

NEW EU ENFORCEMENT

DIRECTIVE CONSUMER PROTECTION MAY BE MORE DRASTIC FOR THE (INTERNATIONAL) HORSE TRADE THAN COVID-19

What is the case?

Professional sellers of horses and ponies are burdened by the current Consumer Protection as it applies in the EU Member States. This Consumer Protection means, among other things, that when a horse or pony is sold by a professional (a party that is professionally or commercially engaged in the sale of horses and ponies) to a consumer, and a defect demonstrates itself within six months after the delivery then such defect is deemed to have already been present at the time of delivery. If the professional seller cannot demonstrate the contrary (in popular speech: can prove), then the seller is liable for this. In practical terms, he often has to take back the horse and even pay compensation to the buyer. The situation outlined has been incorporated into legislation by almost all EU member states. Even though there are some country specific provisions across the EU, the court are applying this principle quite consistently. In the Netherlands, the judges apply this principle also in case of for instance injuries that can develop acutely, such as a tendon injury. In such a case the professional seller must prove that the tendon injury did not exist at the time of delivery. The jurisprudence of Dutch courts pursuant to which substantial's claims of the buyers are awarded simply because the Court experts cannot scientifically date the defect that has appeared before or after the delivery of a horse or pony is numerous.

Trade risks

It goes without saying that these types of trade risks are undesirable in the sale of horses. After all, a consumer can also handle a horse so amateurishly that it will develop injuries. The seller is then not to blame, but he still has to pay the damages. In addition, it applies that each animal has its own intrinsic energy, can spontaneously contract diseases or defects, etc.

Warranty period extended from six months to twelve months or even twenty-four months.

Notwithstanding this finding, by Directive (EU) 2019/771, the European Parliament and the Council have instructed the Member States to amend a number of even more far-reaching mandatory Consumer Law provisions in the legislation before 1 July 2021, which amendments will take effect on 1 January 2022.

From six months to at least twelve months

The most far-reaching change concerns the extension of the period from six months to at least twelve months. In concrete terms, this means that the professional seller runs the risk that the consumer buyer can even say at the end of that year: "my horse is lame, so I can no longer ride it and / or compete it. Please take it back, I am entitled to a refund of the purchase price and damages". Virtually every stakeholder involved into equestrian sports will understand that this will not promote the trade in horses to consumers. One may wonder whether European equine businesses should be happy knowing that the directive allows Member States to introduce this "guarantee" in their legislation up and to two years after the delivery. In case of the Netherlands, the Dutch government has now decided to go for the "minimum" period of twelve months.



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Exclusion Consumer rights protection in animal trade / Member State have a choice

However, the European Directive does stipulate that Member States are free to exclude, among other things, the purchase of living animals from the scope of this Directive.

The Directive reads:

"5. Member States may exclude from the scope of this Directive contracts for the sale of:

- (a) second-hand goods sold at public auction; and
- (b) living animals"

The implementation of this Directive for the Netherlands does not use this option!

We quote: "A year of reversal of the burden of proof does not lead to substantially greater burdens for the pet industry"

Missing opportunity

This is apparently the only consideration for the government not to make use of the exclusion option! We suspect that the horse

trade in the Netherlands and its interest groups including the KWPN and the other studbooks are missing an opportunity. The bill has yet to go to the Dutch Parliament, so action is mandatory if one wishes to support on justified grounds the horse trade which is already in difficulties. In Germany the Ministry of Agriculture and the German Equestrian Federation are pleading for the exclusion of living animals and more in particular horses

governed by the national law of the seller. So, a Dutch court would then decide following German law. It can be very confusing for the Court if there are significant differences

"A year of reversal of the burden of proof does not lead to substantially greater burdens for the pet industry"

from the consumer sale contracts. This approach of the German government and equine industry reconciles the long-lasting tendency in the German jurisprudence which – from our point of view – correctly tried to be rather reluctant in applying unconditionally consumer law to horses. German judges have already made clear then when it comes to animals one cannot expect the same as from consumer goods.

between the Member States concerning the consumer protection. On the other hand, such discrepancies will lead to increased importance of the choice of applicable law in the contract. Many professional sellers will then opt for the applicable law being the law of a Member States that has excluded living animals from the Consumer Protection. ■

Potential risks for the equine industry in the EU

Lack of harmonization within the EU may lead to potential juridical problems if in some countries from the scope of contracts of sale living animals have been excluded and in some not. Under the EU Regulations, the law applicable to the sale and purchase agreement is determined by the State in which the seller is domiciled. At the same time the European Regulations provide for the possibility of a consumer buyer to initiate litigation against a seller from another Member State before the consumer's District Court. Let us take an example of a German professional seller and a consumer buyer from the Netherlands. In such a case the Dutch consumer can start litigation before his district court in the Netherlands. In principle however German law would be applicable to such a dispute because the dispute would be



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If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us via info@europeanequinelawyers.com or by telephone +31-(0)135114420.



NOT?