

CROSS-BORDER ENFORCEMENT OF EC CONSUMER LAW - - CPC REGULATION

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Resume

Public enforcement authorities in the Member States play a decisive role in ensuring that consumer protection laws are correctly enforced. Regulation (EC) No 2006/2004 on Consumer Protection Cooperation was adopted in 2004 to tackle the growing cross border problems in the Internal Market. It lays down the framework and general conditions under which authorities, responsible for enforcement in the Member States, are to cooperate. The Regulation links up national, public enforcement authorities in an EU-wide Enforcement Network which has been given the means to exchange information and to work together to stop rogue traders or any other cross-border breach to consumer protection laws.

There are two main EC law instruments containing specific provisions on powers to enforce consumer law: a 1998 Directive¹ and a 2004 Regulation². The purpose of the Directive 98/27

¹ DIRECTIVE 98/27/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 May 1998 on injunctions for the protection of consumers' interests, O J L 166/51, 11. 06. 1998. Hereinafter referred to as the Directive 98/27.

² REGULATION (EC) No 2006/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 October 2004, on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (Text with EEA relevance), O J L 364, 9.12.2004, p. 1–11 amended by: DIRECTIVE 2005/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and

is to approximate laws, regulations and administrative provisions of the Member States relating to injunctions in order to protect the collective interests of consumers included in the Directives listed in the Annex. CPC Regulation allows cooperation between Member States for consumer protection. The Regulation establishes a network of authorities responsible for monitoring the application of legislation concerning consumers. The aim is to ensure compliance with the legislation and the smooth functioning of the internal market. Whereas the action for injunction under the Directive may be taken for either domestic or cross-border problems, the Regulation applies only to intra-Community infringements of consumer protection legislation. The above acts create combined effects on a number of conceivable transnational enforcement scenarios.

Why a legal framework for improving co-operation between consumer protection enforcement authorities has been needed? Consumer protection laws – like virtually all legislation – are only as good as their enforcement. The Directive 98/27 gives national consumer enforcement bodies and consumer associations nominated by the Member States the power to seek injunctions in courts (on their own or other Member States initiative) to stop traders infringing EU consumer protection directives. What was lacking, it was the ability for these bodies to cooperate effectively in cracking down on rogue traders who operate cross-border. Commission in the Green Paper acknowledged that a framework for systematic information exchange was essential for effective market surveillance, lack of formal co-operation within the EU also had the consequence that the EU was unable to cooperate effectively with third countries.

The key elements of such a legal framework according to the Commission's reasoning in the Green Paper were the following: the nomination of competent authorities by each Member State to co-ordinate enforcement co-operation among national, regional and local bodies and act as a single point of contact; the establishment of common databases and communication networks that respect confidentiality requirements; the establishment of reciprocal mutual assistance rights and obligations among the Member States (that could cover information exchange on request and spontaneously, reciprocal use of national notification, surveillance,

of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance), OJ L 149, 11.6.2005, p. 22–39; Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Text with EEA relevance) OJ L 332, 18.12.2007, p. 27–45. Hereinafter referred to as the CPC Regulation.

investigation and seizure powers); the possibility for Member States to carry out co-ordinated enforcement actions (simultaneous investigations, injunctions etc.) albeit under national enforcement powers; the establishment of obligations on Member States to supply information (statistics, complaints, risk patterns, emergencies) to the Commission for dissemination, to other Member States to enhance the co-ordination of market surveillance; the possibility for the EU to enter into co-operation with third countries on enforcement and join global enforcement networks; the possibility to carry out common EU and national projects such as the creation of information and communication networks, common databases, training, seminars, exchanges and common inspections. Most of the member states' governments strongly supported the Commission's ideas. Therefore according to Article 1 of the Regulation there are two specific objectives to achieve. First, providing for cooperation between enforcement authorities in dealing with intra-Community infringements that disrupt the internal market. Second, contributing to improving the quality and consistency of enforcement of consumer protection laws and to the monitoring of the protection of consumer economic interests. Article 2 limits the scope of the regulation to intra-Community infringements of EU legislation that protects consumers' interests.

To sum up, CPC Regulation - the most extensive piece of Community law legislation focusing on enforcement of consumer law undoubtedly strengthens public enforcement. The Regulation seen as complementary to the Injunctions Directive adds to the remedies available under it. The major purpose of the CPC Regulation is to create a network of national authorities responsible for enforcing EC consumer law and to oblige them to work together. These mechanisms until now remained unexplored in the consumer law context. Therefore we can perfectly say that the Regulation cuts out a potential avenue to harmonised consumer protection that could work better than the wholesale harmonisation of private law. Having come to such a conclusion we shall wait for the first Member States' reports to the Commission on the application of the Regulation.

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