



Consumer Voice

Newsletter on food safety, health and consumer policy
from the European Commission's Health and Consumer Protection DG

February 2003, Edition 2/03



◀ David Byrne,
Commissioner for
Health and Consumer Protection

Aiming for more coherent European contract law

Unleashing the full potential of the Internal Market

I am very pleased that our Action Plan on European Contract Law has been published. Differences in contract law across the EU need to be addressed if we are to unleash the full potential of the Internal Market.

We want to do this as well and comprehensively as possible. The Action Plan sets out the way we see the project evolving.

Our intention is to maintain the consultative nature of the process, involving all EU institutions, the Member States and stakeholders, in particular consumer groups, business and legal practitioners.

In this edition, we also introduce our plans for the first year of implementation of the new public health programme and extend an invitation, to bodies active in the field of health, to come to Luxembourg in March and find out exactly how to submit a proposal.

In this defining year of the programme, I look forward to seeing solid foundations laid for the Europe of Health that I hope for.

The Commission has given the green light to an Action Plan that opens the way for a more coherent body of contract law in Europe. One of the primary aims is to remedy identified inconsistencies in contract law and to ensure the smooth functioning of the internal market.

The measures proposed in the Action Plan respond to a wide consultation process initiated by Commissioners David Byrne, António Vitorino, Frits Bolkestein and Erkki Liikanen in a Commission Communication of July 2001. The process revealed a number of problems that result from differences between national contract laws in the Member States leading to the non-uniform application of European contract law and obstacles for the internal market.

Some EU rules, such as the Package Travel Directive and the Timeshare Directive, already harmonise specific aspects of the contract laws of the Member States. However, more needs to be done to make the interaction between EU law and national laws coherent on an EU-wide basis.

One of the problems identified, is the use of abstract terms that are defined in some Directives and not in others. For example the term "damage" is defined in the Product Liability Directive but not in either the Commercial Agents Directive or the Package Travel Directive. The Action Plan sets out a strategy to overcome these problems. It suggests the way forward could be a problem solving mix of regulatory and non-regulatory measures.



IN THIS EDITION

Aiming for more coherent European contract law	1-3
Launch of the new Public Health Programme	3-4
EU and Chile reach agreement on trade in food	4

CEE: XXIV/14

■ Abstract terms can cause problems

In one specific case before the European Court of Justice (ECJ) – Simone Leitner/TUI Deutschland GmbH & Co KG – the ECJ interpreted the general term “damage” only in the light of the Package Travel Directive, without taking account of the definition in the other Directives.

While this decision cannot be generalised, such an interpretation could lead to fragmentation of national legislation. To avoid such fragmentation, clear definition of these abstract terms is seen to be essential.

■ Contract clauses can have different effects cross-border

In a number of Member States, for example UK and Germany, companies often conduct business on the basis that the buyer only owns the goods when they have been paid for – known as a “reservation of title” clause in the contract – guaranteeing payment to the seller.

However, some reservation of title clauses cannot be enforced if the goods cross into a different Member State where a company could find their guarantee of payment has vanished.

The measures proposed

A first priority would be to increase the coherence of the European body of law in the area of contract law, through the improvement of the current and future acquis, and by creating and using where appropriate, a Common Frame of Reference.

The measures would promote the widespread use of EU-wide general contract terms. Standard contract terms can be used in straightforward cases. However, most of these were formulated in one or other of the Member States and do not necessarily have application across borders. However, these standard contracts are demonstrably useful and could be adapted for cross border use.

A discussion would be launched to see what kind of potential there is for non-sector specific problem-solving solutions to current problems, such as an optional instrument in the area of European contract law.

The strategic approach

At the heart of the proposal is a mid-term project to research and identify common rules and definitions in the area of European contract law leading up to development of a Common Frame of Reference (CFR). The project will be funded through the Sixth Framework Programme.

The CFR is expected to contain common rules on the conclusion, validity and interpretation of contracts as well as performance, non-performance, remedies and rules on credit securities, on moveable goods and the law of unjust enrichment. It will also clarify the meaning of basic concepts such as “contract” or “damage”.

Researchers will draw on the full body of EU law in this field as well as national Member State legal systems and case law in order to find the common denominators and best solutions.

Case law is important for the CFR, especially that of the highest national courts. It will help to assess which national rules were able to solve practical problems in an efficient and satisfactory manner. The experience of contractual practice will also make a valuable contribution to make sure the provisions of the CFR meet the actual demands of economic operators and stakeholders.

The Commission intends to use the common frame of reference, where appropriate, when reviewing existing EU law or making new legislative proposals.

Flexibility could boost cross-border trade

As well as providing a tool for improving existing European contract law and ensuring consistency of future measures, the content of the CFR will be used as the basis for further reflection on a possible “optional instrument” in the field of European contract law.

The Commission considers that contractual freedom should be one of the guiding principles of such a contract law instrument but that restrictions should only be applied where they can be justified, for example for reasons of consumer protection.

Nevertheless, the Action Plan suggests that an optional instrument could provide the kind of rules that are particularly adapted to contracts in the internal market. Such an instrument would be particularly beneficial to cross-border trade for small and medium sized businesses and individual consumers.

An optional instrument would mean that parties would not need to cover every detail in contracts specifically drafted or negotiated for this purpose. Instead they could simply refer to the optional instrument as the applicable law. It would exist in parallel with, rather than instead of, national contract laws

What needs to be thought through before forming such an instrument is the scope of it. Would it extend to consumer contracts? What kind of legal form should it take? Could it be a set of EU-wide rules in the form of a regulation or recommendation?

The answers to these questions need to come from participants to the debate as implementation of the Action Plan involves consultation on an ongoing basis. However, the deadline is set for 16 May 2003 for comments on the plan itself. The Commission is looking forward to hearing what businesses, consumer groups, legal practitioners, Member States and other stakeholders have to say about it.

For more details on European contract law, go to: http://europa.eu.int/comm/consumers/policy/developments/contract_law/index_en.html

Launch of the new Public Health Programme

Gearing up to implement the new Public Health Programme, the Commission is expected to adopt a work programme for 2003 at the beginning of March and has launched a "call" inviting proposals for actions to implement it. Priorities defined in the work plan for 2003 concentrate on those actions that will create solid foundations for the overall ambitions of the six-year programme to run from 2003 to 2008.

As a complementary measure, to encourage and help anyone interested in applying for funding to gain a full understanding of the requirements and conditions, an information day will be held on the 21 March in Luxembourg. The objectives of the programme will be outlined, giving an overview of the full programme and introducing the priority areas for action that are to be the focus of the first wave of projects.

During the day, participants will be taken through the financial details and on how to apply for funding of projects. Participants will also be informed on the legal procedures that must be completed. A good proportion of time is allocated for discussions and for questions and answer sessions.

Seeking a wide response to the call for proposals

The Commission is seeking a wide response to the call from bodies active in the field of public health. Projects can also be submitted by international and intergovernmental public organisations. All of those interested in responding to the call are welcome to attend the information day.

In addition to the Member States of the EU and the 12 applicant countries who will participate in the public health programme in 2003, the call is also open to participation from the EFTA-EEA countries (Iceland, Liechtenstein and Norway). Organisations from any of these countries can submit a project as the main contractor or act as a partner in any project.

Although project proposals are invited for all aspects of the programme, priority will be given this year to funding actions that fall within the scope of the work plan 2003. Proposals should avoid duplication of work already done in the former eight public health programmes that are replaced by the new programme. However, where appropriate, projects could aim to build on work already underway at EU level.

The objectives of the Public Health Programme 2003-2008

Health information

Improving information and knowledge for the development of public health.

Health threats

Enhancing the capability of responding rapidly and in a co-ordinated fashion to health threats.

Health determinants

Promoting health and prevent disease through addressing health determinants across all policies and activities.

Cross cutting themes to reflect the integrated approach

Ensuring a high level of human health protection in the definition and implementation of all Community policies and activities, through the promotion of an integrated and inter-sectoral health strategy.

This work would be developed in connection with other activities to meet health challenges such as assessing the impact of enlargement on health or on how to develop the health community.

Tackling inequalities in health

Encouraging co-operation between Member States in the areas covered by Article 152 of the Treaty.

■ Calls restricted to not-for-profit applications

Commercial companies cannot take part in calls for proposals unless they can demonstrate that the objective of the project is non-commercial and absolutely non-profit making. Neither can an agent submit an application for a third party. All submissions must be accompanied by documentation showing that the person or organisation applying is working within the requirements of law and has no outstanding debt or offence concerning their professional conduct.

■ Financial rules

At least 20% of the project costs must be funded by sources other than the Public Health Programme. In principle, up to 80% of the eligible costs for the project could be considered, however, this figure is the maximum, not the normal indication for all projects. The Commission will decide the maximum percentage to be awarded in each case.

What proposals should aim for

All project proposals should work toward the protection of human health, the improvement of public health and contribute to achieving one or more of the objectives. In particular, it is important they should have an element of European added value in that they would be carried out in a large number of EU Member States as well as applicant and EFTA/EEA countries.

It is also desirable they should be large scale in content and geographical coverage. Projects offering a multiannual and multidisciplinary type of activity, covering the issue in a broad way would be favoured. Projects could for example involve a number of partners from different countries, span several years and cover a wide range of issues. All projects should give full attention to evaluation of the process and results.

Within the work plan for 2003, priorities are focussed on three types of action. The projects to be funded will look at how they can improve the quality and transparency of health information, how they would improve on current abilities to respond rapidly to health threats and how they would tackle health determinants – the underlying causes of disease.

For full details of the Work Plan 2003, the Call for Proposals and the Information Day, go to: http://europa.eu.int/comm/health/index_en.html

EU and Chile reach agreement on trade in food

On the 1 February 2003, an Agreement came into force between Chile and the EU to trade in animals and animal products, plants and plant products in the clear understanding that both parties will fully implement stringent measures to safeguard human, animal and plant health.

The Agreement that enshrines both the exacting food safety requirements of the EU, and the sanitary and phytosanitary measures required by the World Trade Organisation, is included in a groundbreaking Association Agreement – one that promotes international trade between the EU and Chile as well as co-operation in a wide number of other areas.

Commissioner David Byrne said he is particularly satisfied that the Agreement removes barriers to trade while sticking to a high level of protection for consumers. "I look forward to seeing both Chile and the EU make the most of the opportunities that are now open to them to trade in food and food products with greater ease and safety."

One of the greatest obstacles to trade between Chile and the EU in the past was the difficulty in obtaining a licence. This difficulty has been removed by eliminating the concession for licences to export.

Under the terms of the Agreement, trade is to be promoted through the progressive and reciprocal elimination of obstacles and the establishment of understandable, stable and clear regulations for imports and exports.

For the full text of the Association and Co-operation Agreement including the Agreement on health and phytosanitary measures (MSF) (Article 89, Annex IV), go to: http://europa.eu.int/eur-lex/en/dat/2002/l_352/l_35220021230en00031439.pdf