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ON ENFORCEMENT OF

EUROPEAN CONSUMER LEGISLATION

EXECUTIVE SUMMARY

Improving enforcement of the EU legislation on consumer protection is a priority for the Commission. Good enforcement means correct implementation and effective application of EU consumer legislation by the Member States. Whereas monitoring the implementation can be managed by the Commission on the basis of the notified national measures, the monitoring of the practical application is a very complex task which necessitates strong support and co-operation from the Member States. In this context, it is appropriate to distinguish between safety and non-safety related issues since they give rise to different problems. Apart from other specificities, enforcement on non safety issues presents the particularity of being very much linked with the subject of access to justice of individual consumers. The possibility for them to enforce their rights measures, to a large extent, the effectiveness of the legislation on consumer protection. Improving access to justice therefore means improving the enforcement of the law.

In its Communication of June 1997 on the "Action Plan for the Single Market", the Commission established as strategic target 1 : making the rules more effective. This strategic target deserves a specific consideration in the field of consumer protection¹. Furthermore enforcement has been declared a high priority of the UK Presidency.

The present working paper aims at establishing a broad picture of the situation concerning the enforcement of EU consumer legislation and presents some ideas for improvement. These ideas necessitate a strong cooperation from the Member States, not only with the Commission but in particular among themselves. A previous, short version of this document, including a questionnaire was discussed at a meeting on 13 January 1998 with senior officials responsible for Consumer Policy at national level. That document was well received and certain Member States have sent written comments concerning the questions asked. The present Commission working paper takes into account these comments, the conclusions drawn from previous informal discussions with Member States officials and is intended to be a basis for discussions at the Consumer Council under the UK Presidency.

The Commission hopes that the Austrian Presidency will continue the discussion and that concrete conclusions can be drawn and specific actions launched.

¹ Also in other fields such as environmental legislation, the Commission has reflected on enforcement issues, COM(96)500 final

From the Commission's point of view, some specific actions related to the ideas mentioned in Chapter V, points 2, 4 and 5 could be taken in the near future. Concerning Chapter V, point 7, a first meeting is being organised by the UK Presidency, with the support of the Commission, and has already been scheduled for 11/12 June 1998 in Edinburgh. Concerning other ideas launched in Chapter V of this working paper as well as any other suggestions that will eventually emanate from further discussions, the Commission would welcome views at the Consumer Council meeting on 23 April 1998.

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I - INTRODUCTION

There is no point in making European legislation to protect consumers if that legislation is not properly implemented by the Member States or if it does not have a practical impact on the situation of the actual consumers or, in other words, if the European legislation is not enforced in the Member States.

The Action Plan for the Single Market, which followed the Commission's first major report on the Single Market², set priorities to give a clear and strategic vision for fulfilling the potential of the Single Market. However, it left much of the detail to be completed by sectoral specialists. Consumers stand to gain enormously from the specific actions contained in the Action Plan. These fall into two categories:

(i) those actions which specifically target consumers, for example, under Strategic Target 3: Removing sectoral obstacles to market integration, Action 2, Consumer products as covered by Directive 92/59 on General Product Safety; and

(ii) those actions not specifically targeted at consumers but which will benefit them as citizens, for example, under Strategic Target 1: Making the rules more effective, Action 2, Establish a framework for enforcement and problem solving, and the easily identifiable contact points to which citizens can address any Single Market problems.

For the purposes of this paper, the word "enforcement" covers two different questions :

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

Monitoring the **implementation** is done by the Commission in two steps. The first one relates to the timely communication by the Member States of the national measures implementing the Directives. In case they fail to do so, the Commission automatically institutes infringement proceedings against the Member States under article 169 of the Treaty. The second one relates to the proper implementation of the Directives. The Commission, on its own initiative, evaluates the national measures communicated in the light of the obligations resulting from the Directives. The Commission also acts on the basis of complaints for incorrect implementation made by any person or organisation.

Monitoring the **practical application** is a very complex issue because the Commission very often lacks the means to get sufficient information on the practical application of the national laws implementing consumer Directives and to evaluate this information. In this respect, a distinction should be made between safety and non-safety related issues, which respectively give rise to different problems, as is explained in point IV.B. When the Commission receives sufficient information showing incorrect application of consumer

² 'The Impact and Effectiveness of the Single Market: Communication from the Commission to the European Parliament and Council' COM(96)520 final, 30 October 1996; and 'The 1996 Single Market Review: Background Information for the report to the Council and European Parliament' SEC(96)2378.16/12/1996

Directives, it can open infringement proceedings against the Member State. This occurs in particular on the basis of complaints.

II - THE "ACQUIS" ON CONSUMER PROTECTION

Within the Commission, the control of the **implementation** and of the **practical application** of European law is normally carried out by the same service which drafted the proposals for legislation. Nevertheless, in the field of food safety (in particular hygiene of foodstuffs (Directive 93/43/EEC) and official control of foodstuffs (Directive 89/397/EEC)) and of veterinary and phytosanitary legislation, the Commission decided to separate the responsibilities: legislative policy and control of implementation have been allocated to the sectorial services in charge and control of the practical application has been allocated to the Directorate General responsible for consumer policy and consumer health protection.

This document analyses EC consumer legislation enforcement issues in both its aspects (implementation and practical application), with a particular focus on the following instruments³: Dangerous imitations, General product safety, Distance selling, Timeshare, Unfair contractual terms, Package travel, Price indication, Consumer credit, Doorstep sales and Misleading advertising.

III - IMPLEMENTATION

1. Difficulties of monitoring

The Commission is faced with different types of difficulties with respect to monitoring such as the complexity of the issues, the internal lack of resources and insufficient commitment of the national bodies involved.

European legislation is often accused of complexity and the Commission is making a considerable effort in order to simplify it. But the implementation of the legislation by the Member States is often very complex, partly due to need to integrate the provisions of the directives in the national legal tradition in a coherent form. Sometimes the compliance with a directive does not directly result from the text of the notified law, but rather from a combination of this text with other more general texts, principles or case law not directly linked with the subject. A proper evaluation of the national measures implementing the directives requires a good knowledge of each national legal system and of each official language of the Union, which does not always correspond to the resources available in the field of consumer protection.

³ While other EC legal instruments have consumer relevance, the specific aspects of their implementation are not examined in this document. Among these are : the product liability directive, the directives on labelling, sectoral directives such as the toys safety, cosmetics, medicines, textiles, automobile directives, the regulation on overbooking practices, etc.

A specific problem is the "sanction" issue⁴. Directives establish rights and obligations but generally do not foresee any particular sanction with a view to ensuring the effectiveness of these rights or the respect of the obligations. This aspect is devolved to the Member States, who should establish adequate and effective sanctions. Nevertheless, the system of sanctions varies between the different Member States and is entirely dependent on the legal (and social) tradition (administrative sanctions, fines, criminal law, civil law, etc.). The evaluation of the adequate character of these sanctions is a very intricate task.

The Timeshare Directive illustrates the problems concerning the "sanctions" issue. Article 6 of the Directive asks the Member States to "prohibit any advance payments by a purchaser before the end of the period during which he may exercise the right of withdrawal". It is self-evident that this article supposes that the individual consumers affected by an infringement of that prohibition by an enterprise have the right to be reimbursed ! Nevertheless, this article also supposes that some additional sanctions exist in order to dissuade enterprises from infringing the prohibition. Thus, some Member States foresee fines (UK, Austria, Ireland, Sweden) while some others use traditional civil remedies: reimbursement with interest (Germany, The Netherlands) or double reimbursement (Spanish draft law).

The difficulties in evaluating national laws could be overcome more easily with the help of a strong commitment of the national actors, in particular the consumer associations. This is far from being the current situation and problems of enforcement are only very rarely brought to the attention of the Commission by national consumer associations, which are probably insufficiently aware of these questions or lack resources to deal with them.

2. The situation as to the implementation of existing Directives⁵

The situation as regards the **formal notification of the implementation** measures is not entirely satisfactory. Two Directives have not yet been implemented by all the Member States. One Member State (Spain) has failed to implement the Unfair Contractual Terms Directive, and more than one third of the Member States (Belgium, France, Italy, Luxembourg, Greece and Spain) have not yet implemented the Timeshare Directive. The Commission is nevertheless aware of several cases in which draft laws are in an advanced stage of adoption. The infringement proceedings related to timeshare can serve as an example of the Commission's willingness to act quickly as already in January 1998, only 9 months after the expiry of the deadline for implementation, the Commission had sent off reasoned opinions to the Member States concerned. As regards the proceedings concerning the Unfair Contractual Terms Directive, the case has already been brought before the Court of Justice (C-318/97).

⁴ Reference should be made to the Communication of the Commission to the Council and the European Parliament of 03.05.1995 (COM(95)162 final) « on the role of penalties in implementing Community internal market legislation », and, to the reply of the Council to this communication through its Resolution of 29.06.1995 « on the effective uniform application of Community law and the penalties applicable for breaches of Community law in the internal market ».

⁵ Only directives referred to in the second paragraph of chapter II are taken into account here.

Nor is the situation entirely satisfactory at present as far as **proper implementation** is concerned. Five proceedings for incorrect implementation are currently underway (i.e. an Article 169 letter sent to Member States). Moreover, this number is likely to increase in the future as several cases of possible infringement are being examined. In particular, the evaluation of the implementation of the Unfair Contractual Terms Directive showed some problems of conformity and, following a first exchange of letters with some Member States, the Commission may initiate proceedings in the near future. A first evaluation of the laws implementing the Timeshare Directive also showed some cases of possible infringement of Community rules. The Commission is also willing to go deeper into the evaluation of the implementation of the Package Tours Directive, particularly with regard to its article 7, and to re-evaluate the national laws implementing the General Safety Directive in the light of the experience gained during the first years of application. These evaluations could reveal further infringements of Community law.

IV - PRACTICAL APPLICATION

A. Safety issues

1. General ideas

The creation of the internal market for goods means that consumer products can circulate freely throughout the EEA-area. Therefore there exists today one single EEA-market for products. The responsibilities for the surveillance of the safety of the products are however shared by all the Member States.

Safety issues are regulated by public law; public administrations have a legal duty to monitor the market and should have the necessary legal powers to do so. Safety directives do not generally grant direct rights to individual consumers. The directives give some direct powers to the Commission and establish specific procedures to monitor some aspects of the practical application. A distinction has to be made, however, between safety issues regarding industrial products, where the competence of the Commission is still rather limited and foodstuff, veterinary and phytosanitary issues where the Commission has more powers, notably powers of inspection.

The difficulties of practical enforcement are to a large extent common for the different types of legislation mentioned above. They do however relate both to problems on the national level and to problems related to co-operation between Member States.

At the national level, there are problems related to lack of sufficient powers or sanctions and weakness of organisation and/or funding.

Practical enforcement at the level of the single market faces additional problems. On the one hand, there are differences in interpretation of the European Directives by the Member States and in the ways of application of the safeguard clause procedures and the RAPEX-system. On the other hand, there exist insufficiencies related to the exchange of information on findings of dangers, the consultations for assistance in investigations between the responsible administrations, the knowledge on contact points in other Member States, the technical means to communicate and the possibilities to disseminate information due to confidentiality requirements.

2. Industrial products

The types of legislation vary between different product sectors. Other than the already mentioned directives on general product safety and on dangerous imitations, the main categories of legislation relating to consumer product safety are old approach and new approach product directives: while the former harmonise very specific technical details, the latter give essential safety requirements, which can be fulfilled through the use of harmonised standards. Another specific text dealing directly with enforcement is the Council Regulation (339/93/EEC) on checks for conformity with the rules on product safety in the case of products imported from third countries, which requires checks of these products.

Market surveillance actions carried out in Member States demonstrate that there are a number of products on the market that do not comply with the safety requirements.

According to a recent survey, 52% of EU-citizens do not believe that the products on sale in other EU-countries have the same level of safety as in their home country⁶. The present situation also distorts competition in favour of manufacturers who do not live up to the requirements. The credibility of EU-marking systems, such as the CE marking is also questioned. This tends to encourage proliferation of new, national markings, which can function as technical barriers to trade and thus limit competition.

3. Food

Community food law has developed piecemeal, over time, and there is no central unifying text setting out the fundamental principles of Community food law and clearly defining the obligations of those concerned.⁷

In the field of hygiene, 11 vertical veterinary hygiene directives co-exist with a general directive on hygiene of foodstuffs. The Commission has already begun work on the simplification of the vertical directives, but their relationship with the general directive must be considered. Priority should be given to ensuring that there is a coherent and consistent body of Community hygiene rules. In the field of quality, it does not appear that the differences of approach resulting from the different objectives of internal market and agricultural legislation give rise to problems of incoherence and inconsistency. In the field of labelling, binding labelling rules should ensure that consumers are provided with essential information about the foodstuff in a user-friendly manner.

The BSE crisis has highlighted the need for a European food policy centred on the requirement that only foodstuffs that are safe, wholesome and fit for consumption be placed on the market.

The approach of the Commission covers the whole food chain "from the stable to the table". This gives rise to two issues:

⁶ Eurobarometer 47.0 of 1997 on consumer policy.

⁷ The Commission adopted on 30 April 1997 a Green Paper on "The General Principles of Food Law in the European Union" (COM(97)176) which will be followed-up.

1. the extent to which primary agricultural production and the processed foodstuffs sector should be brought within the same set of general rules;
2. the principle of producers' liability for defective products to be made obligatory for primary agricultural production. The extension of the product liability directive⁸ to cover primary agricultural production should improve the overall level of protection of consumers, but should not be considered as an alternative to appropriate product safety rules and effective official control systems.

The primary responsibility for safe food should be placed with industry, producers and suppliers, including imports from third countries, through self-checking provisions (so-called Hazard Analysis Critical Control Points systems or HACCP) backed up by official controls and appropriate enforcement.

Enforcement of food legislation has been carefully developed by each Member State. In most Member States central and local authorities have structures where specialist consumer advice can be obtained and where suspect foodstuffs can be analysed, in most countries without any cost for the consumer. Furthermore, Community food law foresees that Member States set up mechanisms of mutual assistance for the application of law and quality standards relating to foodstuffs.

The primary role of the Community in the field of control is not to replace the Member States, but to verify that the necessary controls are being carried out in an effective and equivalent manner through the internal market.

The Commission has only recently published the list of the names of liaison bodies of the Member States but has so far not been informed about the structures and performance of these liaison bodies and the exchange of information between Member States within the framework of this official mutual assistance.

Consumer health protection can be improved through an effective, working partnership between the food industry, the official control services at national level and the Commission.

4. Initiatives concerning safety issues

In order to monitor and to improve the practical enforcement of Consumer Safety legislation in the context of the Single Market, various initiatives have been taken by the Commission and the Member States.

a) Initiatives from the Commission

The Commission has, through a number of general initiatives, tried to encourage the co-operation between national authorities responsible for the operation of the internal market.

⁸ The Commission has proposed on 1 October 1997 (COM(97)478) the extension of the Product Liability Directive 85/374/EEC to primary agricultural products.

- **Framework for enforcement**

A framework for enforcement co-operation was set up by the Commission in its Communication of 16 February 1994 on the development of administrative co-operation in the implementation and enforcement of Community legislation in the internal market. In June 1994 the Council consequently adopted a Resolution on the same topic. The Council through a Council Resolution of 8 July 1996 reinforced the issue.

It called on the Member States to complete the notification of their national contact points for the enforcement of Community legislation in the areas listed in the Annex to the Council Resolution of 16 June 1994. These contact points are now contained in a database run by the Commission and which it has recently been agreed with the Member States will be placed on the Europa Web-server of the Commission with password access. Member States were also called on to notify essential information on their enforcement structures as specified in the 16 June 1994 Resolution, to keep their administrative cooperation contact points up to date, and to notify one or more contact points to which businesses and enterprises could address problems which they encounter in exercising their rights under the Single Market rules.

- **Action plan for the single market**

The Commission has, in the Action plan for the single market, which was endorsed by the Amsterdam-summit in June 1997, undertaken to initiate measures to:

- strengthen the application in the Member States of the mandatory market surveillance requirements of the Directive on general product safety
- further develop and institutionalise the systems of co-operation between the Member States and between the Commission and the Member States under the directive
- accelerate the functioning of the alert and information systems on dangerous products and to
- improve the distribution of information on dangerous products.

However, the Action Plan made clear that the primary responsibility for enforcing Single Market rules rests with the Member States⁹.

- **General product safety**

The Commission has, in meetings of the Committee under the Directive on general product safety, invited Member states to give their opinion on the need for the strengthening of the co-ordination of market surveillance between Member states and, if such a need is identified, how it should best be organised. This has resulted in a number of proposals for projects. The aim is to organise some pilot projects either in the framework of the committee under the directive or, preferably, through direct co-operation between Member States with Commission support.

⁹ Action Plan for the Single Market: Communication of the Commission to the European Council' CSE(97)1 final, 4 June 1997, page 3, Action 2: Establish a framework for enforcement and problem-solving.

- **New Approach**

For products covered by New Approach-directives actions will be proposed covering the elements of market surveillance, mutual assistance between enforcement authorities and providing of technical expertise in support of the preparation and management of the Directives and of surveillance activities.

- **RAPEX**

The RAPEX notifications system was created to support the Commission in assessing and disseminating notifications on dangerous products.

- **EHLASS**

The EHLASS programme was also set up by the Community in order to improve collection and analysis of data on home and leisure accidents and to improve the information flow on this subject.

- **Official control of foodstuffs**

The Commission published, on 28 November 1997, a list of liaison bodies designated by the Member States to afford mutual administrative assistance in connection with the official control of foodstuffs and adopted, on 2 February 1998, a Recommendation concerning a coordinated programme for the official control of foodstuffs for 1998.

- **Food and Veterinary Office controls**

The Commission adopted before the end of January 1998 two Decisions laying down the rules on the performance of veterinary on-the-spot checks in both Member States and third countries. These provide a public commitment by the Commission and the Member States to accelerate the processing of the mission findings, and recommendations for action following from them, are made rapidly available both to the European Parliament and to the general public.

Furthermore, the need for additional controls at Member State level in respect of food safety standards for non-animal origin foodstuffs, e.g. fruits and vegetables, will be examined by the Commission in order to assess whether further action is needed at national or Community level.

b) Initiatives from the Member States

The need for developed systems on enforcement has been recognised by a number of Member States. For example, the Swedish government organised a conference on market surveillance that was held in October 1997.

It is also clear from the specific agencies responsible for enforcement of the Directive on general product safety that there exists a need and a willingness to strengthen co-operation. For instance, in a number of interventions at the first European Convention on Consumer Safety in Barcelona in April 1997, the Commission has been requested to take further action in order to promote a more organised co-operation and co-ordination between Member States.

Several initiatives were also taken in the past in the Member States.

- **PROSAFE**

PROSAFE ("Product Safety Forum of Europe") is a forum for informal co-operation between non-food enforcement officers in EEA Member States. The organisation was

founded in 1990, and is a non-governmental private organisation. Membership of PROSAFE is restricted to enforcement practitioners in EU and EFTA-States. Its main interest is the day-to-day problems in the field of safety enforcement. PROSAFE acts as a complement to more formalised structures. Suggestions and opinions are given and studies are carried out, on request or on its own initiative, following discussions with enforcement officers of the EEA states, who can bring to bear their practical experience. In reaching conclusions each member country shall have equal weight.

- **FLEP**

FLEP (Food Law Enforcement Practitioners Forum) performs a similar function on food law, i.e. to encourage closer liaison and practical co-operation between enforcement practitioners.

- **Regional co-operation**

Several initiatives for Regional co-operation should also be noted, like the well-established co-operation between Nordic States, under the auspices of the Nordic Council of Ministers; the computerised information trading standards system LINK run by the Institute of Trading Standards Administration in the United Kingdom and connected to similar systems in the Netherlands and Sweden; and arrangements set up between enforcement bodies like the South of England authorities and their counterparts across the Channel.

B. Non safety issues

1. General ideas

Non safety issues are dealt with by a mixture of private and public laws. Very often, directives do not imply any monitoring by public administrations on the part of the Member States. Generally, these directives do not give the Commission any specific powers nor do they foresee any specific procedures of monitoring. Moreover, non safety directives normally aim to give rights to consumers, which they can invoke against enterprises¹⁰.

The monitoring of the practical application of the European Consumer legislation on non-safety issues faces several difficulties linked to the nature of these directives, which are added to the difficulties mentioned before concerning the monitoring of the implementation. Some specific **types of difficulties can be mentioned**: differences between national systems of enforcement, differences between Member States in the follow-up of the practical application of the directives, difficulties with respect to access to justice of individual consumers and transborder problems¹¹.

¹⁰ The only exceptions are the misleading advertising and price indication directives.

¹¹ Under Strategic Target 1 of the Action Plan for the Single Market, the new framework on enforcement, which includes information about each Member State's enforcement structures and procedures, will help the officials working in the contact points for enterprises and citizens and the coordination centres to have a better understanding of these national differences. The framework should eventually be available in all 11 Community languages and will be of great benefit to Administrative Cooperation and ultimately to all consumers.

- **National systems of enforcement**

The first problem thus relates to the difference between the national enforcement systems. In the abstract, two "pure" systems of national enforcement of consumer law can be foreseen. A "public" system, where public authorities are responsible for enforcement through mechanisms of public law (investigation powers, fines, administrative authorisations, injunctions, etc.) and a "private" system where enforcement is left to private actors (individual consumers, enterprises, consumer or professional organisations, etc.) through mechanisms of private law (actions before courts asking for civil law remedies : performance, cancellation, damages, injunctions, etc.).

These two systems are normally applied in a mixed form by the Member States. These systems do not only vary between the Member States with respect to one directive, but also within each Member State with respect to different directives and even to different provisions of the same directive.

The Unfair Contractual Terms Directive might illustrate the situation. This Directive aims at two different objectives : prevent the use of unfair terms by enterprises and professionals and protect individual consumers against these terms when used.

In the Scandinavian countries, Portugal, the UK and Ireland, enforcement of the first objective is pursued mainly by the public authorities, whereas in the other countries, it is entirely left to private actors. The latter option seems to be functioning quite well in countries like Germany, where consumer associations are subsidised to do the job, but seems to perform less well in countries like Belgium, where not only this support does not exist, but where consumer associations are also supposed to bear the costs of the court proceedings even if they win the case.

Enforcement of the second objective of the Unfair Contractual Terms Directive is generally left to individual consumers and is therefore entirely dependent on the situation of access to justice in each country. In some countries, individual consumers can benefit from some aid by public authorities to obtain individual redress or may apply to specific complaint boards, arbitration courts, etc., whereas in other countries, only action before the courts is left to them.

Another example could be taken from the Timeshare Directive. Article 3.1 of the directive obliges timeshare companies to "provide any person requesting information" with a specific document. What are the options of an individual consumer when he is faced with a refusal from a company ? In the UK, he can lodge a complaint with the public authorities : the refusal is considered to be a criminal offence. In Germany, he should bring the case before the court and initiate specific proceedings (Auskunftsklage) to ask the judge to oblige the company to give him the information requested.

- **Member States' follow up**

The second problem relates to the lack of information of the Commission of the Member States' follow-up of practical application. In general, the Commission is not regularly informed about a possible follow-up by the Member States on the practical application of laws implementing EU Directives. In some cases, this follow-up does not exist at all, in particular when the practical application is made by courts or other bodies responsible for the settlement of disputes.

- **Access to justice**

A third difficulty concerns the problem of access to justice of individual consumers. European directives generally aim to give (through their implementation) direct rights to consumers, which they can invoke against enterprises and professionals. Any failure or difficulty in guaranteeing access to justice to individual consumers automatically leads to failures in the enforcement of European law at national level. As noted above, the situation differs a lot between Member States. Various Member States, for instance, do not have a body specifically responsible for dealing with consumer complaints¹².

- **Transborder cases**

Finally, it should be stressed that every issue of practical enforcement at national level of European Consumer Directives becomes more complex when it relates to transborder cases, whether enforcement on behalf of the general interest of consumers or access to justice of individual consumers is concerned.

2. Initiatives concerning Non-Safety Issues

As appears from what has previously been said, the practical enforcement of consumer legislation has two different aspects : market supervision (or actions on behalf of the general interest of consumers) and dealing with individual claims. On both aspects, various initiatives have been taken by the Commission and the Member States in order to monitor and to improve the practical enforcement of consumer law, in particular in transborder cases.

a) Initiatives from the Commission

Studies, reports, various actions and new legislative initiatives have been undertaken by the Commission.

- **Studies**

Examples of studies are a study on the application of Article 7 of the Package Tour Directive by the Member States, several studies on existing unfair contractual terms on the market in different sectors, a study on the application of the Unfair Contractual Terms Directive to public services, etc.

- **Reports**

A good example of an exhaustive report on the enforcement of a European directive, made with a good collaboration from the Member States, is the report on the application of the Consumer Credit Directive of May 1995.

¹² However, consumers of the European Union now have access to contact points in the Member States to which they may address problems they encounter in exercising their rights under Single Market rules. The contact points have been publicised by each Member State and are in the process of being placed on Europa, the Web-server of the Commission.

- **CLAB**

A specific action launched by the Commission for monitoring the practical application of a directive is the creation of the CLAB Database (European Database on national "case law" on unfair contractual terms) which not only allows to follow the practical application of the Unfair Contractual Terms Directive, but also refers to the case law existing in the field before the adoption of the Directive and puts all this information at the disposal of the public on Internet (<http://europa.eu.int/clab>).

- **Karolus**

The Community's Karolus programme aims to facilitate the exchange of enforcement officers between Member States. The priorities of this programme for 1998 include consumer protection in the following areas: general product safety, financial services, economic interests of consumers, and access to justice.

- **Citizens First**

The Citizens First initiative provides information concerning the rights of EU citizens and is available in all the official Community languages. The Commission has published a series of guides explaining these matters. For example, the guides: "Buying goods and services" and "Travelling in another country" directly concern consumer rights.

- **Actions for injunctions**

The Commission has launched a legislative initiative in order to improve market surveillance, in particular in transborder cases: the proposal for a Directive on Injunctions for the protection of consumers' interests of January 1996. A common position of the Council relating to that proposal has been adopted at the end of 1997.

- **Access to justice**

Improving access to justice for consumers has been the subject of actions by the Commission since the seventies. These actions were mainly concentrated on launching or supporting various pilot projects in different Member States, as well as conferences and publications. Moreover, the Commission published two Communications on access to justice (in 1984 and 1987), followed by a Resolution of the Council and the European Parliament in 1987, devoted exclusively to consumer redress. The impact of these actions over the years is difficult to evaluate. Nevertheless, several examples of concrete results can be cited: for instance, a pilot project in Dundee, which led to the creation of a small claims procedure before the courts in Scotland, or a pilot project on an arbitration court in Lisbon, which led to the creation there of a permanent arbitration court as well as the creation of similar courts in other towns. Moreover, in more general terms, it is justified to think that all these Community initiatives have greatly contributed to the development of ideas and policies at national level, even at legislative level. Since the nineties, with the development of the internal market, a new challenge has been faced by the Commission: to integrate into its thinking on access to justice the specific problem raised by transborder litigation. Thus, the Commission published a Green Paper on access to justice in 1993, which, other than summarising the previous actions, proposed new ideas, in particular for dealing with this new topic. Moreover, the Commission drafted and published a "Consumer Guide in the internal market" and a "Guide to Legal Aid in the European Union". The Commission has also been supporting for several years, a network of Consumer "Euroguichets" in transborder areas and a network of centres aiming to support and give advice to consumers on access to justice in transborder cases. Finally, the Commission adopted,

in 1996, an "Action Plan on Consumer Access to Justice" which was submitted to extensive consultation and is, at present, being implemented. Finally, it adopted in 1997 a communication entitled "Towards a greater efficiency in obtention and enforcement of judgments in the European Union" (COM(97)609) which, on one hand, contains proposals for improvement of the Brussels convention, particularly in the field of jurisdictional rules for consumers and, on the other hand, aims at launching a wide debate on a possible common approach, at the level of the European Union, on certain aspects of national procedural law.

b) Initiatives from the Member States

- **IMSN**

One very important initiative on non-safety related issues was the creation of the International Marketing Supervision Network (IMSN). The IMSN was born in 1991 during a Conference of Member States' "Consumer enforcement bodies" held in Copenhagen on the initiative of the Danish Consumer Ombudsman but it immediately became, on the initiative of its first Presidency (the UK), a wider network including such countries as the US, New Zealand and Japan which meets within the framework of the OECD. The principal aim of this network is to improve co-operation between the different countries in order to stop and prevent illegal marketing practices which have their origin in one country but produce effects in another country.

The limits of this co-operation are self-evident. On the one hand, they relate to the scope of the co-operation and to the countries involved, and, on the other, to the previously mentioned differences in enforcement structures in the Member States. As regards the former, one should note that co-operation is not limited to fields where the law has been harmonised. Thus, completely different legal regimes could be applied in the country of origin and in the country of destination. As regards the latter, some Member States do not have a general body responsible for the enforcement of consumer law. This explains why, for instance, Italy refuses to take part in the network and Germany is represented by a non-governmental body.

In general it is also fair to say that the IMSN also suffers from the lack of a permanent secretariat, which could monitor the results of co-operation and make the link between Presidencies.

In 1996, following France's initiative, the IMSN also began to deal with individual consumer complaints in order to improve consumer redress in transborder litigation. In this field, a supplementary difficulty added to those previously mentioned: the national enforcement bodies on market surveillance often lack the competence to deal with consumer redress.

The present Irish presidency has recently developed an Internet home page of the IMSN.

- **Link to CLAB database**

An example illustrating simple and practical co-operation between a Member State and the Commission in a specific issue is the initiative of the General Public Attorney of Portugal to establish a link between its Internet Home Page and the CLAB Database. Public attorneys in Portugal have specific powers in the field of consumer law enforcement, in particular regarding unfair contractual terms legislation (powers to ask for injunctions before the courts to stop the use of unfair terms), and, through this

simple initiative, they will have direct access to the case law of other Member States in this field.

V - HOW TO IMPROVE THE ENFORCEMENT OF EUROPEAN CONSUMER LAW?

The key words to improve the enforcement of European consumer legislation are "transparency" and "co-operation". Improving the transparency of Member States' legislation and its enforcement arrangements and strengthening co-operation between different enforcement authorities, and between these authorities and the Commission, are the fundamental aims to be pursued¹³. A third key is "access to justice". Any initiatives aiming to improve access to justice for consumers will automatically improve the enforcement of legislation.

The following general ideas might be used as a basis for further discussions concerning improvements of the enforcement of European consumer legislation. The first conclusions drawn from the comments made during the meeting of Senior Officials or forwarded afterwards to the services of the Commission are mentioned in italics where appropriate.

General ideas

- 1) Member States should report to the Commission on their enforcement arrangements when they transpose each piece of consumer legislation.¹⁴ They should describe how they will ensure the efficiency of each piece of legislation and provide information on the bodies responsible for enforcement, their concrete powers, and the nature and level of any sanctions which may be imposed for non-compliance.

This idea of reporting to the Commission on Member States' enforcement arrangements has received a favourable reception.

- 2) In parallel with the control of proper implementation of consumer Directives and possible infringement procedures, the Commission could make reports on the comparative analysis of implementation, highlighting the differences and similarities of national laws and the possible problems of infringement of European law. A first experience could be launched concerning the Timeshare Directive.

General support has been given to this idea.

¹³ The new framework for enforcement and problem solving under Strategic Target-1 of the Action Plan for the Single Market will greatly improve administrative cooperation and transparency. It provides for contact points for enterprises and citizens and a coordination centre in each Member State which will have information about the enforcement structures and procedures of all other Member States in its own language.

¹⁴ The Member States have made certain undertakings in that respect in the Council Resolution of 29 June 1995 on the effective uniform application of Community law and the penalties applicable for breaches of Community law in the internal market.

- 3) The Commission could launch new initiatives like the CLAB database for other directives. However, a high level of cooperation from Member States (concerning input material and financial arrangements) would be needed. The CLAB database is entirely financed by the Commission, which uses a network of private consultants to assure the collection and treatment of the input material. Member States could, for the time being, also establish national links to the CLAB Database in order to improve its use by national bodies in charge of enforcement of the unfair contractual terms legislation.

There is general agreement that the CLAB database is a very useful tool, because of the importance and legal complexity of the subject matter, and about the usefulness of creating links to this database. However, the majority of Member States seem doubtful about creating more databases covering other directives considered as being more specific and less complex.

- 4) With the support of the Member States, the Commission could strengthen, in respect of consumer legislation, the existing central administration cooperation database¹⁵ and explore the possibility of making the texts of the laws of the Member States implementing the European Consumer directives available to the public via Internet.

There is a general opinion in favour of these ideas.

- 5) With the support of Member States, the Commission, while implementing the 1996 Action Plan on access to justice, could establish a database on certified bodies responsible for out-of-court settlement of consumer litigation.

There is a general agreement to this initiative.

- 6) The Member States and the Commission should study the possibility of improving the functioning of the IMSN or creating a similar network limited to the Members of the Union, which would bring enforcement bodies from the Member States together, with a view to improving exchange of information and mutual co-operation. Another idea would be to establish a permanent secretariat of the IMSN.

There seems to be a general agreement among Member States' officials of a need to improve the functioning of the IMSN, but a general reluctance to create a similar network limited to Members of the European Union.

- 7) Exchange of best practices. A high level official meeting, to which representatives of the enforcement community might be invited, could be held to explore the enforcement approaches being adopted by Member States on a particular piece of consumer legislation and to share information on best practice. Such meetings might usefully be held at regular intervals and this activity might encompass periodic peer group enforcement audits by Member States of the effectiveness of particular pieces of

¹⁵ This database has been created following the Council resolution of 16 June 1994 on the development of administrative cooperation in the implementation and enforcement of Community legislation in the Internal Market, O.J. C 179, 1 July 1994. The database lists names and contact details of enforcement/policy officials for each piece of internal market legislation.

EU consumer legislation and of the nature and amount of action taken in different Member States in enforcing it.

There is a general opinion in favour of improving voluntary dissemination of information and best practice. However, there seems to be some reluctance to the idea of organising periodical peer group audits on the effectiveness of particular pieces of EU consumer legislation in order to benchmark their performances.

Specific ideas on safety issues

- 8) Reinforce the competence of the Commission related to the monitoring of safety of industrial products. Enforcement activities of national authorities could be surveyed by the Commission or through peer-assessment and anomalies in powers and penalties removed or reduced. Discussions with Member states with difficulties to live up to the requirements and, as a last resort, legal actions against specific Member states could be necessary.

The responses show some reluctance to the idea of reinforcing the competence of the Commission related to the monitoring of safety of industrial products.

- 9) Co-ordination and co-operation has to be organised not just on Community level but also in each Member State between different national authorities (e.g. between customs and market surveillance organisations). The establishment of national co-ordination bodies could facilitate this. The Member States should inform the Commission of the structure and functioning of the liaison bodies for foodstuffs and how these are operated and to involve more the Commission in their exchange of information on infringements and penal actions.

- 10) Co-operation on compilation and analysis of surveillance-results from a number of Member-states can also facilitate identification of product-sectors with specific problems, which can be a priority for enforcement actions. Other data, such as EHLASS-data could be used for the same purpose. Support of voluntary dissemination of information between administrations on e.g. findings on dangerous products. But it can also be e.g. exchange of specific numerical information, information on testing techniques and the characteristics of specific products. Other needs frequently expressed includes the translation of information, guidance in interpreting the legislation. The support includes development of technical means for distribution of information. EU-rules could be developed on Member States obligations to exchange information and on the levels of confidentiality. Promotion of forums for co-operation between Member States administrations. A Code of Practice for enforcement can be elaborated including cross fertilisation of best practice from one sector to another.

- 11) Initiation of trial-projects for co-operation between Member states administrations, such as planning and operation of surveillance activities, product testing and technical analysis. Such projects should have the double aims of making the best use of limited resources and the creation of more coherent methods and better transparency. The practical co-ordination can take place in different stages of the surveillance-activities. It can be fruitful already as early as in the training of enforcement officers but also in the planning-stage where product-risks are analysed and priorities for surveillance of different product-sectors are set. For product-sectors characterised by "pan-European" sale the same products can be found in practically all Member States. The

projects can therefore also mean distribution of intensified surveillance tasks for specific product-sectors between Member States and co-operation in testing of products, information on test-results and analyses of the results. The latter will reduce the risk of duplicate random-checks, testing etc.