

# EEC Perspectives

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## Editors' Introduction

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The "soft law" approach to regulating consumer matters has not been developed very far in the EEC as a supranational body. The EEC has been trying since the first consumer protection programme of 1975 to promulgate directives concerning certain consumer transactions such as doorstep selling, credit contracts, and correspondence courses, to regulate advertising, or to improve the standards of product liability. None of these drafts has yet been enacted by the Council – the legislative body of the EEC. Codes of conduct, guidelines and the like as means of implementing EEC consumer legislation are therefore not conceivable.

On the other hand, there is an intense policy debate about the pros and cons of soft law regulation by the EEC. A paper of the European Consumer Law Group (1983) which has been distributed to the participants of the workshop had opted for a negative approach, a position which was presented to the workshop by the representative of the Bureau Européen des Unions de Consommateurs (BEUC), Tony Venables, in a comment published below. On the other hand, a paper published by Reich & Smith (1983) concerning voluntary actions to improve the marketing of breast milk substitutes preferred a somewhat different approach: "soft law" should be promoted if it improves the position of the consumer and if legislation is uncertain – a position both criticised and supported by participants of the workshop. John Braun, in describing a voluntary approach by the European Direct Selling Association demonstrated that guidelines by supplier organisations might be a useful means of improving trading standards without denying the need for legislation on an EEC basis. The paper of Jeremiah Sheehan on behalf of the responsible EEC directorate gives an insight into the difficulties the EEC has in choosing the "horses for courses" to implement its first and second consumer protection programme. The discussion of the workshop will certainly have some influence on the policy orientation of the EEC, as the concluding remarks of Thierry Bourgoignie show.

It is useful to know that in an area where the EEC already has jurisdiction, namely competition policy, more flexible approaches toward regulation and implementation are used. Christian Joerges demonstrates this in his paper on EEC practice concerning selective distribution systems. Whenever complex matters with respect to

many actors — including consumers — have to be decided by an administration, it is impossible to use the “tough enforcement approach.” Negotiation processes allowing for a subtle weighing of interests take place. Unfortunately, it is doubtful whether the consumer’s interest is well taken care of by this “discovery procedure practice” (Entdeckungsverfahren-Praxis), as Joerges calls it. The procedural rules to allow consumer participation in EEC antitrust proceedings certainly have to be improved.

#### REFERENCES

- European Consumer Law Group (1983). Group actions in the consumer interest. *Journal of Consumer Policy*, 6, 325–350.
- Reich, N., & Smith, L. J. (1983). Implementation of the International Code of Marketing of Breastmilk Substitutes by the EEC. *Journal of Consumer Policy*, 6, 355–364.