

## **DUTCH SOCIAL AND ECONOMIC COUNCIL SUPPORTS REFORM OF EUROPEAN CONSUMER LAW**

The Social and Economic Council's Committee for Consumer Affairs (CCA) supports the reform of eight European directives aimed at protecting consumers, known as the Consumer Acquis. The CCA's basic views are the following:

1. there should be an adequate level of consumer protection at national and European level;
2. the rules pertaining to consumer protection should be simplified and the administrative burden reduced;
3. the internal market should be expanded, and it should instil more confidence in consumers and businesses.

### *Choice of strategy*

In terms of the reform strategy itself, the CCA prefers the mixed approach described in the Commission's Green Paper on the Review of the Consumer Acquis. The mixed approach consists of a horizontal instrument regulating issues common to the eight directives combined with sector-specific rules. That will prevent regulatory fragmentation at European level and help to streamline European legislation. The CCA believes that the future horizontal instrument should apply to all consumer contracts.

### *Minimum or full harmonisation?*

Another key question is whether the eight directives that make up the Consumer Acquis should continue to be based on minimum harmonisation (with the Member States being free to step up consumer protection in their own territories), or whether they should now be based on full harmonisation (with the Member States having virtually no freedom). Opinions in the CCA are divided on this score. The independent members and employers' representatives on the CCA essentially prefer full harmonisation for the eight directives of the Consumer Acquis, despite uncertainty about the outcome of the current review. The consumer representatives on the CCA continue to prefer minimum harmonisation as a general precept, and also favour the rule that the applicable law should be the law of the country of the consumer.

### *Self-regulation*

The Netherlands has a tradition of self-regulation in the area of consumer law, but the Green Paper says nothing about this. That is perhaps because only one of the eight selected directives refers explicitly to the option of self-regulation, i.e. the Distance Selling Directive (1997). Other consumer protection directives that do make explicit reference to self-regulation are not considered part of the Consumer Acquis. These are the Distance Marketing of Financial Services Directive, the Electronic Commerce Directive, the Misleading and Comparative Advertising Directive, and the Unfair Commercial Practices Directive.

The European Commission did investigate whether it could encourage private parties to develop EU-wide General Terms and Conditions (GTC). It emphasised promoting the use of GTC in business-to-business contracts and agreements between businesses and

public authorities. After careful consideration, however, the Commission decided to abandon this idea<sup>1</sup>, and no knock-on effect can therefore be expected in the area of consumer protection.

There are consequently various impediments to involving the instrument of self-regulation in the process of implementing and enforcing European consumer protection law. To begin with, in some Member States consumer protection law falls mainly under public law, whereas in others (such as the Netherlands) much of it is enshrined in the Civil Code and so may have more potential for self-regulation. Secondly, the nature and scale of the national organisations of businesses and consumers differ from one Member State to the next, and a sector-specific or other umbrella organisation at European level does not always exist. The role and significance of self-regulation also differs from Member State to Member State.

This means that if self-regulation is to have any meaning within the context of European legislation, the responsibilities assigned under such legislation must be absolutely distinct from the responsibilities associated with self-regulation. If self-regulation is to become part of the process of implementing and enforcing European rules, an adequate legal back-up should in any event be available.

The CCA recommends that the Netherlands – a country in which self-regulation works and produces results – should ensure that this topic remains on the agenda of the European Union.

Translated by: Balance Texts and Translations, Maastricht

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<sup>1</sup> COM (2005) 456, Brussels, September 2005, p. 11.