



Project e-commerce

FINAL REPORT

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CONTENT

Summary of the project	2
1 Introduction	2
2 Background	2
2.1 Project background	2
2.2 Characteristics of internet trade	3
2.3 Legislative background (Status 2005)	4
Legal provisions EU	4
2.3.1 Internet related legislation	4
2.3.2 Chemicals related legislation	9
2.3.3 Placing on the market	10
2.3.4 Information obligations for companies and private individuals offering chemicals on the internet	12
2.4 Project objectives	13
3 Project description	13
3.1 Project plan	13
3.2 Participating countries and working group	14
3.3 Schedule	15
3.4 Preparatory phase and desktop study	15
3.4.1 Desktop study	15
3.4.2 Desk top study results	16
3.4.3 Inspection phase preparations	16
3.5 Inspection phase	16
3.5.1 Selection of websites and companies	16
3.5.2 Scope of investigation; common and supplemental checks	17
3.5.3 Execution of inspections	18
3.6 Reporting phase	18
3.6.1 Sequence of work	18
3.6.2 Data compilation and processing	19
4 Results	20
4.1 Scale of the survey and quantitative contributions of the participating countries	20
4.2 Characteristics of the inspected companies	21
4.3 Characteristics of the inspected websites	23
4.4 Characteristics of the chemical products	25
4.5 Availability of contract related information	27
4.6 Types and quality of hazard related information found	28
4.7 Violations	30
4.8 Sanctions and measures imposed	33
5 Conclusions and recommendations	35
Comprehensive conclusions	35
Recommendations for Industry	35
Recommendations for COM and Member State Authorities	36
List of annexes	37
Annex I - Results of the desktop study	38
Annex II - Desk top study questionnaire	40
Annex III - Inspection Questionnaires and Explanatory Notes	44
Annex IV - List of participants	53
Annex V - Glossary	54

SUMMARY OF THE PROJECT

1 INTRODUCTION

The Chemical Legislation European Enforcement Network (CLEEN) is a forum for information exchange. The general goals of CLEEN are:

- to facilitate better compliance
- to provide feedback to the commission about execution of enforcement programs, sensitivity to fraud, enforceability and field experiences and changes in the market.
- to share experience and knowledge: Best practices
- to exchange and co-ordinate information between the members of the network
- equal conditions for industry within the European Member States and EEA (European Economic Area) countries.

To meet these goals, CLEEN performs projects on specific matters. The e-commerce project was planned for the period starting 2005. It focused on the enforcement of the European legislation on:

- Special provisions concerning internet trade of chemicals,
- Marketing / import of dangerous / banned substances via internet,
- classification and labelling of chemical products and on Safety Data Sheets,

This report describes the performed project. In addition an overview of relevant legal regulations and enforcement tools concerning e-trade of chemicals is given.

2 BACKGROUND

2.1 Project background

For several years the internet has been more and more used as a trade platform for all kind of goods and in general internet shopping becomes increasingly popular. As the results of a previous German project concerning Biocides has shown, such products, but also other chemicals, are frequently offered and ordered via internet, including consumer products. The authorities found banned chemicals or chemicals subject to use restrictions. Since these chemicals are generally not available for private persons and only under special conditions for professionals the question was raised, how private persons could obtain them. During official investigations it became clear, that not all companies observe the chemicals regulations aimed at the protection of human health and the environment, e.g. restrictions in marketing and use of certain chemicals. This conclusion is confirmed by the results of an Austrian project performed in 2002, especially regarding classification and labelling: Only 1 of 25 suppliers offered chemicals via internet in accordance with legislation. All other suppliers were not in compliance.

Monitoring takes place in some special internet areas, where e.g. police is trying to identify persons dealing with drugs, pornographic material or chemical weapons. It

seems that less is done in the area of trade with chemicals, at least compared to the activities in the field of “conventional” trade”.

Several past European enforcement projects were performed in order to strengthen compliance and enforcement and to reach a consistent enforcement of chemical legislation, but so far none has focused on the marketing of chemicals via the web. Since the internet doubtlessly is going to be one of the main future means of marketing chemicals, the CLEEN-network decided to undertake an investigation in the field.

2.2 Characteristics of internet trade

In general, legal provisions regulating trade apply to all types of trade. Thus they also apply to chemical substances, preparations and products. As the chemicals regulations, which are made to protect human health and the environment against dangerous properties of chemicals, do not distinguish between different forms of trade, all provisions regulating chemicals apply to internet trade as well. In practice though, internet trade differs considerably from conventional trade. It is more virtual and anonymous. Some homepages are visited by persons or network members searching for certain chemicals (e.g. explosives) and are more or less hidden to other internet users. In many cases the access to websites is restricted to registered customers, making investigations by monitoring authorities more difficult. This is a new situation and requires new strategies and methods to check compliance with chemicals regulations.

Some further aspects of internet trade are:

- The clientele cannot be contained national or regional.
- In case of sale via market places (like eBay) the identity of the vendor is not known.
- In addition to the vendor and customer a third party is providing the internet platform, being responsible for the basic conditions, but almost not involved in the transactions.
- Companies and their products mostly cannot be inspected instantly because at first the vendor's identity has to be determined. Thus, taking rapid action is nearly impossible for the authorities (In contrast, a purchase via internet just takes some clicks)
- In most cases a spatial distance exists between the vendor and customer. Therefore particular legal requirements are difficult to apply and control, e.g. verifying the proof of the legal age or the identity of the customer.
- Cross-border co-operation between the Member States, as referred to in Dir. 2000/31/EC, is reasonable and necessary since in those cases, where offers are being found from parties abroad, national authorities have very limited possibilities to act.

2.3 Legislative background (Status 2005)

Important note: The following comments refer to the legal situation as of summer 2005. Later amendments or other changes of legislation have not been reconsidered.

Legal provisions EU

2.3.1 Internet related legislation

Several European Directives are dealing with the issue „internet“, yet not all of them are relevant for the project. The crucial provisions, mostly definition of terms, are laid down in the following Directives:

In the European Union the e-commerce is regulated by **Dir. 2000/31/EC on certain legal aspects of information society services (ISSs), in particular electronic commerce in the internal market**. It complements information requirements applicable to information society services, without prejudice to the level of protection of public health and consumer interests, established in other community acts, in particular Directive 97/7/EC or in national legislation implementing it.

In the annotations of Dir. 2000/31/EC it is stated under item (18): **“Information society services span a wide range of economic activities which take place on-line; these activities can, in particular, consist of selling goods online; activities such as the delivery of goods as such or the provision of services off-line are not covered; information society services are not solely restricted to services giving rise to on-line contracting but also, in so far as they represent an economic activity, extend to services which are not remunerated by those who receive them, such as those offering on-line information or commercial communications, or those providing tools allowing for search, access and retrieval of data;...”**

The level of protection guaranteed by other EU provisions is mentioned in Article 1:

Dir. 2000/31/EC, Article 1, para. 2:

This Directive complements Community law applicable to information society services without prejudice to the level of protection for, in particular, public health and consumer interests, as established by Community acts and national legislation implementing them in so far as this does not restrict the freedom to provide information society services.

Dir. 98/48/EC, Article 1 amends Dir. 98/34/EC in relation to the definition of ISSs and to include the main definitions of Dir. 2000/31/EC in the Guidance Manual (GM):

„service“, any Information Society Service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

A service provider is

Dir. 2000/31/EC, Article 2 a:

'service provider': any natural or legal person providing information society service;

An established service provider is

Dir. 2000/31/EC, Article 2:

'established service provider": a service provider who effectively pursues an economic activity using a fixed establishment for an indefinite period. The presence and use of the technical means and technologies required to provide the service do not, in themselves, constitute an establishment of the provider

In one EU country, service providers that need to comply national provisions are established service providers in their territory.

To select in the project "national service providers" is interesting in relation to follow up actions related with companies

"Recipients of the service" are those persons using an information service for professional ends

Dir. 2000/31/EC, Article 2 d:

'recipient of the service': any natural or legal person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking such as: information or making it accessible;

Persons acting outside trade, business or profession are consumers.

Dir. 2000/31/EC, Article 2 e:

'consumer': any natural person who is acting for which are outside his or her trade, business or profession;

Article 5 of Dir. 2000/31/EC defines for all service providers (hence including companies professionally trading chemicals via internet) **the general information to be provided.**

These items (name, geographic address, details including e-mail to allow a rapid contact, trade register and registration number) are mandatory; the service provider shall **render them easily, directly and permanently.**

Looking at **chemical suppliers that are acting as service providers** on the web in the light of the directive, they have two options: either to offer a direct on-line selling possibility (usually restricted) or to supply enough information on "means of distance communication" (e-mail –mandatory-, phone or fax) to allow rapid contact for effecting a distance contract.

Dir. 2000/31/EC, Article 5, para. 1:

In addition to other information requirements established by Community law, Member States shall ensure that the service provider shall render easily, directly and permanently accessible to the recipients of the service and competent authorities, at least the following information:

- (a) the name of the service provider;
- (b) the geographic address at which the service provider is established;
- (c) the details of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner; (...)

Regarding electronic contracts the Directive obliges the Member States to

Dir. 2000/31/EC, Article 9, para. 1:

(...) ensure that their legal system allows contracts to be concluded by electronic means. Member States shall in particular ensure that the legal requirements applicable to the contractual process neither create obstacles for the use of electronic contracts nor result in such contracts being deprived of legal effectiveness and validity on account of their having been made by electronic means.

According to the directive service providers are not liable for the information stored at the request of a recipient of the service:

Dir. 2000/31/EC, Article 14

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:
 - (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
 - (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.
2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.
3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for Member States of establishing procedures governing the removal or disabling of access to information.

The Directive does not force providers to monitor information generally,

Dir. 2000/31/EC, Article 15, para. 1

No general obligation to monitor

Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12, 13 and 14, to monitor the information which they transmit or store, nor a general obligation to seek actively facts or circumstances indicating illegal activity.

but they can be obliged to inform authorities about assumed illegal activities of their users:

Dir. 2000/31/EC, Article 15, para. 2

Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

Article 19, para. 1 – 5 sets rules for the co-operation of the Member States concerning

Cooperation:

1. Member States shall have adequate means of supervision and investigation necessary to implement this Directive effectively and shall ensure that service providers supply them with the requisite information.
2. Member States shall cooperate with other Member States; they shall, to that end, appoint one or several contact points, whose details they shall communicate to the other Member States and to the Commission.
3. Member States shall, as quickly as possible, and in conformity with national law, provide the assistance and information requested by other Member States or by the Commission, including by appropriate electronic means.
4. Member States shall establish contact points which shall be accessible at least by electronic means and from which recipients and service providers may:
 - a) obtain general information on contractual rights and obligations as well as on the complaint and redress mechanisms available in the event of disputes, including practical aspects involved in the use of such mechanisms;
 - b) obtain the details of authorities, associations or organisations from which they may obtain further information or practical assistance.
5. Member States shall encourage the communication to the Commission of any significant administrative or judicial decisions taken in their territory regarding disputes relating to information society services and practices, usages and customs relating to electronic commerce. The Commission shall communicate these decisions to the other Member States

According to article 20 of 2000/31/EC the Member States determine the sanctions applicable to infringements of national provisions adopted pursuant to this Directive and they shall take all measures necessary to ensure that they are enforced. The sanctions they provide for shall be effective, proportionate and dissuasive.

Dir. 97/7/EC on the protection of consumers in respect of distance contracts is applicable only to products offered to the general public. Some provisions are also interesting for the project, e.g. the definition of “**distance contract**” and “**means of distance communication**” (Article 2, para. 1 and 4) which include electronic mail and video text (microcomputers).

An indicative list of means of distance communication is included in Annex I of Dir 97/7/EC.

“distance contract” (**Dir 97/7/EC**): any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment in which the contract is concluded.

“Consumer” is defined analogue to the definition in Article 2 e of Dir. 2000/31/EC as:

Dir. 97/7/EC, Article 2, para. 2

“any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession”

A supplier is defined as:

Dir. 97/7/EC, Article 2, para. 3

“any natural or legal person who, in contracts covered by this Directive, is acting in his commercial or professional capacity”

The supplier is obliged to provide information in time prior to the conclusion of a contract to the consumer:

Dir. 97/7/EC, Article 4

Prior information

1. In good time prior to the conclusion of any distance contract, the consumer shall be provided with the following information:
 - (a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address;
 - (b) the main characteristics of the goods or services;
 - (c) the price of the goods or services including all taxes;
 - (g) delivery costs, where appropriate;
 - (e) the arrangements for payment, delivery or performance;
 - (f) the existence of a right of withdrawal, except in the cases referred to in Article 6 (3);
 - (g) the cost of using the means of distance communication, where it is calculated other than at the basic rate;
 - (h) the period for which the offer or the price remains valid;

- (i) where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently.
2. The information referred to in paragraph 1, the commercial purpose of which must be made clear, shall be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the principles governing the protection of those who are unable, pursuant to the legislation of the Member States, to give their consent, such as minors.

2.3.2 Chemicals related legislation

The chemicals related legislation describes the conditions and requirements which apply for chemicals placed on the market. It also defines the information requirements concerning safety data sheets and the conditions under which they must be supplied to the receiver. Moreover, it restricts the marketing and use of chemicals or even bans them. A detailed description of the European chemicals legislation is not subject of this manual though.

As previously mentioned, the chemicals legislation in force is aimed to protect human health and the environment from dangerous properties of chemicals does not distinguish between the different forms of trade, thus applies to internet trade as well. Most important legal acts in the context of this project are:

- **Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances.**
Apart from the notification procedure for new chemicals substances and the classification / labelling for dangerous substances the directive describes some essential terms for the e-commerce project:
 - definition of “placing on the market”, Article 2, para. 1 (e)
 - advertisement for substances, Article 26
 - obligation to classify and label substances , Article 4, 23, 24 and 25
- **Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations**
Describes:
 - the procedure for classification and labelling of preparations and
 - the mandatory information for advertisements in case of distance selling of preparations, Article 13
- **Commission Directive 2001/58/EC of 27 July 2001 amending for the second time Directive 91/155/EEC defining and laying down the detailed arrangements for the system of specific information relating to**

dangerous preparations in implementation of Article 14 of European Parliament and Council Directive 1999/45/EC and relating to dangerous substances in implementation of Article 27 of Council Directive 67/548/EEC (safety data sheets)

Describes the contents (Compilation Guide) to be covered in SDS, the assessment and the conditions of dissemination: when and how SDS shall be delivered and to whom

- **Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market**
 - Advertisement of biocidal products (Article 22, “Use biocides safely. Always read the label and product information before use.”)
 - Definition of a biocidal products
- **Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations**
 - restricting the marketing and use of certain dangerous substances and it’s single directives
- **Ozone depleting substances regulation EC (No) 2037/2000**

Equipment containing banned substances are offered in internet auctions and from countries where the European regulations are not in force.
- **Commission Directive 91/155/EEC of 5 March 1991 defining and laying down the detailed arrangements for the system of specific information relating to dangerous preparations in implementation of Article 10 of Directive 88/379/EEC**

2.3.3 Placing on the market

From the legal point of view marketing products via internet is a special form of “distance selling”. From the position of the e-commerce working group it was of interest to determine, at what point a product can be regarded as “placed on the market” in contrast to where there is only advertisement.

Chemicals legislation provides only for a few requirements with regard to advertising chemicals. Moreover, requirements for chemical substances and chemical preparations differ.

Dir 67/548/EEC, Article 26, Advertisement:

Any advertisement for a substance which belongs to one or more of the categories referred to in Article 2 (2) shall be prohibited if no mention is made therein of the category or categories concerned.

Dir. 1999/45/EC Article 13, Distance selling:

„Any **advertisement** for a preparation within the meaning of this Directive which **enables a member of the general public to conclude a contract for purchase** without first having sight of the label for that preparation must make mention of the type or types of hazard indicated on the label. This requirement is without prejudice to Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts“

With regard to substances, the legislation clearly makes information on danger categories mandatory. It applies to all types of users and any type of advertising, may it conclude in purchase or not. By contrast, the “Preparation Directive” introduces in its Article 13 the consumer protection perspective and covers only preparations that can be purchased by the general public, e.g. household products, paints, glues, et cetera. In fact, a reference is made to 97/7/EC which on its part does not apply to distance contracts for professional users.

Someone who is solely advertising a product usually does not want to conclude a legally binding agreement right away with the person perceiving the offer. Instead, a closer commercial relationship potentially leading to a legally binding agreement is sought. By contrast, companies / persons offering products on websites combined with on-line mechanisms to place orders generally aim to sell them. Therefore this set-up cannot be regarded as sole advertisement, but must be interpreted as the intention to place the offered products on the market.

Directive 67/548/EEC defines “placing on the market”:

Article 2, para. 1 (e):

“placing on the market” means the **making available to third parties.** Importation into the Community customs territory shall be deemed to be placing on the market for the purposes of this Directive.

In most participating countries, yet not in all, the aforesaid provision is interpreted in a sense that includes already the possibility of placing the chemical product on the market before it is physically moved (in case of distance selling e.g. before it is sent to the customer). From a legal point of view the wording “making available to third parties” connotes the concrete intention to sell or to “place the goods at the disposal” of a certain customer, through a binding contract for instance. Therefore, in some countries goods are considered as placed on the market only if they are actually sent out to the customer.

“Placing on the market” is a general term that covers the entire process of “making a product available to third parties”. In other words, it covers the whole commercialisation process. Nevertheless, the legal **requirements** regarding the **information systems** for both, substances and preparations, are linked to the

product label (on the package) and the SDS (travels with the product and can be supplied downstream with the first delivery).

For this reason the "Dangerous Substances Directive" 67/548/EEC (DSD) and the "Dangerous Preparations Directive" 1999/45/EC (DPD) have to regulate advertising (in general, for substances, or to enable distance selling for preparations) in specific articles.

Advertising is a part of the commercialisation process because it is always done for economic reasons. But being a special activity within the process of "placing on the market", it is particularly treated in both directives.

A rather different situation exists if products are "offered" in the context of internet auctions, where advertising is not possible. By putting a product up for auction it becomes instantly accessible to anyone. Disposal can be obtained simply through "accepting" the offer by placing the highest bid. With the expiration of the time limit set by the auctioneer, a contract between him and the person giving the highest bid will be concluded automatically.

In case of distance selling consumers receive information on the dangerous properties of chemical substances also if persons / companies merely promote products on their website. Professional users receive the complete information via safety data sheet with the first delivery.

Dir. 91/155/EC, Article 1, para. 1:

Any person established within the Community who is responsible for placing a dangerous substance or preparation on the market, whether the manufacturer, importer or distributor, shall supply the recipient who is an industrial user of the substance or preparation with a safety data sheet containing the information set out in Article 3.

But as internet is a medium in general addressing an undefined clientele and vendors can not be sure whether or not only professionals are using their websites they are well advised to make data available to all persons visiting the website. This applies in general also to restricted websites, depending on the procedures a vendor ensures that only professionals can access it.

2.3.4 Information obligations for companies and private individuals offering chemicals on the internet

In principle, the situation does not differ from other distance selling activities or conventional trade. The European provisions oblige persons trading chemicals to observe the provisions regulating advertisement and information on certain hazardous properties of chemicals, as described above; dangerous products placed on the market have to be labelled properly. Professional users are entitled to receive a safety data sheet and its updates.

2.4 Project objectives

General goals

- Information exchange and sharing experience between the Member States to improve enforcement activities in Europe,
- Fostering a greater degree of compliance,
- Reducing risks for man and the environment,
- Establishing co-operation with other authorities concerning the matter at a national level.

Subject related goals

- Gaining relevant knowledge and experience in the field of internet and internet trade for monitoring authorities,
- Finding specific enforcement strategies adapted to the national situation in each Member State,
- Obtaining an overview of EU / national provisions regulating internet trade of chemicals,
- Elaborating recommendations for COM, national authorities and decision makers concerning the enforceability of regulations,
- Advising companies regarding their duties in internet trade.

Extra target

- Broadening the project's base by acquiring technical, legal and financial support from COM, thus, backing up the mission of the current and future CLEEN projects in an important and helpful way.

3 PROJECT DESCRIPTION

The core objective of the project was to take a first step to obtain knowledge on the status of the internet trade of chemicals and to increase enforcement experience and expertise in the area. Under this condition the CLEEN participants favoured a project which was easy to execute. Accordingly, the project was constructed to allow familiarisation with the internet market, to detect and analyse monitoring challenges and weaknesses, to come up with solutions, and if necessary provide a basis for a follow-up project. Seeking assistance for the inspectorates from national authorities with developed internet intelligence was considered an important task. Participating countries had the choice of just taking part in the first phase (desktop study) or the main phase (inspections) of the project or to perform the full program.

3.1 Project plan

E-commerce was split in three phases:

Preparatory phase and desktop study

- Agreement on the project and the project activities
- Notice of participation to the project management

- Establishment of a working group (AT, FIN, DE NL, ES)
- Elaboration of a project manual, working method, forms (by working group)
- Identification of useful tools, e.g. special software
- Collection of national legal provisions regarding internet trade (optional for participating countries)
- Identification of possibly involved authorities / specialists / other authorities monitoring internet
- Possibilities of information exchange / co-operation on a national level
- Listing the obligations of companies / persons offering chemicals via internet at a national level

Operational phase

- Information / involvement of other authorities
- Identification of companies / persons offering chemicals in internet shops
- Involvement of specialists, where necessary
- Collection of information on companies / persons
- Selection of companies / persons for inspection
- Inspection, follow up, if necessary
- Sending of the report forms to the project management

Reporting phase (project management / working group)

- Analysis / evaluation of the report forms, identification and clarification of unclear information
- Draft of the final report, including conclusions / recommendations
- Commenting round for project participants
- Elaboration of the final report, adoption by the CLEEN Conference
- Publication of the final report
- Press release, public relations to raise public awareness

3.2 Participating countries and working group

During the 5th CLEEN conference 10 MS declared an interest to take part in the “e-commerce” project. The collective was formed by Austria, Belgium, Denmark, Finland, Germany, Netherlands, Poland, Slovenia, Spain and Sweden. The working group consisting of Austria, Finland, Germany, Netherlands and Spain was set up and the project management was assigned jointly to Austria and Germany.

The working group was put in charge of:

- Further planning
- Proposing strategies, procedures, tools
- Seeking administrative bodies outside the chemicals field with the potential to support the project with internet experts and/or know-how
- Drawing up a manual, questionnaires and guidelines,
- Providing computerized utilities to document findings and compile project results
- Facilitating information exchange among the participating countries and synchronizing activities

- Preparing reports for the CLEEN conferences and the secretariat

3.3 Schedule

Step	Time
Launch of project, agreement on participants	2005 ✓
Desktop study Involvement at a national level: Compilation of an overview of national regulations Location of resources (authorities concerned, supporting specialists)	08 / 2005 ✓
Results of desktop study	09 / 2005 ✓
Elaboration of draft project manual, tools proposals (working group)	09 / 2005 ✓
Interim report at 6 th CLEEN conference, Bonn	09 / 2005 ✓
Completion of the project manual and questionnaire	01 / 2006 ✓
Inspection phase	02-10 / 2006 ✓
Database built	09 / 2006 ✓
Data processing (merging reports and analysis)	05 / 2007 ✓
Presentation of preliminary results at 8 th CLEEN conference, Krakow	05 / 2007 ✓
Press release	05 / 2007 ✓
Adoption of the final report, Oslo	05 / 2008 ✓

3.4 Preparatory phase and desktop study

3.4.1 Desktop study

The following aspects were covered during the desktop phase:

- Collection of national legal provisions regarding internet trade (on a voluntary level)
- Location of involved authorities / specialists / other authorities monitoring internet on a voluntary level, but recommended
- Possibilities of information exchange / co-operation on a national level
- Compiling the legal obligations of companies / persons offering chemicals via internet and delivering an overview document
- Assessment of where the participating countries have equal provisions regarding restrictions in chemicals trade (e.g. expert knowledge, legal age of dealers / customers) to determine the activities in the inspection phase in detail (In practice this step entailed collection of information regarding specific national obligations/demands concerning, for instance, record keeping and licenses to retailers for selling very toxic chemicals).

The desktop study was carried out up until August 31st, 2005 by completing a questionnaire elaborated by the e-commerce working group (see Annex II). The aim was to identify where the participating MS have analogous provisions not regulated by EU law, e.g.:

- Mandatory licenses for traders
- Obligations for keeping records and types of records
- Prohibition of self-service

3.4.2 Desk top study results

Based on the analysis of the questionnaires it became clear that restriction schemes exist in all participating countries, but they differ. Consequently the project had to focus on the fields of the EU legislation. The latter is summarised in chapter 2.3.2. Nevertheless, specific national provisions could be checked on a voluntary basis. The findings have been integrated in the project report. A results overview is given in Annex I.

3.4.3 Inspection phase preparations

Parallel to the ongoing desk top study the working group prepared the main project manual along with a draft inspection questionnaire. Besides explaining the juridical background and setting the timeframe, the manual contained the working method including tips on how to approach the internet survey, a list of recommended actions and guidance on the checking of web pages and responsible enterprises. The task was accomplished partly in a written procedure and partly during a two-day subgroup meeting in July 2005. Following the presentation and consideration of the documents during both, the meeting of the full working group and the 6th CLEEN Conference in September 2005, Spain and Germany were appointed to compose the final version of the inspection questionnaire in consideration of the expressed comments and to optimise it for later digital recording and processing of the reported inspection data. The forms were completed accordingly and distributed to the national focal points in January 2006.

3.5 Inspection phase

The fundamental approach of the practical internet survey was that each participating country would screen the web for pages promoting and/or offering chemicals but concentrate attention on national enterprises. Websites and the responsible vendors were chosen for close examination according to an adopted, predefined set of criteria (see 3.5.1). It was agreed that each country would examine a minimum of 25 websites operated by enterprises having its seat on their national territory. Inspections were carried out in the period between February and October 2006.

3.5.1 Selection of websites and companies

Websites and companies were filtered and selected for inspection from the massive array of websites based on two sets of criteria:

Company characteristics

- Preference was given to small and midsize enterprises (SME).
Former CLEEN projects had shown that deficient knowledge of the legal situation is quite common in this group.
- Producers / traders / importers.
The focus lay on those suppliers who put up dangerous, banned or incorrectly labelled chemicals on the web intending to place them on the market in a business-to-business relation (B2B).

- Companies selling to consumers other than professional customers (B2C, B2B)
- Private persons offering chemicals

Nature of the offered chemical products

- Attention was predominantly paid to dangerous chemical products (substances and preparations), in particular:
 - banned / restricted substances
 - classified dangerous substances and preparations
 - biocides (products)
 - pesticides (voluntary target)

3.5.2 Scope of investigation; common and supplemental checks

The following checks were considered to be obligatory elements of the common regular inspection routine:

- Examining company details (identity, size, etc.)
- Tracing the responsible enterprise, which is actually placing the chemical on the market, where third parties (“service providers”) are offering the product on the web (e.g. traders, “market places”, auctions, portals)
- Gathering information on all the involved and responsible companies, to show their role in the chemicals supply chain and to indicate their professionalism and product stewardship
- Clarifying the general purpose of the websites. Where possible, establishing whether or not a site serves to just advertise chemical products or to effect sales (to place chemicals on the market)
- Checking the availability of compulsory information regarding the conclusion of distant contracts. Scrutinizing found information
- Identifying the offered chemicals and their attributes relevant to the project (dangerous properties, restricted substance, banned substance)
- Determining whether websites feature restricted access areas which might serve as a regular or concealed sales platform. Where permitted by law, investigating after making a registration
- Assessing quality of product / substance description, in particular hazard related information
- Establishing whether or not all mandatory information on dangerous product properties is correctly provided (C & L)

The following aspects were seen as being supplementary and could be voluntarily checked:

- Compliance with additional national legal provisions applying to the marketing of chemicals (e.g. particular restrictions, mandatory licences, proven expert knowledge, certified staff trainings, legal age of vendors / customers, record keeping about sales and/or quantities. etc.)
- Quality of provided Safety Data Sheets

A spectrum of interventions was recommended in case contraventions would seem to be likely or would clearly be detected through the on-line monitoring:

Interventions aimed at companies

- Performing on-site inspections and:
 - If the website featured a restricted access area: Making a visit to clarify the function of the feature and to examine the company's general conduct
 - In case restricted or banned substances were offered: Clarifying what safeguards are in place and how efficient they are to ensure that only authorised professionals can acquire these chemicals
 - In case of a substantiated violation: Imposing measures according to the national legislation, e.g. withdrawal from the market/internet place. Submitting information to customs services / other relevant authorities.
 - Providing the customs with information about the import of banned substances, if necessary

Interventions aimed at private persons

- In case of a violation or suspected violation due to putting banned / restricted substances on a market place or auction: Contacting the service provider to force withdrawal of the offer and to demand the disclosure of the vendor's identity.
- Informing police / other competent authorities

3.5.3 Execution of inspections

Undertaking on-site company inspections aside from website controls was not a mandatory element of the collective campaign, so the decision to use this instrument was left to each participant. In practice some countries performed site inspections as an integral part of their basic campaign routine while others undertook site controls and other forms of interventions only in reaction to detected convictions on websites (see Chapter 4.8).

Compliance checks on subjects of the voluntary extended program were carried out by more than half of the countries taking part in the project (see Chapter 4.6).

3.6 Reporting phase

3.6.1 Sequence of work

Inspection reports were submitted to the project management from the middle of the operational phase on until the official start of the reporting phase in November 2006. At the outset of this phase the management began to merge all received data to form a single data pool. Between January and March 2007 a feedback procedure involving all submitters was undertaken to assure data quality. During the following weeks data analysis was conducted and statistics were compiled. At the 8th CLEEN conference in May 2007 the results were presented along with a preliminary interpretation of the findings. In the course of the conference the attained facts and the project as a whole underwent close evaluation by a subgroup, which also proposed the final conclusions

and recommendations. After adoption of these by the full assembly and the phrasing of a press release, DE was endowed with the mandate to finalise the project report for publication. The latter was adopted at the 9th CLEEN conference in 2008.

3.6.2 Data compilation and processing

Since the beginning of the project it was the management's ambition to increase the use of electronic tools for processing the inspection reports, analysing the raw data and extracting the project results. The original intent to put the questionnaire on the internet and collect the inspection data online had to be abandoned after estimation indicated that the efforts in terms of costs and personnel input for developing the system would be too high.

At the start of the inspection phase the national focal points therefore received forms in a standard office format that was suitable for the recording and returning of single inspection reports. Simultaneously a database including entry screens, tailored for installation on local computers, was also built with an office system by Spain and handed over to the focal points soon after.

About half of the participating countries made use of this database application to record the reports of their inspectorates and to compile a national data set, which was then submitted to the project management for further processing. The other countries directly turned over anonymised versions of their forms to the management.

After the end of the inspection period the data from all submitted database files were merged in a system, which had been modified by Germany for optimal statistical analysis beforehand. In a next step the compilation was manually supplemented by Germany and Austria with those data that had been provided on single forms, which resulted in the final data stock for the subsequent analysis, representing a total of 900 forms. Transcription errors were avoided and high data quality was assured in a feedback process with the submitters. All quantitative results presented in this project report (Chapter 4) were obtained from the aforementioned data stock via a set of SQL database queries created for the purpose.

4 RESULTS

4.1 Scale of the survey and quantitative contributions of the participating countries

In total 207 web site inspections spanning 465 offers for chemical products have been reported by the participating countries. The share of each individual country in absolute numbers and percentages is given in two tables below. The figures indicate quite noticeable differences in input. With regard to each issue, web site controls as well as product controls, three countries performed two-thirds of the checks. But while Poland, Spain, and Finland checked the majority of web sites (Table 4.1) Spain, Austria and Belgium contributed the most to product controls (Table 4.2). A comparatively small number of inspections were reported from Germany, Netherlands and Slovenia. The reasons are not completely clear. However, in the case of Germany a capacity binding campaign against illegal internet selling of basic ingredients for explosives production was run by the authorities parallel to the project. Findings and results of this activity were not documented within the context of the CLEEN “e-commerce” project.

Note: all further statistical analysis was based on the data stock obtained from the merged data sets of all participating countries. No further differentiation by nation was done.

Country	%	Web sites
PL	22	45
ES	20	42
FI	14	28
AT	10	21
DK	10	20
BE	7	15
SE	6	12
DE	4	9
SI	4	8
NL	3	7

Table 4.1: Number of inspected web sites per country

Country	%	Products
ES	36	167
AT	15	68
BE	11	50
PL	10	45
DK	9	44
FI	6	28
SE	6	26
DE	4	18
NL	2	11
SI	2	8

Table 4.2: Number of inspected chemical products per country

4.2 Characteristics of the inspected companies

Beyond examining websites the survey included the collection of information indicating the role of the responsible companies in the chemicals supply chain, their professionalism, size and reliability. The information was intended to help analyse whether factors such as certified management systems, association memberships or staff size influence companies' compliance with legal provisions.

Table 4.3 lists all the roles taken by the inspected sample of companies regarding chemicals supply. Companies were found to act predominantly as distributors (70%). Less than one third (30%) are producers and an even smaller group (25%) act as importers. Roughly every tenth company has more than one role in the supply chain, e.g. importer and distributor (~13%). In rare cases companies appear to be active in all three business fields.

Company type	%	no
producer	30	62
importer	25,1	52
distributor	70	145
producer + importer	5,3	11
producer + importer + distributor	2,4	5
importer + distributor	12,6	26

Table 4.3: Proportions of company types inspected

Further company related facts recorded are shown in Table 4.4. Since in a considerable number of cases companies were not actually visited during the investigation and the facts in focus tend not to be displayed on the websites of enterprises, inspectors quite often were not able to provide the requested information. Therefore it

must be noted, that for each category in the table definite figures can be stated only for a portion of the total set of 207 companies. Consequently the picture drawn has an element of uncertainty.

Certified management systems	%	n°
ISO14001		24
ISO 9001		46
Others		24
Total sum certified		64
Association member		
yes		45
no		120
not reported		42
Company size		
1 person	9,2	19
2-9 persons	27,1	56
10-49 persons	34,3	71
50-249 persons	6,8	14
>= 250 persons	7,7	16
not reported	15,0	31

Table 4.4: Corporate characteristics

64 enterprises in total were reported to apply certified management systems, among which several have multiple certificates. 27 enterprises are known not to hold any certificate. In 140 cases their status remains unknown.

Besides conforming to the common ISO-standards companies were found to be certified according to the criteria of national environmental emblems, the military, OHSAS 18001 and others.

The survey shows a relatively weak tendency among the sample companies to join professional associations. Out of those 165 companies with known status only 45 (= 27%) have such a membership.

With regard to staff size, the survey includes companies ranging between one person to more than 250 people, grouped in 6 categories. In 176 cases it was possible to determine the actual size of the company. While the majority falls into the category of 2-9 people (56) and 10-49 people (71) the rest of the companies are spread over the remaining categories relatively equally.

4.3 Characteristics of the inspected websites

A set of basic information was collected to characterise the general purpose of the websites checked, as well as the corporate bodies operating them. A crucial issue was to establish whether websites were meant to only advertise chemical products or to serve as instruments to effect sales, thus to actually place chemicals on the market. Furthermore, it was intended to elucidate whether the chemicals verified were set up for sale within a regular professional context and based on a sincere trader-costumer relationship or offered and distributed under rather amateur conditions, possibly in disregard of legal provisions.

Figure 4.1 shows the distribution pattern of website types within the inspected sample. The vast majority of websites / web pages (~74%) were found to be operated by chemicals supplier companies. Shopping and auction portals – directed at consumers – and sites run by associations of professional users or suppliers make up about 14% and 10%, respectively. Websites operated by other actors, e.g. private individuals were rarely investigated (< 1%) and do not contribute significantly to the results of this study.

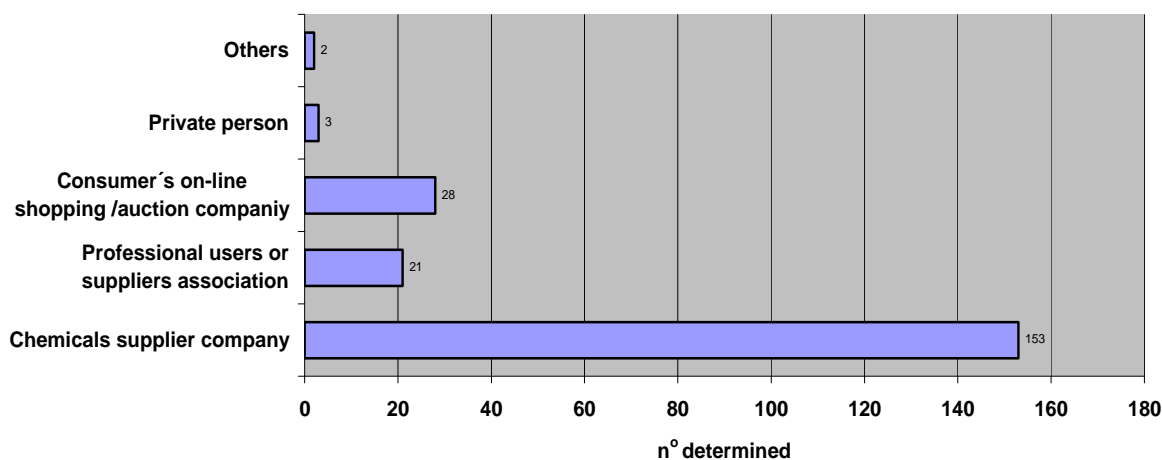


Figure 4.1: Type of operators of websites / web pages inspected

In most cases websites were not addressing a specific target group but were directed to both the consumers and corporate clients. Sites directed only towards one particular type of client made up the smaller portion of the sample. While sites focused on corporate business (B2B) represent one third of the inspections, sites limited to retail trade amount to little more than 10 percent (Table 4.5).

Target group	%	n°
Consumers (B2C)	12	24
Companies (B2B)	33	69
both	55	114

Table 4.5: Target groups of the websites

Table 4.6 indicates that companies active in chemicals trading typically consider the internet as a sales channel like others and that their websites serve as a means to sell products, thus to conclude contracts. Consequently, in the vast majority of cases (76%) the inspected websites provided mechanisms to pick and order products on-line. Therefore, the legal provisions for distance selling in general according to Dir. 97/7/EC; Dir. 2000/31/EC and for chemicals in particular, e.g. Dir. 1999/45/EC et cetera apply and played an important role in the compliance assessment.

Distance sales function enabled	%	n°
yes	76	158
no	23	48
not reported	>1	1

Table 4.6: Portion of websites with on-line distance sales function enabled

Restricted areas accessible only for registered clients were found only on a relatively small number (49) of websites. Although reports are not complete regarding the item, available data suggest that such a specific service is offered at a rate of approximately 30% within the total sample (Table 4.7).

Restricted access areas for clients	% (n=156)	n°
yes	29	46
no	71	110
not reported		51

Table 4.7: Website with restricted access areas for clients

In order to find out whether certain corporate characteristics affect the operation and features of internet sites, different groups of companies (4.2) were compared with regard to the rate of enabled on-line distance sales functions on their sites. The results show that on-line sales mechanisms are present on the internet sites of all company groups at a high rate - irrespective of such parameters as association memberships or management systems (Figure 4.2). Rates fluctuate around the mean of the entire sample (76%) varying from 64% to 91%. Although not confirmable, the figures suggest a slight tendency among organised and certified enterprises to utilize internet features with more reserve, possibly because they rely on different distribution channels.

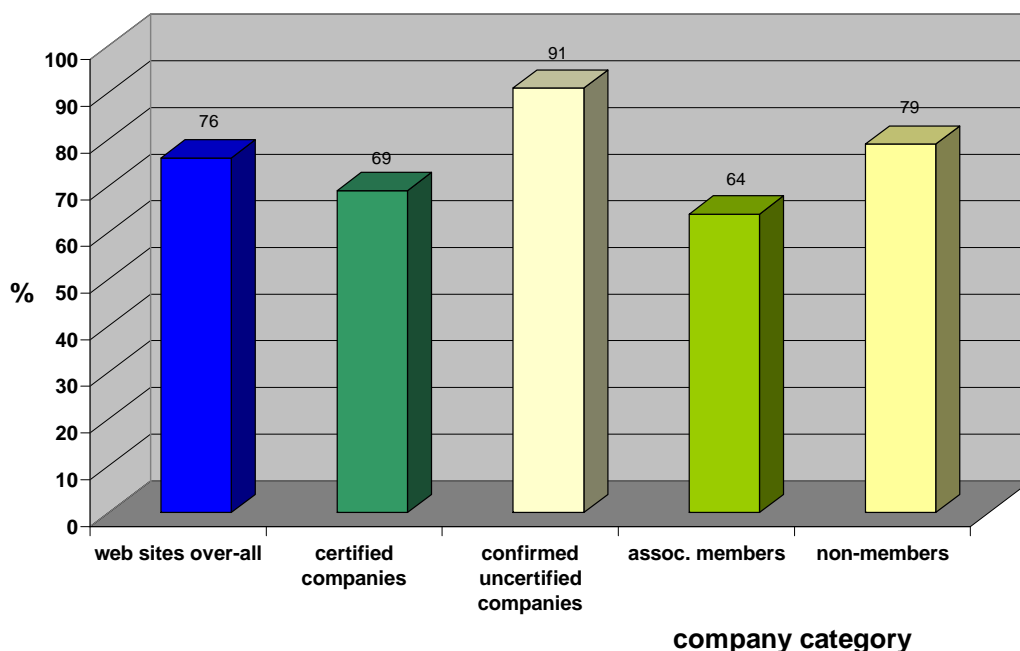


Figure 4.2: Rates of websites with distance selling enabled by company category

4.4 Characteristics of the chemical products

One goal of the survey was to draw a picture of the common practice among small and medium size enterprises (producers / traders / importers) with regard to internet trade of dangerous chemicals. In particular, it was desirable to obtain information on the extend of compliance with legal provisions concerning placing such chemicals on the market, e.g. respecting availability restrictions for consumers / professional users, bans, authorization requirements for purchase and use. For this purpose inspectors often deliberately chose websites offering dangerous chemicals for detailed checks. Moreover, from websites offering a variety of dangerous and not dangerous chemical products, frequently the dangerous specimens were picked for reporting.

Therefore the present results (Table 4.8) on the characteristics of chemicals found advertised or set up for sale on websites can not be viewed as obtained from a random selection.

Product types	% (n=465)	n°
Substance	17	80
Preparation	82	383
not reported	0	2
Dangerous products	(n=465)	
yes	94	435
no	6	28
not reported	0	2
Products with components listed in Annex I of DSD	(n=435)	
yes	90	392
no	8	35
not reported	3	12
Restrictions	(n=465)	
apply	17	81
product is banned	>1	1
none	73	338
product is exempt	>1	1
not reported	8	35
Purchase requires authorization	(n=465)	
yes	22	101
no	69	323
not reported	9	41

Table 4.8: Ratio of product types, proportion of dangerous products inspected, ratio of products containing components listed in Annex I of DSD to total sample of dangerous chemicals, purchase restrictions and authorization requirements

Checks were performed largely on preparations. Products consisting of single substances represent less than one fifth (17%) of the entire sample.

94% of the products reported were classified as dangerous by the inspectors. Among these products the large majority (90%) contained components listed in Annex I of the "Dangerous Substances Directive" (67/548/EEC).

Restrictions apply to a substantial number of the products (17%), either according to European or national regulations. In one case a banned product was offered.

For a further significant portion of products (22%) the buyer needed to be legally authorised before purchase.

4.5 Availability of contract related information

Where chemical products are put up on a web page to effect sales the supplier is obliged by law to fully inform the customer in good time prior to the conclusion of a distance contract about his identity, the terms and conditions of the contract and about the main characteristics of the product, including their dangerous properties, instructions for proper and safe and use, precautions to be taken and so on. The manner of presenting the latter information is specified in the various pieces of legislation related to substances and preparations (Chapter 2.3). The following table (Table 4.9) describes the observed degree of compliance with the aforementioned legal provisions.

Prior information required acc. Article 4 of Dir. 97/7/EC	% (n=150)	n°
yes	29	43
No	47	70
not applicable	25	37
not checked		57
Chemicals identity		(n=465)
CAS n°	27	125
EC n°	22	102
name(s)	41	190
Mandatory hazard information		(n=435)
yes	23	101
no	5	25
is incomplete	24	112
is not provided	46	216

Table 4.9: Availability of information on the supplier and distance sales conditions, the chemicals identity, hazards

Out of 150 websites checked regarding the item, almost every second one did not contain the information, as laid down in Article 4 of Dir. 97/7/EC, that must be provided to the customer before the conclusion of a distance contract for purchase. The provisions did not apply to every fourth site, either because exclusively corporate costumers were addressed or solely products were advertised.

For only 41% (192 cases) of the total of 465 inspected products, the chemical identities of the ingredients were found to be part of the product information. Commonly used identifiers were the chemical name or numbers (EC or CAS) or a combination of these. In virtually all these cases (2 exceptions), the name was part of the information. In over 170 additional cases inspectors identified the product's components through further investigations to be able to carry out the full inspections as agreed.

For only slightly more than one fourth (28%) of the chemicals was the complete mandatory hazard information made available, either by direct display as part of the offer or through a link connecting to a third party's website. However, for most products (70%) the hazard information was deficient, either entirely lacking (46%) or incomplete (24%).

4.6 Types and quality of hazard related information found

Part of the inspection program was to examine the use of the established legal means and descriptors for declaring product related hazards (e.g. classification and labelling elements, safety data sheets) and to assess the quality of the information presented by the chemicals suppliers. The figures for four categories surveyed are listed in Table 4.10. They show that dangerous products were offered with insufficient C&L information at a high rate. Only a small percentage (5%) of the total set of 435 verified dangerous chemical products was equipped with the complete label. For another 20% vendors supplied safety data sheets. Just selected parts (pictograms) of the proper C&L information were used in more than 10% of the cases. Dangers were described in writing at about the same rate, mostly with insufficient content (e.g. one single aspect) and/or with a reference to a not available external source. For roughly half of the dangerous chemicals C&L information was completely missing.

Classification & labelling	% (n=150)	n°
Complete label	5	21
Pictogram(s)	13	57
Safety data sheet	20	87
others	16	69

Table 4.10: Proportions of information types used for dangers description

Figure 4.3 compares the hazard information provision rate for two categories of dangerous products: products containing components that are officially classified and therefore listed in Annex I of the DSD and those with no such ingredients. The initial assumption that available official classification and labelling requirements for given chemicals simplify the declaration of products for companies and may result in better compliance with regard to danger communication was not confirmed.

The diagram shows almost identical insufficiency rates for both product categories: information on dangers was totally missing for close to 50% of the products and incomplete for another 25%. Thus, taken as an accumulation in around three out of four cases (> 70%) chemical companies failed to meet the requirements to correctly inform the buyer about dangerous product properties before purchase.

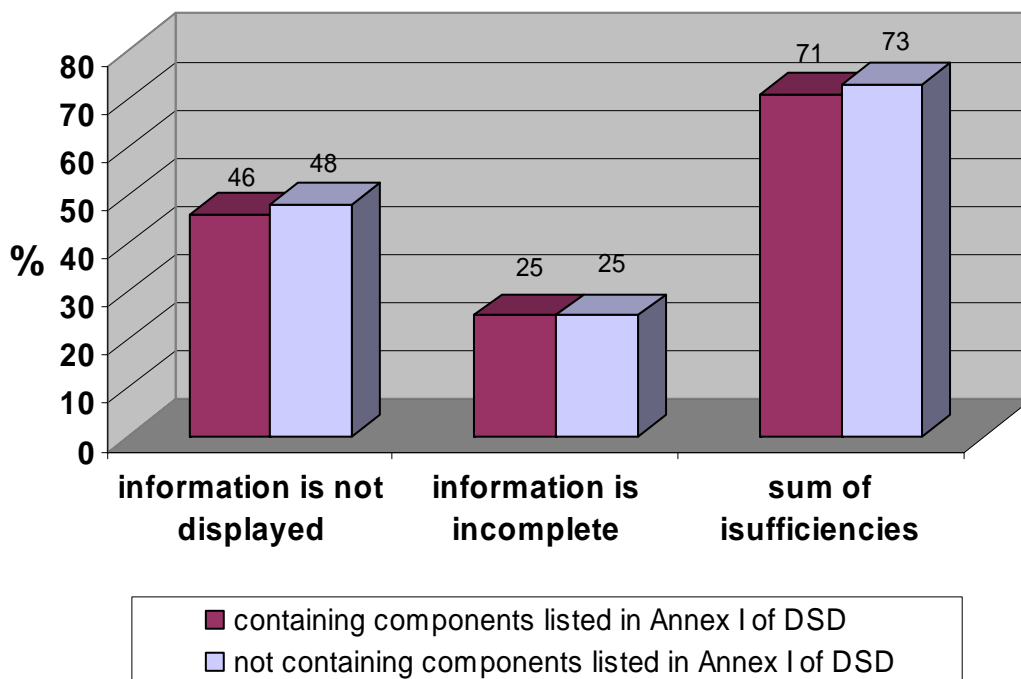


Figure 4.3: Hazard information provision rate for dangerous products

As a complement of the project's fixed inspection programme 6 countries (Austria, Belgium, Spain, Netherlands, Sweden, Slovenia) voluntarily assessed Safety Data Sheets (SDS). SDSs were obtained either directly from the enterprises responsible for the offer found on the internet or from linked web sources used as a reference. Based on completeness, correctness and correspondence to legal provisions inspectors rated 221 SDSs according to an agreed scale of four quality categories (see Annex III. "Explanatory Notes"). The results are given in Table 4.11. SDSs of all four quality levels were found at a more or less equal frequency (19 – 30%). However the fact needs to be highlighted that a relatively small percentage (21%) of the inspected SDSs were judged as being complete and of good quality ("ok", cat. 3). In contrast, almost 50% were proven significantly or severely deficient. Thus, to a large extent companies failed to inform their customers adequately and in line with legislation about the properties and safe use of their chemical products.

SDS quality	% (n=221)	cases
severe deficiencies (cat 0)	19	41
significant deficiencies (cat 1)	30	66
minor deficiencies (cat 2)	23	51
okay (cat 3)	21	47
not reported	7	16

Table 4.11: SDS quality assessment

Over-all quality assessment of the hazard information surveyed (including SDSs and other types) reveals a similar, yet even more unfavourable situation with regard to reliability of the content (Table 4.12). For just 13% of the entire sample of dangerous products inspectors categorised the supplied information (by direct display or internet link) as being correct. An identical rate was diagnosed for the set of products containing ingredients listed in Annex I of the DSD.

Summing up, in only one, or at a maximum two, out of 10 cases could customers expect to receive comprehensive, good quality information on dangers of the chemical product they purchase.

Information presented by	quality	%	cases	n°
direct display or internet link (dangerous products in general)	correct	13	55	435
direct display or internet link (dangerous products containing components listed in Annex I of DSD)	correct	13	51	392

Table 4.12: Reliability of provided hazard information for dangerous products

4.7 Violations

Inspectors reported single or multiple violations for the vast majority of surveyed companies / websites; the rate reaching almost 80%, in other words 4 of 5 cases (Table 4.13). As demonstrated in the previous sections (4.5;4.6), non-compliance included, for example, concealing dangerous aspects of chemicals, putting up belittling advertisements (17%), failing to provide information on the supplier company, failing to state sales conditions and to inform about the properties of the product according to law and before entering into distant contracts and failing to submit correct SDS to professional users. Apart from these, chemical companies were frequently found to neglect their duty to efficiently verify the buyer's authorization to purchase certain dangerous substances or preparations where legal regulations provide for such

obligations (e.g. national regulations to control trade and use of toxic substances via a system of permits). Among the 101 authorization requiring products examined in this study, only every second one (50%) was controlled by vendors in terms of granting access exclusively to authorized recipients (Table 4.14). For at least 40% of the products such restriction mechanisms were not pursued.

It must be pointed out that even if companies deployed authorization verification procedures, their effectiveness often appeared to be doubtful. In a number of cases simply registering on-line as a customer and claiming to hold a permit was sufficient to enable clients to effect orders without any further proof of authenticity of statements. On the other hand, inspectors observed serious routines to ensure the correctness of client statements as well. For instance, clients were obliged to submit copies of identification and permits by regular mail before effective offers could be placed.

Violations discovered	% (n=207)	n°
yes	78	161
no	20	42
not reported	2	4

Table 4.13: Observed violation rate (full company sample)

Customers authorization is verified where required	% (n=101)	n°
yes	50	50
no	40	40
not reported	10	11

Table 4.14: Verification of customer's authorization to purchase products by chemicals providers

In this survey no significant correspondence was observed between company characteristics and internet chemicals trade habits. General violation rates were equally high for all groups: association members and non-members, certified and uncertified enterprises (Fig. 4.4). Likewise, size did not have a verifiable influence (Fig. 4.5). Although results might suggest a tendency to better compliance among medium-size companies (10-249 staff)

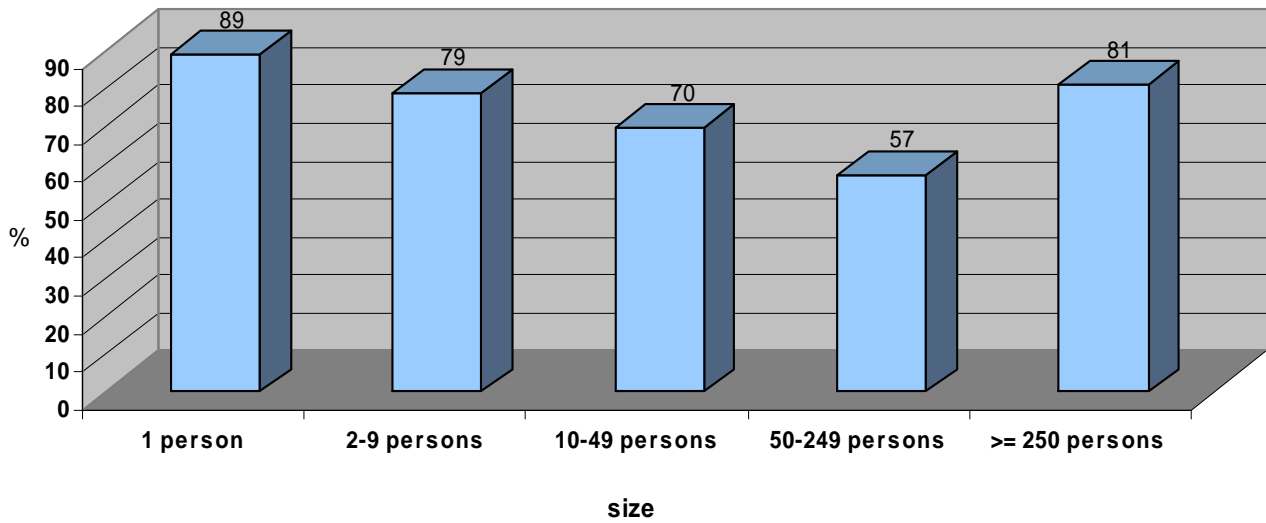


Figure 4.4: Violation rate found for different company categories

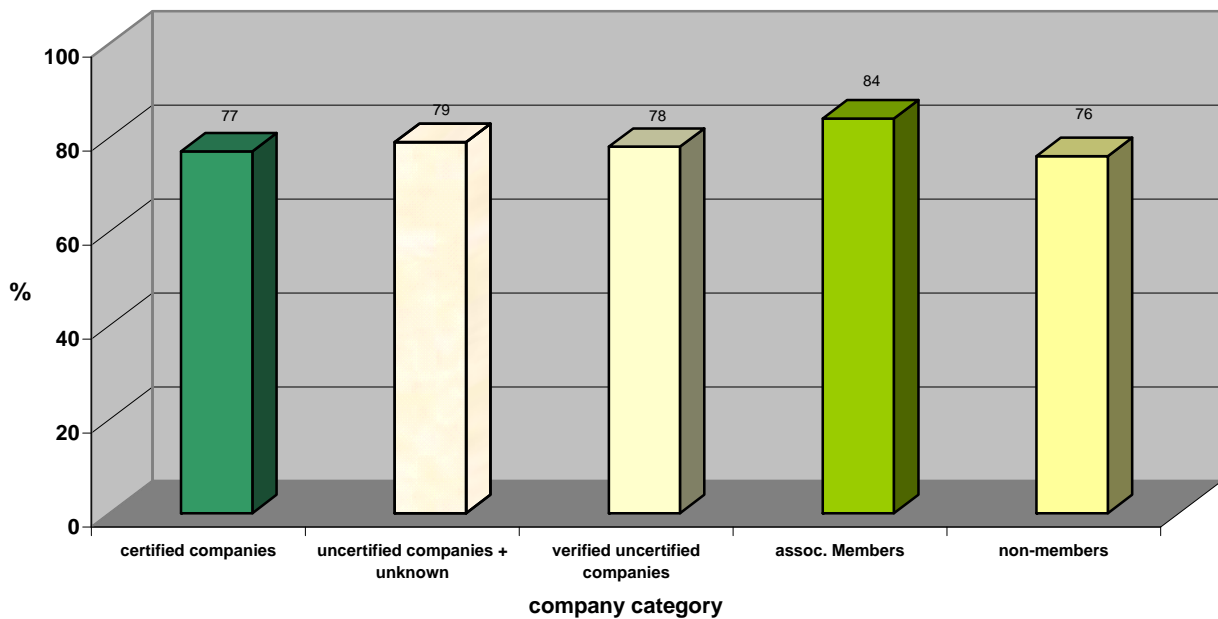


Figure 4.5: Violation rate by company size

A comparison of the company groups (omitting size) with regard to their authorization verification practice Figure 4.6 shows ratios of group members who respected the legal obligation to those who disregarded them laying between 3 of 10 and 6 of 10 cases. The smallest relative proportion of companies performing checks was found in the group of those not organized in associations, even though this observation cannot be backed up statistically.

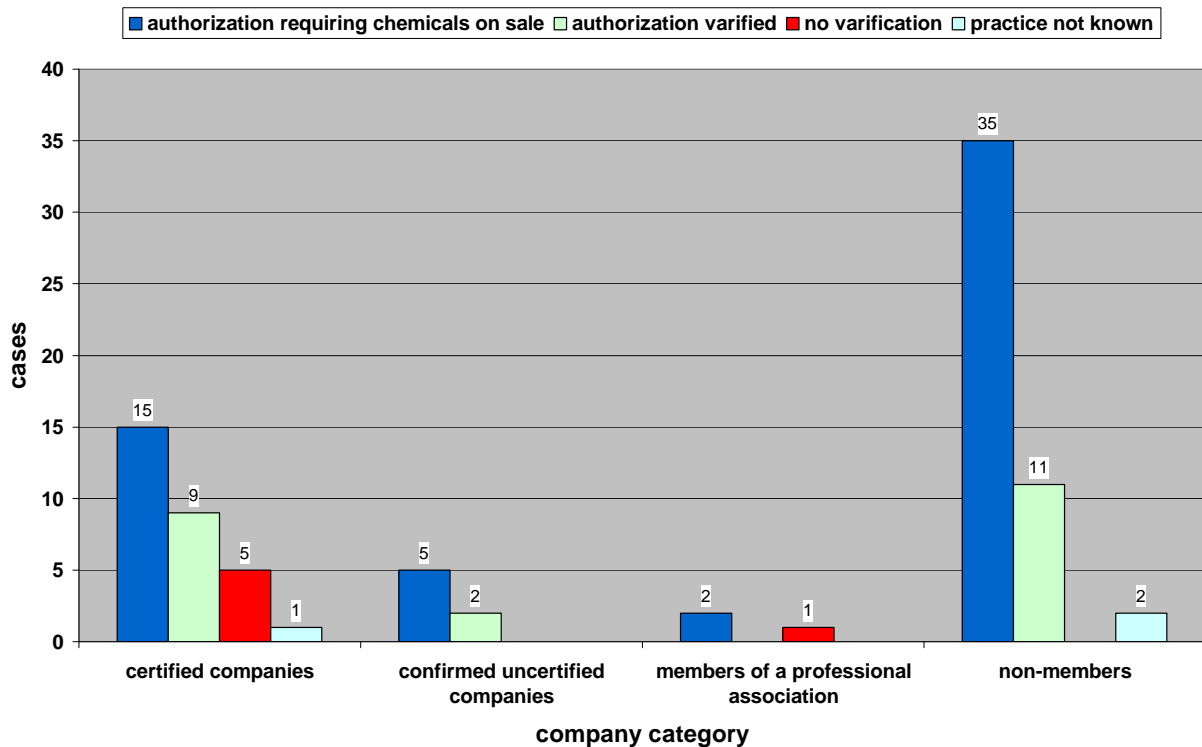


Figure 4.6: Authorization verification rate among different company groups trading dangerous chemicals that require the purchaser's legal authorization. Due to the small sample size per company category no percentage rates were calculated, instead case counts are given.

4.8 Sanctions and measures imposed

The inspectors participating in the project reported 101 active responses to contraventions. In most cases, the companies were advised on how to improve compliance with the legal provisions. Only in a few cases were stern measures and formal sanctions, such as official reprimands, warnings or legal proceedings imposed. Examples of actions undertaken are:

- provision of advise to the company on how to improve compliance
- request of more information from companies for further investigation
- onsite inspection after inspecting the website
- submission of a warning letter to the companies
- measures imposed in order to comply with a certain legal provision within a set deadline (e.g. publication, updating or correcting SDS)
- administrative decisions and fines
- case reported / forwarded to different authorities (e.g. different territorial competence, Police, public prosecutor)
- banning of websites until the information displayed respects the legal provisions in force

It should be noted that the MSs are responsible for enforcing the European and national law, while different systems of inspection, empowerment and awarding penalties are in place in the different MSs. Due to this reason it was not possible to

collect information on the sanctions applied within this project in a uniform way. Although the results presented above give the range of enforcement activities taken by the authorities, their quantification was not possible. In some cases sanctions were reported to have been applied, but their nature was not specified.

5 CONCLUSIONS AND RECOMMENDATIONS

Comprehensive conclusions

1. The survey results show a clear tendency among sellers to not comply with legal obligations concerning internet trade in general and regulations regarding selling dangerous chemical products in particular
2. There is a huge range of chemicals presented and made available via internet and e-commerce is expanding. In a few years e-commerce probably will be the dominant chemicals sales channel
3. A high percentage of chemical suppliers fail to provide the customer with full information on risks and potential hazards of the products they offer
4. The reliability of provided information on dangers of the chemical products for sale is usually low
5. There is no noticeable difference in sales practice between certified companies, members of a professional associations and other vendors
6. Generally, the standard of compliance with legal requirements is poor

Recommendations for Industry

1. There is a need for a step change in chemicals trade via internet:
 - a) In particular, companies should not overlook the e-commerce side of business
 - b) A website is a 'window on the world' - the accuracy and quality of hazard and risk information send clear messages to customers about a company's attitude toward product stewardship
 - c) If a company states it is certified for quality to a particular standard, and the quality of hazard information given is poor, that company risks reputational harm because it is clear that in practice the company is not meeting these standards.
2. Reliable information on risks and substance related hazards need to be provided to customers
3. The requirements for EU safety data sheets are not the same as for the US Material Safety Data Sheets. Furthermore, suppliers should recognise they have a duty to provide safety data sheets in the national language of the Member State into which the product is being imported. In many cases, therefore, it is not sufficient for the SDS to be only in English.
4. End users and distributors who choose to buy directly from a non-EU supplier become importers for EU purposes, and take upon themselves the responsibility for correct classification and labelling and for providing adequate safety data sheets.

Recommendations for COM and Member State Authorities

1. There is a need to step up enforcement and advice on the provision of hazard information (classification, labelling and safety data sheets), both in general and for e-commerce in particular.
2. Suppliers need more advice about their responsibilities and how to meet them. The advice should set out what suppliers should include on their website if they supply chemicals on the web.
Guidance should be transnational. The EU-Commission could initiate such guidance.
3. Inspectors need a strategy on how to monitor compliance and, where necessary, enforce the requirements for e-trade in chemicals. Inspectors would benefit from guidance on:
 - a) Finding relevant sites
 - b) Identifying the actual business responsible for the website, especially where essential contact details are lacking
 - c) Enforcing as needed
4. It would be useful for inspectors to be able to share experience and tips as a first step to developing a strategy.
5. Efficient software tools identifying web sites offering chemicals are necessary. Spider applications as existing for other fields could serve as a model.
6. A harmonised definition of 'placing on the market' is needed so that inspectors in all MS have a common understanding and can enforce in a consistent and concerted manner.
7. Resources for enforcement in Member States are static or decreasing, but the volume and complexity of chemicals legislation is increasing, along with the public expectation of effective enforcement.
Enforcing authorities need more resources.
8. Having established in this project a benchmark of compliance (which is clearly poor), this work should be repeated in 3-5 years to see whether the picture is improving.

LIST OF ANNEXES

Annex I.....	Results of the desktop study
Annex II.....	Desk top study questionnaire
Annex III.....	Inspection questionnaires and explanatory notes
Annex IV.....	List of participants
Annex V.....	Glossary

Annex I – Results of the desktop study

	Austria	Belgium	Denmark	Germany	Finland	Netherlands	Poland	Spain
Dir. 2001/31 implemented	Yes	Yes	Yes	Yes	Yes	Yes	Yes	?
Dir 97/7 implemented	Yes	Yes	Yes	Yes	Yes	Yes	Yes	yes
Proposed definition „placing on the market“ accepted?	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Licenses needed for traders	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Requirements								
Chemicals affected	T+, T	Only for biocides and pesticides: T+, T, CMR, C Xn, Xi, depending on the category	T+, T	T+, T	E	Pesticides and biocides	n.a.	E
Exemptions possible	No	No	?	Yes	No	Yes	n.a.	No
Traders have to keep records	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Chemicals affected	T+, T	Biocides and pesticides	T+, T	T+, T	T+, T, pesticides, (partly expert knowledge) explosives (valid permission	Pesticides and Biocides	T+, C combined with R35, methanol, preps containing 3% methanol weight	Biocides and pesticides: T+, T

	Austria	Belgium	Denmark	Germany	Finland	Netherlands	Poland	Spain
					buyer)			
Type of record (only delivery)	Quantity, name of substance, name/address purchaser, date of delivery	Yearly quantities, client list	Date, place, name of product, quantity	Date, identity / quantity, use name/address purchaser, name sender, receipt	Name/address, name substance, quantity, use, date	Information about sold products	Name, address, region No.,	
Other info obligations								
Exemptions possible	No	No	No	Yes	Yes	?Yes	Yes	No
Bans on self service	Yes	No	Yes	Yes	No	?	No	No
Chemicals affected	T+, T, Xn, C, CMR	n.a.	T+, T	Yes T+, T, O, F+, Xn(R40,R62,R63 or R68)	n.a.	?	n.a.	n.a.

Annex II - Desk top study questionnaire

Annex - Questionnaire desktop study

European enforcement project **e-commerce**

Questionnaire Desktop Study

Please complete the questionnaire and send it back to zucht.gerhard@baw.bund.de until **31.08.2005**

Chapter 1 – General information

e-commerce contact:

Country:

Name:

Address:

Phone:

Fax:

E-Mail:

Comments:

Chapter 2 - Legislation

Is Directive 2000/31/EC implemented in your country? yes no
(Directive on certain legal aspects of information society services, in particular electronic commerce, in the internal Market)

Is Directive 97/7/EC implemented in your country? yes no
(Directive on the protection of consumers in respect of distant contracts)

Can you agree with the following interpretation of „placing on the market“:

„A chemical offered on a website is placed on the market if it can be ordered directly.“

yes ☺ no ☹

If no: Please describe your interpretation:

Comments:

Draft final report **e-commerce****National legislation regulating the sale of chemicals**

In some countries national legislation sets special conditions for trading dangerous chemicals. For instance when trading toxic or very toxic substances the trader has to hold a license proving his expert knowledge, a minimum age of 18 years and the necessary reliability. If other chemicals are being dealt (e.g. T+, T, C, O, F+, Xn in combination with certain R-sentences) the trader has to file certain information concerning the identity, the age and the authorisation of the customers receiving them. Moreover, certain chemicals are banned from self-service.

National regulations:

Which chemicals are affected:

Licenses needed for traders?

yes

Which chemicals are affected:

What are the requirements for the license:
(e.g. minimum age, reliability, expert knowledge...)

Exemptions possible?
(Not necessary to describe details)

yes

no

no licenses needed

Are traders obliged to keep records?

yes

Which chemicals are affected:

Describe the information to be filed by the trader

Exemptions possible?
(Not necessary to describe details)

yes

no

no obligation to keep records

Bans on self service:

yes

no

Self service is a special form in the service sector, where service former done by employees due to cost reduction or better availability of products is done now by the customer himself, e.g. in vending machines or do-it-yourself stores. There is in general less advice and information.

Which chemicals are affected:

page 2

Draft final report **e-commerce**

Comments:

Chapter 3 – Activities / experiences, co-operation

Were there any activities in your country concerning the monitoring of internet trade with chemicals so far?

yes Please describe the results:

Are there special experiences to be observed in the e-commerce project?

no activities

Are other authorities in your country monitoring chemicals trade on the internet?

yes

Is co-operation with these authorities established?

yes no

If no co-operation: Do you intend to install co-operation within the frame of the e-commerce project?

yes no

no other authorities

Comments:

Chapter 4 - Tools

Are there specialists identified experienced in internet queries?

yes

Will they support you in the inspection phase?

yes no

no specialists

Are there other provisions made to ensure effective internet queries in the inspection phase?

yes

Please give a short description:

no other provisions

Is a software available in your country which supports you to identify chemicals offered on the internet?

yes

Please give a short description of the function

Draft final report **e-commerce**

no
Would such a software be useful for the project activities in your country?
 yes no

Are there other tools available?

yes
Please give a short description

no other tools available

Comments:

Annex III - Inspection Questionnaires and Explanatory Notes

E-commerce of Chemicals Inspection Questionnaire

[complete one per web site]

Main form

*SMALL CAPITALS, BOLD TYPE: Information for general use
, Normal print: for national use only

Section 1 – General information	
A1	COUNTRY (NAME OR EU-CODE):
A2	INSPECTION DATE:
A3	NATIONAL AUTHORITY/INSPECTORATE INVOLVED:
Section 2 – Chemicals supplier data	
B1	COMPANY CODE (ASSIGNED BY INSPECTORATE):
B2*	Name:
B3*	Geographic address:
B4*	Country (EU-code):
B5*	E-mail address:
B6*	Phone n ^o / Fax n ^o :
B7	TYPE:
	<input type="checkbox"/> Producer
	<input type="checkbox"/> Importer
	<input type="checkbox"/> Distributor/Vendor
B8	COMPANY SIZE:
	<input type="checkbox"/> 1 person
	<input type="checkbox"/> 2-9 persons
	<input type="checkbox"/> 10-49 persons
	<input type="checkbox"/> 50-249 persons
	<input type="checkbox"/> 250 and over
B9	CERTIFIED MANAGEMENT SYSTEMS:
	<input type="checkbox"/> ISO14001
	<input type="checkbox"/> ISO 9001
	<input type="checkbox"/> Others:
B10	MEMBER OF A CHEMICAL INDUSTRY ASSOCIATION:
	<input type="checkbox"/> YES; Name*:
	<input type="checkbox"/> NO

Page 1 of 3

european enforcement project e-commerce 2005-2006

E-commerce of Chemicals Inspection Questionnaire

B11* Degree of knowledge on chemicals legislation:

- good
 deficient
 nonexisting

Section 3 – Web site data

C1* Complete web site address (whole pathway):

C2* Web site home page:

C3 **TYPE OF WEB SITE/PAGE:**

- Chemicals supplier company own 's site
 Professional users or suppliers associations site
 Consumer 's on-line shopping /auction companies site
 Private persons web site
 Others. Describe:

C4 **WEB SITE'S TARGET GROUP:**

- Consumers (B2C)
 Companies (B2B)
 Both

C5 **DOES THE WEB SITE ENABLE DISTANCE SELLING?**

- YES
 NO

C6 **IS PRIOR INFORMATION (ACC. ART. 4 OF DIR. 97/7/EC) REQUIRED TO CONCLUDE DISTANCE PURCHASE CONTRACTS AVAILABLE?**

- YES
 NO
 not applicable

C7 **HAS THE WEB SITE AREAS OF RESTRICTED ACCESS FOR CLIENTS?**

- YES
 NO

Section 4 - General information on chemical products inspected

D1 **TOTAL NUMBER OF DANGEROUS PRODUCTS INSPECTED IN THIS WEB SITE:**
 D2 **TOTAL NUMBER OF SUBSTANCES:**

E-commerce of Chemicals Inspection Questionnaire

D3	TOTAL NUMBER OF PREPARATIONS:	
D4	TOTAL NUMBER OF SDS INSPECTED:	[voluntary measure]

Section 5 – Procedure related information

E1	HAVE VIOLATIONS BEEN DISCOVERED ? <input type="checkbox"/> YES, quantify <input type="checkbox"/> NO
E2	THE INFRINGEMENT RELATES TO: <input type="checkbox"/> The provision of prior information <input type="checkbox"/> Belittling advertisements
E3	MEASURES TAKEN:
E4	HAS THERE BEEN COOPERATION WITH OTHER NATIONAL AUTHORITIES WHICH MONITOR THE INTERNET ? <input type="checkbox"/> YES <input type="checkbox"/> NO Comment:
E5	SPECIAL TOOLS DEPLOYED. DESCRIBE:
E6	GENERAL COMMENTS:

E-commerce of Chemicals Inspection Questionnaire

[complete one per substance or preparation]

ANNEX 1 – Chemicals related information

AN1.1	COUNTRY (NAME OR EU-CODE) :
AN1.2	COMPANY CODE [of section 2-B1] :
AN1.3	TYPE OF PRODUCT : <input type="checkbox"/> Substance <input type="checkbox"/> Preparation
AN1.4	TRADE NAME :
AN1.5	[In case of <u>voluntary</u> SDS-assessment] PRODUCT CODE (ASSIGNED BY INSPECTORATE) :
AN1.6	CHEMICAL'S IDENTITY : [list CAS or EC n° of substance / ingredients (if preparation). Give name(s) if n° is not available]
	Information is given on web page:
	YES NO
	CAS n° : <input type="checkbox"/> <input type="checkbox"/>
	EC n° : <input type="checkbox"/> <input type="checkbox"/>
	Name(s): <input type="checkbox"/> <input type="checkbox"/>
AN1.7	IS PRODUCT DANGEROUS ? <input type="checkbox"/> YES <input type="checkbox"/> NO
AN1.8	ARE ANY / ALL INGREDIENT LISTED IN ANNEX I OF DSD ? <input type="checkbox"/> YES <input type="checkbox"/> NO
AN1.9	MANDATORY HAZARD INFORMATION : <input type="checkbox"/> is displayed / mentioned directly on web site <input type="checkbox"/> is provided by link to another web site <input type="checkbox"/> is incomplete <input type="checkbox"/> is not displayed / mentioned <input type="checkbox"/> not applicable
AN1.10	QUALITY ASSESSMENT OF HAZARD INFORMATION : <input type="checkbox"/> correct <input type="checkbox"/> incorrect <input type="checkbox"/> not checked <input type="checkbox"/> not applicable

E-commerce of Chemicals Inspection Questionnaire

- AN1.11 HAZARD RELATED INFORMATION PROVIDED :**
- Classification / Labelling information
- Complete label
- Pictogram(s)
- R-Phrases
- S-Phrases
- Safety data sheet
- Others. Describe:
- AN1.12 RESTRICTIONS :**
- Ingredient(s) of product are subject to restrictions
- Ingredient(s) of product are banned
- None
- Product is exempt. Describe:
- AN1.13 DOES PURCHASE REQUIRE LEGAL AUTHORIZATION OF CUSTOMER ?**
- YES
- NO
- AN1.14 IS AUTHORIZATION OF CUSTOMER VARIFIED ?**
- YES
- NO
- AN1.15 MANNER OF VARIFICATION :**
- Describe:
- not applicable

E-commerce of Chemicals Inspection Questionnaire

[complete one per product]

ANNEX 2 – SDS assessment

[sds assessment is a voluntary complement of the fixed inspection activities within the present e-commerce project]

*, Normal print: for national use only

AN2.1*	TRADE NAME :				
AN2.2	PRODUCT CODE (of Annex 1, AN1.5) :				
AN2.3	PRODUCT'S CLASSIFICATION : [select inspected product's danger categories]				
	<input type="checkbox"/> T+	<input type="checkbox"/> Xi			
	<input type="checkbox"/> T	<input type="checkbox"/> N			
	<input type="checkbox"/> Xn	<input type="checkbox"/> F+,F,R10			
	<input type="checkbox"/> C	<input type="checkbox"/> E,O			
	<input type="checkbox"/> R42 and/or 43	<input type="checkbox"/> CMR 1,2 or 3			
AN2.4	ASSESSMENT OF SDS INFORMATION :				
		SDS Directive 2001/58/EC	ok	defective	Notes
AN2.41	Heading 1. Identification of the product/company	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
AN2.42	Heading 2. Composition on ingredients	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
AN2.43	Heading 3. Hazards identification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
AN2.44	Heading 11. Toxicological Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
AN2.45	Heading 12. Ecological Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
AN2.46	Heading 15. Regulatory Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
AN2.47	Correspondence Heading 15 – label	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
AN2.48	IS THE SDS LAST VERSION PLACED ON THE WEB ? <input type="checkbox"/> YES <input type="checkbox"/> NO				
AN2.49	SDS QUALITY ASSESSMENT: <input type="checkbox"/> 3 - SDS ok <input type="checkbox"/> 2 - minor deficiencies <input type="checkbox"/> 1 - significant deficiencies <input type="checkbox"/> 0 - severe deficiencies				

E-commerce of Chemicals Inspection Questionnaire

[complete one per inspectorate]

ANNEX 3 – Project assessment

AN3.1	PARTICULAR PROBLEMS FACED:
AN3.2	SOLUTIONS:
AN3.3	GENERAL REMARKS:

EXPLANATORY NOTES

E-COMM OF CHEMICALS 'S INSPECTION QUESTIONNAIRE

This questionnaire must be filled for each web site inspected

If the web site offers on-line selling of chemicals that belong to several suppliers, and more than one supplier is chosen to be inspected, one questionnaire should be filled for each supplier.

If the web site belongs to the chemical supplier, the questionnaire will be filled per web site and per supplier

Section 1 – General Information

A1- Names or acronyms can be used for each country following the "Manual of decisions for implementation of the sixth and seventh Amendments to Directive 67/548/EEC on dangerous substances (Directives 79/831/EEC and 92/32/EEC)" non-confidential version (Updated 14th June 2005).

The questionnaire offers a picklist of the contry names:

01. France (FR)	10. Greece (GR)	19. Cyprus (CY)
02. Belgium (BE)	11. Spain (ES)	20. Latvia (LV)
03. Netherlands (NL)	12. Portugal (PT)	21. Lithuania (LT)
04. Germany (DE)	13. Finland (FI)	22. Hungary (HU)
05. Italy (IT)	14. Austria (AT)	23. Malta (MT)
06. United Kingdom (UK)	15. Sweden (SE)	24. Poland (PL)
07. Ireland (IE)	16. Norway (NO)	25. Slovenia (SI)
08. Denmark (DK)	17. Czech Republic (CZ)	26. Slovakia (SK)
	18. Estonia (EE)	

All rest of items that may be required at a national level such as federal state/autonomous community/department/voivodship, inspectors,should be developed by each MS as needed!

Section 2 – Chemicals Supplier Data

The chemical supplier is the company responsible for the classification and labelling, as well as for the SDS. It should be a national established company, in regard to the follow up actions that need to be taken.

B1- The company code is assigned by the inspectorat. It is a code to be used for sending the results without identifying the company inspected.
Shouldn't be too long! Recommendation: 8 digits.

B4- Same as A1

B8- Based on Commission recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Official Journal of the European Union L 124, 20/05/2003)

Section 3 – Web site Data

As E-commerce grows there are more and more specialized webs for Internet trading, being the most popular types the B2C or B-C (Bussiness to Consumers) which are companies that offer on-line selling of products for consumers and the B2B or B-B (Bussiness to Bussiness) which are companies offering products via Internet to other companies. Some of them are open for both types of customers.

The web site can belong directly to the chemical supplier company (responsible for placing the product in the market) or to a distributor/retailer that works in the Internet (virtual shop), selling other companies chemicals.

If we find a web site that only offers "out-links" to chemical companies web pages, we should take into account the final web page, the one that would allow the customer to make the purchase. If more than one, we should select.

In all cases, may the web site belong to a chemical company responsible for the product or to a retailer, they are bound to comply with article 26 of the DSD and article 13 of the DPD as well as with the obligations derived from the national implementation of D 2000/31/EC.

C6- This article 4 is only applicable for consumer's targeted web sites

ANNEX I- CHEMICALS RELATED INFORMATION

This questionnaire must be filled for each chemical product inspected

AN1.1- Product's code is assigned by the inspectorate to the product in order to avoid sending the chemical's product identity.

AN1.2- Here the company code assigned in item B1 (section 2) of the main form of the questionnaire is used. It links the chemical related inspection results with the web site related results.

AN1.5- In case an extra SDS assessment will be conducted (voluntary activity, see next section AN2.2), a product code has to be assigned here. The product code links the SDS to the chemical information of Annex 1 and to the web site information of the questionnaire. It is a code to be used for sending the SDS results without identifying the chemical and responsible company inspected.

ANNEX 2- SDS ESSESSMENT (EXPLANATORY NOTES)

Completing this form is not mandatory within the context of the present CLEEN e-commerce project. Though, SDS assessment can voluntarily be conducted as a complement of the fixed inspection programme of the project.

AN2.2- Here the product code assigned in Annex 1, item AN1.5 is used. The product code links the SDS to the chemical information of Annex 1 and to the web site information of the questionnaire. It is a code to be used for sending the SDS results without identifying the chemical and responsible company inspected.

AN2 (AN2.41 to A2.47)

Based on ECLIPS format.

Check if the necessary information is available and use "Notes" to write down main lacks or deficiencies.

A2.44 and A2.45 are optional, that means that some inspectorates (usually health inspectorates) will concentrate on Heading 11 and not 12, while environmental inspectorates will do otherwise. Some inspectors will cover both.

A2.46- Should give the health, safety and environmental information shown in the label, according to the DSD and the DPD. Also, if the chemical product is the subject of specific provisions, in relation to the protection of man or the environment at a Community level, for example, restrictions on the marketing and the use of dangerous substances and preparations (D 76/769/EEC)

A2.47- Is there a correspondence between the information obtained from the label and the information obtains from Heading 15?

AN2.48

In the SDS assessment of a chemical product in the Internet, is very convenient to ask the company to send by e-mail or fax its last version in order to ensure that the web site is updated, concerning the SDS information.

AN2.49

To assess the quality of the SDS on common grounds, the information inspected should be described selecting a number from 0 to 3, with the following criteria:

3- Headings complete and high/medium high quality information (SDS ok!!)

2- Minor deficiencies: medium quality information in inspected headings. Information a little incomplete.

1- Significant deficiencies: Medium-low quality information in some of the headings inspected. Eg. Headings 3, 11 or 12 quite poor, eg. No symptoms described related to uses and misuses and/or no description of adverse effects in heading 3, eg. No complete toxicological data or environmental data related to the product's danger categories in Heading 11 or 12, no complete correspondance between heading 15 and label (some S-phrase missing, or chemical name of the dangerous substances or some special labelling requirement missing). Emergency phone n° missing in H1.

0- Severe deficiencies: Low-very low quality information in the headings inspected.

Eg. SDS in another language. Eg. Substantial information missing in heading 2: EC/CAS n° id, concentration ranges, chemical names of dangerous substances that contribute to the final classification, absence of info (R-phrases) for very toxic, toxic, harmful, corrosive, sensitizers, CMRs, dangerous for the environment preparations/substances, concerning these categories.

Eg. No mention in Heading 15 to specific restrictions on the marketing and the use of dangerous substances and preparations (D 76/769/EEC) if the particular substance/preparation is included in this legislation.

08/01/2006

2

Annex IV - List of participants

Country	Contact partner
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Annex V - Glossary

AT	Austria
B2B (B-B)	Business-to-business
B2C (B-C)	Business-to-customer
BE	Belgium
C&L	Classification and Labelling
CAS (n ^o)	Chemical Abstract Service (identification number for substances)
COM	European Commission
DE	Germany
Dir.	Directive
DK	Denmark
DPD	Dangerous Products Directive (1999/45/EC)
DSD	Dangerous Substances Directive (67/548/EEC)
EC (n ^o)	European Commission system for numbering chemicals
ES	Spain
EU	European Union
FI	Finland
GM	Guidance Manual
ISO	International Organization for Standardization
ISSs	Information society services
MS	Member State
NL	Netherlands
OHSAS	Occupational Health and Safety Assessment Series (labour safety norm)
PL	Poland
SDS	Safety Data Sheet
SE	Sweden
SI	Slovenia