

**Submission by the European Consumer Centre Dublin (ECC) to the
Communication of the Commission to the European Parliament and Council
“A more coherent European Contract Law: An Action Plan”**

03/06/03

Introduction:

The European Consumer Centre Dublin (ECC) is part of a European wide network of centres (or Euroguichets) which provide free legal advice and information on European Consumer legislation and assist consumers in the resolution of cross - border consumer disputes.

The ECC Dublin welcomes the opportunity to present a submission to the Commission's Action Plan on “A more coherent European Contract Law”. It had not enough time however to make a more detailed submission due to the short notice given.

The Commission's consultation with stakeholders such as the ECC Dublin is welcomed as the network has first hand knowledge of the difficulties consumers experience in cross-border transactions. The ECC Dublin agrees with the findings on problems related to the uniform application of community law and the implications for the Internal market.

This paper will assess the suggested approach of a mix of non-regulatory and regulatory measures, the quality and consistency of the EC Acquis in the area of contract law, the promotion of EU-wide standard contract terms and finally the desirability of a non sector – specific optional instrument in the area of contract law.

1. Suggested approach of a mix of non-regulatory and regulatory measures

The suggested approach of a mix of regulatory and non-regulatory measures to be taken is not shared in its entirety by the ECC Dublin.

a. Regulatory

Consumer protection is by definition mandatory and only if it remains that way would consumer protection be ensured.

It is unacceptable to leave consumer protection up to the market as there is no guarantee that the market's priority would be to offer the same protection that regulation grants consumers.

b. Non – regulatory

In relation to non-regulatory measures, the ECC Dublin is critical of their benefits for consumers. In the context of self-regulation for instance, it was recently brought to the ECC network's attention that the Commission was considering endorsing an association representing the Timeshare/Holiday Club industry. On closer examination of the various codes of ethics by the network the codes were found to be highly flawed, not guaranteeing

consumer protection as alleged by the association in question and accordingly the Commission is reconsidering the issue. This is only one example but it suggests that self-regulation would not be enough to guarantee consumer protection.

Among all the measures suggested in this context, the ECC Dublin would however welcome the suggestion to solve some of the existing problems by increasing consumer awareness through information campaigns. This task is already carried out by the ECC Network which would obviously benefit from an increased role that would facilitate reaching more consumers. The ECC Dublin looks forward to an increased role in this regard.

Another project closely linked to the ECC project is the European Extrajudicial Network (or EEJ-Net) which provides information and assistance to consumers about Alternative Dispute Resolution (ADR) solutions to their consumer disputes. This network would also look forward to an increased role in the information campaigns envisaged by the Commission.

The ECC would welcome clarification from the Commission in the follow up to this Action Plan as to which problems the Commission anticipates this mixture of regulatory and non-regulatory approach would solve or otherwise to express a more detailed opinion in relation to this option.

2. High quality and consistency of the EC Acquis in the area of contract law

a. Objective

The ECC Dublin welcomes the Commission's objective to tackle the "coherence, consistency, quality, effectiveness and simplicity of the existing and future Acquis and to involve civil society in the EU decision-making process". In this context the Interactive Policy Making Project (IPM), closely linked to the ECC network, is instrumental in transmitting the real issues consumers have to the policy makers to enable them to inform the legislative making process accordingly.

In relation to the good drafting of legislation, several projects already aim at promoting the use of clear language, such as the SLIM initiative, all welcomed by the ECC Dublin. The use of clear language understandable by all, not only lawyers (when we agree on a unique interpretation!), should be a priority as legislation is created for citizens and not for lawyers. Consumers should be able to understand what the legislation states. Otherwise they will not have confidence in the Union or in the benefit of the Union and will not contribute to the Internal Market.

It is noted that Consumer Policy Strategy 2002-2005 already endeavours "to review existing legislation, remove inconsistencies, fill gaps and simplify legislation". However this problem needs to be addressed without further delay and not only by the Commission but by all institutions involved in the legislative-making process. There is no point in having different agreements in relation to the matter if they are not implemented quickly and efficiently. Legislation needs to be user-friendly. Otherwise citizens will not place their trust in it.

b. Method

To ensure consistency the suggested measures such as consolidation, codification and recasting need to be carefully assessed.

The ECC Dublin considers that:

- a. consolidation would be a waste of time as the end product will not be a binding text and it would only create confusion as to the exact piece of legislation applicable in each case.
- b. codification is a welcomed option but would create more difficulties for the interpretation of the legislation than recasting.
- c. recasting would be the preferred option as it would create more certainty as to the correct piece of legislation applicable and would allow the legislator to dispose of superseded pieces of legislation that only hinder the correct application of the legislation.

It is welcomed that the Commission endeavours to apply these principles both to the existing and future *Acquis*.

The task should be undertaken without delay.

c. Sectoral harmonization

In addition to the above measures, sectoral harmonization, only when particular need for harmonization is identified, will continue to be needed to ensure that consumers are confident in the Internal Market and accordingly the Internal market objectives are met.

Domestic legislation should however be considered before embarking in more harmonization to avoid legislating for matters which are already well legislated for in domestic legislation.

In this context the ECC Dublin would call for minimum harmonization of the highest possible standard rather than maximum harmonization of a lower standard to allow each Member State to legislate in light of its own traditions and needs. Member States which may require amendments to their consumer legislation to deal with new consumer related problems should not have to wait for European legislation which traditionally takes longer to be passed into law and implemented.

3. Elaboration of EU-wide standard contract terms

The promotion of EU-wide standard contract terms is not a welcomed proposition for the ECC as it would only be useful for retailers and not for consumers who in the majority of cases have no bargaining power whatsoever but are presented with standard format contracts.

4. Non-specific measures such as an optional instrument in the area of European Contract Law

The suggested creation of an optional instrument providing the parties to a contract with a body of rules parallel to domestic contract law adapted to cross-border contracts is not favoured by the ECC Dublin.

For consumer contracts the proposition that contractual freedom is the most favorable option is objectionable as it would defeat the purpose of consumer protection to leave it up to the party with the bargaining power (the retailer) to set up the terms and conditions.

This proposition seems to be totally pro-retailer and not advisable in the context of consumer protection. Consumers need to be protected by legislation as such protection can not be left to the good will of retailers only.

In light of the above the proposal that only a small number of rules (aiming at protecting the consumer) should be mandatory is totally unacceptable for the ECC Dublin as it seems to imply that these rules would take precedence over the existing mandatory domestic consumer protection legislation. This solution does not guarantee enough protection for the consumer.

Furthermore many instruments of private international law, such as SISG, with similar objectives, already exist which have not been proven to be efficient for the consumer's interest as Member States are free to adhere to them or otherwise.

The ECC Dublin would suggest that a much better solution would be to improve existing EU legislation. There is no point in creating another legislative instrument, wait for a long time until the terms are agreed and then find out that not all Member States are prepared to sign the Treaty. This would defeat the purpose of the whole exercise.

Conclusion:

The ECC agrees with the Commission that urgent action is needed to ensure that the Internal Market objectives are achieved while guaranteeing consumer protection at the same time.

The ECC can not stress enough the importance of good drafting and consistency both in existing and future legislation and welcomes efforts to resolve the issues raised by stakeholders. This should be the basis of the Commission drive to resolve existing problems.

More sectoral legislation is certainly needed. Maximum harmonization represents a risk for consumers as the agreed content of a maximum harmonization legislation may fall short of an acceptable level of consumer protection legislation. In this context a high level of minimum harmonization should be guaranteed to allow individual Member States to grant better protection if required.

However the ECC disagrees with some of the options suggested such as the use of self-regulation, EU wide standard terms and the creation of a new non – sector specific instruments as they do not guarantee enough protection for consumers.

The ECC Dublin would like to take this opportunity to ask the Commission to clarify where these proposals stand in relation to the Fairness Directive and the Commission's drive towards maximum harmonization. Clarification would be welcome to progress this interesting discussion further.

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