisations should be enhanced in order to ensure that their collective interests are better represented, not least in the field of regulation and in the exercise of legal rights in connection with the application of consumer law,
 - L. whereas the use by consumers of alternative methods of dispute resolution that are accessible to all, equitable, swift and available at low cost should be facilitated, while emphasising consumers' right to free access to justice,
 - M. whereas difficulties arise from the lack of coordination between the national authorities responsible for the application of consumer law,
 - N. whereas a comparative study of fair trading laws in the Member States should be conducted with a view to establishing to what extent a common body of provisions already exists,
1. Considers that common general rules enabling a high level of consumer protection should be adopted as a matter of priority;
 2. Supports the aim of harmonising legislation on trading practices, which should be done in a coherent way by first setting the general framework and only afterwards establishing vertical legislation on specific practices, such as sales promotion, if necessary;
 3. Points out that the harmonisation approach should not lower the level of consumer protection achieved under certain national arrangements;
 4. Underlines that consideration can only be given to the application of the principles of mutual recognition and control by the country of origin if a sufficiently wide scope of harmonisation on a high level of consumer protection is achieved;
 5. Points out that harmonisation should not lower the level of protection against unfair trading practices achieved by means of national legal instruments;
 6. Advocates introducing a general clause on fairness in relation to the consumer into the framework directive and supports the concept that the directive should deal mainly with

practices which are detrimental to consumers; the consumer should not be misled as to the content and functions of the product or service; a product or service should therefore only be attributed properties, effects or origins which can be substantiated;

7. Considers that the general clause on fairness should be based on precise and objective criteria in order to avoid differing interpretations in the legislation or case law of the Member States, and suggests that an unfair commercial practice be defined as contrary to the requirements of 'good faith' in line with the provisions contained in Directive 93/13/EC on unfair terms in consumer contracts¹;
8. Emphasises the need to enable the consumer to make an informed choice; therefore stresses the need to include in the fairness criteria the duty to always provide consumers with prior information in a language understood by the consumer concerned and accessible to everyone, including the disabled, on aspects which are fundamental to consumer health and economic security, as a minimum:
 - the nature of the goods and services provided,
 - the presence of dangerous substances in consumer goods,
 - the exact content and origin in the case of foodstuffs,
 - the price in Euros, and in local currency in the non-Euro zone, inclusive of all taxes,
 - any delivery charges,
 - the arrangements for delivery or performance,
 - conditions of withdrawal, exchange or refund,
 - the identity and address and full contact details of the supplier,
 - full details of the product guarantee and conditions of after-sales service,
 - membership of a code of conduct, where applicable,
 - existing remedies;
 - all information to be displayed in a clear and visible manner;
9. Considers it appropriate, in the interests of establishing a single corpus of harmonised general rules, to incorporate into the framework directive certain provisions of existing directives, such as those covering misleading advertising;
10. Considers it essential that the concept of unfair behaviour should also include any commercial behaviour aimed at exploiting temporary or permanent physical or mental vulnerability arising, for example, from the age, infirmity, mental state, or low level of literacy of a consumer or a consumer group;

¹ OJ L 95, 21.4.1993, p. 29.

11. Considers that, without prejudice to the special provisions applicable to vulnerable consumers, any commercial behaviour constituting physical or psychological coercion, and in particular harassment or intimidation, the use of threats or force and obstructive behaviour (such as the practice of making it difficult for consumers to change service providers), should also be deemed unfair behaviour;
12. Suggests that the framework directive be accompanied by a non-exhaustive blacklist of practices considered to be detrimental to the interests of consumers, which should be regularly updated with the help of consumer groups at the appropriate levels in the Member States;
13. Suggests that the framework directive should lay down the principles applicable in the event of a legal action being brought, in particular as regards territorial jurisdiction and the law applicable if the undertaking accused of unfair trading practices has its headquarters in a Member State other than that in which the consumer who has allegedly been wronged is resident;
14. Recommends that, in addition to a general clause, the framework directive should give further practical examples of individual unfair trading practices;
15. Is in favour of continuing discussions with the Member States and the parties involved on new forms of regulation, especially on co-regulation and self-regulation; when such new forms are chosen as a supplement to legislative measures, expresses a preference for co-regulation, since this would allow the European Parliament and Council to be involved in adopting the objectives, and ensure open and transparent processes with consultation of business and consumers;
16. Stresses the need to ensure that the stakeholders involved in the regulatory approach are representative;
17. Considers that co-regulation and self-regulation should always be subsidiary to Community rules and that their aim should be confined to establishing supplementary measures better geared to the interests of consumers in the sectors concerned;
18. Recommends that Community-level codes of conduct be introduced;
19. Considers that the proposals for governing codes of conduct at a EU level are insufficient;
20. Believes that in order to guarantee the legal certainty of commercial relations between business and consumers, non-compliance with a voluntary commitment established by a code of conduct duly validated by the Community authorities should be viewed as an unfair practice within the meaning of the framework directive;
21. Considers that in view of this need for legal certainty, it is inadvisable to promote the introduction of recommendations without binding force;
22. Calls on the Commission to assess the experience gained through voluntary cooperation, for example in the Nordic states and within the Organisation for Economic Cooperation and Development (OECD), and to establish a legal framework and effective scrutiny

arrangements for cooperation between the authorities responsible for enforcement in the field of commercial practices; calls on the Commission to consider in detail the factors to be included within a framework directive and to discuss the content with the Member States and relevant consumer and trade organisations;

23. Calls on the Commission to continue consultations on this matter with the Member States, with stakeholder participation;
24. Calls on the Commission to draw up a proposal setting up frameworks for cooperation on enforcement by mid-2004;
25. Suggests that databases be established in order to promote the exchange of information between the Member States;
26. Suggests that a harmonised warning system be created so as to enable Member States to take concerted action to enforce the Community rules;
27. Suggests that the Commission should build upon existing practice by convening regular meetings with Member State authorities to look at how general and specific directives are working in practice;
28. Calls on the Commission to swiftly present a draft framework directive taking into account the opinions of national experts and stakeholders;
29. Recommends that the Commission should organise regular meetings for Member States to exchange best practice ensuring effective and consistent transposition of EU consumer protection legislation;
30. Calls on the Commission to publish and disseminate an easy-to-read consumer guide so as to inform consumers of their rights;
31. Calls on the Commission to ensure that initiatives following up on the Green Paper are discussed as far as possible in tandem with the proposal for a regulation on sales promotion;
32. Instructs its President to forward this resolution to the Council and Commission and the parliaments of the Member States.