



## **Groningen, Ghent, Uppsala, Turku & Göttingen Annual Legal Research Network Conference 2009**

2009, hosted by Ghent University

### **Proactive Law Approach and Consumer Protection: Need for a New Approach?**

Kaisa Sorsa\*

August, 2009

#### **Abstract**

The word proactive implies acting in anticipation, taking control, and self-initiation. These elements are all part of the *Proactive Law* approach, which differentiates two further aspects of *proactivity*: one being the *promotive* dimension (promoting what is desirable; encouraging good behaviour) and the other being *preventive* dimension: (preventing what is not desirable, keeping legal risks from materialising). Responding to and resolving problems has always been one of the main functions of the law and they remain important in the future as well but preventing causes of problems should be even more important in EU, in order to avoid time consuming court cases and litigations.

Proactive law approach (PLA) from lawmakers' viewpoint is also raised to the agenda in EU in an Opinion of the European Economic and Social Committee. The aim of this paper is to address legal environment and especially legal rules of consumer protection in EU and to analyze how does the situation look like at the moment from a PLA viewpoint. PLA mainly *focuses in the actions of the regulated entities (or "end-users" of the rules)* instead of judges or administrative authorities. This dimension emphasizes the need to realize how the companies or consumers understand the obligations and rights set to them by public lawmakers and how do they comply with rules. In addition, it is as important to understand the role of self-regulation rules in the legal environment in conjunction with the legal rules.

In this essay, the focus is on the role of proactive law approach in the field of European consumer law and it is suggested that this approach should be more exploited. Because of the

new, networking business environment, reassessment of consumer protection methods (combining self- regulation, co-regulation and command and control rules) is needed and consumer protection substantive law and redress mechanisms at EU and in Member States level should also be echoed against this background.

First, the content of the proactive law approach will be discussed, secondly, the role of the business in taking responsibility of the tasks which have normally belonged to the state, thirdly, the redress mechanisms of consumer protection in use in EU level in some member states (substantive and procedural methods). Finally, critical aspects on proactive law in the context of consumer protection are discussed. The substantive law aspects of consumer protection are dealt with only incidentally.

Keywords: proactive law, consumer protection

\*University of Turku, Faculty of Law, 20014 Turun yliopisto, kaisor@utu.fi