

CONSUMER RIGHTS: THE FIRST FIFTY YEARS: invitation for a one-day conference in Utrecht (Netherlands) on 15 March 2012

1 On 15 March 2012, Consumer law will celebrate its fiftieth birthday. On that day in 1962, President John F. Kennedy famously read his *Special Message on Protecting the Consumer Interest* to the American Congress. The Message, which begins with the oft-quoted words 'Consumers, by definition, include us all', sets forth four basic consumer rights:

- '(1) The right to safety - to be protected against the marketing of goods which are hazardous to health or life.
- (2) The right to be informed - to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labeling, or other practices, and to be given the facts he needs to make an informed choice.
- (3) The right to choose - to be assured, wherever possible, access to a variety of products and services at competitive prices; and in those industries in which competition is not workable and Government regulation is substituted, an assurance of satisfactory quality and service at fair prices.
- (4) The right to be heard - to be assured that consumer interests will receive full and sympathetic consideration in the formulation of Government policy, and fair and expeditious treatment in its administrative tribunals'.

These rights should not be misunderstood as to have the nature of fundamental rights, to be enshrined in a Constitution. They rather were suggested as political rights, together presenting a programme for the legislature. That at least is what the two main international organisations in Europe had in mind when in the next decade they took over Kennedy's idea. The Council of Europe was the first to do so, but more importantly it was the European Union which in 1975 established the First Consumer Protection Programme. Under the Programme, five basic rights of consumers were enumerated:

- (1) The right to protection of health and safety;
- (2) the right to protection of economic interests;
- (3) the right to redress;
- (4) the right to information and education; and
- (5) the right of representation (the right to be heard).

The Programme has been updated on various occasions; at present, the EU Consumer Policy strategy 2007-2013 is in force. The First Consumer Protection Programme has been implemented in a large number of directives. So many have been issued, that at present codification of some in the Consumer rights directive is expected.

2 The Molengraaff Institute of Utrecht University, with the support of the Law Faculty and the *ius commune* research school, will organise a one-day conference on the precise anniversary of President Kennedy's message, Thursday 15 March 2012, not only to commemorate this event but also to explore the future of consumer law. The programme runs as follows. The conference will be opened by Yvonne van Rooy, who has a law degree from Utrecht University and is President of this University, but it is not in this capacity that she has been invited. She also serves as President of the Netherlands Consumer Council (*Commissie voor consumentenaangelegenheden*) which at an initial stage considered hosting the conference itself. Due to an overlap with the European Consumer Association's annual meeting in Copenhagen, the Netherlands Consumer Council considered that it was not in a position to host the event itself, but has been found willing to participate in the person of its Senior Consumer Protection Official Thom van Mierlo, who will provide us with a video of Kennedy's speech. The two other convenors also are members of the Netherlands Consumer Council.

3 The second speaker will be Kathleen Gutman, who read law at Duke University and wrote a PhD in Leuven on *The Constitutional Foundations of European Contract Law: A Comparative Analysis* (Oxford: OUP, forthcoming 2011). Kathleen has been invited to address the development of consumer law in the US. The first impression is that on the whole this development has been less spectacular than in Europe. At present, despite some legislation in the aftermath of the financial crisis, no major shift of approach at the federal level is apparent, although such outlook still provides the basis for salient comparisons on the regulation of consumer protection in the US and the EU.

4 What is the situation in Europe? We have invited Fabrizio Cafaggi and Susanne Augenhofer to analyse the development in the past and future developments. Fabrizio Cafaggi is Professor of Law at the European University Institute in Florence. He is the author of a great number of publications on self-regulation and European private law. He is one of the principal convenors of a HILL (Hague Institute for the Internationalisation of Law) project on self-regulation. In March – the exact dates are not yet known - Fabrizio has previous commitments elsewhere, so we may have to do without him. Susanne Augenhofer is Professor of Law at Berlin's Humboldt University. In the *Festschrift* to celebrate 200 years of this University she wrote a paper in which she seriously considers the abolition of consumer law in the next decades. Susanne read law at Graz, the *Freie Universität Berlin* and Yale. She holds a doctorate from Vienna University.

5 The afternoon session will have four more speakers. Sybe de Vries will address the relation between consumer protection and competition law. The title of his paper is *The relationship between consumer protection and the EU rules on free movement and competition*. Sybe read law in Nijmegen and Stockholm before writing a PhD in Utrecht on *Tensions within the Internal Market – the functioning of the internal market and the development of horizontal and flanking policies* (2006). He currently is senior lecturer in Utrecht. Tjatie Naudé will discuss the new South African Consumer Protection Act with us. Is consumer protection something for the affluent, or may also the poor profit from it? She is Professor of Law at the University of Cape Town.

6 Willem van Boom and Vanessa Mak conclude the speakers list. They will address issues of behavioural economics in consumer law, and financial literacy more in particular. Willem van Boom is one of the leaders of a successful interdisciplinary research programme of the Erasmus University Rotterdam. He will focus on the information paradigm in European consumer law, its inherent limitations and the challenges of attaining true and meaningful transparency in consumer markets. Vanessa Mak read holds a PhD from Oxford on *Performance-oriented remedies in European sale of goods law* (Oxford: Hart, 2009) and is now a senior lecturer at Tilburg University. Her presentation concerns the question whether *rights* should be the central focus of consumer law. Behavioural economics studies teach us that consumers do not make rational choices, and often are unable to. Vanessa discusses the example of consumer credit agreements, which can be very complex and therefore hard to understand for consumers who lack 'financial literacy'. A consumer law based on information rights, like European consumer law, cannot address this problem and therefore needs revising. We also hope to have a speaker from a jurisdiction where a majority of consumers belong to the deprived – does consumer protection have anything for them?

7 The format of the conference will be a traditional one: short lectures of 20-30 minutes followed by discussion, introduced by invited guests (to be named). The papers will be published in a special issue of a leading consumer law review.

8 Participation in the conference will be free. In order to finance the venture, we will seek financial support from the *Ius commune* research school, the Social and Economic Council, Uitgeverij Paris and the Utrecht University Faculty of Law. We will also advertise the conference as a NOVA continuing legal education event.

9 We would be most grateful to you for passing on this information to those in your institute who may have an interest in the conference, which has as addressees advanced master's students, PhD researchers, academics, representatives of legal services and employees of organisations of consumers, trade & industry, and government.

10 We are glad that the Law Faculty of Utrecht University has been willing to sponsor the conference. We also hope to add the research school *Ius commune* and the *Tijdschrift voor Consumentenrecht en Handelspraktijken* to the list of our sponsors. The papers for the conference will be published in the newly founded EUVR, *Zeitschrift für Europäisches Unternehmens- und Verbraucherrecht/Journal of European Consumer and Market Law*.

11 (Pre-)Registration is possible with Ms Mariëtte Pesman, m.a.pesman@uu.nl. The number of participants will be limited and slots will be given on a first come first serve basis.

Johan van de Gronden

Ewoud Hondius

Thom van Mierlo