

## Opinion of the European Economic and Social Committee on Consumer policy post-enlargement

(2005/C 221/24)

On 17 July 2003, the European Economic and Social Committee decided, under Rule 29(2) of the Rules of Procedure, to draw up an opinion on Consumer policy post enlargement.

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 8 September 2004. The rapporteur was Mr Pegado Liz.

At its 414th plenary session of 9 and 10 February 2005 (meeting of 10 February), the European Economic and Social Committee adopted the following opinion by 95 votes with 2 abstentions.

### 1. Introduction — Grounds

1.1 The enlargement of the EU, when ten new Member States will be joining the EU at the same time, does not just raise problems of a quantitative nature.

A global analysis of the impact of accession on the European Union's structure and the way it operates was one of the main concerns of the European Convention and is behind a whole series of initiatives set out in the draft constitution.

Enlargement also calls for a sectoral policy discussion about the impact on the various sectors which will be affected. <sup>(1)</sup>

1.2 As far as EU consumer policy and law in particular are concerned, however, until now there has not been any systematic, in-depth discussion about the qualitative consequences of enlargement, nor about the possible changes and adjustments entailed in adapting consumer policy and law to the new market of around 500 million consumers.

1.2.1 However, during the meeting promoted by the EESC in Thessaloniki on 14 and 15 March 2003, it was stressed that enlargement could involve major changes to the guidelines underlying consumer policy, with implications even for the Treaty and also for the concrete methods used to define new consumer protection measures in such a way as to apply them effectively with sufficient harmonisation throughout Europe where differences between Member States' domestic legislation will inevitably grow.

1.3 Indeed, this is a matter of a real 'qualitative leap' — a new way of defending, protecting and promoting consumers' interests, ensuring that consumers are consulted and involved, safeguarding their representation at all levels of political decision-making, in a new landscape with diverse characteristics, distinct consumer practices and habits, different cultural traditions, and different laws and codes of conduct.

<sup>(1)</sup> The EESC has had the opportunity to discuss all these issues in a series of opinions, of which the following should be highlighted:

- *The future of cohesion policy in the context of enlargement and the transition to a learning society* (CES 848/2002), for which the rapporteur was Mr Malosse, OJ C 241 of 7.10.2002.
- *Economic and social consequences of enlargement in the candidate countries*, for which the rapporteurs were Mr Dimitriadis and Mrs Belabed, OJ C 85 of 8.4.2003.
- *The impact of enlargement on EMU*, for which the rapporteur was Mr Vever, OJ C 61 of 14.3.2003.
- *The impact of the enlargement of the European Union on the single market*, for which the rapporteur was Mrs Belabed, OJ C 85 of 8.4.2003.
- *Transport/Enlargement*, for which the rapporteur was Mr Kielman, OJ C 61 of 14.3.2003.
- *Financial assistance for Pre-accession*, for which the rapporteur was Mr Walker, OJ C 61 of 14.3.2003.
- *EU enlargement: the challenge faced by candidate countries of fulfilling the economic criteria for accession*, for which the rapporteur was Mr Vever, OJ C 193 of 10.7.2001.
- *Eastward enlargement of the European Union and the forestry sector*, for which the rapporteur was Mr Kallio, OJ C 149 of 21.6.2002.

1.4 The aim of this own-initiative opinion was therefore to encourage as detailed discussion as possible about the effects of enlargement on consumer policy and consumer law, which could lead to proposals being put forward on consumer policy guidelines for the period after the new Member States' full integration, or possible changes to the Community *acquis* for protecting, defending and promoting consumers' interests and involving consumers, or even new legislative initiatives which might be considered necessary.

## 2. Method adopted and preparatory work

2.1 In order to prepare this opinion, it seemed necessary to obtain as clear an understanding as possible of the difficulties the new countries have encountered in implementing Community legislation.

2.2 To this end, two questionnaires were sent out to a variety of high profile speakers with responsibilities in this area, both from public administration bodies and from consumer organisations and certain professional bodies more directly involved in consumer relations. In addition, a hearing on this subject was held on 2 December 2003, attended by a large number of participants.

2.3 Based on the hearing's results and an analysis of the replies to the questionnaire, and taking into account the outcome of bilateral contacts pursued during the work, this opinion is able to provide a basis for conclusions and recommendations about possible changes to post-enlargement consumer policy guidelines.

## 3. A definition of 'representative consumer organisation' as a basis for the promotion of consumers' interests and consumer participation

3.1 It is generally agreed that the primary objective of any consumer policy in tune with the reality of life today in an enlarged single market must be increasingly to promote consumers as 'market partners' and therefore to foster and create the means and mechanisms that allow them to be involved in defining policy guidelines affecting them. <sup>(1)</sup>

3.2 While it is true that not only local, regional and national government organisations in the various Member States, but also the different departments of the various Community institutions and bodies, play an important role in achieving this objective, there is a general sense that it is up to consumers themselves to decide — of their own accord and as part of their right to establish and join associations and federations — how best to organise themselves so that their interests are defended and represented and so that they themselves are involved in debating and defining the policy guidelines which affect them at various political and legislative decision-making levels.

3.3 The fundamental principle in this area must therefore be full recognition of the capacity and autonomy of consumers to organise and manage themselves so that they can establish and join associations and federations at local, regional, national, Community and international level, thereby ensuring that their interests are properly represented and that they themselves are involved in all bodies where decisions affecting them are taken.

It is clearly up to the legislator, whether at national or Community level, to ensure that this requirement is met.

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<sup>(1)</sup> See point 14 of Council Resolution of 2 December 2002 on *Community consumer policy strategy 2002-2006* (OJ C 11 of 17. 1.2003, p. 1) which reads as follows: 'CALLS UPON THE COMMISSION AND THE MEMBER STATES: [...] 14. to support representative consumer organisations so that they can independently promote consumers' interests at Community as well as national level and enable them to exert influence, enter, for example, into a balanced dialogue with business and participate in Community policy making. The development of capacity-building projects in order to strengthen consumer organisations where appropriate as well as education tools on specific aspects of cross-border transactions would be key to this end'.

3.4 There have nonetheless been calls from many quarters calling for identical parameters to be defined at Community level to ensure that all consumer organisations respect, of their own accord, the fundamental principles of democratic organisation and methods, which in turn ensure that consumers in general are properly and independently represented.

3.4.1 A number of Community instruments already set out criteria defining the parameters for gauging the representativeness of consumer organisations and associations so that they can be compared across the EU <sup>(1)</sup>. These criteria were, however, considered to be insufficient.

3.4.2 To this end, the EU has also defined a number of criteria for recognising representative consumer organisations, such as those laid down in Directive 98/27/EC of 19 May 1998 on injunctions for the protection of consumers' interests <sup>(2)</sup>.

3.4.2.1 However, these criteria entail an 'administrative' decision by the Member States and cannot therefore be used as the basis for a uniform definition of what is meant by a representative consumer association or organisation, which is identical and comparable in the various Member States and throughout the area covered by the single market.

<sup>(1)</sup> See, in particular, Article 7 (2) and (3) of Decision No 20/2004/EC of 8 December 2003 establishing a general framework for financing Community actions in support of consumer policy for the years 2004 to 2007 (OJ L 5 of 9.1.2004, p. 1) which state the following:

2. The financial contributions for action 16 may be awarded to European consumer organisations which:

- (a) are non-governmental, non-profit making, independent of industry, commercial and business or other conflicting interests, and have as their primary objectives and activities the promotion and protection of the health, safety and economic interests of consumers in the Community;
- (b) have been mandated to represent the interests of consumers at Community level by national consumer organisations in at least half of the Member States that are representative, in accordance with national rules or practice, of consumers and are active at regional or national level, and
- (c) have provided to the Commission satisfactory accounts of their membership, internal rules and sources of funding.

3. The financial contributions for action 17 may be awarded to European consumer organisations which:

- (a) are non-governmental, non-profit-making, independent of industry, commercial and business or other conflicting interests, and have as their primary objectives and activities to represent consumer interests in the standardisation process at Community level, and
- (b) have been mandated in at least two thirds of the Member States to represent the interests of consumers at Community level:
  - by bodies representative, in accordance with national rules or practice, of national consumer organisations in the Member States, or
  - in the absence of such bodies, by national consumer organisations in the Member States that are representative, in accordance with national rules or practice, of consumers and are active at national level.

— (See too the EESC opinion on this by Mr Hernández Bataller (INT/180) of 17.7.2003, OJ C 234 of 30.9.2003.)

<sup>(2)</sup> See OJ L 166 p. 51 which reads as follows:

**'Article 3**

**Entities qualified to bring an action**

For the purposes of this Directive, a 'qualified entity' means any body or organisation which, being properly constituted according to the law of a Member State, has a legitimate interest in ensuring that the provisions referred to in Article 1 are complied with, in particular:

- (a) one or more independent public bodies, specifically responsible for protecting the interests referred to in Article 1, in Member States in which such bodies exist and/or
- (b) organisations whose purpose is to protect the interests referred to in Article 1, in accordance with the criteria laid down by their national law.'

Or its current 'codified version' which states the following:

**'Article 3**

**Entities qualified to bring an action**

For the purposes of this Directive, a "qualified entity" means any body or organisation which, being properly constituted according to the law of a Member State, has a legitimate interest in ensuring that the provisions referred to in Article 1 are complied with, in particular:

- (a) one or more independent public bodies, specifically responsible for protecting the interests referred to in Article 1, in Member States in which such bodies exist; and/or
- (b) organisations whose purpose is to protect the interests referred to in Article 1, in accordance with the criteria laid down by their national law.'

3.5 Several characteristics have been identified in an attempt to define a uniform concept of what 'representative consumer association' means, namely:

- (a) it must have legal personality and a right to bring an action before a court;
- (b) it must be non-profit making;
- (c) its main statutory objective must be to defend and represent the interests of consumers in general (general interest associations) or to protect and represent its members and consumers or users of specific goods and services (specific interest associations);
- (d) its governing bodies must have been freely elected through a secret ballot of all its members;
- (e) it must be financially autonomous; and
- (f) it must be independent vis-à-vis political and economic interests, business and business organisations (operating on the supply side of the market).

3.5.1 It has also been suggested that cooperative organisations, in particular consumer cooperatives, should be placed on the same footing as consumer associations <sup>(1)</sup>.

3.5.2 In addition, the possibility has been raised of requiring representative associations to be officially recognised by an authorised public body in the Member States; it has also been suggested, however, that support for consumer organisations should be based on their technical qualifications and on the results of their work and not solely on their accreditation by national authorities.

3.6 Owing to the delicate nature of this matter, the Committee, recognising it as being important, believes that the Commission should discuss it in depth and then publish its findings in a Communication.

3.7 In order to ensure that organisations representing consumers' general and specific interests properly exercise the consumer's right to representation at Community level in particular, a number of shortcomings or gaps in existing systems have also been identified.

3.7.1 One aspect warranting special mention is the training needs of managers and trainers in the aforementioned representative consumer associations and organisations <sup>(2)</sup>.

3.7.2 In addition to generic information programmes targeting consumers in general, consumer associations and organisations must also be given tailor-made, advance information which they can then pass on to their members or to consumers in general in their respective countries or regions.

3.7.3 Consumer associations themselves must be better represented in the various Community bodies, either directly or through their umbrella organisations. The EESC does, nonetheless, welcome the Commission's recent initiatives to restructure the Consumer Committee <sup>(3)</sup> and appoint a Consumer Liaison Officer within DG Competition <sup>(4)</sup> and hopes that this example will be followed in other policy areas affecting consumers <sup>(5)</sup>.

<sup>(1)</sup> On the importance of the cooperative sector, see the Commission Communication on the promotion of co-operative societies in Europe - COM(2004) 18 final of 23 February 2004 – which again puts forward the idea of a statute for European cooperative associations (Opinion by Mr Hoffelt).

<sup>(2)</sup> The EESC therefore welcomes the Commission's very recent initiative (DG SANCO) to ask BEUC to organise training courses on financial and human resources management, public relations and lobbying, and consumer law in the course of this year.

<sup>(3)</sup> Decision of 9 October 2003 on setting up a European Consumer Consultative Group (OJ L 258 of 10.10.2003).

<sup>(4)</sup> It was announced in December 2002 that this post would be created with a view to ensuring a permanent dialogue with European consumers; it was filled by Mr Juan Riviere y Marti on his appointment by Commissioner Mario Monti on 9 December 2003 (IP/03/1679 of 9.12.03).

<sup>(5)</sup> Of particular importance is the recent Commission Decision setting up Scientific Committees in the field of consumer safety, public health and the environment (OJ L 66 of 4.3.2004).

3.7.4 It would also be a good idea to start organising regular European consumer forums again, in order to step up and improve dialogue, information and cooperation between consumer organisations.

#### 4. Financing consumer organisations and associations

4.1 One of the main priorities for proper consumer representation is to ensure that representative bodies are properly financed, at both organisational and operational level <sup>(1)</sup>.

4.2 Regardless of the national arrangements in force in each country, a number of consumer representatives feel that only with significant Community support and incentives will representative consumer associations have the resources necessary to play their essential role of defending, promoting and representing consumers at regional, national, Community and international level <sup>(2)</sup>.

4.3 The general point has also been made that, because consumer associations rely on funding generated by members' subscriptions and their own initiatives, they can find it difficult on their own to avoid bankruptcy and thereby safeguard their autonomy and independence vis-à-vis political and economic interests <sup>(3)</sup>.

In order to safeguard these principles, any financial support received must, as a rule, be put towards action, programmes, projects and initiatives for training technical staff and providing consumer education and towards covering the cost of class actions for defending consumers' general interests, rather than funding the everyday management of these bodies.

4.4 The current Community support framework for consumer organisations and associations is laid down in Decision 20/2004/EC of 8 December 2003 establishing a general framework for financing Community actions in support of consumer policy for the years 2004 to 2007 <sup>(4)</sup>, which must be viewed in conjunction with the Review of the rolling programme of actions of the Consumer Policy Strategy 2002-2006 of 15 September 2003 <sup>(5)</sup>.

#### 5. Maximum harmonisation in line with the highest level of consumer protection

5.1 Article 153 clearly identifies the concept of minimum harmonisation and a high level of consumer protection as a fundamental principle of Community consumer policy <sup>(6)</sup>.

<sup>(1)</sup> 72 % of the respondents to the questionnaire said that consumer associations did receive state support, but deemed this to be inadequate.

<sup>(2)</sup> In August 2003, in a particularly timely statement, BEUC called on governments in the new Member States to provide consumer associations with adequate financial support and raised the possibility of using the PHARE programme to this end.

<sup>(3)</sup> 75 % of the respondents said that consumer protection associations did not benefit from tax relief.

<sup>(4)</sup> OJ L 5 of 9.1.2004, p. 1, cf. EESC Opinion - Rapporteur: Mr Hernández Bataller - OJ C 234 of 30.9.2003.

<sup>(5)</sup> SEC(2003) 1387 of 27.11.2003.

<sup>(6)</sup> See Article 153(1) and (5), the latter of which states that measures which support, supplement and monitor the policy pursued by the Member States, and which have been adopted by the Council in accordance with Article 251 and after consulting the Economic and Social Committee, 'shall not prevent any Member State from maintaining or introducing more stringent protective measures', providing such measures are of course compatible with the Treaty, in particular the subsidiarity and proportionality principles.

5.2 In keeping with this approach, which incidentally is not new <sup>(1)</sup> and has not been changed in the draft Constitution either, most of the consumer protection directives that have been adopted include a 'minimal clause', worded more or less as follows:

*This Directive shall not prevent Member States from adopting or maintaining provisions which are more favourable or more stringent as regards consumer protection in the field in question, without prejudice to their obligations under the Treaty* <sup>(2)</sup>.

5.3 However, it would seem, at least from the Green Paper on European Union Consumer Protection <sup>(3)</sup> and, more recently, the Communication from the Commission on Consumer Policy Strategy 2002-2006 <sup>(4)</sup>, that full harmonisation is now the preferred method of approximating legislation in areas affecting consumer protection.

5.3.1 This is the line taken, in particular, in the recently proposed Directives on credit for consumers <sup>(5)</sup> and unfair commercial practices <sup>(6)</sup>. Together with the excessive importance attached to the principle of mutual recognition <sup>(7)</sup>, this would seem to be a general, as opposed to a merely one-off, approach which is justified either by the nature of the issues concerned or by the need to complete key aspects of the internal market.

5.3.2 Whenever measures intended exclusively or primarily to ensure the smooth operation of the internal market are concerned, the EESC acknowledges the advantage of adopting legislation to ensure the highest possible degree of harmonisation of the rules governing legal transactions between companies or between companies and consumers. This is particularly important given that the EU will soon number 25 Member States.

5.3.2.1 To achieve this objective, the EESC therefore believes that, wherever possible, and taking into account the nature of the subject in hand, the EU needs to adopt regulations (or, to use the new nomenclature of the draft European Constitution, 'European laws' <sup>(8)</sup>) or otherwise directives (or 'European framework laws') which target full harmonisation, as this is the best way of safeguarding the certainty and security of secondary law.

5.3.3 The EESC nonetheless holds the view that the sine qua non of seeking such harmonisation is that consumer protection must be provided at the highest level in line with technological developments, scientific knowledge and the cultural models of the time.

5.4 In all other situations where the primary objective of promoting these interests is not to ensure the completion or smooth operation of the internal market but rather to secure consumer protection, the EESC believes that the best way of safeguarding these interests is to uphold the principle of minimum harmonisation. The idea would be to ensure a high level of protection while at the same time allowing the Member States to maintain or adopt more stringent consumer protection measures in accordance with the Treaty and in strict application of Article 153(5).

<sup>(1)</sup> The same provision was laid down in Article 129-A as amended by the Maastricht Treaty.

<sup>(2)</sup> Cf., for example, Directives 90/314/EEC (package holidays), Article 8; 94/47/EC (timeshare), Article 11; 93/13/EEC (unfair terms), Article 8; 97/7/EC (distance contracts), Article 14; 85/577/EEC (contracts negotiated away from business premises); 84/450/EEC (misleading advertising), Article 7; and 87/102/EEC (consumer credit), Article 15. We should mention here the important study carried out at the Commission's request by the Centre for Consumer Law and coordinated by Monique Goyens. The rapporteur of this opinion had the opportunity to take part in this study, along with eminent legal specialists such as Profs. Klaus Tonner, Lopez-Sanchez, Susanne Storm, Jérôme Frank, Alexandros Voutsas, William Fagan, Paolo Martinello, Andrée Colomer, A. Tavassy and Geraint Howells (SPC/02/93/CM, July 1994). The final report quite rightly drew a distinction between the various forms of harmonisation: minimum, complete, partial, full and optional.

<sup>(3)</sup> COM(2001) 531 final of 2.10.2001.

<sup>(4)</sup> COM(2002) 208 final of 7.5.2002.

<sup>(5)</sup> COM(2002) 443 final of 11.9.2002.

<sup>(6)</sup> COM(2003) 356 final of 18.6.2003.

<sup>(7)</sup> Incorporated into the Treaty when the Single European Act came into force.

<sup>(8)</sup> Cf. Article 32 of the draft Constitution.



5.5 With another ten countries joining the EU, the EESC recommends that the Commission review its recent approach of adopting a general preference for maximum harmonisation and instead confine this to situations relating to the completion or operation of the internal market. It also calls on the Commission always to ensure that, in such cases, consumer protection is guaranteed at the highest level in keeping with advances in scientific knowledge, technological developments and socio-cultural models in the area in question.

5.6 'Scientific knowledge' refers to the knowledge-basis for consumer policy decision makers. It includes the approved results of

- a) the theory of consumption
- b) empirical research of consumer behaviour and organisations development
- c) assessment of measures and projects programmed by the Commission etc.

Apparent deficits in the availability of a knowledge-basis should be eliminated by setting up a workable research capacity.

5.7 Wherever possible, and technical and legal developments permitting, the EESC also recommends using regulations (or 'European laws' under the new nomenclature), as this is the most appropriate instrument for effectively securing approximation of legislation and for ensuring legal certainty and security when applied to legal transactions <sup>(1)</sup>.

## 6. The subsidiarity, mutual recognition and precautionary principles — interpretation and application geared to consumer protection

6.1 A number of basic principles in the Treaty are also fundamental elements of secondary law and must always be invoked when defining the nature, essential attributes, suitability and scope of regulatory measures in the various sectors and when developing EU policies.

Consumer law is no exception.

6.2 The most important of these are the subsidiarity principle <sup>(2)</sup>, the principle of mutual recognition and the precautionary principle.

<sup>(1)</sup> Good examples of this include recent regulations on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Reg. (EC) No. 44/2001 of 22.12.2000); on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (Reg. (EC) No. 1348/2000 of 29.5.2000); on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (Reg. (EC) No. 1347/2000 of 29.5.2000); on insolvency proceedings (Reg. (EC) No. 1346/2000 of 29.5.2000); concerning sales promotions in the Internal Market (COM(2002) 585 final of 25.10.2002); on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2003) 443 final of 18.7.2003); on materials and articles intended to come into contact with food (COM(2003) 689 final of 17.11.2003).

<sup>(2)</sup> See Article 5(II) of the EC Treaty, which states the following:

*'In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.'*

There are, however, a number of differences in the wording of Article 9(3) of the draft Constitution, which ought to be examined in depth.

The draft Constitution reads as follows:

*'Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.'*

The most important contributions to the discussion about this principle are as follows:

*Subsidiarity: The challenge of change*, proceedings of the Jacques Delors Colloquium, published by the European Institute of Public Administration, Maastricht, 1991 (EIPA 11/04); *The principle of subsidiarity*, Jean-Louis Clergerie, Ellipses, 1997; the study, thought to be unpublished, by Prof. G. Vandersanden, *Considérations sur le principe de subsidiarité*, Jan. 1992; *Il principio di sussidiarietà nella prospettiva dell'attuazione del Trattato sull'Unione europea* by Gian Pietro Orsello, Rome, 1993; and the Mégret Commentary of the Treaty, Vol. 1, 2<sup>nd</sup> ed., Addendum, Ch. III, pp. 421 et seq.

6.3 Without going into an in-depth analysis of the scope of the subsidiarity principle as it applies to consumer protection legislation, when considered in conjunction with Article 153, its current wording gives rise to what some people have termed 'dual subsidiarity' <sup>(1)</sup>.

6.3.1 Indeed, in addition to the test of 'primary' or general subsidiarity set out in TEC Article 3b, the legislator wanted to subject the measures referred to in Article 153(3)(b) to an even more stringent test of 'secondary' subsidiarity. That is, even after they have passed the subsidiarity test, such Community measures will only be admissible if and insofar as they 'supplement' or 'support' Member States' initiatives in the areas mentioned.

6.3.2 In other words, the Member States must always have taken steps to either adopt or propose measures at national level before the Community can introduce measures to 'supplement' or 'support' such steps where it is appropriate to do so.

6.3.3 In short, the Community does not therefore have the power to take action even in the areas explicitly outlined above and even if, according to the subsidiarity principle laid down in Article 3b, such action is justified, unless it is supplementing or supporting specific measures taken by Member States.

6.4 It is therefore essential — in all circumstances and particularly when applying the subsidiarity principle — that consumers' representatives bring home to the Community institutions that their interpretation of this principle must not hold up the adoption of much-needed and appropriate consumer protection measures.

6.5 Likewise as regards the principle of mutual recognition <sup>(2)</sup> the Committee has already expressed its views in some depth in its November 2000 own-initiative opinion <sup>(3)</sup> following the key Commission Communication on *Mutual recognition in the context of the follow-up to the action plan for the single market* <sup>(4)</sup>.

6.6 In turn, the Commission has published programmes of measures for implementing the principle of mutual recognition in a number of specific sectors, in particular, decisions in criminal matters and in civil and commercial matters <sup>(5)</sup>.

6.7 As far as measures affecting consumers are concerned, there has been a growing trend towards extending such measures to other areas of legislation, particularly when full harmonisation is also being sought.

6.8 It must be pointed out that, while application of the principle of mutual recognition is in general warranted, there are areas where doing so means that consumers are subject to different Member States' laws. This generates confusion and is a major disincentive to cross-border trade <sup>(6)</sup>.

6.9 The EESC would therefore draw the Commission's attention to the need for the principle of mutual recognition to be applied with care and in such a way that is in tune with the reality of the sector concerned, whenever it is used to approximate legislation.

<sup>(1)</sup> It must, therefore, be stated that the Commission's initial interpretation, presented at the Edinburgh European Council of 11 and 12 December 1992 was that the study, in line with the aforementioned principle, would result in the withdrawal of an entire series of proposals in the pipeline and would put the revision of many others on hold.

<sup>(2)</sup> This principle was fully integrated into Article 100-b when the Single European Act came into force, definitively incorporating the *Cassis de Dijon* verdict.

<sup>(3)</sup> *Mutual Recognition in the Single Market* – Rapporteur: Mr Lagerholm, OJ C 116 of 20.4.2001

<sup>(4)</sup> COM(1999) 299 final of 16.6.1999

<sup>(5)</sup> OJ C 12 of 15.3.2001.

<sup>(6)</sup> This refers in particular to financial products sold through mail order.



6.10 On the other hand, the EESC feels that the precautionary principle, incorporated into Community law when the Maastricht Treaty came into force and only applies to environmental policy, must be considered as a legal principle common to all EU policies, in particular consumer protection policy. This would have significant practical consequences, particularly for systematic and objective risks assessment and in terms of reversing the burden of proof in favour of consumers as a general rule in civil liability law <sup>(1)</sup>.

## 7. A genuinely horizontal approach to consumer policy

7.1 As referred to above, the idea of a horizontal approach to, and the mainstreaming of, consumer policy was included in the EC Treaty when the Amsterdam Treaty came into force; it had already been mentioned in various Commission programming documents <sup>(2)</sup> and nowadays has gained considerable ground in the Commission's policy guidelines, in addition to warranting mention as a fundamental right in the draft Constitution <sup>(3)</sup>.

7.2 Indeed, the Commission's 'Consumer Policy Strategy 2002-2006' <sup>(4)</sup> states that: 'As well as specific consumer protection rules, consumers are also affected by other important EU policies such as the internal market, environment and sustainable development, transport, financial services, competition, agriculture, external trade and more. Consumer policy as such cannot be developed in isolation without taking into account other areas that have an impact on consumers. Systematic integration of consumer concerns into all relevant EU policy areas is essential' <sup>(5)</sup>.

7.3 In reality, however, this principle has not been put into practice systematically in the measures for implementing and developing the various Community policies, and neither has the above-mentioned strategy document attached priority to this objective, contrary to the proposals put forward by the EESC in its opinion on the Commission's Communication <sup>(6)</sup>.

7.4 It thus calls for transparent mechanisms to be devised and credible practices put in place to guarantee that consumers' interests are always taken into account and a high level of consumer protection ensured when measures are adopted in any area falling within the EU's sphere of responsibility <sup>(7)</sup>.

<sup>(1)</sup> Cf. EESC Opinion on the *Use of the precautionary principle* - Rapporteur: Mr Bedossa - OJ C 268 of 19.9.2000, p. 6.

<sup>(2)</sup> Cf. EEC's Preliminary Programme for a consumer protection and information policy of 14 April 1975, which states: 'All these [consumers] rights should be given greater substance by action under specific Community policies such as the economic, common agricultural, social, environment, transport and energy policies as well as by the approximation of laws, all of which affect the consumer's position' (OJ C 92 of 25.4.1975). The idea was subsequently to be developed in the Communication to the Council dated 4 July 1985 and entitled a 'New impetus', where, for the first time, it was quite rightly considered that, for the creation of the European Economic Community, the completion of the single market was a means and not an end (COM(85) 314 final). This led to the Council Resolution of 23.6.1986.

The European Parliament also, in its March 1992 Resolution on the *consumer protection and public health requirements to be taken into account in the completion of the internal market*, called on the Commission to take more and more account of consumer protection requirements in all policy areas (DOC. PE 152150).

However, it fell to the EESC, on the eve of the Amsterdam European Council, in its Opinion on the *Single market and consumer protection* (CES 1309/95 of 22 November 1995 - Rapporteur: Mr Ceballo Herrero OJ C 39 of 12.2.1996), to set out clearly a whole series of recommendations on the implementation of a horizontal approach to consumer policy and to call for a general reference to this to be enshrined in the revised Treaty.

<sup>(3)</sup> Art III-38 and Art-III-5.

<sup>(4)</sup> COM(2002) 208 final of 7.5.2002.

<sup>(5)</sup> Ibidem page 7.

<sup>(6)</sup> EESC Opinion 276/2003 of 26 February 2003 - Rapporteur: Mrs Ann Davison - OJ C 95 of 23.4.2003.

<sup>(7)</sup> In Opinion CES 1309/95 referred to previously, the EESC recommended in this connection that:

- consumer interests should be taken into account in all EU trade policy decisions, in accordance with objective and published criteria;
- the consultation of consumer organizations should be made mandatory under Treaty Articles 85 and 86 before exemptions are granted in respect of agreements between undertakings and before such agreements are authorized, above all in cases involving mergers, since both practices hinder the orderly operation of the market;
- directives should be adopted on unfair competition and unfair advertising and measures taken to avoid social and environmental dumping, also in the interests of consumers;
- the right to consumer safeguards against discriminatory or aggressive sales practices in this sector should be harmonized;
- cooperation policy should be strengthened in the field of safety standards approval and sanctions against dealing in products or services presenting health or safety hazards.' (Point 3.2.4)

7.5 To this end, the EESC suggests in particular that the Commission weigh up the need to boost the human and material resources of DG SANCO and redefine the way that its methods and procedures tie in with the other directorates-general.

7.5.1 The other Community institutions — from the Council to the European Parliament, Committee of the Regions and the EESC itself — should likewise rework their approach so as to do more to ensure that consumer protection is properly taken into consideration in all Community policies.

## 8. Simplification and codification of consumer law

8.1 Given the increasing proliferation and complexity of new legislation and regulations in the area of consumer law, it would be advisable — if not imperative — to continue to improve lawmaking and simplify legislation.

8.2 The Commission has expressed growing concern about these aspects of the Community legislative process <sup>(1)</sup>.

8.3 The Committee meanwhile has not only voiced the same concerns as the Commission <sup>(2)</sup>, but since 2000 has also made 'simplification' an ongoing focus of its Single Market Observatory.

8.4 The EESC therefore welcomes the inter-institutional agreement reached between the EP, the Council and the Commission in this area <sup>(3)</sup> and moreover refers back to the comments it made in the aforementioned opinions and, in particular, in its recently adopted opinion on the Commission's latest Communication on this subject <sup>(4)</sup>.

8.5 This subject is particularly important where consumer law is concerned, insofar as the latter primarily affects private individuals; particular attention must therefore be given to further simplifying consumer law so that it is easier to understand and apply <sup>(5)</sup>.

8.6 At the same time, efforts should be made to step up codification, as already begun by the Commission, albeit on a small scale where several directives are concerned.

8.7 Given that the term 'codification' has many possible meanings, there does not seem to be any value in drawing up an actual, dedicated European Consumer's Code <sup>(6)</sup>; instead, we should continue with the concerted approach to reworking Community law along the lines of major themes, harmonising the provisions enshrined in the various legislative initiatives and organising them according to subject area.

<sup>(1)</sup> Of particular significance since 1992 are its *Better lawmaking* documents, in particular the one for 2002 (COM(2002) 715 final of 11.12.2002) and its Communications of 5 December 2001 on *Simplifying and improving the regulatory environment* (COM(2001) 726 final, of 5 June 2002 on *European governance: Better lawmaking* (COM(2002) 275-278 final) and of 11 February 2003 on *Updating and simplifying the Community acquis* (COM(2003) 71 final) and, in particular, its recently published legislative and work programme for 2004 (COM(2003) 645 final of 29.10.2003) which makes the simplification and codification of Community legislation a priority for 2004 (Annex 5).

<sup>(2)</sup> Cf. the EESC Opinions for which the rapporteurs were Mr Vever (OJ C 14 of 16.1.2001), Mr Walker (OJ C 48 of 21.2.2002 and OJ C 125 of 27.5.2002), Mr Simpson (OJ C 133 of 6.6.2003) and Mr Retureau (INT 187 of 17 March 2004 – CESE 500/2004; OJ C 112 of 30.4.2004).

<sup>(3)</sup> OJ C 321 of 31.12.2003. Cf. the particularly important EP report of 25.9.2003 (A5-0313/2003) by Monica Frassoni MEP.

<sup>(4)</sup> COM(2003) 71 final for which the rapporteur was Mr Retureau (CESE 500/2004; OJ C 112 of 30.4.2004).

<sup>(5)</sup> When asked how much progress has been made in transposing the Community *acquis*, 65 % of the respondents to the questionnaire said that the reform of the legal framework has been fully completed, while 35 % said that the transposition process has not been completed.

<sup>(6)</sup> The idea of the 'codification' of Community consumer law and the various meanings of the term 'codification' were discussed at length at the Colloquium held in Lyon on 12 and 13 December 1997, the minutes of which were published by Bruylant (1998) under the title *Vers un Code Européen de la Consommation*. These were discussed again at the Colloquium held in Bologne-sur-Mer on 14 and 15 January 2000, the minutes of which were published by Documentation Française (Paris 2002). This subject was also discussed by various authors in the work by Dominique Fenouillet and Françoise Labarthe entitled *Faut-il recodifier le droit de la consommation?* (ECONOMICA, 2002).

8.8 One widely acknowledged way of reducing the legislative burden would be to make greater use of self- and co-regulation mechanisms.

8.8.1 Without wishing to anticipate the EESC opinion currently being drafted on this subject, the point can however already be made that, where consumer law in particular is concerned and in an as yet unconsolidated market where there is an acknowledged lack of information, it will only be possible to develop alternative self- and co-regulation systems where there is a legal framework with well-defined scope, parameters and criteria. The EESC has moreover already stated this in its opinion on unfair commercial practices <sup>(1)</sup>.

## 9. Consumer information and education

9.1 For a long time now, the EESC has been demonstrating the decisive role of proper consumer information and education in promoting, protecting and defending consumers' interests.

9.2 Where **consumer information** in particular is concerned, the EESC has pointed out that it is not enough to provide specific information about each service or product, however detailed such information may be; rather, there is a need for general information on consumers' rights which in turn must serve as a basis for tailor-made information on the goods and services concerned <sup>(2)</sup>.

9.3 Where **consumer education** is concerned, a recent EESC own-initiative opinion not only extolled the virtues of the '*educated consumer*', but also detailed the content and techniques of consumer education and the role of the various players (European Union, Member States, consumer associations, professionals, etc.) in education processes <sup>(3)</sup>.

9.4 In any moves to rework consumer policy — a necessary consequence of enlargement — consumer information and education should play an even greater role in ensuring that consumers' interests are promoted and protected effectively, while still leaving it up to the Member States and consumer associations to define the guidelines and criteria for bringing such information and education into line with the specific circumstances and features of each national, regional or local market.

9.4.1 It is not only schools, consumer associations, businesses, professionals, and Member States who have a role to play in this important task.

It is the responsibility of the European Union not only to coordinate initiatives, but also to encourage and promote measures designed to improve the quality of information and the level of education of consumers <sup>(4)</sup>.

9.4.2 Such measures must not be limited to providing adequate financial support, but must also include the development of joint information and education campaigns and programmes.

9.4.3 They should also include not only consumers but also professionals, providers of goods and services and even regulators and bodies responsible for implementing the law, with particular emphasis on members of the legal profession (judges, lawyers, public prosecutors, etc.).

<sup>(1)</sup> EESC Opinion 105/2004 for which the rapporteur was Mr Hernández Bataller (OJ C 108 of 30.4.2004).

<sup>(2)</sup> In this connection, see in general the EESC's opinions on the 'Single Market and Consumer Protection', for which the Rapporteur was Mr Ceballo Herrero (OJ C 39 of 12.2.1996) and on the 'Green Paper on European Union Consumer Protection' for which the Rapporteur was Ms Davison (OJ C 125 of 27.5.2002) and in particular the opinions on proposals for directives on misleading and comparative advertising, doorstep sales, consumer credit, package travel, unfair terms, time share, distance sales of goods in general and services in particular, producer responsibility, guarantees, electronic commerce, product safety and unfair commercial practices.

<sup>(3)</sup> EESC Opinion of 26 March 2003, for which the rapporteur was Mr Hernández Bataller (OJ C 133 of 6.6.2003). The Dutch Committee for Consumer Affairs' November 2000 report on this subject is also of interest in this connection.

<sup>(4)</sup> As stated by the Council in its Resolution of 9 June 1986 (OJ C 184 of 23.7.1986).

## 10. Administrative cooperation on the application of consumer protection laws

10.1 One fundamentally important element will be the outcome of the recent proposal for a regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2003) 443 final of 18.7.2003), on which the Committee has already issued an opinion <sup>(1)</sup>.

10.2 For the system for monitoring infringements of Community legislation to be ever more effective and for national implementation to guarantee effective application, the various limitations revealed in this proposal will have to be tackled.

An aspect worth altering immediately is the proposal's scope, which the EESC considered far too limited.

## 11. Some ideas for effectively and adequately protecting, defending and promoting consumers' interests in the enlarged single market

11.1 The EESC is well aware that no changes to legislation will produce immediate effects or instantaneous results. Therefore — in addition to its concern to stress the need to consolidate and promote proper application of existing laws — in this discussion on the various areas which could be dealt with in greater depth or improved upon, the EESC is also keen to emphasise the gradual, concerted nature of possible developments to pursue, so as not to upset the essential balance between the main interests concerned, but not forgetting that on most occasions consumers are at a disadvantage in the consumption process.

11.2 It is with this in mind that the EESC lists below a number of areas requiring thought, with a view to improving the current legislative framework governing legal transactions which directly affect consumers.

11.2.1 One such area concerns the **safety of services** for consumers, and, associated with this, the way that a **supplier's responsibility for defective services** is regulated.

11.2.2 In 1992, the proposal for a directive on this subject was shelved <sup>(2)</sup>. In response to a call from the Council and the Parliament to *'identify the needs, possibilities and priorities for Community action on the safety of services'* <sup>(3)</sup>, the Commission has decided to start up discussions on this issue again with its *Report of 6 June 2003* <sup>(4)</sup>, and more recently with its Proposal for a Directive on services in the internal market <sup>(5)</sup>; this decision has been greeted with renewed hope.

<sup>(1)</sup> Opinion, adopted on 28 January 2004 - Rapporteur: Mr Hernández Bataller (OJ C 108 of 30.4.2004). The Commission had already pointed to the need for better monitoring of the application of Community law in its Communication of 11 December 2002 (COM(2002) 725 final).

<sup>(2)</sup> At the Edinburgh Council meeting on 11 and 12 December 1992, it was decided to withdraw a whole series of proposed directives which were in the pipeline in order to apply the subsidiarity principle; this included the text in question. (SN/456/92 Appendix C to the Presidency's conclusions)

<sup>(3)</sup> Directive 2001/95/EC, Article 20.

<sup>(4)</sup> COM(2003) 313 final of 6.6.2003.

<sup>(5)</sup> COM(2004) 2 final of 13.1.2004. See EESC Opinion for which the rapporteurs were Mr Metzler and Mr Ehnmark. See also Council Resolution of 1 December 2003, published in OJ C 299 of 10.12.2003.

11.2.3 There is nevertheless concern that the Commission's approach to this matter, based on an erroneous interpretation of the subsidiarity and complementarity principles in relation to national policies, might mean that timely, effective measures are not taken <sup>(1)</sup>.

11.2.4 Another area where there is a major gap in Community legislation concerns the definition of the scope of **key services of general interest** and the standard principles which should govern them, in terms of the continuity and universal nature of services, price accessibility, right of access and freedom of choice, etc. <sup>(2)</sup>

11.2.4.1 Following on from its opinions on this subject <sup>(3)</sup>, the Committee feels that EU enlargement requires precise guidelines to be drawn up with a view to the privatisation of certain key public services and the identification — as a matter of urgency — of core services of general interest, which will have to include air and rail transport, electricity, gas and postal and telecommunications services. <sup>(4)</sup>

11.2.4.2 In the absence of quality indicators precise enough to allow a comparative assessment of these services, the Commission's promised communication on a method for the horizontal assessment of services of general interest is eagerly awaited. <sup>(5)</sup>

11.2.5 One other shortcoming noted to date concerns Community-wide standardization of the law applying to non-contractual obligations.

11.2.5.1 The Commission initiative to move forward with a proposal for a Regulation <sup>(6)</sup> on this subject therefore warrants special mention; together with the comments and suggestions made by the EESC in its opinion <sup>(7)</sup>, this proposal represents a key component of legislative harmonization throughout the enlarged EU in an area vital for securing adequate consumer protection.

11.3 As far as the **right to information** is concerned, in particular as regards foodstuffs <sup>(8)</sup>, in addition to the fact that the labelling should be made increasingly clear for consumers, other modern methods should likewise be used to improve consumer information (internet, free telephone lines, consumer support services, etc) without forgetting, wherever necessary and possible, a reference to the product's origin <sup>(9)</sup>.

<sup>(1)</sup> This comment is made without any intention of anticipating the EESC Opinion on this topic (CESE 137/2005).

<sup>(2)</sup> Cf. Green paper on *Services of General Interest* (COM(2003) 270 final of 21.5.2003) and the Commission Communication entitled '*Services of General Interest in Europe*' (COM(96) 443 final of 11.9.1996).

<sup>(3)</sup> Opinion CESE 1607/2003 of 10.12.2003 (OJ C 80 of 30.3.2004) - Rapporteur: Mr Hernández Bataller and Opinion CES 605/1997 of 29.5.1997 (OJ C 287 22.9.1997) - Rapporteur: Mr Van Dijk. Also see the EESC's sectoral opinions on certain key services, in particular Opinion CES 1269/1996 of 31.10.1996 (OJ C 66 of 3.3.1997) on energy and Opinion CES 229/2001 of 1.3.2001 (OJ C 139 of 11.5.2001) on electronic communications services - Rapporteur in both cases: Mr Hernández Bataller.

<sup>(4)</sup> In a recent decision in Portugal, telephone services were surprisingly not included as part of key public services (Law 5/2004 of 10.2.2004).

<sup>(5)</sup> This Communication appears in document COM(2004) 374 final of 22/7/2003 (Rome II).

<sup>(6)</sup> Regulation on *the law applicable to non-contractual obligations* (COM(2003) 427 final of 22.7.2003) ('Rome II').

<sup>(7)</sup> Opinion CESE 841/2004 - Rapporteur: Mr Von Fürstenwerth (OJ C 241 of 28.9.2004).

<sup>(8)</sup> European Parliament and Council Directive 2000/13/EC of 20 March 2000, OJ L 109 of 6.5.2000.

<sup>(9)</sup> The directive stipulates that identification of a product's origin is only mandatory when omitting it might mislead consumers; this gives rise to considerable doubt and from the point of view of legal certainty is not clear enough.

11.4 As regards **health protection and safety**, an increasingly effective operation of the RAPEX system <sup>(1)</sup> depends on the capacity of the Member States to respond. The EESC therefore reiterates that there is a need to invest in the quality of the system for monitoring the Community market through projects which help shape and develop Member States' market control mechanisms, particularly in the accession countries, providing back-up for both consumer representative bodies and the relevant public bodies <sup>(2)</sup>.

11.4.1 In turn, consumer organisations must provide reliable information on the safest goods and services and make public the results of inspections carried out at national level.

11.5 On the **protection of economic interests** of consumers, various aspects warrant attention and reworking:

11.5.1 As far as **producer liability** <sup>(3)</sup> is concerned, the current arrangements are out of balance, to the detriment of the consumer, as regards the burden of proof imposed on the consumer on the one hand, and the grounds for exemption from producer liability on the other.

11.5.1.1 There are thus solid grounds for continuing with the current work on Directive 85/374/CEE of 25 July along the lines recommended inter alia in the Green Paper on Liability for Defective Products <sup>(4)</sup>, which a succession of studies commissioned by the Commission have taken into account <sup>(5)</sup>.

11.5.2 Certain misgivings have been expressed about steps restricting consumer protection on **doorstep sales** <sup>(6)</sup> to express requests from consumers, because of the difficulty in supplying proof and because it is sometimes unclear what rules should apply. The EESC feels that this problem should be revisited so as to work out a basis for protecting the consumer against fraudulent behaviour, in addition to which the whole directive should be reviewed in the light of current unfair, aggressive practices and the Community texts referring thereto.

11.5.3 As regards **distance contracts** <sup>(7)</sup>, it would be important, as a matter of urgency, to reach a decision on placing the burden of proof on the supplier as regards compliance with requirements on the existence of prior information, written confirmation and consumer consent <sup>(8)</sup>. Moreover, it would be appropriate to analyse the suitability of information requirements in distance contracts covering new technologies.

<sup>(1)</sup> System for the rapid exchange of information.

<sup>(2)</sup> Along the same lines: EESC Opinion on the Proposal for a Directive of the European Parliament and of the Council on General Product Safety (OJ C 367 of 20.12.2000). When questioned about mechanisms to monitor the market, 65 % of respondents considered them to be adequate while 37 % considered them to be relatively ineffective.

<sup>(3)</sup> Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products amended by Directive 99/34/EC of the Parliament and the Council of 10 May 1999, which expanded the scope of the directive to include the electricity market.

<sup>(4)</sup> COM(1999) 396 final of 28.7.1999.

<sup>(5)</sup> Particular reference is made here to the Lovells Report (MARKT/2001/II/D), Contract N° ETD/2001/B5-3001/D/76; the present rapporteur was also involved in the preparation of the afore-mentioned report.

<sup>(6)</sup> Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, OJ L 372 of 31.12.1985.

<sup>(7)</sup> European Parliament and Council Directive 97/7/EC of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ L 144 of 4.6.1997.

<sup>(8)</sup> Ibidem Article 11, para 3a)



11.5.4 The EESC has concerns about the application of the **right of withdrawal**, deeming it to be important to standardise time-limits in the various legal texts concerned and to draw up clear rules for exercising this right, particularly as far as the distance marketing of financial services <sup>(1)</sup> and consumer credit <sup>(2)</sup> is concerned. The EESC feels it has to point out that there is a need to simplify these arrangements which are complex and lack transparency <sup>(3)</sup>.

11.5.5 On the protection of consumers against **unfair terms in consumer contracts** <sup>(4)</sup>, it would be valuable for the Commission to carry out a systematic, up-to-date survey of general contractual terms which have expressly been declared as unfair, either in Member States' domestic case-law, or in the case-law of the Court of Justice, with a view to passing this information on to consumer and professional organisations <sup>(5)</sup>.

11.5.5.1 On the other hand, since it has been recognised that the regulatory framework is outmoded, the EESC calls on the Commission to complete its review work quickly, in the wake of its Report on the implementation of the Directive <sup>(6)</sup> and the numerous meetings it has organised in this connection.

11.5.6 As for the matter of **consumer credit** <sup>(7)</sup>, the EESC has already had the opportunity to issue its views on the recent Commission proposal <sup>(8)</sup> on this subject; it feels it appropriate to reaffirm here the need to combat extortionate money-lending practices and to balance out the rights and obligations of consumers and credit providers. Disparities between national legislation in this sphere and the different levels of consumer protection — which could get worse when the new Member States join the EU — could damage confidence on the financial services market and create distortions in competition.

11.5.7 A matter which urgently needs to be dealt with at Community level, as underlined by the EESC on several occasions, is **household over-indebtedness**; this has been worsening recently and there are fears that it will spiral upwards with the likely rise in interest rates <sup>(9)</sup>.

11.5.8 The EESC also considers that it is vital to further develop legislation on the **security of electronic payments** <sup>(10)</sup>; it welcomes the Commission's recent initiative to launch a debate on the establishment of a single area for payments in the single market <sup>(11)</sup>.

<sup>(1)</sup> European Parliament and Council Directive 2002/65/EC of 23 September concerning the *distance marketing of consumer financial services* OJ L 271 of 9.10.2002.

<sup>(2)</sup> Proposal for a Directive of the European Parliament and of the Council on the *harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers* COM(2002) 443 final of 11.9.2002.

<sup>(3)</sup> 89 % of respondents said that this right was enshrined in law, but 30 % felt that these mechanisms were not properly applied.

<sup>(4)</sup> Directive 93/13/EEC of 5 April, OJ L 95 of 21.4.1993, p. 29.

<sup>(5)</sup> As far as is known, the CLAB database is no longer being updated and is difficult to access. 52 % of respondents deemed consumer protection against unfair clauses to be adequate, while only 19 % deemed it to be inadequate.

<sup>(6)</sup> COM(2000) 248 final of 6.7.2000; Cf. EESC Opinion - Rapporteur: Mr Ataíde Ferreira – OJ C 116 of 20.4.2001.

<sup>(7)</sup> Directive 87/102/EEC, OJ L 42 of 12.2.1987 and Directive 98/7/EC, OJ L 101 of 1.4.1998.

<sup>(8)</sup> EESC Opinion on the *Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers* of 17 July 2003 (OJ C 234 of 30.9.2004), where the EESC points out that it does not accept that the proposal should, like Directive 87/102/EEC, maintain that the development of the single market is still the main concern, and that consumer protection is only of importance in so far as it might encourage the free movement of credit supply, not constituting an end in itself but just a means to develop single market.

<sup>(9)</sup> To be highlighted in this connection are the still topical EESC Information Report and Own-initiative Opinion on this issue (24.4.2002 - Rapporteur: Mr Ataíde Ferreira, OJ C 149 of 21.6.2002) and the various meetings organised in this connection by the Commission and national organisations.

<sup>(10)</sup> Commission Recommendation 87/598/EEC on a *European Code of Conduct relating to electronic payment* (OJ L 365 of 24.12.1987) is not enough to protect consumers' interests in this area.

<sup>(11)</sup> Communication from the Commission to the Council and the European Parliament concerning a *New Legal Framework for Payments in the Internal Market* (COM(2003) 718 final); the EESC is to draft an opinion on this subject, for which the Rapporteur will be Mr Ravoet (30 June 2004).

11.5.8.1 However, a comprehensive approach to electronic trade is still lacking; such an approach is necessary to gain consumers' confidence, as was made clear at the conference held in Dublin on the occasion of the 2004 European Consumer Day.

11.5.8.1.1 In addition, work carried out to date to set up systems for accrediting professionals in this sphere has not even led to any self-regulation measures being adopted to enable consumers to identify reliable websites.

11.5.8.1.2 Thus, recent Commission initiatives to promote more secure internet use<sup>(1)</sup> and on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry are to be welcomed, despite their limitations<sup>(2)</sup>.

11.5.8.2 Moreover, there is no world-wide legal framework similar to the one introduced in the EU with the Brussels I Regulation, which is essential for the secure development of international electronic transactions; for this reason, a convention on matters pertaining to jurisdiction and the implementation of verdicts in matters civil and commercial is a key objective to pursue at the Hague conference.

11.5.9 One area of crucial importance is the standardisation of **contract law**, launched by the Commission and supported by the EESC<sup>(3)</sup>; this should be pursued and further developed, focusing on the standardisation of specific types of contracts which are of particular interest to consumers<sup>(4)</sup>.

11.5.10 The recently published Directive on certain aspects of the sale of consumer goods and associated guarantees<sup>(5)</sup> deals with aspects relating to guarantees involved in the sale of goods. The EESC's criticisms directed at that proposal, as set out in its opinion on the subject<sup>(6)</sup>, still hold true, especially as regards the links between commercial and legal guarantees, and the procedures for putting these into practice.

11.5.10.1 It will now be necessary not only to rethink the extension of the Directive's scope to cover after-sales services<sup>(7)</sup>, but in particular for the Commission to monitor closely how this is being transposed into Member States' legislation, because of the complexity of the arrangements and the fact that it will be difficult to tie these in with national laws.

11.5.11 One area where it was very much hoped that the Commission would adopt a position in the wake of the Green Paper on Consumer Protection<sup>(8)</sup> was, precisely, **unfair commercial practices**.

11.5.11.1 Nevertheless, in its opinion on this subject<sup>(9)</sup>, the EESC has already had the opportunity to express its disappointment and a certain apprehension as regards the path and guidelines set out in the Directive concerned.

<sup>(1)</sup> Cf. COM(2004) 91 final of 12.3.2004 and the EESC Opinion currently in the pipeline, for which the rapporteurs are Mr Retureau and Ms Davison.

<sup>(2)</sup> Cf. COM(2004) 341 final and EESC Opinion currently in the pipeline, for which the rapporteur is the same as for the present opinion.

<sup>(3)</sup> Cf. Commission Communication on *European Contract Law* (COM(2001) 398 final of 11.7.2001) and the relevant EESC Opinion – Rapporteur: Mr Retureau – OJ C 241 of 7.1.2002.

<sup>(4)</sup> Cf. EESC Own-initiative opinion currently being prepared on the *European insurance contract* (INT/202) – Rapporteur: the same as for the present opinion.

<sup>(5)</sup> Directive 1999/44/EC of 25.5.1999, OJ L 171 of 7.7.1999.

<sup>(6)</sup> EESC Opinion 743/94 of 1 June 1994 – Rapporteur: Mr J. Proumens (OJ C 295 of 22.10.1994)

<sup>(7)</sup> As provided for in the Commission's excellent *Green Paper* (COM(1993) 509 final of 15.11.1993); the Directive concerned did not adhere to the spirit of that Green Paper.

<sup>(8)</sup> COM(2001) 531 final; cf. EESC Opinion 344/2002 – Rapporteur: Mrs Davison – OJ C 125 of 27.5.2002.

<sup>(9)</sup> EESC Opinion of 28.1.2004 – Rapporteur: Mr Hernández Bataller (OJ C 108 of 30.4.2004).

11.5.11.2 This issue will therefore have to be monitored closely in the future, especially by consumers' representatives and in particular in the new Member States.

11.5.12 In the same vein, the EESC has already expressed its dissatisfaction regarding the draft regulation on **Sales Promotions** <sup>(1)</sup> and it reiterates here that it is apprehensive about the final form of this regulation and the way it will tie in with the proposal on unfair commercial practices, fearing that together these two instruments, instead of helping promote consumers' interests further, will in the end entail a step backwards from current consumer protection levels.

11.6 Lastly, as regards **access to justice**, the EESC deems it necessary to strengthen the protection of not only collective, general and similar individual interests <sup>(2)</sup> — by revising the Directive on injunctions for the protection of consumers' interests <sup>(3)</sup> as a matter of urgency, extending its scope so as to turn it into genuine 'class action' aimed at promoting damage compensation in addition to merely putting a stop to unlawful or unfair practices — but also the legitimate interests of individual consumers in a conflict situation, especially as regards access to speedy justice, ideally free of charge <sup>(4)</sup>. In this connection the EESC would reiterate that it advocates the use of not only alternative means of conflict settlement (alternative dispute resolution — ADR) <sup>(5)</sup>, but also arbitration procedures, and considers it to be a matter of priority importance to give national authorities operational and technical support for setting up and implementing ADR and arbitration procedures in the various Member States <sup>(6)</sup>.

11.6.1 The EESC also advocates adopting binding legislation which, without prejudice to the subsidiarity and proportionality principles, secures the objectives set out by the Commission in its Recommendations on this matter <sup>(7)</sup>. These concern in particular the principles of consumer freedom and of the impartiality and transparency of the process, making binding rules out of what are at present mere recommendations which have not been effectively applied in practice on a widespread basis.

11.7 In this connection, the EESC welcomes the Commission's recent initiatives in judicial cooperation; it would highlight the recent regulations on insolvency proceedings <sup>(8)</sup> and the law applicable to court jurisdiction (Brussels Convention) <sup>(9)</sup>, as well as the proposed Regulation on the law applicable to non-contractual obligations (Rome II) <sup>(10)</sup>, the Green Paper on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument (Rome I) <sup>(11)</sup>, and the Regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters <sup>(12)</sup>. It urges the Commission to continue steps to set up a single judicial area as a keystone of structural support for completion of the single market, increasingly important in an enlarged EU.

<sup>(1)</sup> In its Opinion (OJ C 221 of 17.9.2002) – Rapporteur: Mr Dimitriadis – on the Commission's proposal for a regulation on this subject (COM(2001) 546 final of 2.10.2001).

<sup>(2)</sup> 71 % of respondents said there were mechanisms to enable consumers to gain access to justice, while only 29 % said there were no specific mechanisms for doing so; when asked how effective they were, 58 % deemed them to be adequate, while 35 % deemed them to be relatively ineffective.

<sup>(3)</sup> Directive 98/27/EC of 19 May 1998 (OJ L 166 of 11.6.1998) now in a codified version (COM(2003) 241 final of 12.5.2003).

<sup>(4)</sup> When asked if there were rules exempting consumer associations from legal costs, 73 % of respondents said there were no such rules.

<sup>(5)</sup> EESC Opinion on the *Green Paper on alternative dispute resolution in civil and commercial law* (COM(2002) 196 of 19.4.2002) – Rapporteur: Mr Malosse – OJ C 85 of 8.4.2003. In follow-up to this, the EESC is awaiting publication of the report on the operation of the EEJ-NET (European Extra-Judicial Network); however it would point out here and now the need to make this more operational.

<sup>(6)</sup> 78 % of respondents said there were alternative means of dispute resolution, while only 33 % said there were none.

<sup>(7)</sup> Recommendation 98/257/EC of 30 May 1998 on the *principles applicable to the bodies responsible for out-of-court settlement of consumer disputes*, OJ L 115 of 17.4.1998 and Recommendation 2001/310/EC of 4 April 2001, OJ L 109 of 19.4.2001.

<sup>(8)</sup> Council document 9179/99 and Corr 1-99/00806; the Rapporteur of the EESC Opinion on the subject was Mr Ravoet (OJ C 75 of 15.3.2000); these Council documents have now become Council Regulation (OJ L 160 of 30.6.2000, p. 1).

<sup>(9)</sup> Regulation 44/2001/EC (OJ L 12 of 16.1.2001).

<sup>(10)</sup> COM(2003) 427 final of 22.7.2003.

<sup>(11)</sup> COM(2002) 654 final; the Rapporteur for the EESC Opinion on this subject was the author of the present opinion (Opinion CESE 88/2004 in OJ C 108 of 30.4.2004).

<sup>(12)</sup> COM(2001) 705 final of 22.11.2001; the Rapporteur for the EESC Opinion on this subject was Mr Ataíde Ferreira (OJ C 36 of 8.2.2002).

## 12. Conclusions

12.1 Promoting, protecting and defending consumers' interests and involving consumers must be an ongoing objective of all EU policies, as a genuine right of European citizens.

12.2 Now that the EU has ten new Member States, in most of which consumer protection is a relatively new issue, consumer policy as a whole must be rethought so as to bring it into line with the new reality of a market of around 500 million consumers.

12.3 The EU and its institutions play a key role in identifying priorities for re-defining the legal and institutional framework and the programmes and actions essential to ensuring an effective consumer policy that safeguards and meets these objectives.

12.4 With this own-initiative opinion, the EESC — in its capacity as a relay for the concerns of civil society — wishes to play a part in defining such a policy, making a particular effort to involve representatives from the new Member States.

12.5 The EESC is of the view that the immediate priorities for consumer policy must be to:

- consolidate the Community *acquis* through simplification and codification;
- effectively apply laws that have been passed and properly transposed into national law, and closely monitor compliance with these laws;
- implement the framework-directive on unfair commercial practices;
- take urgent steps to improve consumer information and education;
- consider fully mainstreaming consumer policy into other policies, at both national and Community level;
- support consumer organisations in order to undertake product analyses and to exchange information on their quality.

12.6 The EESC considers that strong and independent consumer organisations provide the basis for an effective policy for defending and promoting consumers' interests and involving consumers.

12.7 To this end, the EESC is of the view that it is essential to ensure that consumer organisations are properly financed so that they can develop actions, programmes, projects and initiatives.

12.8 The EESC believes that a key way to make consumer policy more effective is to define criteria for gauging representativeness and the involvement of consumer organisations.

12.9 The EESC considers that — without losing sight of the need to maintain a balance between the interests in question — new legislative initiatives should gradually be introduced, particularly in the following areas:

- safety of services and responsibility for supplying defective services;
- key services of general interest;
- health protection and safety;
- greater security for electronic payments and internet use;
- household over-indebtedness;
- means of payment;
- contract law;
- access to justice and a single judicial area.

12.10 The EESC also believes that existing Community legislation must be reviewed and harmonised to bring it into line with the new enlarged single market, with particular emphasis on the following areas:

- producer liability;
- doorstep sales, distance selling, e-commerce and sales promotions;
- unfair terms in consumer contracts;
- consumer credit;
- guarantees involved in the sale of goods and services.

12.11 The EESC recalls its proposal to set up a European Research Institute for Consumer Protection as a provider of the knowledge-basis for consumer policy <sup>(1)</sup>.

12.12 The EESC calls on Member States to make the protection, defence and promotion of consumers' interests and the involvement of consumers a priority in all their policies.

12.13 The EESC recommends that the Commission take account of the proposals and suggestions put forward in this opinion when defining the new consumer policy guidelines and periodically to issue reports on the situation of consumption and consumers in Europe.

Brussels, 10 February 2005.

The President  
of the European Economic and Social  
Committee  
Anne-Marie SIGMUND

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<sup>(1)</sup> Opinion 'Strategy of Consumer Policy 2002-2006' (26.2.2003, OJ C 95 of 23.4.2003, Rapporteur: Ms Ann Davison); Opinion 'Financial Framework for Consumer Policy 2004-2007' (17.7.2003, OJ C 234 of 30.9.2003, Rapporteur: Mr Hernández Bataller)

## APPENDIX

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

The following proposal for amendment was rejected, but received at least a quarter of the votes cast.

**Point 12.5**

Add the following to the list of priorities:

- ‘— in the event of difficulties protecting the rights of a consumer outside his own country, make it possible for him to resolve such difficulties in the language of his home country, using the consumer ombudsman of his home Member State as an intermediary.’

**Reason**

It is currently difficult for consumers to assert their rights in countries of the EU other than their own, due to the language barrier and ignorance of procedural obstacles — for example, if a Latvian consumer has his rights violated in the Netherlands, or vice-versa.

**Outcome of the vote:**

For: 3

Against: 3

Abstentions: 3.

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