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Communication from the Commission

on

“the out-of-court settlement of consumer disputes”

and

Commission recommendation

**on the principles applicable to the bodies responsible for out-
of-court settlement of consumer disputes**

SUMMARY

This Communication is part of a series of Community initiatives in the field of consumer access to justice that have been developed over the years.

The urgent need for Community action in regard to the settlement of consumer disputes was highlighted and confirmed in the consultations on the Green Paper (1993) and the Action Plan on "consumer access to justice and the settlement of consumer disputes in the single market" (1996).

The outcome of these discussions shows that one of the paramount goals is to facilitate the settlement of consumer disputes by resolving the problems arising from the disparity between the economic value at stake and the cost of its judicial settlement. In order to satisfy this objective, this Communication contains two features designed to improve access to justice for individual consumers:

- a claim form designed to facilitate communication between consumers and professionals and, should an amicable solution prove impossible, facilitate access to out-of-court procedures and
- a Recommendation laying down the principles applicable to out-of-court procedures for the settlement of consumer disputes².

¹ For the purposes of this communication "consumer access to justice" means the opportunity to exercise one's rights in practice, not access to justice in the stricter sense, i.e. to the courts.

² The first Community initiatives in the field of consumer access to justice date from the 1980s. A first Commission Communication on consumer redress was transmitted to the Council in the form of a memorandum on 4 January 1985 (COM(84) 692 final), followed by a supplementary Communication dated 7 May 1987 (COM(87) 210 final). The European Parliament adopted a Resolution on the subject on 13 March 1987 (OJ No C 99, 13.4.1987, p. 203). The Council's reaction was to adopt a Resolution on 25 June 1987 devoted solely to consumer redress (87/C 176/02, OJ No C 176, 4.7.1987, p. 2), in which it invited the Commission to supplement its analysis in view of the enlargement of the Community.

The Community dimension of the problem of consumers' access to the law was also referred to in the European Parliament's Resolution of 11 March 1992 (OJ No C 94, 13.4.1992, p. 217) and the Council Resolution of 13 July 1992 on future priorities for the development of consumer protection policy (OJ No C 186, 23.7.1992, p. 1). On 21-23 May 1992, under the aegis of the Council Presidency and the Commission, the third European Conference on consumer access to justice was held in Lisbon and was attended by some 300 experts from the 12 Member States of the European Community and certain EFTA countries. The conclusions of the meeting confirmed the concerns expressed in the course of the above-mentioned initiatives.

In its Green Paper on "Access of consumers to justice and the settlement of consumer disputes in the single market" (COM(93) 576 final of 16 November 1993), the Commission set out a number of proposals aimed at resolving individual and collective cross-border disputes. The aspects mentioned in the proposals included the free movement of actions for an injunction and the simplified settlement of disputes.

Following the Green Paper, the Commission tabled a proposal for a Directive on injunctions for the protection of consumers' interests, which is in the process of being adopted (common position of the Council on injunctions for the protection of consumers' interests (EC No 48/97 of 30 October 1997, OJ No C 389, 22.12.1997, p. 51) as well as a Communication on an action plan on consumer access

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to justice and the settlement of consumer disputes in the internal market (COM(96) 13 final of 14 February 1996). In its Resolution on this Communication (A4-0355/96, OJ No C 362, 2.12.1996, p. 275) the European Parliament gave its support to the objectives set out in the action plan and called on the Commission to undertake further work on the subject.

INTRODUCTION

1. THE PROBLEM OF ACCESS TO JUSTICE FOR INDIVIDUAL CONSUMERS

When it adopted the first programme for a consumer protection and information policy in 1975³, the Council of the European Communities enunciated five fundamental rights⁴. Since then, Community law has made substantial progress in this area. There are now several Community texts that endow consumers with a set of concrete rights which can be relied on in all the Member States. Product liability, consumer credit, doorstep selling, package holidays, overbooking in air transport, liability for air traffic accidents⁵, unfair terms, contracts negotiated at a distance, and timeshares - all are now addressed in EC law. Other texts have been proposed and are currently under discussion in such areas as the sale of consumer goods and associated guarantees. Thanks to the adoption of these rights at Community level, consumers can make the most of the large internal market, which was the objective underlying the Member States' decision to accept the Action Plan for a Single Market presented by the Commission to the Amsterdam European Council (strategic objective 4, CSE(97) 1 final of 4 June 1997).

The Member States, who are primarily responsible for consumer protection, have also adopted on their own initiative a multiplicity of laws providing for specific rights in consumers both in domains not covered by the Community texts and in harmonised domains covered by Community provisions allowing Member States to ensure a higher level of consumer protection. Moreover, in their relations with professionals - even in the absence of specific legislation - consumers enjoy the protection granted by the general rules of civil law.

However, if substantial rights are granted people without providing mechanisms to ensure their effective exercise, these rights have no practical value⁶. Hence, in order to ensure

³ OJ No C 92, 25.4.1975, pp. 1-16.

⁴ "The right to protection of health and safety, the right to protection of economic interests, the right to information and education, the right to representation, the right to fair compensation for damages in the form of rapid, effective and affordable procedures".

⁵ Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, OJ No L 285, 17.10.1997.

⁶ Access to justice, as far as consumers are concerned, constitutes a corollary of the substantial rights conferred by the Community legal order. Although, in the absence of Community regulations, Member States have the power to establish the procedures for access to justice which are necessary to ensure that these rights are fully safeguarded, Community law nevertheless imposes limits to that power. For example, legislation of this type may not discriminate against persons whom Community law entitles to equal treatment, and they may not restrict the fundamental freedoms guaranteed by the Treaty. Since Community law guarantees free movement of goods and services in the common market, it is a corollary of those freedoms that operators, including consumers, must be able, in order to resolve any disputes arising from their economic activities, to bring actions in the courts of a Member State in the same way as nationals of that State (judgment of 26 September 1996, *Data Delecta and Forsberg*, C-43/95, ECR 96 /I-4661; judgment of 20 March 1997, *Hayes*, C-323/95, ECR I-171).

that reality is in step with the consumer protection framework designed by the Community and national legislators, consumers must be able to assert their rights, whenever they are infringed, through access to simple, swift, effective and inexpensive legal channels.

The specific problems encountered by consumers in exercising their rights have already been addressed in several position statements issued by the competent institutions. In real life there are a certain number of obstacles facing consumers who are seeking justice in the courts.

Firstly, there is the cost of legal consultation and representation, court fees and the cost of expert opinions (particularly as modern economies are characterised by increasingly complex products and services, sometimes beyond the judge's knowledge). Secondly, in certain countries plaintiffs may have to pay the defendant's costs if they lose their case, and in other countries they have to pay their own costs even if they win. Finally, because of the backlog of cases pending in certain Member States, long delays may arise before a case is judged. Besides these material factors, there are also barriers of a psychological order due to the complexity and formalism associated with court procedures. And consumers are often reluctant to sue because of their unfamiliarity with legal language and the hermetic rituals characteristic of judicial proceedings.

If things are complex enough in national disputes, they are even more complicated when more than one country is involved. The risk of getting involved in a cross-border dispute⁷ has been increasing with the proliferation of cross-border consumer transactions and the development of new selling techniques and services.

In view of the above it is fair to say that, in most consumer disputes – both national and cross-border – the proceedings are too long drawn out and their cost excessive⁸ when compared with the limited value of the dispute. In these circumstances many consumers do not even try to assert their rights and simply allow them to be infringed.

2. THREE APPROACHES TO A SOLUTION:

There are three possible ways of improving consumer access to justice: simplification and improvement of legal procedures, improvement of communication between professionals and consumers, and out-of-court procedures to settle consumer disputes. Far from being alternatives, these three approaches are fully complementary.

However, a fundamental difference distinguishes the first approach from the other two: while the first approach remains within the traditional framework of the judicial settlement

⁷ For a detailed description of the definition and all the specific or supplementary problems associated with it, see page 72 of the Green Paper.

⁸ This argument has been verified and borne out in the study on the "Cost of legal barriers for consumers in the single market". This study showed that the average cost (court fees plus lawyer's fees) of the judicial settlement of an intra-Community dispute concerning an amount of ECU 2 000 is approximately ECU 2 500 for the plaintiff even in the best of circumstances. The results of the study are summarised in the Action Plan on consumer access to justice and the settlement of consumer disputes in the single market, pages 8-11 (COM(96) 0013).

of disputes and aims to improve the existing systems, the two other remove these disputes from the judicial arena wherever possible.

a) The simplification and improvement of court procedures

Most Member States have mounted initiatives designed to simplify court procedures for "small disputes", either generally or specifically in regard to consumer disputes. The idea common to these initiatives is to dispense with formalised procedures so that the case can be dealt with in a simplified manner, the involvement of a lawyer being optional, or to have the court itself seek to reach a settlement (either mandatory or at the discretion of the court or the parties). Despite some similarities there are many inter-country differences in the simplified procedures, especially in the criteria used to define small disputes and in regard to costs.

In its Action Plan of 14 February 1996 the Commission proposed creating a form, designed to simplify consumer access to court procedures. However, the results of the subsequent consultations showed that the Member States had misgivings about the benefits of a single form in the context of simplified court procedures - especially since the possibility of initiating such a procedure simply by dispatching a form would mean changes to the national rules of civil procedure in most countries. However, the work done in this context inspired the Commission to launch one of the initiatives in the out-of-court domain contained in this Communication (see section I.1 below).

This Communication does not address court procedures and therefore does not contain proposals referring to this primordial domain. Of course, this does not mean the Commission has opted not to encourage progress in the matter of court procedures. On the contrary, it will continue to study the need for common action and the form such action should take with regard to the operation of court procedures in the global framework of the internal market and the European legal area, in which connection its efforts will receive a considerable boost from the Amsterdam Treaty. It has also presented a Communication⁹ the main intent of which is to improve procedures for the enforcement of court decisions abroad and rules on determination of the courts empowered to hear cross-border disputes. This Communication, which takes account of consumer interests, also opens up a debate on a common EU approach as regards certain aspects of national procedural law. Moreover, a broader debate will be launched on the operation of simplified court procedures (for small disputes) in the context of the European legal area.

b) The improvement of communication between consumers and professionals

In order to counter the problems of consumer access to justice before the courts, the objective is to help consumers find an amicable solution to their disputes with the professional. Dialogue between the two parties and an amicable settlement of the dispute mean that consumers can avoid all the problems associated with going to court, while putting right the situation created by any infringement of their rights.

⁹ Communication from the Commission to the Council and the European Parliament "Towards greater efficiency in obtaining and enforcing judgments in the European Union" (COM(97) 609 final, of 26.11.1997).

The amicable resolution of disputes is also in the interest of professionals who, for their part, are keen to avoid litigation and to retain their clients.

Normally the dialogue takes place at the consumer's own initiative, with or without the involvement of consumer associations or other bodies whose mission is to help consumers.

However, fruitful communication is obstructed through lack of consumer information, the problems consumers have in formulating their complaints clearly and, in the case of cross-border disputes, their reluctance to initiate a dialogue with someone in a language other than their own.

Obviously, if an amicable solution proves impossible, there is no alternative but to have recourse to the bodies responsible for resolving consumer disputes.

The Commission has also launched an initiative in the field of financial services¹⁰, intended to allow the parties concerned, i.e. the financial services industry and consumer organisations, to reach voluntary agreements with a view to improving consumer information and access for consumers to redress procedures.

c) The creation of out-of-court procedures

Hence numerous initiatives in various Member States have opted for out-of-court solutions for the settlement of consumer disputes. The European Commission has long supported "pilot projects" at national or local level designed to put in place or develop systems of this kind.

In addition to court procedures, a whole range of "out-of-court methods" specifically designed to resolve consumer disputes currently exist in Europe. Sometimes these are supplementary or prior procedures, such as mediation or conciliation; sometimes they offer access to alternative mechanisms, such as arbitration. Since a given method may differ from country to country, and in order to avoid confusion as a result of this terminological diversity, it should be made clear that this Communication concerns methods which, no matter what they are called, lead to the settling of a dispute through the active intervention of a third party who proposes or imposes a solution. It does not concern procedures that merely involve an attempt to bring the parties together to convince them to find a solution by common consent.

Systems for the out-of-court settlement of consumer disputes differ greatly as regards their structure, operation and implementation.

Out-of-court instruments may be the fruit of initiatives by public authorities both at central level (such as the Consumer Complaints Boards in the Scandinavian countries) and at local level (such as the arbitration courts in Spain); they may also spring from initiatives promoted or organised by individual associations or sectors (e.g. bank and insurance company mediators / ombudsmen) or by professionals or establishments offering mediation or arbitration services as their main activity (e.g. lawyers or private arbitration centres).

¹⁰ Communication on "Financial services: enhancing consumer confidence" (COM(97) 309 of 26 June 1997, which constituted a follow-up to the Green Paper on "Financial services: meeting consumers' expectations" (COM(96) 209 of 22 May 1996)

Precisely because of this diversity, the status of the decisions adopted by these bodies differs greatly. Some are mere recommendations (as in the case of the Scandinavian Consumer Complaints Boards and most of the private ombudsmen), while others are binding only on the professional (as in the case of most of the bank ombudsmen); others still are binding on both parties (arbitration).

However, with an eye to safeguarding the interests of the parties involved, it is necessary to determine the extent to which out-of-court procedures can provide guarantees comparable with those offered by court procedures (notably independence and impartiality), while improving practical access to the settling of disputes. This question is all the more important in that the out-of-court system, despite its unquestionable merits, is not without its weaknesses, such as the flexibility which makes it possible to exclude strict application of the legal rules, the absence of appeal procedures in cases where decisions are binding, or difficulties in implementing a decision, especially in a Member State other than that in which it was made (the 1958 New York Convention on the enforcement of arbitral awards does not apply in all Member States of the European Union¹¹).

Providing certain guarantees of "good justice" in out-of-court procedures might reduce their drawbacks and also enhance the credibility of out-of-court systems for consumers, besides reinforcing mutual confidence between the bodies that exist in the different Member States.

¹¹ Portugal, for example, has not subscribed to this Convention (judgment of 25 July 1991, Rich, C-190/89, ECR I-3855). This means that the recognition and enforcement of arbitral awards are not guaranteed throughout the European Union.

I. THE CONTENT OF THE PROPOSED ACTION

With this Communication the Commission is launching two initiatives designed to improve consumer access to justice. The Commission's aim is to supplement the policy of the Member States in this area with a view to realising a "high level of consumer protection" in compliance with Article 129a of the Treaty; in keeping with the principle of subsidiarity (Article 3b of the Treaty), the content of the action is limited to what is necessary to achieve the objective, and the idea is that the proposed initiative will be implemented on a voluntary basis.

I.1 Encouragement of amicable settlement of consumer problems

In this context the Communication's paramount goal is to encourage and facilitate the settling of consumer conflicts at an early stage so that the parties can avoid the inconvenience of initiating proceedings (in court or, for that matter, out of court). To this end the Communication presents a "European claim form for consumers", designed to improve communication between consumers and professionals with a view to settling their disputes amicably. If the dialogue between the consumer and professional does not lead to a solution, this form could be used to initiate an out-of-court procedure. Ideally the bodies responsible for out-of-court settlement of consumer disputes should agree to open a procedure coming within their remit on the basis of simple lodgement of the European form, so as to make the most of the possibilities offered by this form.

This claim form may be used at both national and cross-border level, independently of the value of the claim or the type of consumer dispute in question. It is for the parties themselves to decide to what extent their problem through use of the form. As regards financial services in particular, the ongoing "dialogue" between the financial services industry and consumers is currently examining the appropriateness of this form for disputes concerning financial services.

The form will be available on the Internet for all interested persons and organisations (<http://europa.eu.int/comm/dg24>) in all the languages of the European Union. The form as such cannot be altered, but the organisations (firms, associations of firms, consumer organisations, consumer information centres, etc.) that propose its use to consumers may "personalise" it by printing their logo in the top right-hand corner.

The "consumer claim form", whose current wording is based on numerous consultations with the parties concerned and the Member States, has been designed with a view to "guiding" and orientating consumers in formulating their claims. It proposes a choice of multiple responses to help consumers indicate their problems and describe their claim, while leaving enough space for users to add supplementary details or to describe particular cases not covered by the form's lists. The combination of a multiple-choice system and free text will considerably facilitate translation in the case of cross-border disputes where the parties speak different languages. The Commission will make any technical changes to the form which may prove desirable.

This Commission initiative is a pilot project. After two years the Commission will evaluate the pertinence and impact of the form on the basis of the experience gained.

I.2. Providing appropriate safeguards in connection with the creation and operation of out-of-court bodies responsible for resolving consumer disputes.

The second strand of the Commission's initiative takes the form of a Recommendation designed to establish a series of principles applicable to the operation of out-of-court bodies (existing or yet to be created) for resolving consumer disputes.

The out-of-court procedures concerned by this Recommendation are those which, whatever their "legal nature" (decision, recommendation or settlement proposal), involve the mediation of a third party whose role is not confined to persuading the parties to reach agreement but who express a firm position concerning settlement of the dispute.

Respect for certain principles - such as independence, transparency and effectiveness - should contribute to a higher level of protection of consumer rights. In parallel, provision of these safeguards will make for greater reliability and confidence. This confidence must be built up at two levels: firstly, consumers - aware of the guarantees provided by the out-of-court procedures available to them - will be able to make the most of the out-of-court system in their own country, or that of another Member State in the event of cross-border disputes, without misgivings or reservations; secondly, the bodies responsible for the out-of-court settlement of consumer disputes in the different EU countries will have more confidence in each other, in connection with cross-border disputes. Mutual confidence will enable them to cooperate effectively in improving the processing of consumer disputes of a cross-border nature. The Commission will facilitate the networking of these bodies so as to promote their active collaboration in resolving specific cases. Ultimately, consumers should be able to refer cross-border disputes to the competent out-of-court body in the foreign country via the corresponding out-of-court body in their own country.

To this end, the existing out-of-court bodies in the Member States should respect the principles set out in this Recommendation. Consumer associations and trade associations - both individually and jointly - have a key role to play in realising this objective.

These principles may also make it easier for parties providing out-of-court settlement services established in one Member State to offer their services in other Member States.

In order to ensure a level of transparency and dissemination of information on out-of-court procedures in line with the principles set out in the Recommendation and to facilitate networking, the Commission intends to create a database of the out-of-court bodies responsible for resolving consumer disputes that offer these safeguards. In keeping with the principle of subsidiarity, the database will contain particulars communicated to the Commission by the Member States that wish to participate in this initiative. To ensure standardised information and to simplify the transmission of these data, the Commission is providing the Member States with a standard information form, annexed to this Communication.

Likewise, with an eye to transparency and the provision of information, each Member State could appoint a single contact point on its territory responsible for directing all interested parties to the bodies they should consult with a view to the out-of-court settlement of a specific consumer dispute.

The Commission will evaluate the implementation of this Recommendation in two years' time.

II. A EUROPEAN CLAIM FORM FOR CONSUMERS



Where appropriate, the seal of the body proposing use of this form to consumers

CONSUMER CLAIM FORM

This form has been drawn up by the European Commission's services and should not be changed by users. It is intended to improve communication between consumers and professionals in order, as far as possible, to reach an amicable solution to the problems which they may encounter in their various transactions. The form is available in all the official languages of the European Union (<http://europa.eu.int/comm/dg24>). Under no circumstances should it be sent to the European Commission, which has no power to intervene in this type of dispute!

DETAILS OF THE PARTIES

Complaint submitted by:

Name:.....
Address, street:
..... N°
Town, post code:
Country:.....
Tel:.....
Fax:.....
Email:.....

On behalf of: *
.....

Against:

Name:.....
Address, street:
..... N°
Town, post code:
Country:.....
Tel:.....
Fax:.....
Email:.....
Other particulars:
.....
.....
.....

* To be filled in only if the consumer's complaint is presented by a third party and not by himself. In this case, the consumer should put his signature under his name.

INSTRUCTIONS

- In order to identify your problem and your claim, the form offers a choice of answers to each question. Please choose the answers **(one or more)** most appropriate to your case and, where appropriate, provide additional particulars in the space reserved for this purpose.
- It is recommended that this form be accompanied by **copies of supporting documents** and be sent by **registered post with acknowledgement of receipt or any other means making it possible to establish proof of dispatch and receipt**. A copy should be kept.
- The claimant should give the professional an appropriate amount of time to reply (at least two weeks). The professional's reply must be communicated to the claimant by returning the entire form. The consumer must then send him the reply coupon (page 4).

WARNING: Most national laws stipulate a time limit after which persons may no longer seek redress through the courts. Sometimes this **limitation period** is relatively short, particularly in the case of purchases of goods. Whether or not the use of this form suspends this time limit is determined by the legislation applicable to the dispute.

CONSUMER COMPLAINT

I. PROBLEMS ENCOUNTERED:

Date on which problem(s) was (were) encountered (day/month/year):...../...../..... Indicate whether the problem has arisen for the first time or not:.....

Problem connected with:

- | | |
|---|---|
| 1 <input type="checkbox"/> Product not delivered | 15 <input type="checkbox"/> Inadequate information |
| 2 <input type="checkbox"/> Service not provided | 16 <input type="checkbox"/> Payment arrangements |
| 3 <input type="checkbox"/> Delay in delivering product | 17 <input type="checkbox"/> Price paid |
| 4 <input type="checkbox"/> Delay in providing service | 18 <input type="checkbox"/> Price increase |
| Duration of delay | 19 <input type="checkbox"/> Supplementary charges |
| 5 <input type="checkbox"/> Defective product | 20 <input type="checkbox"/> Unjustified costs/billing |
| 6 <input type="checkbox"/> Poor service | 21 <input type="checkbox"/> Terms of contract |
| Details | 22 <input type="checkbox"/> Coverage of contract |
| | 23 <input type="checkbox"/> Assessment of damage |
| 7 <input type="checkbox"/> Product not in conformity with order | 24 <input type="checkbox"/> Refusal to pay compensation |
| 8 <input type="checkbox"/> Products/services not ordered | 25 <input type="checkbox"/> Inadequate compensation |
| 9 <input type="checkbox"/> Damage suffered | 26 <input type="checkbox"/> Modification of contract |
| 10 <input type="checkbox"/> Refusal to honour the guarantee | 27 <input type="checkbox"/> Poor performance of contract |
| 11 <input type="checkbox"/> Refusal to sell | 28 <input type="checkbox"/> Rescission / cancellation of contract |
| 12 <input type="checkbox"/> Refusal to provide service | 29 <input type="checkbox"/> Cancellation of service |
| 13 <input type="checkbox"/> Fraud | 30 <input type="checkbox"/> Loan reimbursement |
| 14 <input type="checkbox"/> Incorrect information | 31 <input type="checkbox"/> Interest demanded |
| | 32 <input type="checkbox"/> Failure to honour commitments |
| 33 <input type="checkbox"/> Additional information | |
| | |
| | |
| | |
| 34 <input type="checkbox"/> Other type of problem | |
| | |
| | |

II. THE CIRCUMSTANCES:

(Indicate the date and place of purchase or signature of the contract, describe the product or service as well as the price, payment arrangements or any other information which may be useful in assessing your complaint:.....

.....
.....
.....
.....

III. REQUEST BY THE CONSUMER

To obtain:

- | | |
|---|---|
| 35 <input type="checkbox"/> Delivery of product or provision of the service | 45 <input type="checkbox"/> Correction of assessment of damage |
| 36 <input type="checkbox"/> Repair of the product or service | 46 <input type="checkbox"/> Payment of an indemnification in the sum of |
| 37 <input type="checkbox"/> Exchange of the product | 47 <input type="checkbox"/> Reimbursement of a down payment in the amount of |
| 38 <input type="checkbox"/> Cancellation of sale | 48 <input type="checkbox"/> Reimbursement of other payments effected in the amount of |
| 39 <input type="checkbox"/> Performance of the guarantee | 49 <input type="checkbox"/> Price rebate in the amount of |
| 40 <input type="checkbox"/> Honouring of commitments | 50 <input type="checkbox"/> Payment of damages in the amount of |
| 41 <input type="checkbox"/> Conclusion of a contract | |
| 42 <input type="checkbox"/> Rescission / cancellation of contract | |
| 43 <input type="checkbox"/> Cancellation of invoice | |
| 44 <input type="checkbox"/> Information | |
| 51 <input type="checkbox"/> Other particulars: | |
| | |
| 52 <input type="checkbox"/> Other type of request | |
| | |
| | |

IV. ADDITIONAL EXPLANATIONS (OPTIONAL)

.....

