

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws’**

COM(2010) 791 final — 2011/0001 (COD)

(2011/C 218/12)

Rapporteur: **Mr HERNÁNDEZ BATALLER**

The Council and the European Parliament decided, on 19 and 18 January 2011 respectively, to consult the European Economic and Social Committee under Article 114 of the Treaty on the Functioning of the European Union, on the

*Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws*

COM(2010) 791 final — 2011/0001 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 5 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 104 votes to 13 with 4 abstentions.

## 1. Conclusions and recommendations

1.1 The EESC supports the Commission’s proposal and welcomes its intention to introduce greater legal security, certainty and clarity into EU legislation.

1.2 However, the EESC regrets that the proposed revision is so short on content and does not deal with all of the aspects of the regulation that need to be amended in light of experience since the entry into force of Regulation (EC) No 2006/2004.

1.3 The EESC calls upon the Commission, in its revision of Regulation (EC) No 2006/2004, to take account of the recommendations contained in this document aimed at improving the workings of the current cooperation between authorities responsible for consumer affairs.

## 2. Background

2.1 The EESC expressed its support for the Proposal <sup>(1)</sup> for a Regulation (EC) No 2006/2004, although it regretted certain shortcomings in the arrangements for mutual assistance and reciprocity, which could lead to situations at odds with the operation of the internal market.

2.2 On 27 October 2004, Regulation (EC) No 2006/2004 <sup>(2)</sup> on cooperation between national authorities responsible for the

enforcement of consumer protection laws was adopted, essentially in the form contained in the proposal.

## 3. Implementation report

3.1 On 2 July 2009, the Commission presented a report on the application of Regulation (EC) No 2006/2004 <sup>(3)</sup>. The report examines the institutional and enforcement framework and the establishment of the network, the functioning of the network and the framework for cooperation. In its opinion <sup>(4)</sup> the EESC expressed its regret that it had not been consulted by the Commission on this implementation report.

3.2 The Commission concludes that the network has not yet achieved its full potential. It points out that the functioning of the network must be made more efficient, by means of a series of measures which would, when appropriate, also include a review of aspects of Regulation (EC) No 2006/2004 relating to the implementing rules; the adoption of an annual action plan to implement the legislation on joint exercises such as ‘sweeps’, or promoting a uniform interpretation of EU legislation and raising the network’s profile.

## 4. Commission proposal

4.1 On 3 January 2011, the Commission presented a proposal to amend Regulation (EC) No 2006/2004 in order to update its Annex to reflect recent legislative developments in the field of consumer protection.

<sup>(1)</sup> OJ C 108 of 30.4.2004, p. 86.

<sup>(2)</sup> OJ L 364 of 9.12.2004, p. 1.

<sup>(3)</sup> COM(2009) 336 final.

<sup>(4)</sup> OJ C 18 of 19.1.2011, p. 100.

4.2 The update of the Annex involves removing legislation which is not relevant for consumer protection cooperation between national enforcement authorities, and updating references to old legislation which is no longer in force by providing references to the consumer protection legislation replacing it.

4.3 This includes the deletion of certain references (such as the Directive on misleading and comparative advertising)<sup>(5)</sup> or their replacement (such as the Directives on consumer credit, audiovisual media services, and timeshare).

## 5. General comments

5.1 The EESC welcomes the Commission's proposal, since it believes that the clear formulation of EU legislation offers all citizens greater legal certainty and security. The EESC is concerned about the situation faced by the self-employed and small companies, which is similar to that faced by consumers in transactions with large companies, particularly in relation to network industries.

5.2 The EESC once again supports the Commission in promoting this administrative cooperation in a coherent fashion. The Committee considers this cooperation necessary for the proper functioning of the internal market and acknowledges the Commission's efforts to promote transparency through the adoption of the Recommendation of 1 March 2011 containing the *Guidelines for the implementation of data protection rules in the Consumer Protection Cooperation System*<sup>(6)</sup>.

5.3 However, the EESC considers the proposal to be too narrow and believes that it does not deal with many of the current issues affecting cooperation between consumer authorities. The Commission does not even address the issues which it described as 'shortcomings' in its report on the application of Regulation (EC) No 2006/2004.

5.3.1 The EESC believes that some of the following issues could have been dealt with in the proposed amendment:

### 5.4 Systematic market surveillance

5.4.1 The monitoring and inspection of goods and services regulated by EU legislation requires maximum joint planning in the programming of actions to be taken in each case by Member States' consumer authorities, both in terms of time and in terms of content. Equivalent verification mechanisms should be established to ensure compliance with supranational provisions, by means of systematic market surveillance campaigns to maintain a high and uniform level of consumer protection within the single market at all times.

<sup>(5)</sup> Directive 2006/114/EC is intended to protect the interests of consumers only in relation to comparative advertising. The annex to the Regulation will only include a reference to the relevant articles of this Directive.

<sup>(6)</sup> OJ L 57 of 2.3.2011, p. 44.

5.4.2 This annual coordination of inspection activities, particularly under horizontal provisions, could be backed up with information and market-research initiatives using the corresponding screenings, which would standardise the 'sweeps' currently carried out.

### 5.5 Penalty procedure

5.5.1 In order to prevent a border effect in the application of corrective measures resulting from infringements of the EU legislation in force, there should be minimum harmonisation of the common criteria for the penalty procedure and of the penalties handed out by consumer authorities in order to ensure equivalent guarantees and efficiency in the launch and settlement of cases involving the same infringements.

5.6 The EESC believes that differences in key aspects of penalty systems may lead to non-compliance with EU provisions, seriously jeopardise consumer protection and market integrity, distort competition in the internal market and, ultimately, harm consumer confidence.

5.7 The EESC considers that further convergence and reinforcement of penalty systems is essential in order to prevent the risk of improper functioning of the Single Market. It therefore suggests that minimum common criteria be set to ensure a minimum approximation of national penalty systems, which would include:

- appropriate types of administrative penalties for the breach of key provisions;
- publication of serious penalties;
- a sufficiently high level of administrative fines, in accordance with the infringement committed;
- criteria to be taken into account when applying penalties;
- penalties for natural and legal persons;
- possible introduction of criminal penalties for the most serious breaches;
- appropriate mechanisms supporting effective enforcement of penalties.

### 5.8 Quality monitoring of goods and services

5.8.1 One particular issue in relation to the aforementioned 'systematic market surveillance' initiative is the methodology for the monitoring of goods and services and the relevant analyses to verify compliance with the relevant legislation and the information they authorise and, in particular, prevention and ensuring the quality of goods and services.

5.8.2 A common procedure must be established for monitoring with a view to harmonising its methodology. There must also be cross-border planning in order to extend the spectrum of monitoring, using the resources made available in each participating administration as efficiently as possible, preventing duplications and overlapping, which may lead to unwanted differing burdens in this area.

5.8.3 As well as establishing uniform criteria for the selection of products to be monitored, the common procedure must also cover aspects relating to the identification of samples, the recording of documentation, the carrying out of initial, comparative and decisive analyses, and all other issues not covered by the quality provisions or any other relevant legislation.

5.9 This initiative is clearly necessary in a global market in which it is becoming increasingly normal for consumers to look to cross-border trade for the goods and services they want and need.

5.10 **Product safety.** Although this is clearly the key area for cooperation and there is therefore a higher degree of harmonisation, there are still certain shortcomings beyond the rapid exchange of information system, commonly known as the rapid alert system, which could be improved as a complement to the implementation of tools and instruments for the identification, management and communication of risks, as happens in the case of food safety risks.

5.10.1 In particular, a periodic Eurobarometer to analyse consumers' perceptions of the risks of non-food products is undoubtedly useful when dealing with other related aspects, including consumer information and education.

5.10.2 Another measure, with a view to making the current alert systems more efficient, would be to merge all of them into a single tool for interoperability, i.e. the exchange of information from all origins and sources and from all competent management bodies (health, agri-food, consumption, fiscal etc).

5.11 **Consideration of ethical and environmental factors in the marketing authorisation of goods and services.** It is essential that the procedures relating to the aforementioned alerts be extended to products which must be withdrawn from the market for ecological, ethical or other reasons relating to business practices that violate people's dignity or their environment, i.e. the violations stipulated in the Conventions of the International Labour Organization, environmental degradation or the depletion of natural resources, amongst others, both in the production and distribution stages and in the marketing and provision of goods and services.

5.11.1 Lack of consumer information regarding the origin of products is particularly critical when manufacturing is relocated. This information should indicate where and how products have been produced and distributed and the economic and social impact on the community producing or manufacturing them. Consumers must therefore, where possible, have access, where possible, to information via web pages or other media regarding products, as well as information ensuring that they do not unwittingly consume products resulting from illegal practices. Furthermore, information must be provided enabling consumers to make purchasing decisions on the basis of criteria other than the traditional criteria of quality and price. This should ensure that, in purchasing products, they do not unwittingly help to perpetuate illicit practices directly or indirectly relating to the product in question, which they would certainly not have purchased if they had had access to the relevant information.

5.11.2 The consumer's right to full information regarding the goods on offer – the 'social traceability of products' – is linked to both safeguarding competition and to enhancing the empowerment of consumers and the role they play on the market when freely choosing to purchase a particular product ('your purchase is your vote').

#### 5.12 *Promoting good business practices in relation to responsible consumption*

5.12.1 In view of the increasing importance and spread of Corporate Social Responsibility programmes, consumer policies must play a key role and consumers must be consulted for the purposes of the corresponding responsibility reports.

5.12.2 The adoption of common criteria and policies to promote the evaluation of social responsibility programmes for cross-border companies, in terms of their impact for consumers and users at supranational level, must be complemented by incentivising mechanisms for the recognition of good practices, such as self-regulation, codes of conduct, quality marks and any other voluntary initiative aimed at bringing together the different interests concerned.

5.12.3 These practices also increase companies' competitiveness in the context of a market based on fair competition, a market which can benefit all agents operating within it (producers, distributors, consumers) through synergies which demonstrate that antagonism is not inevitable, particularly when there is reciprocity in the various areas of activity and when consumers and users are aware of the added value it represents.

5.12.4 This initiative must also take specific account of agri-environmental issues, fair trade, responsible purchasing, food sovereignty and other topical issues, such as those relating to genetically modified organisms.

### 5.13 *Collective actions*

5.14 Collective actions for injunctions are regulated at Community level, although this does not currently include collective actions for compensation, for which the EESC has repeatedly advocated the establishment of a harmonised Community framework, to include the possibility of claiming so-called 'bagatelle' damages.

5.15 In the event of serious infringements, the confiscation of unlawful profits resulting from infringements and punitive damages should be provided for as measures to accompany the penalty handed down by authorities and, as the EESC has stated on various occasions, <sup>(7)</sup> the resulting amounts should be paid into a 'support fund for collective action' which would help consumers' associations to launch this kind of collective action for compensation. On the other hand, consumer organisations and authorities should also participate in managing this fund. To this end, the EESC <sup>(8)</sup> would remind the Commission of the need to adopt harmonised supranational legislation on collective actions, in order to ensure a high degree of protection for consumers' economic interests.

5.16 The Committee reiterates its call for an article to be included in the main body of the Regulation providing for greater cooperation between authorities and consumer associations, enabling the relevant national authority to make 'other bodies' responsible for stopping or prohibiting intra-Community infringements.

### 5.17 *Alternative dispute resolution mechanisms*

5.17.1 The Commission has published a consultation document on 'The use of Alternative Dispute Resolution as a means to resolve disputes related to commercial transactions

and practices in the EU', on which the EESC has not been consulted. The Committee therefore eagerly awaits the Commission's proposal in order to give its opinion once again on these complementary systems for access to effective legal protection.

5.17.2 In this regard, in order to increase consumer confidence, consideration should be given to the possibility of establishing a 'European label' for establishments and companies signing up to these systems.

### 5.18 *Resource networks and hubs*

5.18.1 Promoting European hubs through measures to develop the current cooperation networks to promote the information, training and education of consumers (e.g. European Consumer Centres, publications, programmes and projects).

5.19 **Price traceability.** In a single market in which consumers have common concerns and difficulties, and whose global nature can hinder access to reliable information and obscure the setting of product prices, a method for tracing prices of similar basic products should be established. This would make the single market more cohesive and transparent for consumers, thereby helping to restore consumer confidence, which is a crucial indicator of an area's economic health, that of the European Union in this case.

Brussels, 5 May 2011.

*The President*  
*of the European Economic and Social Committee*  
Staffan NILSSON

<sup>(7)</sup> OJ C 162 of 25.6.2008, p. 1 and OJ C 175 of 28.7.2009, p. 20.

<sup>(8)</sup> OJ C 324 of 30.12.2006, p. 1.

## APPENDIX

**to the Opinion of the European Economic and Social Committee**

- A) The following Section Opinion text was modified in favour of an amendment adopted by the assembly but obtained at least one-quarter of the votes cast (Rule 54(4) of the Rules of Procedure):

*'5.7 The EESC considers that further convergence and reinforcement of penalty systems is essential in order to prevent the risk of improper functioning of the Single Market. It therefore suggests that minimum common criteria be set to ensure a minimum approximation of national penalty systems, which would include:*

- appropriate types of administrative penalties for the breach of key provisions;*
- publication of penalties;*
- a sufficiently high level of administrative fines;*
- penalties for natural and legal persons;*
- criteria to be taken into account when applying penalties;*
- possible introduction of criminal penalties for the most serious breaches;*
- appropriate mechanisms supporting effective enforcement of penalties.'*

**Result of the vote on the amendment:**

Votes in favour: 82  
 Votes against: 44  
 Abstentions: 10

- B) The following amendments, which received at least one-quarter of the votes cast, were rejected in the course of the debate (Rule 54(3) of the Rules of Procedure):

**Point 5.11.2**

~~*'5.11.2 The consumer's right to full information regarding the goods on offer — the "social traceability of products" — is linked to both safeguarding competition and to enhancing the empowerment of consumers and the role they play on the market when freely choosing to purchase a particular product ("your purchase is your vote").'*~~

**Reason**

In practice it is unfeasible to put all the requested information on the product label, especially for SMEs. This will put an extra (administrative) burden on SMEs producing and distributing goods and services, create a competitive disadvantage and problems when importing products from third countries.

Moreover: do consumer organisations already have studies concerning the use of this information by consumers and the willingness of consumers to pay the extra costs encountered by the provision of this information?

**Result of the vote:**

Votes in favour: 45  
 Votes against: 75  
 Abstentions: 4

**Point 5.16**

~~*'5.16 The Committee reiterates its call for an article to be included in the main body of the Regulation providing for greater cooperation between authorities and consumer associations, enabling the relevant national authority to make "other bodies" responsible for stopping or prohibiting intra-Community infringements.'*~~

**Reason**

It is not acceptable that an organisation representing one party will be made responsible for stopping or prohibiting intra-Community infringements.

**Result of the vote:**

Votes in favour: 38  
 Votes against: 76  
 Abstentions: 8

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