

**Opinion of the European Economic and Social Committee on the ‘proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (“the regulation on consumer protection cooperation”)**

(COM(2003) 443 final – 2003/0162 (COD))

(2004/C 108/18)

On 1 August 2003 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 16 December 2003. The rapporteur was Mr Hernández Bataller.

At its 405<sup>th</sup> plenary session of 28 and 29 January 2004 (meeting of 29 January), the European Economic and Social Committee adopted the following opinion with 68 votes in favour and four abstentions.

## 1. Introduction

1.1 The Green Paper on European Union Consumer Protection<sup>(1)</sup> argued that there was a need for a legal framework for cooperation between public authorities responsible for the enforcement of consumer protection laws.

1.2 In the Follow-up Communication to the Green Paper<sup>(2)</sup>, the Commission undertook to present a proposal for such a legal instrument.

1.3 The recent Internal Market Strategy 2003-2006<sup>(3)</sup> argued that better enforcement was needed to ensure consumer confidence in the internal market and identified this proposal as a priority action.

1.4 Each Member State has developed an enforcement system adapted to its own laws and institutions. These systems have come into being in order to tackle purely domestic infringements and are not fully adapted to the challenges of the internal market. Domestic authorities lack the power to investigate infringements outside their jurisdiction.

1.5 The result is a system of enforcement in the internal market that has not adapted sufficiently to meet the demands of this market and is not, at present, able to meet the challenge posed by the unfair practices of economic operators seeking to exploit the potential of the Internet in particular.

1.6 The Commission therefore believes that consistent and effective enforcement of the various national consumer protection laws is essential to the good functioning of the internal market, the elimination of distortions of competition and the protection of consumers.

## 2. The Proposal for a Regulation

2.1 The overall goals of the regulation are to ensure the smooth functioning of the internal market and the effective protection of consumers participating in this market.

2.1.1 The proposed regulation has two specific objectives to achieve these goals:

- to provide for cooperation between enforcement authorities in dealing with intra-Community infringements that disrupt the internal market. This objective is designed to ensure that enforcement authorities can cooperate efficiently and effectively with their counterparts in other Member States;
- to contribute to improving the quality and consistency of enforcement of consumer protection laws and to the monitoring of the protection of consumer economic interests. This objective recognises that the EU can contribute to raising the standard of enforcement through common projects and the exchange of best practice on a wide range of information, education and representation activities. It also acknowledges the EU’s contribution to monitoring the functioning of the internal market.

2.2 These goals and objectives have determined the choice of legal basis and instrument. The Commission has opted for Article 95 of the Treaty as a legal basis.

2.3 The scope of the regulation is limited to intra-Community infringements of EU legislation that protects consumers’ interests. The scope of the regulation will be enlarged when the proposed framework directive prohibiting unfair commercial practices enters into force.

<sup>(1)</sup> COM(2001) 531 final.

<sup>(2)</sup> COM(2002) 289 final.

<sup>(3)</sup> COM(2003) 238 final

2.4 Competent authorities are at the heart of the proposed regulation and must be designated by the Member States. The proposal also provides for the designation by each Member State of a single liaison office to ensure proper co-ordination between the competent authorities nominated in each Member State.

2.4.1 Competent authorities are defined as public authorities with specific consumer protection enforcement responsibilities. The proposal also ensures that only those authorities with a minimum of common investigation and enforcement powers can be designated as competent authorities.

2.4.2 The proposal does not in any way change or diminish the role played by consumer organisations in enforcing legislation, in particular with regard to bringing cross-border injunctions.

2.4.3 The proposed regulation puts in place a network of competent authorities and a framework for mutual assistance that complements those which exist already in each Member State or which exist on a sectoral basis at Community level. The proposed network is designed to provide an enforcement solution to give priority treatment to the most serious cases of dishonest cross-border practices, especially those that seek to exploit the freedoms of the internal market to harm consumers.

The competent authorities will be appointed by the Member States to ensure that account is taken of constitutional provisions governing consumer protection enforcement. Member States that do not already have competent public authorities in this area do not necessarily need to set up new public authorities, as the limited responsibilities of the proposed regulation can be carried out by existing public authorities.

2.5 The effectiveness of the enforcement network established in the proposal depends upon the reciprocal rights and obligations of mutual assistance.

2.5.1 The basis of mutual assistance is free and confidential information exchange between competent authorities. The proposal puts in place a system of exchange on request and, just as importantly, spontaneous exchange.

2.5.2 If the information exchanged confirms the existence of an intra-Community infringement, the proposal requires that competent authorities act to bring about cessation of the infringement without delay.

2.5.3 The general principle is that competent authorities can act against traders within their jurisdiction regardless of the location of the consumers involved.

2.5.4 The proposal also sets out the possibility for information to be exchanged with competent authorities of third

countries under bilateral agreements.

2.6 The Community's role is limited to supporting measures which raise the standard of enforcement generally and improve the ability of consumers to enforce their rights, encouraging the exchange of best practice and co-ordinating national efforts so as to avoid duplication and a waste of resources.

2.7 The proposal provides for the submission of statistics on all complaints, the establishment of an up-to-date database for consultation by the authorities, the coordination of enforcement activities and administrative cooperation.

2.8 The proposal also provides for an Advisory Committee to be set up to assist the Commission in implementing the practical procedures for the operation of the regulation. This Committee will be composed, in particular, of representatives of the competent authorities.

### 3. General comments

3.1 The Committee shares the objectives and goals of the Commission proposal. To this end, in previous opinions<sup>(4)</sup> it urged the Commission to meet its commitment to prioritise the effective enforcement of existing legislation and co-operation between enforcement bodies, as a first step in improving current levels of cross-border consumer protection. In any event, the proposal does not exclude the possibility of bringing civil actions to ensure enforcement.

<sup>(4)</sup> EESC Opinion 344/2002 on the Green Paper on European Union Consumer Protection. OJ C 125 of 27.5.2002 and EESC Opinion on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on consumer policy strategy 2002-2006. OJ C 95 of 23.4.2003.

3.2 According to the actual proposal, the legal basis is Article 95 of the EC Treaty. However, this article only establishes provisions for the harmonisation of legislation relating to the establishing and functioning of the internal market. Given the objective laid down in the Commission proposal, namely to establish an effective system for improving the protection of consumers' economic interests, the EESC regrets that Article 153 is not mentioned as a legal basis in the actual proposal and calls on the Commission to consider how more use could be made of this article.

3.2.1 The EESC agrees with the Commission on the need to set up at least one competent authority in each Member State, and that this authority should be a public one, for the following reasons:

- only public authorities can be given the investigation powers needed to prevent cross-border infringements being committed,
- public authorities are the best placed to guarantee confidentiality and ensure that such investigations are carried out properly,
- public authorities are the only authorities that can guarantee protection for all consumers, and
- this will facilitate information exchange and help put an end to cross-border infringements.

3.2.2 In the EESC's view, the Commission should play a more active role and take part in coordination meetings.

3.2.3 As the proposal does not provide any specific measures on resolving disagreements that may arise between Member States when providing assistance, the Commission should act as mediator and provide the administrative solutions needed to facilitate this assistance. This is particularly important given that the proposal will be implemented after enlargement, which is expected to exacerbate problems relating to compliance with Article 10 of the EC Treaty since administrative cultures in most of the new countries are not sufficiently familiar with such practices.

3.2.4 The proposal is unclear regarding the conditions for reimbursement of costs or losses incurred as a result of measures held to be unfounded by a court as far as the substance of the intra-Community infringement is concerned. It needs to specify that such court decisions must be final judg-

ments and not therefore open to appeal. What happens if the requested Member State considers it to be inadmissible to bring an appeal but the applicant Member State thinks otherwise? The proposal does not seem to provide for such a situation, which is not merely hypothetical.

3.2.5 As regards requests for mutual assistance, a request may be refused if it would impose a disproportionate administrative burden in relation to the scale of the intra-Community infringement, in terms of the potential consumer detriment. This would seem to suggest that 'de minimis' infringements of consumer protection could be committed in other Member States without any penalty whatsoever being imposed. The EESC fears that such situations could arise as, exceptional cases aside, consumer complaints are usually for relatively low amounts.

3.2.6 The proposal stipulates that a request for mutual assistance may be refused if the request is not well founded. This solution is excessively rigid; in such cases, consideration should be given to allowing the request to be modified by a given deadline, before it is refused altogether.

3.2.7 Nor does the proposal grant a Member State the right to appeal if it considers another Member State's refusal to comply with a request for assistance to be unfounded.

3.3 In the interests of transparency and without prejudice to the deletion of confidential data, the database of statistics on consumer complaints should be accessible to the public, in particular to the most representative employers' associations and to consumers' associations that are qualified to bring cross-border injunctions <sup>(5)</sup>, and to universities and research centres.

3.4 The EESC welcomes the proposed enforcement coordination. However, it believes that before officials are exchanged, they should be given appropriate training on the legislation in the 'host' Member State to avoid, as far as possible, problems relating to civil liability.

3.5 As regards administrative cooperation measures, the proposal stipulates that these will be coordinated between the Commission and the Member States, but fails to take account of the relevant role that could be played by civil society in carrying out such activities, in particular employers' and consumers' associations.

<sup>(5)</sup> Article 3 of Directive 98/27/EC of the European Parliament and of the Council of 19.5.1998 on injunctions for the protection of consumers' interests. OJ L 166 of 11.6.1998.

3.6 The Standing Committee envisaged in the proposal will examine and evaluate how the arrangements for cooperation are working. However, it will have no competence whatsoever as regards assistance.

3.7 The proposal stipulates that every two years following its entry into force, the Member States must report to the Commission on the application of this regulation. However, the EESC regrets that there is no obligation on the Commission to submit a regular report on the application of the regulation at Community level, with data from all the Member States. Such a report should be sent to the European Parliament and the EESC.

3.8 The definition of the scope of the regulation in Article 3(a) is incorrect in referring to the exhaustive list of Directives found in Annex I. The aforementioned indent (a) should simply provide a number of examples and therefore be worded as follows: 'in particular the Directives listed in Annex 1'.

Another less satisfactory alternative would be to add at least the following omitted Directives to Annex 1:

- Indication of prices of products offered to consumers (98/6/EC)

- Labelling, presentation and advertising (79/112/EEC and 2000/13/EC)
- General product safety (92/59/EEC)
- Safety of toys (93/68/EEC)
- Liability for defective products (1999/34/EC)
- Protection of individuals with regard to the processing of personal data (95/46/EC and 2002/58/EC).

3.9 It would seem unnecessary for consumers to be harmed in at least three Member States for activities to be coordinated. Article 9(2) should not therefore state 'in more than two Member States' but 'in at least two Member States' or 'in two or more Member States'.

3.10 Articles 6, 7, 8, 9, 10, 14, 15, 16 and 17 all refer to Article 19(2). This article should therefore stipulate the procedure to be adopted and not merely refer to Articles 3 and 7 of Decision 1999/468/EC, which is in this way transposed into the national legislation of the Member States.

Moreover, the procedures laid down in this Decision are too bureaucratic to be applied in connection with this Regulation, which should lay down its own more easily implemented mechanisms.

Brussels, 29 January 2004

*The President*  
*of the European Economic and Social*  
*Committee*  
Roger BRIESCH

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