

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE

OF THE EFTA STATES

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WORKING GROUP ON CONSUMER PROTECTION

EEA EFTA COMMENTS ON THE PROPOSAL FOR EP/COUNCIL REGULATION ON CO-OPERATION BETWEEN NATIONAL AUTHORITIES RESPONSIBLE FOR THE ENFORCEMENT OF CONSUMER PROTECTION LAWS (COM (2003) 443 final)

EXECUTIVE SUMMARY

The EEA EFTA States welcome the proposal for EP/Council Regulation on co-operation between national authorities responsible for the enforcement of consumer protection laws. In order for harmonised legislation on consumers' interests to work well, the EFTA side strongly supports a well functioning and efficient enforcement system at European level. On assessment of the proposal, the EEA EFTA States propose that the definition of *intra-Community infringements* should be extended to include all relevant cases where the existence of a cross-border element calls for co-operation. They underline the necessity of maintaining certain conditions in the proposal as they are essential components for an effective enforcement system. The EFTA side proposes a rewording of Article 14.2 in order to place more emphasis on the duty to comply as regards requests for assistance. The EEA EFTA States suggest that there must be some limitations as to what kind of information should be confidential and covered by the obligation of professional secrecy according to Article 12(3).

I INTRODUCTION

1. The EEA EFTA States welcome the proposed EP/Council Regulation on co-operation between national authorities responsible for the enforcement of consumer protection laws.¹ They would also express their satisfaction with the consultation process, which confirms the Commission's declared intention of involving all interested parties.

¹ EEA EFTA States submitted Comments to the Commission on the Green Paper on EU Consumer Protection in January 2002 and on the Follow-up Communication in September 2002.

2. It is important for the functioning of the harmonised legislation on consumers' interests that it be backed by a well functioning and efficient enforcement system at European level. The EEA EFTA States believe that it will be absolutely vital for the national enforcement authorities to have a common forum at European level, i.e., to co-ordinate their practices and exchange information. This will be true, in particular, for a general framework for marketing practices, outlined in the proposal for a Directive that was presented in June 2003.

3. The EEA EFTA States believe that establishing a harmonised co-operation enforcement system will lead to a higher level of protection of consumers' interests and more equal competition terms for professionals.

II SCOPE OF THE SYSTEM FOR CO-OPERATION

4. The EEA EFTA States agree that the scope of the co-operation should be intra-Community infringements of the directives listed in the Annex. However, the definition of *intra-Community infringements* in Article 3b means that only cases where the trader and the consumers are located in different countries are covered by the proposed Regulation. Nonetheless, there might be a need for cross-border co-operation also in cases where the consumer and the trader are located in the same country. The definition should therefore be re-examined and changed to cover all relevant cases where the existence of a cross-border element calls for co-operation.

III CONDITIONS NECESSARY FOR AN EFFECTIVE ENFORCEMENT SYSTEM

5. To ensure the efficient functioning of a future system of co-operation, it is vital that certain conditions are fulfilled. Subsequently, the EEA EFTA States deem in particular the following elements of the proposal important and underline that they should be maintained as set out in the proposal, with a suggestion for a new text in the last point:

- Introduction of a duty to establish *public* enforcement bodies;
- Enforcement bodies should be given sufficient powers to intervene;
- Collection of data of practice should be ensured, in particular information that makes it possible to verify that requests for information and/or assistance are dealt with in a timely and adequate manner by the relevant authorities;

- When a marketing practice is dealt with in another country than the country of effect, the enforcement body in the country of effect shall provide an assessment of how consumers are affected, the context and cultural setting being taken into consideration. Furthermore, the enforcement body of the country of origin shall have an obligation to pay attention to this assessment;
- Enforcement bodies should be obliged to give priority to, and as a main rule, comply with requests for mutual assistance. On this point, the EEA EFTA States would like to see a change in the wording of the introduction of 14.2 to reflect in a better way both that requests shall be given high priority and that complying with a request is the main rule. The introduction of Article 14.2 should therefore read: “A requested authority *is obliged to comply with and give high priority to* requests for mutual assistance, *unless ...*” .

6. As to the fulfilment of the above mentioned elements, it is however, important to take account of the particularities of small administration structures of Member States. In this context, the EFTA side believes that when it comes to the duty of establishing public enforcement bodies, such obligations can be met by particularly small administrations by appointing an already existing public authority or ministry as the contact body for the enforcement co-operation.

IV USE OF EXCHANGED INFORMATION

7. It is the opinion of the EEA EFTA States that there should be some limitations on the kind of information that should be confidential and covered by the obligation of professional secrecy according to Article 12(3). Information communicated pursuant to the mutual assistance provisions of the proposed Regulation should only be kept confidential and be covered by the obligation of professional secrecy if disclosure could harm commercial or other economic interests. This would be in accordance with Regulation (EC) No 1049/2001 Article 4(2), stating that access to a document can only be refused where disclosure would undermine the protection of “commercial interests of a natural or legal person, including intellectual property”.

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