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**REPORT FROM THE COMMISSION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT**

on Consumer complaints in respect of distance selling and comparative advertising

**(Article 17 of Directive 97/7/EC on distance contracts and
Article 2 of Directive 97/55/EC on comparative advertising)**

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1. INTRODUCTION

1.1

On 20th May 1997 the European Parliament and the Council adopted Directive 97/7/EC on the protection of consumers in respect of distance contracts¹. Article 17 of the Directive stipulates:

"Complaints systems

The Commission shall study the feasibility of establishing effective means to deal with consumers' complaints in respect of distance selling. Within two years after the entry into force of this Directive the Commission shall submit a report to the European Parliament and the Council on the results of the studies, accompanied if appropriate by proposals."

On 6 October 1997 the European Parliament and the Council adopted Directive 97/55/EC amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising². Article 2 of this Directive uses almost identical language as Article 17 of Directive 97/7:

"Complaints systems

The Commission shall study the feasibility of establishing effective means to deal with cross-border complaints in respect of comparative advertising. Within two years after the entry into force of this Directive the Commission shall submit a report to the European Parliament and the Council on the results of the studies, accompanied if appropriate by proposals."

From these provisions emerges the Community legislator's concern with :

- the availability of complaints systems within the scope of both distance contracts and comparative advertising;
- the cross-border aspects of comparative advertising.

For this reason, in keeping with the declaration annexed to Directive 97/55/EC: "*The Commission declares that it intends to submit the report referred to in Article 2 as far as possible at the same time as the report on complaints systems provided for in Article 17 of Directive 97/7/EC...*", it seems appropriate to deal with consumer complaints within the scope of a single report.

The purpose of this report is precisely to submit to both Institutions, the European Parliament and the Council, the results of the studies and investigations carried out by the Commission on these issues. It is necessary to note that the deadline for the implementation of the Directive 97/7/EC has been established by the European Parliament and by the Council on 4 June 2000, and, for Directive 97/55/EC, on 23 April 2000.

This means that the relevant complaints on the grounds of infringements to both Directives cannot technically be submitted yet. Therefore it should be borne in mind that this report is necessarily based on data which do not entirely reflect the legal situation brought about by the Directives in question as regards consumer complaints.

¹ OJ L 144, 4.6.97 p.19

² OJ L 290 , 23.10.97 p. 18

The two Directives' reporting requirements presuppose *prima facie* - namely according to the letter of Article 17 of Directive 97/7/EC and Article 2 of Directive 97/55/EC - that no effective means for dealing with consumer complaints are presently available, as the Directives' reference to the "feasibility of establishing" such means seems to indicate.

However addressing the issues in question in such terms would be misleading because:

- A wide array of redress means does exist;
- Their effectiveness depends on a variety of factors;
- A substantial number of initiatives has so far been deployed at the European as well as at the national level to address the limitations of existing systems and to improve effectiveness significantly, in particular as regards the consumers' right to have access to easy, inexpensive and efficient complaints systems.

1.2

Indeed consumer complaints in the two specific areas of distance selling and comparative advertising are part of the wider issue of redress means and consumers' access to justice³ to which the European institutions have been devoting a great deal of attention for more than a decade.

Several Community acts endow consumers with a set of rights in respect of a wide variety of transactions, contractual and market situations such as consumer credit, doorstep selling, package holidays, air transport (overbooking and air carrier liability), unfair contractual terms, distance contracts, timesharing, and consumer goods' guarantees. Other texts are under discussion (distance marketing of financial services).

An even wider range of consumer rights stems from the Member States' legislation, covering both the areas not regulated by European legislation and those domains where Community law allows for "more stringent protective measures" to be maintained or introduced at the national level.

Access to justice and appropriate means of redress are the necessary corollary of these rights, notably when the consumer wants to take full advantage of the opportunities of the Single Market.

Although the rules and procedures applicable to redress means are essentially regulated by the legal systems of the Member States, numerous initiatives have so far been developed at the

³ The EU institutions have been addressing consumer access to justice since the 1980s. The Commission presented its first memorandum in 1985 (COM(1984) 692 final of 4.01.1985), which, in 1987, was followed by a Communication (COM(1987) 210 final of 7.05.1987). The European Parliament adopted a Resolution on 13.03.1987 (OJ C 99 of 13.04.1987). In the same year, the Council adopted its own Resolution on consumer redress (87/C 176/02). Other relevant acts are the European Parliament's Resolution of 1992 (92/C 94/217), the Council Resolution of the same year on consumer protection priorities (OJ C 186 of 23.07.1992), the Commission Green Paper on access to justice and dispute settlement (COM(1993) 576 final of 16.11.1993) the Commission Communication on the same subject of 1996 (COM(1996) 13 final of 14.02.1996), the European Parliament's Resolution on the latter (OJ C 362 of 2.12.1996), and the Commission Communication on the out-of-court settlement of consumer disputes (COM(1998) 198 final, of 30.03.1998).

Community level to overcome the obstacles to handling effectively consumer disputes, particularly those involving cross-border transactions.

Indeed, distance related costs, delays, legal fees, psychological and formal barriers often conspire to form an unsurmountable wall designed to frustrate the legitimate consumers' expectation that their claims be heard and corrective measures be taken, where necessary.

2. THE COMMISSION APPROACH

For the purpose of the present report, the Commission has examined the problem using a two-pronged approach:

- Making an attempt to collect relevant data of the actual state of consumer complaints across the European Union, on the basis of a survey conducted with the co-operation of the national administrations of the Member States, the relevant professional associations, and the consumer Euro-info centres (the feedback received from the survey is described *infra*);
- Assessment of the present situation in the light of the EC Treaty rules as well as of the diverse initiatives in progress in respect of consumers' access to justice.

3. SOURCES OF INFORMATION

During the summer of 1999, the Commission asked the Member States' public authorities, as well as the relevant professional entities to provide information on the following points:

- Number of complaints (breakdown of data for the last three years, where available). As Directives 97/7 and 97/55 are not implemented yet, a loose definition of distance selling and comparative advertising applies to the cases arising so far at the national level;
- Grounds under which the complaints are brought and major problem areas;
- Systems used for dealing with consumer's complaints, whatever their formal status (judiciary, arbitration, administrative bodies, self-regulatory business schemes, consumer organisation-administered systems, etc.).

The information provided by the national authorities, and other entities having participated in the exercise is summarised in the Annex.

4. COMMUNITY INITIATIVES

Further to the 1993 Green Paper on access to justice and dispute settlement (cf. footnote No 2) and the adoption of Directives 97/7/EC and 97/55/EC, a number of Commission initiatives have been addressing the problem of consumer complaints.

These initiatives pursue two strands of work:

- one relates to strengthening the ways and means of effective collective redress; and its most significant achievement is the injunctions Directive (cf. *infra*);

- the other one concerns the improvement of redress avenues available to individual consumers in case of dispute.

4.1 Consumers' collective interests

As regards collective consumer access to justice - either before a court of law or an administrative authority - a very important result was achieved in 1998 with the adoption of Directive 98/27/EC on injunctions for the protection of consumers' interests⁴.

This Directive is meant for the protection of consumers' collective interests, not for merely individual cases. It opens up for the first time the possibility for "qualified entities" (consumer organisations and/or public bodies) to react to the grossest infringements to Community law (and the national implementing measures thereof) beyond the national frontiers.

The Directive's scope covers the bulk of existing consumer Directives and, once implemented - the deadline expires at the end of 2000 - it will enable the qualified entities from one country to initiate proceedings in the Member State where acts contrary to the consumer Directives - as transposed into the national legal system - originate, harming the collective interests of consumers.

The possible applications of such a mechanism are countless: suffice it to think of cases of low-quality goods sold by means of distance communication to customers residing in a foreign country, of misleading advertising televised in a country by a broadcaster established in a different country, or of fraudulent timeshare schemes located in a country and sold to consumers of a different country. Such unlawful situations have a multinational dimension and presently take advantage of the possibility of moving the source of illegal practises to a different country, out of reach of the national enforcement authorities.

The Commission considers that these provisions, once properly implemented, will provide an at least partially satisfactory response - as well as an effective means of prevention of harmful situations - to those consumer complaints which are triggered by practises that infringe Community law and extend beyond the frontiers between the Member states.

4.2 The individual means of redress

Concerning individual means of redress, the focus of Commission initiatives is on improving communication between consumers and professionals with a view, in the event of disputes, to helping the parties involved in the controversy to find an amicable solution.

This is a constructive approach, as both consumers and economic operators are interested in avoiding the delays, hassles and cost of traditional litigation, without undermining consumer rights.

A) European Consumer Complaint Form

In addition to the voluntary systems managed at the national or local level by professional and consumer organisations - the results of which tend to vary widely - the Commission has contributed to this exercise by elaborating and introducing a consumer complaint form. It is designed to provide consumers with guidance in formulating their claims. Its utilisation

⁴ OJ L 166/51 of 11.06.98.

concerns consumers, professionals, consumer associations, and out-of-court bodies for the settlement of consumer disputes.

The form can be used whatever the sum of money involved and whatever the type of consumer dispute. Its use is not mandatory: the parties concerned have the option of using the conventional redress means or any other voluntary system. If an amicable settlement is not attained, the form creates favourable conditions (by precisely defining the object and terms of controversy) for initiating an out-of-court procedure and/or formal proceedings.

Whilst the injunctions Directive is meant for the consumers' collective interests, the European Consumer Complaint Form is geared to facilitating and rationalising the management of individual consumer complaints. Indeed, although no accurate statistics are presently available, estimates indicate that hundreds of thousands of cases are annually dealt with by consumer organisations and bodies. Many others are simply not pursued at all because the costs of litigation largely outweigh the value of the goods or services involved in the transaction.

The European Consumer Complaint Form intends to contribute an easy, inexpensive means of reaching an amicable solution not only to disgruntled consumers, but also to the economic operators which do not wish to incur legal fees and have their reputation affected by lengthy court procedures. The form is available in all EU languages and also in electronic format on the Europa DG SANCO site at <http://europa.eu.int/comm/dg24/>.

Spreading the form's use contributes to inventorying consumer disputes, as a first step towards comprehensive monitoring of the phenomenon at the European level.

As the form was introduced in 1998, a thorough assessment of its effectiveness is premature at the present stage. An evaluation of the form's relevance and effectiveness is expected for 2000.

B) Out-of-court settlement of consumer disputes

In particular, in its communication on the out-of-court settlement of consumer disputes⁵, the Commission i.a. suggested:

- the simplification and improvement of legal procedures;
- the improvements of communication between consumers and professionals;
- the re-shaping of out-of-court procedures to settle consumer disputes.

Alongside the usual judicial procedures, there are a wide range of "out-of-court methods" in Europe to deal with consumer disputes (e.g. procedures which are complementary to or prior to court hearings, such as mediation and conciliation, and more alternative mechanisms such as arbitration).

All these out-of-court systems are highly diverse in terms of structure and procedure. Precisely because of this diversity, the type of decisions taken can also vary widely. Some are no more than recommendations, others are binding only on the professional, while others apply equally to the two sides.

5 COM (1998) 198 final of 30.03.1998.

In the interests of safeguarding consumer's rights, the important thing is to decide what court-style guarantees these procedures can offer (e.g. guarantees of independence and impartiality), while still improving the way they can help resolve conflicts.

The Recommendation included in the Communication of 30 March 1998 has set out a certain number of minimal guarantees that the bodies responsible for the out-of-court settlement of consumer disputes in each Member State should offer to their users. These minimal guarantees take the form of "principles" that out-of-court bodies should comply with.

Compliance by a given body with the seven principles (of independence, transparency, respect of the adversarial principle, effectiveness, legality, liberty and representation) is intended to guarantee people availing themselves to that system (consumers and professionals) that their claims will be given a treatment whose "fairness" and rigour is substantially similar to that of a conventional court.

Thus, the Recommendation aims at:

- enhancing consumer confidence by providing an acceptable standard of quality for out-of-court procedures;
- fostering mutual confidence on the part of the responsible bodies, so as they co-operate effectively in improving the processing of cross-border consumer disputes.

It is up to the Member States to provide the Commission with details of the out-of-court bodies which meet all the conditions set out in the Recommendation. This information is posted in the public-access data base accessible via the Commission's website on the Europa server.

To date 11 Member States have notified the Commission of data concerning the bodies that they consider as being in full conformity with the Recommendation (i.e. Austria, Belgium, Denmark, Finland, Greece, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom).

The Commission now plans to work out the necessary conditions so that bodies complying with the Recommendation's conditions can be networked. A number of steps were taken to address these challenges. Firstly, a workshop was held in December 1998 on "*Alternative Dispute Resolution Schemes (ADR) relating to consumers disputes in the EU*", which brought together some 40 experts in the field of ADR schemes and several potentially "notifiable" bodies. Secondly, a conference held in November 1999 at Lisbon, Portugal reflected upon the future co-operation of a network of cross border consumer resolution.

Subsequent steps include:

- a meeting with the responsible officials from justice and consumers affairs in the Member States, held in Brussels on 17 January 2000 where the Commission presented its plans to establish the network (EEJ-Net, on which see *infra*, end of chapter 6);
- a Conference that the Commission plans to organise later in the year 2000, which will bring together all "notified" schemes.

Two specific publications are designed to provide consumers confronted with a dissatisfactory situation with practical indications on how to protect their interests making full use of the redress systems and in particular, of the measures taken at the European level (including those concerning the complaint form and the out-of-court bodies) ⁶:

- The first publication, elaborated in the framework of Community actions to enhance dialogue with citizens and businesses in the Single Market, will be called “*Exercising your rights in the Single Market – How to seek Redress*” and will be finalised in the first half of 2000.
- The second publication, called “*Consumer disputes - Labyrinthian Thread*”⁷, was prepared in the context of the Commission's specific actions to improve the access to justice for consumers.

In the area of financial services, the development of a Europe-wide consumer complaints network is being addressed within the scope of implementation of the relevant legal framework⁸.

4.3 The role of complaints in order to achieve the enforcement of EU consumer legislation

In March 1998 the Commission adopted a document about the enforcement of the consumer legislation⁹. This document aimed at establishing a broad picture of the situation concerning the enforcement of EU consumer legislation and presented some ideas for improvement.

The term "enforcement" covers two different questions:

- a timely and proper implementation,
- effective and correct practical application, which includes the existence of adequate redress mechanisms.

The document points out that, while monitoring the implementation can be managed by the Commission on the basis of notified national measures, the monitoring of the practical application necessitates strong support and co-operation from the Member States, not only vis-à-vis the Commission but in particular among themselves. When the Commission receives sufficient information showing incorrect application of consumer Directives, it can open infringement proceedings against the Member States concerned. This occurs in particular on the basis of complaints¹⁰.

⁶ Consumer Disputes, OPOCE, ISBN 92-828-6021-3.

⁷ Office for the Official Publications of the E.C., 1999, ISBN 92-828-6020-5.

⁸ Financial Services: Implementing the Framework for Financial Markets - Action plan; COM (1999) 232 of 11.05.1999.

⁹ Commission Working Paper on Enforcement of European Consumer Legislation; document SEC(1998)527 final, of 27.3.1998.

¹⁰ In those areas of commercial communication that are not currently subject to European harmonisation but where national laws diverge significantly, the Commission has established a Member States' Expert Group. The Group's work has i.a. identified the need to further improve cross-border redress for complaints relating to commercial communications. At the request of the experts the Commission is currently, on the basis of a questionnaire, collecting information on how cross-border complaints are handled in this area by judicial, administrative and extra-judicial bodies.

5. MEMBER STATES' INITIATIVES: CO-OPERATION WITHIN THE SCOPE OF THE INTERNATIONAL MARKETING SUPERVISION NETWORK

The International Marketing Supervision Network (IMSN) - or Réseau International de Contrôle de la Commercialisation (RICC) - was born in 1991 during the "Supervision of Marketing" Conference of Member States' "Consumer enforcement bodies" held in Copenhagen at the initiative of the Danish Consumer Ombudsman. Nevertheless, on the impulsion of its first Presidency (the UK), it immediately became a wider network including such countries as the US, New Zealand, Japan and other OECD members. It was not intended to cover product safety or the prudential regulation of financial institutions, nor specific redress for individual consumers.

The principal aim of this voluntary and informal network is to improve co-operation between the different countries in order to stop and prevent illegal marketing practices connected with cross-border transactions in both goods and services, and to help ensure exchanges of information among the participants for mutual benefit and understanding.

During the preparation of the working document on "Enforcement of European consumer legislation" the Commission was faced with the situation that in the non-safety area, there is no regular information about a possible follow-up by the Member States on the practical application of laws implementing EU Directives. Thus, the Commission, after looking into the functioning of the existing IMSN initiative, considered it as an instrument that, once completed and/or modified could, if its EU members agreed, be used for contributing to improving enforcement of non-safety consumer EU legislation.

As a consequence of that and following the Commission's initiative, the European members of the network decided, at the Network World Conference held in Bruges on the 25 March 1999, to set up a sub-group called 'IMSN Europe', the main task of which is to improve the conditions for co-operation and information exchange between the members concerning the application of harmonised consumer legislation. The first meeting of the sub-group was held in Oslo the 12-13 September 1999.

The technical instruments allowing the sub-group to optimise exchanges of information between its members (be it on specific problems or best practices) will be developed by the Commission and put at the disposal of the European Group. These include, in particular, an electronic message exchange system and a restricted-access database for collecting the information exchanged.

The aims and rules of procedure of IMSN-Europe can be summarised as follows:

- To strengthen and to improve co-operation and systematic exchange of information between the members in order to achieve more effective enforcement of European consumer legislation (with the exception of legislation dealing with health and safety matters);
- To discuss, exchange views and experiences concerning and seek common solutions to problems linked to the enforcement of European consumer legislation (with the exception of legislation dealing with health and safety matters);
- The activities are restricted to questions characterised by a specific European dimension;

- The members shall undertake to do all in their power to ensure optimum use of the network and the instruments for co-operation it provides (six-monthly meetings, information exchange system, database);
- As far as possible, the members shall endeavour to co-operate with the bodies responsible at regional or local level in their country with a view to collecting and forwarding relevant information of interest to IMSN-Europe.

6. CONCLUSIONS; FUTURE INITIATIVES

It is only possible to give a provisional description of the situation regarding consumer complaints on the basis of currently available data. Although the present report seeks to respond as precisely as possible to the requirements contained in the two Directives in question, it is inevitably patchy, (a) because it is based on information from diverse sources and (b) because it has to be submitted before implementation of the Directives in all Member States. In particular, the report cannot take account of eventual problems arising in connection with the practical operation of the regulatory frameworks for distance contracts and comparative advertising introduced by Directives 97/7/EC and 97/55/EC.

In the light of the factual and legal situation described above, the Commission finds that:

- The notion of "consumer complaints" covers a wide variety of situations characterised by consumer dissatisfaction with goods, services, after-sale assistance, contractual terms and conditions, price, quality, guarantees, product performance, operating instructions, safety, conformity to standards, delivery, return policy, etc;
- Virtually all consumer complaints can rely on redress systems. These means of redress are provided for by national legislation and, in some instances, are complemented by voluntary systems. Nevertheless, consumers are often uneasy about resorting to redress means, because of insufficient information and advice on how to address their problems and uncertainty over the duration, cost and effectiveness of available procedures.

For both trans-border and purely national complaints, the effectiveness of mandatory and voluntary systems is affected by the traditional problems of consumer access to justice (distance, cost, legal hurdles, etc.). A detailed analysis of these difficulties - on the basis of an ad hoc study - is to be found in the Green Paper on access to justice and dispute settlement (COM(1993) 576).

In recognition of this situation, Article 11(4) of Directive 97/7/EC on distance selling, provides the Member States with the option of "...voluntary supervision by self-regulatory bodies of compliance with the provisions of this Directive and recourse to such bodies for the settlement of disputes to be added to the means which Member States must provide to ensure compliance with the provisions of this Directive.";

- From the European perspective, due account should be taken of the complementary nature of European consumer policy and the Member States' own policies and initiatives. Furthermore, in the future effective redress means for consumer complaints could be enhanced by the potential created up by Title IV (Articles 61 to 69) of the EC Treaty - as amended by the Amsterdam Treaty -

which provides i.a. for "measures in the field of judicial co-operation in civil matters..." (Article 61(c)) and "the recognition and enforcement of decisions in civil and commercial cases, including decisions in extra-judicial cases" (Article 65(a)).

As a consequence of this legal framework and the allocation of responsibilities deriving from it, the Commission considers it opportune to concentrate on:

- removing the obstacles to cross-border complaints;
- helping to establish a regulatory framework capable of addressing consumer complaints in the present circumstances of the Information-Society, notably when they involve contracting with businesses located outside the consumer's country of residence;
- reviewing existing consumer-related legislation to determine whether additional regulatory action may be necessary. In this respect, the Commission is - under the terms of Council Resolution of 19 January 1999 on the Consumer Dimension of the Information Society¹¹, required to present the European Parliament and the Council with a report accompanied, if necessary, by proposals.

Concerning the removal of obstacles in the area of complaints related to the collective interests of consumers, a significant step forward was achieved by the adoption of Directive 98/27/EC on injunctions. Once effectively implemented, this Directive will enable consumer organisations and bodies with a status as "qualified entities" to start proceeding and pursue cases in the jurisdiction of the country from which infringements to consumer legislation (EU Directives and the national implementing measures) originate.

As for individual consumer complaints - i.e. in cases where no collective consumer interests are at stake - there should be a gradual improvement of redress means in transactions which have a trans-border dimension as a result of:

- the application of the principles set out in Commission Recommendation No 98/257 on the principles applicable to out-of-court bodies. The Commission will report in 2000, giving an evaluation of the actual impact of those principles;
- increased use of the consumer claim form introduced by the Commission Communication of 1998 (COM(1998) 198) whose relevance and impact as a pilot project will also be assessed in 2000;

In addition to the above, the effectiveness of both individual and collective consumer complaints will benefit from the following accompanying measures:

- clarification of the private international law requirements applicable to contracts to which the consumer is part. Particularly significant are the initiatives designed to revise and update the 1968 Brussels Convention¹² and the 1988 Lugano Convention¹³ devoted to judiciary competence and execution of rulings between respectively, the EU Member States and the Member States and the EFTA

¹¹ OJ C 23/1 of 28.01.1999.

¹² OJ C 27 of 26.01.1998 (consolidate text taking account of Austria, Finland and Sweden's accession).

¹³ OJ L 319 of 25.11.1988.

countries. In this respect, progress should come, in particular, from the draft Regulation designed to incorporate the Brussels Convention. into the Community legal system¹⁴. The draft Regulation is a first, important step in the direction of cross-border co-operation in justice-related matters within the scope of Community law and, at the same time, an indication of the possibilities provided for effective action at the EU level, on the basis of Articles 61-69 of the EC Treaty;

- promotion at the international level of a consistent set of consumer protection principles suitable to enhance consumer confidence and enable consumer to take advantage of the increasing global marketplace.

After adoption by the OECD of a Recommendation on Guidelines for consumer protection in electronic commerce¹⁵, the Commission intends to promote the adherence to the principles underlying the OECD Guidelines in all relevant international forums as well as in bilateral negotiations on consumer-related issues with third countries.

In the Consumer Policy Action Plan 1999-2001¹⁶, the Commission announced that it will monitor the use in practice of the consumer complaints form and will use this experience, together with information from the databases of bodies responsible for out-of-court settlements, to assess whether further action is required to facilitate access to justice for individual consumers. In this context, the Commission will also take steps to improve the functioning of small claims procedures in trans-national situations and will consider the case for a European Consumer Ombudsman with competence for cross-border complaints.

The lack of comparable data on consumer complaints severely handicaps any attempt to assess of the effectiveness of systems dealing with complaints. Given that complaints are an essential input to the enforcement and policy making process, this is a real handicap for consumer policy in the Community. Therefore the Commission services intend to address the feasibility of an initiative designed to introduce a common basis for classification of consumer complaints. Such an action requires close co-operation between the European Statistical Office, the Euroguichets, the national statistical resources, and all administrations, bodies and organisations which receive consumer complaints. The intention is not to oblige any of these bodies to collect new data but simply, to the extent that they already record complaints, to do so according to same common guidelines and to send details to the Commission regularly. Such guidelines would not be mandatory but all organisations would have an interest in following the guidelines so that they had a better input into the EU policy making. In particular, the possibility of using the European consumer complaint form for the purpose of identifying and facilitating the monitoring of consumer complaints will be considered.

¹⁴ COM (1999) 348 final of 14.07.1999.

¹⁵ Adoption took place on 9 December 1999.

¹⁶ Commission Communication n° COM (1998) 696 final of 1.12.1998.

Finally, the Commission intends to monitor closely the situation of consumer complaints as part of the work which is being done on the issue of consumer access to justice. In order to allow for appropriate follow-up on the part of the European Parliament and the Council, in parallel with the implementation of Directives 97/7/EC and 98/27/EC, the Commission intends to give special attention to consumer complaints in future reports and proposals for new legislation, in the regulatory framework of electronic commerce¹⁷ and distance marketing of financial services¹⁸, as well as other relevant Community legislation, in keeping with the outcome of the ongoing review of consumer-related legislation in the area of the Information Society.

Future initiatives

The Commission work programme for 2000 includes the following actions :

- Commission staff working paper on the recovery of legal costs and lawyers' fees. One of the barriers to consumer access to justice is the lack of proportionality between the costs required to bring legal proceedings and the actual amount claimed. If the total costs incurred are recovered when a consumer wins a case, this barrier is significantly reduced. The Member States have adopted a great variety of solutions to deal with this difficulty: The working paper will report on these issues and launch on this subject wide-ranging public debate.
- Commission staff working paper on the state of implementation of Directive 98/27/EC on injunctions for the protection of consumers' interests. Directive 98/27 gives consumer associations (or public bodies charged with consumer protection) the right to commence cessation proceedings to prevent infringements in breach of the provisions of a number of consumer directives. In cross-border cases, these actions can be brought directly before the courts where the professional is domiciled. However, to be effective, the Directive needs adoption by Member States of measures complementary to formal transposition.
- Commission staff working paper on the establishment of an European Network of extra-judiciary bodies responsible for the out-of-court settlement of consumer disputes. In 1998, the Commission adopted Recommendation 257/98 on the principles applicable to extra-judiciary bodies. Since then, the Member States have notified the Commission of their respective national bodies which respect these principles. It is now time to go further in providing the basis for the creation a network between these bodies, with the aim of facilitating the resolution of cross border litigation. In the area of financial services, the Commission will report later

¹⁷ Amended Commission proposal (taking account of the European Parliament's first reading) for a draft Directive on certain legal aspects of electronic commerce in the internal market: COM (1999) 427 final of 17.08.99. As electronic commerce tends to become the most widespread form of distance contracting as well as a source of concern for consumers, the Commission proposal includes provisions on codes of conduct, out-of-court settlement and inclusion of infringements of the Directive's provisions among the cases which can trigger injunction proceedings under the terms of Directive 98/27/EC.

¹⁸ Modified proposal concerning the distance marketing of consumer financial services: COM (1999) 385 final of 23.07.99). Specific rules are proposed on sanctions, redress means, and most important, the supplier's burden of proof as to the obligation to inform consumers and consumers' consent to the conclusion of the contract, as contractual conditions making the burden of proof lie with the consumer shall be deemed unfair terms within the meaning of Directive 93/13/EEC (OJ L 95 of 21.04.93) on unfair terms in consumer contracts.

in 2000, in the context of a communication on electronic commerce and financial services, on the establishment of a network of out-of-court redress schemes.

- Commission staff working paper on the collective representation of consumers' interests in civil litigation (group actions). The working paper intends to report on the current state of national laws in relation to the possibility of bringing class actions in the name of a group of consumers who have suffered the same type of damage and encourage a wide-ranging public debate on this issue.

ANNEX

1. INFORMATION PROVIDED BY NATIONAL AUTHORITIES

A) Distance contracts

Austria

The information provided by the Austrian Federal Chancellery (*Bundeskanzleramt*) points out that, according to the Consumers Affairs Office, only a small percentage of the available data is statistically verifiable. Consumer advice centres deal with a large number of complaints by telephone; these cases are not, but for a few exceptions, statistically documented.

Total number of complaints in Austria:

- 1996: 3.565
- 1997: 4.829
- 1998: 5.149

Main areas of complaint:

Lotteries

- 1996: 705
- 1997: 989
- 1998: 1.210

Most complaints occur in relation to lotteries. The number of complaints is increasing rapidly, though a law came into force on 1.10.1999 under which misleading promises of prizes are punishable.

Unsolicited merchandise

- 1996: 223
- 1997: 245
- 1998: 281

Problems caused by unsolicited merchandise - arising especially in cases where the identity of a person placing an order by telephone is not carefully ascertained - are an increasingly frequent cause for complaint amongst consumers.

"Cold calling" (especially for insurance and investment products)

"Cold calling" designates the phenomenon of unsolicited telephone calls to consumers partially or totally unaware of the commercial drive of the contact. Although the practise may, within limits (particularly as regards the opt-in and opt-out provisions in Directives 97/7/EC and 97/66/EC) be legitimate, prospective customers are liable to be caught off-guard ("cold")

by skilled operators who manage to gain the interlocutor's confidence and take advantage of the situation, persuading consumers to accept heavy financial commitments or otherwise unfair deals to which they wouldn't have been subscribed under normal circumstances.

- 1996: 135
- 1997: 157
- 1998: 170

Defective goods/incomplete orders

- 1996: 287
- 1997: 304
- 1998: 322

These mainly comprise complaints about goods which are not delivered at all or are delivered late or only in part. When merchandise is defective, it is often not very easy to ensure that the problem is remedied.

Debt collection

- 1996: 382
- 1997: 409
- 1998: 427

As regards debt collection, delays in payment on hire purchase agreements and unclear, sometimes astronomically high, interest rates appear to be the main problems. Furthermore, the claim for payment is often not itemised.

Concerning the enforcement of consumers' rights, the Austrian authorities point out that some of the complaints are settled via the consumer associations. Only a small percentage go to court (which explains the lack of comprehensive data).

Belgium

In Belgium, the present provisions on distance selling are included in the Act on Commercial Practices¹⁹ (articles 77 to 83) as amended by the Act of 25 May 1999, adopted to implement the Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts. On the basis of the statistics handled by the Economic Inspection, infringements to the above measures are rare bearing in mind the only recent entry into force of the national law. For example, in 1998, only 3 cases went to court on the grounds of infringement of article 77 (financial services) and only 5 cases throughout the period 1.1.1999-20.9.1999.

¹⁹ *Wet van 14 juli 1991 betreffende de handelspraktijken en de voorlichting en bescherming van de consument - Loi du 14 juillet 1991 sur les pratiques du commerce et sur l'information et la protection du consommateur.*

The data provided by the Belgian authorities show that eighteen cases went to court in 1998; ten cases were registered throughout the period 1.1.1999-20.9.1999. All of them concern consumer credit.

Denmark

Number of complaints in Denmark over the last three years

Denmark has no central register for complaints concerning distance selling. It is not possible for cases of this nature to be separated from other legal statistics. However, in the last three years, the Consumer Complaints Board (*Forbrugerklagenævnet*) registered the following civil actions relating to distance selling:

17 complaints in 1997;

25 complaints in 1998;

11 complaints in 1999 (as of August 1999).

In this connection, the Danish authorities observed that the definition of "distance selling" in the Danish Consumer Contracts Act (*Lov om visse forbrugeraftaler*) does not cover the provision of services. The Act also imposes a general ban on telephone selling (unsolicited approaches by telephone with a view to selling goods and services).

The Consumer Complaints Board's powers are limited in that complaints relating to certain specific fields are outside its area of competence. The Board's powers are also restricted to services involving a fee of no more than DKK 24 000 but not less than DKK 500. It is to be assumed that because of this lower limit of DKK 500, some complaints about distance selling do not come to its attention.

Complaints regarding telephone selling may also be filed with the Consumers' Ombudsman (*Forbrugerombudsmanden*) who is responsible for supervising compliance with public-law regulations in that field. Complaints addressed to the Consumers' Ombudsman are not registered in a way that allows those concerning distance selling to be identified. Therefore the information on the number of these complaints could not be provided.

Reasons for complaints and main problem areas

In the experience of the Danish Consumer Complaints Board, civil-law disputes normally concern inaccurate/misleading information contained in marketing material, or problems with the right to withdraw from a contract in a particular sector.

Complaints lodged with the Consumers' Ombudsman are normally concerned with misleading marketing and/or the difficulty of contacting firms engaged in distance selling. The most problematical area is distance selling via the Internet.

Bodies dealing with consumer complaints

For civil-law disputes concerning distance selling (which may be referred to the Consumer Complaints Board), it should be noted that the Consumer Complaints Board may grant exemptions from the lower limit DKK 500 mentioned above. This discretionary power may be used in the event of a large number of complaints about one specific disreputable firm, or in order to settle a matter of principle. This power was used, for instance, in a considerable

number of complaints against a particular firm offering "telephone sex services" or similar services on the Internet are dealt with by action on the part of the appropriate authority. (These complaints are not registered as relating to "distance selling" since the activities concerned do not fall within the current definition of the term in Denmark).

Under the Act establishing the Consumer Complaints Board (*Lov om Forbrugerklagenævnet*), the Board may give official sanction to private-sector complaints boards or boards of appeal operating in specific sectors or areas of activity.

The following private-sector complaint and appeal bodies have been approved by the Consumer Complaints Board: building industry, property transactions, insurance industry, hotel, catering and tourism industries, cavity insulation, driving schools, financial institutions, mortgages, travel industry.

As mentioned above, complaints about firms engaged in distance selling may also be referred to the Consumers' Ombudsman, who is entitled under the Marketing Act (*Markedsføringsloven*) to take direct action in respect of such activities.

If a number of consumers all make the same type of claim for reimbursement in connection with an infringement of the Marketing Act, the Consumers' Ombudsman may also, on request, combine these to form a group action before the courts.

Finland

The Finnish authorities' sources of information were the municipal consumer advisors, the National Consumer Agency, the Consumer Complaints Board, the Finnish Consumers' Association and the consumer organisation *Kuluttajat Konsumenterna ry*.

The Finnish authorities pointed out that the figures emerging from the exercise are to be regarded as indicative. In particular, no breakdown of cross-border cases was available.

Distance Selling:

Complaints received by municipal consumer advisors mostly concerned mail-order sales. The problem areas primarily concern mishandled and/or incomplete deliveries, lack of conformity and failure to obtain refunds. In a limited number of cases, complaints are forwarded to the Consumer Ombudsman. Most cases are successfully dealt with at the consumer advisers' level.

The National Consumer Agency examined 21 cases in 1997, 36 in 1998 and 213 in 1999 (as of 30 September 1999). These cases mostly concerned mail-order and Internet-related sales. The significant raise in the number of complaints in 1999 springs from 1998 foreign advertising campaigns targeted at Finland. Such campaigns were found to be in breach of the Finnish Consumer Protection Act.

The Consumer Complaints Board dealt with 120 complaints about mail-order sales in 1997; in 1998 there were 88 cases and in 1999 (on the 30th of September) 87 cases were registered. The main problems were raised in connection with goods return policies. In one case, the Consumer Complaints Board dealt with Internet-related services sales to minors.

A significant proportion (about one third) of the complaints to the Board about door-to-door sales - 120 cases in 1997, 88 in 1998 and 87 in 1999 (as of 30 September 1999) - actually

concerned distance selling. The problem areas appeared to be cancellation and return policies, refunds and faulty goods.

The Finnish Consumer Association received 50 distance-selling related complaints in both 1997 and 1998. The total number for 1999 is estimated at 50-100 cases. The problem areas are contractual (unfair) terms, return policies and belated deliveries.

The overall number of distance-selling complaints is estimated by the Finnish authorities at about 315 cases in 1997, about 345 cases in 1998 and about 570 cases in 1999.

Germany

The Ministry of Justice (*Bundesministerium der Justiz*) reports that the Unfair Competition Law (§13) and the law on General Business Conditions (§13) allow consumers to start legal proceedings. No consumer complaints were brought to the knowledge of the Federal Government. No statistical information was available.

Greece

The Greek authorities reported the following consumer complaints on distance selling:

Areas of complaint	1997	1998	1999²⁰
Misleading advertising	26	29	66
Unfair advertising	16	29	4
Failure to return money after withdrawal from contract	*	*	10
Charging for unsolicited goods	*	*	8
Liability for postal charges	*	3	4
Concealment of the consumer's right of withdrawal	*	*	6
Other	*	*	2

(*) Data are not available

Complaints are handled in three ways:

- Out-of-court procedure via the arbitration committees that exist in all the prefectures,
- Litigation,
- Administrative sanctions, which may range from a fine of GDR 20.000 (higher fines may be imposed on repeat offenders) to the firm's being struck off the competent government department's register and shut down.

²⁰ Oral and written procedures.

Note that to date two firms have been struck off the register and two other firms have not been allowed to start selling.

Ireland

The Department of Enterprise, Trade and Employment reported the following information provided by the Advertising Standards Authority of Ireland (ASAI):

Year	Consumer Complaints on Distance Selling
1996	5
1997	2
1998	1
1999 (8 months)	4

It should be taken into account that the ASAI gets few complaints about distance selling/direct mail. However, ASAI expects this aspect of its work to grow as the phenomenon itself grows in Ireland, particularly direct mailing.

Luxembourg

The Luxembourg authorities presented data provided by the "Euroguichet-Consommateur de l'Union Luxembourgeoise des Consommateurs" (ULC/Euroguichet), which is the Luxembourg consumers' customary contact point for cross-border issues.

The ULC/Euroguichet considers that distance selling includes all sale agreements whose passed and executed without physical contact between the supplier and the customer (this definition covers the use of telephone, television, minitel (in France) and Internet-related techniques).

On the basis of this approach, 271 cases were registered in 1997, 332 in 1998 and 153 up to the 30th of June, 1999. As these figures incorporate door-to-door and promotional excursions ("Kaffeefahrten") which account for 10-15% of cases, the ULC/Euroguichet estimates that, in keeping with the above definition, the overall number of cases should be reduced accordingly.

Most problems are effectively dealt with resorting to the legal framework available in Luxembourg law which provides adequate protection for the most frequent problems

such as non-conformity of goods, costs associated to bank transfers, mistaken card invoicing, VAT rates, defective goods, inertia selling, and guarantees.

The Netherlands

The Netherlands authorities' sources of information were the Consumer Association (*Consumentenbond*), the Advertising Standards Organisation (*Stichting Reclame Code*) and the Association of Dispute Committees for Consumer Affairs (*Stichting Geschillencommissies Consumentenzaken*); within the scope of the latter, two dispute committees - the Home-Shopping Disputes Committee (*Geschillencommissie Thuiswinkel*)

and the Travel Disputes Committee (*Geschillencommissie Reizen*) deal with distance selling-related complaints.

The Dutch authorities noted that the data gathered from the above sources do not provide sufficient details to pinpoint the complaints of a cross-border nature, and that no information was available on disputes which have ended up in a civil court of law.

Distance selling complaints, 1996-1998:

Before the Home-Shopping Disputes Committee:

12 cases were filed in 1996 (year in which the Committee was set up and started its operations);

7 decisions in 1997 (the overall number of cases introduced in 1997 is not known);

81 cases were filed in 1998.

These cases mainly concern product non-conformity, failure to deliver (especially household furnishings and electrical appliances), and repairs/maintenance.

Before the Travel Disputes Committee:

In 1997, the Committee issued a ruling in 908 cases (the total number of cases is not known); 5 such cases concerned travel agreements concluded by means of distance selling. In 1998, 2707 complaints were filed and 1227 rulings issued, two of which originated by distance marketing of travel products.

These cases mainly regarded contractual terms, incorrect booking, unclear information, quality of accommodation and itinerary changes.

Before the Advertising Standards Organisation:

No figures are available.

Before the Consumer Association:

The Consumer Association receives about one hundred complaints a year about not cross-border-related distance selling. As many cases relate to advertising, they are also dealt with by the Advertising Standards Organisation.

These cases mainly concerned sweepstakes-related advertising in distance selling and occasionally, the quality of goods/services.

Before the Ministry of Economic Affairs:

The Ministry receives about five cross-border complaints a year (mainly from Belgium, France and the United Kingdom) about distance-selling advertising. These cases are forwarded to the Advertising Standards Organisation and/or the European Advertising Standards Alliance.

These cases raised issues such as the alleged misrepresentation of the sweepstakes attached to advertising messages and total or partial lack of delivery of goods/services.

Spain

The *Instituto Nacional del Consumo* (INC), a public agency that depends on the Ministry of Health and Consumer Affairs, has reported the following figures on distance selling-related complaints (data provided by the regional administrations - "*Comunidades Autónomas*"²¹ - and by consumers' organisations) :

- 1997: 2.366
- 1998: 2.786
- 1999: 652 (January to September 1999)

Main areas of complaint

- Breach of contract,
- Refusal to replace goods,
- Defective goods,
- Misleading advertising,
- Misleading marketing advertising,
- Refusal to respect a cooling-off period,
- Price irregularities,
- Bad quality of the offered goods,
- Delayed delivery,
- Goods not delivered at all,
- Poor and incomplete information about goods, prices and cooling-off periods,
- Lack of information on the supplier's identity,
- Imposition of terms limiting the rights of the consumer,
- Insertion of personal data computerised archives and lists without the prior authorisation of the person concerned.

Systems used for dealing with consumers' complaints

- Sending the file to the competent agency,
- Initiation of the procedure by the agency where the complaint has been lodged,
- Mediation,

²¹ In Spain, consumer affairs are handled by the regional governments which have specific competence in consumer policy, including complaint-handling agencies.

- Dismissing the complaint because of lack of proof, or claim withdrawal,
- Initiation of the arbitration procedure (when the firm has joined the arbitrationsystem),
- Bringing the complaint to court (little used option).

Sweden

The National Swedish Complaints Board (*Allmänna reklamationsnämnden (ARN)*) is a public agency whose task is to examine litigation cases between consumers and economic operators. The ARN makes recommendations about how to solve the disputes. The procedure is written and free of charge for the parties involved, and the ARN activities are entirely financed by the State. Under government guidelines, ARN is required not to devote more than five months to litigation when consumers' complaints can be adjudicated within the scope of ARN's meetings.

There are eleven different sections that examine consumer litigation (banks, engines, textiles, travel, etc.). According to its own regulations, the ARN examines disputes between consumers and:

- all Swedish economic operators,
- the foreign economic operators having an office for their activities in Sweden,
- foreign economic operators, when the contract on a product or a service has been concluded in Sweden,
- foreign economic operators when the contract on a product or a service has been concluded abroad but the marketing has been made in Sweden, the consumer lives in Sweden and there is no reason to assume that an ARN recommendation would be ineffective.

The agency has reported that throughout the period 21.9.1996-21.9.1999, it has dealt with the following cases involving consumers living abroad:

1996: 2 (Spain)

1997: 38 (mainly USA, but also Denmark, France, Finland and others)

1998: 20 (Norway, USA, Denmark and others)

1999: 22 (Norway, Germany, Finland and others)

and foreign economic operators:

1996: 8 (from Denmark, Finland and some others)

1997: 35 (mainly from Denmark and Finland)

1998: 37 (mainly from Denmark but also Norway)

1999: 20 (mainly from Denmark)

Breakdown of cases according to the different sections of the ARN:

Cases concerning consumers living abroad

	1996	1997	1998	1999
General matters	0	5	4	3
Banks	0	1	0	2
Housing	0	0	1	2
Ships	0	0	0	2
Electricity	0	1	4	2
Insurance	2	1	0	4
Engines	0	0	5	3
Travel	0	7	4	3
Shoes	0	1	0	0
Textiles, leather	0	3	2	3
Dry cleaning	0	0	0	0

In some cases, the consumer lived in Sweden when the contract was concluded and moved abroad afterwards. In other cases, the consumer lived near the Swedish border. In seven cases, the ARN declared itself incompetent.

Cases concerning foreign economic operators

	1996	1997	1998	1999
General matters	2	3	3	1
Banks	0	0	0	0
Housing	0	0	1	3
Ships	0	0	0	0
Electricity	0	1	1	0
Insurance	0	3	0	2
Engines	0	0	0	0
Travel	3	20	31	12
Shoes	0	1	0	0
Textiles, leather	2	7	1	2

Most disputes with foreign economic operators concern travel-related transactions. The majority of complaints concern the rental of holidays bungalows or secondary residences. In twelve cases, ARN found itself incompetent.

The Market Court (*Marknadsdomstolen*)

The following matters have been referred to the Market Court on the grounds of infringement of the Marketing Act:

Year	N° of cases	Object
1996	----	-----
1997	----	-----
1998	3	- Marketing on the welcome page of a company - TV advertising targeted to children - Advertising pamphlet (Publipostage)
1999 ²²	3	- Marketing (from abroad) of goods ordered by telephone - Mail order sales to children less than 16-year old. - Sales through an allowance system

United Kingdom

According to the information provided by the Department of Trade and Industry, in the field of distance selling, there are a number of self-regulatory codes in existence (eg those of the Direct Marketing Association and the Mail Order Traders Association). The British authorities pointed out that the information required by the Commission about consumer complaints in respect of distance selling is not available in sufficient detail.

The Office of Fair Trading has compiled the data on consumer complaints that the Local Authority Trading Standards departments, the Citizens Advice Bureaux and other advice agencies throughout the UK that also take up complaints on behalf of consumers, have provided. Unfortunately these data do not specify whether the goods and services have been provided using distance selling techniques, or not.

Nevertheless, the following conclusions can be drawn from the information received by the Commission's services (the data refer to 1996, 1997 and 1998²³):

Consumer complaints on defective goods or substandard service (by number of complaints)

²² January- September 1999
²³ 12 months to 30 September of each year.

- Second-hand cars
- Radio, TV, other electrical goods
- Clothing and footwear
- Food and drinks
- Package holidays and travel agents

Consumer complaints on non-delivery of goods, and delay or non-completion of services

- Furniture, pictures
- Radio, TV, other electrical goods
- Clothing and footwear
- Second-hand cars
- Non-life insurance

Consumer complaints on selling techniques, misleading claims, representations or advertisements, presentation of goods and services, and lack of information

- Second-hand cars
- Food and drinks
- Radio, TV, other electrical goods
- Clothing and footwear
- Package holidays and travel agents

Consumer complaints on mail order or prepayments

- Clothing and footwear
- Radio, TV, other electrical goods
- Books, newspapers and magazines
- Pharmaceutical products and medical services
- Food and drinks

B) Comparative Advertising

Austria

The Austrian authorities have not reported any cross-border complaints on comparative advertising.

Belgium

The unit "Commercial policy" of the Ministry of Economic Affairs has reported that, given that new legislation allowing comparative advertising has been recently adopted, there are no registered complaint cases for the time being.

Denmark

The information provided by the Danish authorities shows that the Consumers' Ombudsman receives only very few complaints about comparative advertising from consumers, since it is complaints from competitors that dominate in this area. Nevertheless, the complaints may touch on aspects which are of relevance to consumers, and it is therefore often the case that the Consumers' Ombudsman must assume responsibility for dealing with these matters.

Over the years, the Consumer Complaints Board (*Forbrugerklagenævnet*) has dealt with a number of civil actions in which the information contained in comparative advertising has had implications under civil law.

Complaints from competitors refer to comparative advertising considered misleading and/or unfair. The complaints relate to comparisons based on price or price-levels. Complaints regarding comparisons in terms of quality are rarer, however.

In the last few years, the Consumers' Ombudsman has been busy with matters concerning retail chains' comparative advertising based on price or price-levels.

Finland

The National Consumer Agency received 6 comparative-advertising related complaints in 1997, 13 in 1998 and 6 in 1999 (until 30 September 1999). Some of these cases were dealt with by the consumer ombudsman and concerned misrepresentation of prices and misleading price comparisons in industries such as telephone services, motor boats, car crash tests and environmentally-friendly features. None of these cases was related to cross-border marketing.

The Finnish Consumers Association registered less than ten complaints about comparative advertising during the years in question.

The total number of complaints related to comparative advertising is estimated by the Finnish authorities at about 17 in 1997, about 24 in 1998 and about 17 in 1999.

Germany

In Germany all legal proceedings are open for consumer complaints. Nevertheless

cross-border complaints in relation to comparative advertising are not known to the Ministry of Justice, nor to consumer organisations or professional trade associations.

Greece

No complaints have been reported in the field of comparative advertising.

Italy

The Italian authorities transmitted the text of three cases (two in 1998, one in 1999) of complaints on the grounds of comparative advertising dealt with by the national competition authority (*Autorità Garante della Concorrenza e del Mercato*). None of such cases are of a cross-border nature.

Ireland

The Irish authorities reported that no complaints were lodged in the field of comparative advertising throughout the period January 1996-August 1999.

Luxembourg

The *Direction de la Concurrence et de la Protection des Consommateurs* of the Ministry of Economic Affairs points out that to date Comparative advertising has been prohibited in Luxembourg, therefore there are no registered complaint cases for the time being.

The Netherlands

Three complaints were filed in 1996, 2 in 1997 and 6 in 1998 before the Advertising Standards Organisation; none of such cases were of a cross-border nature.

The main issue of concern appears to be misrepresentation and is often raised by competitors. In addition to the Advertising Standards Committee, an Appeals Tribunal (*College van Beroep*) provides redress through a specific procedure for dealing with cross-border advertising complaints.

Spain

The *Instituto Nacional del Consumo* has reported that no complaints (cross-border or not) have been laid throughout the period January 1997-September 1999.

Sweden

The ARN has not reported complaints on comparative advertising. Nevertheless, the following issues relating to commercial communication have been referred to the Market Court:

Year	N° of cases	Object
1996	6	Pens; magazines; car rentals; printing machines; dog food
1997	1	Comparison of prices
1998	4	Slogans rejected on the grounds of the Marketing Practices Law
1999 ²⁴	2	Dental-care insurance; price and quality of colours

²⁴ January- September 1999

It should be taken into account that comparative advertising was allowed in Sweden before the adoption of the Directive.

United Kingdom

The systems used for dealing with complaints in the UK are generally self-regulatory in the field of comparative advertising. The Advertising Standards Authority monitors the British Codes of Advertising Practice and the broadcasting authorities (the Independent Television Authority and the Radio Authority) are responsible for dealing with complaints about broadcast advertising.

There are no detailed data on consumer complaints in the field of comparative advertising (see the UK data on distance selling).

2. INFORMATION PROVIDED BY PROFESSIONAL ASSOCIATIONS

A) Distance Contracts

The European Advertising Standards Alliance (EASA)²⁵ ran a survey among its EU Members, on Consumers' Complaints in Distance Selling. The survey was carried out in co-operation with the European Federation of Direct Marketing (FEDMA).

- The survey shows that there is a system of self-regulation in place in each country to deal with problems arising from distance selling. Eight of the eighteen EU EASA members have a specific code of conduct or note of guidance, whilst seven others apply the provisions of their general advertising codes to the area. The codes and principles that these organisations adhere to are based on the International Chamber of Commerce (ICC) general code of advertising practice and have been further elaborated for distance selling, where necessary, according to the circumstances of each individual country;
- EASA members co-operate closely with the relevant national direct marketing association and indeed in some countries responsibility for handling complaints has been assumed by the local DMA (Direct Marketing Association). In Scandinavian countries, the existence and role of the Consumer Ombudsman, and, as is the case in Sweden, a number of specific self-regulatory organisations (i.e. on sexual or racial discrimination) allow only a very limited scope for general advertising self-regulation;
- The main cause of complaint relates to misleading and fraudulent practices. Some self-regulatory organisations have a system of ad alerts related to unfair practices and fraud, and co-operate with public authorities in cases of fraudulent activities;

²⁵ The European Advertising Standards Alliance (EASA) is a non-profit making organisation based in Brussels (Belgium) which is the co-ordination point for the views of national advertising self-regulatory bodies across Europe. Its members (27 from 22 European countries including all Member States of the EU) are the national self-regulatory bodies responsible for administering their respective national self-regulatory systems and applying national codes of advertising practice based on those put in place by the International Chamber of Commerce. Its aims are to promote and support the development of effective self-regulation; to co-ordinate the handling of cross-border complaints; and to provide information and support on advertising self-regulation in Europe. EASA has developed its own cross-border complaint procedure.

- One-third of the eighteen EU EASA Members have experienced problems in either the type of complaints or enforcement, in the area of distance-selling advertising. These include: misleading mailings, non-fulfilment of offers, unsolicited mail, and illegal offers being made through direct mailings;
- The most complained about products or services relating to distance-selling advertising are medicines (and products claiming to have healing or therapeutic effects), slimming products, and book clubs.

B) Comparative Advertising

The European Advertising Standards Alliance (EASA) operates its own "Cross-Border Complaints Procedure". All cross-border advertising complaint case records are stored on an electronic database managed by the EASA Secretariat. Upon resolution of the complaints, a report of the closed cases is published in the EASA quarterly newsletter, '*Alliance Update*'.

EASA database shows no evidence of cross-border complaints directly linked to comparative advertising. Issues arising from comparative advertising are as yet difficult to analyse as Directive 97/55 is not yet implemented throughout the European Union. EASA provided details of two cases related to plagiarism, which are only marginally linked to comparative advertising.

Country of Origin of the Media*	Country of Consumer	Complaint	Case outline
UK	Germany	Plagiarism	Complaint from a German company about the alleged plagiarism in the UK of its pan-European slogan. Upon examination of the case, the UK's Advertising Standards Authority concluded that the ad did not mislead or cause confusion. Complaint not upheld.
UK	Greece	Plagiarism	Complaint from a Greek property agency who alleged that an ad in the World Property Magazine offering property for sale in Greece, used wording identical to its ad for the same region which appeared on the reverse page of the magazine. The complainant felt that this would lead to confusion between the two companies. The complaint was not upheld by the UK's Advertising Standards Authority.

* Country of Origin of the Media, as defined in the EU Broadcasting Directive.

3. DATA EMERGING FROM THE CROSS-BORDER CO-OPERATION INITIATIVE ON CONSUMER ACCESS TO JUSTICE AND RESOLUTION OF CONSUMER DISPUTES IN THE SINGLE MARKET - 1998

The cross border initiative was carried out in 1998 by a group of consumer organisations²⁶ with the support of the Commission services and co-ordinated by the *Institut Européen Interrégional de la Consommation* of Lille (IEIC). This action focuses on the follow-up of consumer complaints in ten geographical border areas [Luxembourg; Alsace, Nord-Pas-de-Calais and Languedoc-Roussillon (France); Nordrhein-Westfalen (Germany); Ostbelgien (Belgium); Cataluña and Madrid (Spain); Milano and Südtirol (Italy); Innsbruck (Austria); and Athina (Greece)] which - mainly because of their location - tend to concentrate a significant number of cases.

²⁶ Union Luxembourgeoise des Consommateurs, Chambre de la Consommation d'Alsace, Centre Régional de la Consommation Nord-Pas-de-Calais, Verbraucher-Zentrale Nordrhein-Westfalen, Verbraucherschutz-zentrale Ostbelgien, Institut Català del Consum, CTRC Languedoc-Roussillon, Comitato Difesa Consumatori (Milano), VZ Südtirol, Eurokons Innsbruck, ABC Test-Achats, OCU (Madrid), EK.PI.ZO (Athina).

Within the scope of this exercise, 5552 cases were inventoried in 1998. The areas affected by consumer complaints are: cars, furniture, financial services, consumer credit, insurance, building industry, lotteries and games, and timeshare. The highest proportion of disputes concerns financial services and timeshare.

The breakdown of data does not fit into the categories of distance contracts and comparative advertising. Despite their lack of specific indications on consumer complaints as referred to in Directives 97/7/EC and 97/55/EC, these data contribute to the general knowledge of the phenomenon of consumer complaints in situations characterised by a significant number of cross-border transactions, particularly in the central European countries where consumer habits tend for geographical reasons to include cross border shopping.