



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.12.1996  
COM(96) 725 final

96/0025 (COD)

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

**on injunctions for the protection of consumers' interests**

(presented by the Commission pursuant to Article 189 a (2)  
of the EC-Treaty)

## EXPLANATORY MEMORANDUM

### I PROCEDURE

On 24 January 1996, the Commission adopted a proposal for a Directive relating to injunctions for the protection of consumers' interests<sup>1</sup> on the basis of Article 100a of the Treaty establishing the European Community. This proposal is designed to ensure that Community consumer legislation is applied effectively, and covers injunctions against infringements of national provisions transposing Community law in this area. To this end, and especially to prevent intra-Community infringements, the proposed Directive applies the principle of mutual recognition to entities "qualified" to bring an action on the basis of lists which shall be drawn up by the Member States and published in the Official Journal of the European Communities.

The Economic and Social Committee gave its opinion on 25 September 1996 and the European Parliament, to which the proposal was submitted under the co-decision procedure, gave its opinion at the first reading on 14 November 1996 (Rapporteur: M. Verde i Aldea). The legislative resolution adopted by the Parliament approves the proposal subject to 20 amendments, 17 of which were accepted in their entirety or in part by the Commission during the debate preceding the vote at the plenary sitting.

### II THE COMMISSION'S POSITION WITH REGARD TO THE AMENDMENTS

Amendments 6, 19 and 25 were rejected by the Commission on the grounds of proportionality and, in particular, recitals 9, 10 and 11 of the proposal for a Directive.

At the plenary sitting of the Parliament, the Commission undertook to accept amendments 1, 3, 7, 9, 11, 13, 14, 15, 16, 17, 18, 22, 24, and; subject to certain changes, amendments 8, 10, 20, and 23.

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<sup>1</sup> OJ No C107 of 13.4.1996, p. 3.

The proposal for a Directive has been amended accordingly by the Commission under the terms of the provisions governing the co-decision procedure.

### III THE AMENDED PROPOSAL

Recital 1 and Article 1 are amended on the basis of amendments 3, 10, and 11 brought in by the European Parliament. They are intended to make the proposal more consistent with respect to the concepts of the qualified entities defined in Article 3 and of the protected consumers' interests indicated in the directives listed in the Annex. In Article 1 (1), "coordinate" is replaced by "approximate" to bring it into line with the term used in Article 100a 1) of the Treaty. Since this provides the legal basis for the proposed Directive, the Commission considers the change in the wording to be justified.

Recital 15 is amended in accordance with amendment 7 so as to point out that, since the law applying to the substance of a dispute comprises provisions transposing one of the directives listed in the Annex, it should be applied in full. Indeed, the proposed Directive does not make for any change to the rules of private international law or to the conventions in force between the Member States.

Recital 15a is added, which goes hand in hand with the amendment to Article 4 (2) in line with amendments 8 and 24, accepted by the Commission in principle. The Parliament's amendment is designed to avoid differences in interpretation of the "reasonable time limit" which appears in the initial proposal and the problems involved in applying such a vague concept. In the amended proposal, the limit is expressed in weeks firstly because "working days" are not necessarily the same in the Member States concerned and secondly because amendments 8 and 24 refer to two different periods (30 and 20 days respectively). As this provision applies in the case of summary procedure (Article 2 a)), the three weeks represent what ought to be a "reasonable" period of time in the specific context of the Directive.

Recital 16a is introduced in line with amendments 9 and 23. The underlying principle conforms with paragraph 5 of the comments on the articles in the initial proposal and the Commission endorses it fully. However, since it is liable to anticipate the future activities of the Community legislature if it appears in the enacting terms, it is thought preferable to include it in the recitals.

Article 2 is amended in line with amendments 13, 14 and 15. The change under e), in particular, is in keeping with the principle of proportionality in that it is intended to leave the Member States as much latitude as possible. This amendment ensures that the type and beneficiary of the payment will actually be determined by national law.

Article 2a is introduced in the amended proposal in line with amendment 16 and is intended to clarify the distinction (which was implicit in the initial proposal) between the concepts of being qualified to act and having an interest in doing so. The Directive is designed to introduce mutual recognition of the qualification for action ("qualified

entities") but the interest in bringing an action is governed by national law and must be assessed separately in each case by the judge before whom the action is brought.

Article 3 is reworded to comply with amendments 17 and 18 and to clarify matters in the spirit of amendment 20. Under the Commission's proposal, the Member States will apply the "criteria laid down by national law", to any organisation existing in their territories, irrespective of the national, transnational or European nature of such organisations.

Article 5 is amended in line with amendment 22. The rules governing prior notification, in particular, must enable the action to be brought "as quickly as possible", since it is done so under summary procedure (Article 2 a)).

**Amended proposal for a European Parliament and Council Directive  
on injunctions for the protection of consumers' interests**

*(Submitted by the Commission pursuant to Article 189 a(2) of the EC Treaty  
on )*

INITIAL PROPOSAL

AMENDED PROPOSAL

THE EUROPEAN PARLIAMENT AND  
THE COUNCIL OF THE EUROPEAN  
UNION

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof, Unchanged

Having regard to the proposal from the Commission,<sup>1</sup>

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure referred to in Article 189b of the Treaty,

- (1) Whereas certain Community directives, listed in the schedule annexed to this Directive, lay down rules with regard to protection of the economic interests of consumers; Whereas certain Community directives, listed in the schedule annexed to this Directive, lay down rules with regard to protection of the economic interests of consumers; whereas these include the interests of persons exercising a commercial, industrial or craft activity and those of the public at large, as against certain unlawful practices and their effects in terms of unfair competition;
- (2) Whereas current mechanisms available both at national and at Community level for ensuring compliance with those directives do not always allow the effects of infringements of their provisions to be corrected in good time to protect consumers' interests; Unchanged
- (3) Whereas, as far as the restraint of unlawful practices is concerned, the efficacy of national measures transposing those Directives is thwarted; Unchanged

<sup>1</sup> OJ No. C 107, 13.4.1996, p. 3

- (4) Whereas those difficulties can disrupt the smooth functioning of the internal market, their consequence being that it is sufficient to move the source of an unlawful practice in order to place it out of reach of all forms of redress; whereas this constitutes a distortion of competition that is harmful to the great majority of firms which comply with the provisions of national law; Unchanged
- (5) Whereas those difficulties are likely to diminish consumer confidence in the internal market and may have discriminatory effects on organizations representing consumers adversely affected by a practice that infringes Community law; Unchanged
- (6) Whereas those practices often extend beyond the frontiers of the Member States, which is, indeed, the reason for approximating the systems of substantive law in question; Unchanged
- (7) Whereas, there is thus an urgent need for some degree of coordination of national provisions designed to enjoin the cessation of the abovementioned unlawful practices, so that the existing means of redress can take effect, irrespective of the country in which the unlawful practice has had its effects; Unchanged
- (8) Whereas the objective of the action envisaged can only be attained by the Community legislature; whereas it is therefore incumbent on the Community legislature to act; Unchanged
- (9) Whereas the third paragraph of Article 3b of the Treaty makes it incumbent of the Community not to go beyond what is necessary to achieve the objectives of the Treaty; whereas, in accordance with that Article, the specific features of certain national legal systems must be Unchanged

respected; whereas that condition can be met by leaving Member States free to choose between different options having equivalent effect;

- (10) Whereas one option should consist in requiring an independent public body, specifically responsible for the protection of consumer interests and/or competition matters, to exercise the rights of action set out in this Directive; Unchanged
- (11) Whereas the other option should provide for the exercise of those rights by organizations which have a legitimate interest in protecting consumers, or by organizations representing firms, in accordance with criteria laid down by national law; Unchanged
- (12) Whereas Member States should be able to combine those two options; Unchanged
- (13) Whereas Member States should designate at national level the bodies and/or organizations qualified for the purposes of this Directive; whereas the principle of mutual recognition should be applied to the bodies and/or organizations thus certified by Member States; Unchanged
- (14) Whereas it is incumbent on the Member States to communicate to the Commission the list of bodies and/or organizations thus qualified for the purposes of this Directive, as well as any changes to these national lists; whereas it is the business of the Commission to ensure their publication in the *Official Journal of the European Communities*; Unchanged
- (15) Whereas this Directive should be without prejudice to the rules of private international law and the conventions in force between the Member States; Whereas this Directive should be without prejudice to the rules of private international law and the conventions in force between the Member States from which it follows that the national law applying to the substance of a

dispute under the above rules should be applied in full;

(15 a) Whereas, where the Member States have established that there should be prior intervention by a national qualified entity having territorial jurisdiction with a view to initiating action under this Directive, a deadline of three weeks should be set after which, should the latter body fail to respond or respond in the negative, the applicant shall be entitled to bring an action before the competent authority without further notice;

(16) Whereas Member States should be able to require that a prior notification be issued by the party that intends to bring an action for an injunction, in order to give the defendant an opportunity to bring the contested infringement to an end;

Unchanged

(16 a) Whereas the provisions of this Directive could also be extended to future directives whose aims are adapted to the general objectives referred to in Article 1;

(17) Whereas the application of this Directive should not prejudice the application of Community competition rules,

Unchanged

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

*Scope*

1. The purpose of this Directive is to coordinate the laws, regulations and administrative provisions of Member States relating to certain remedies designed to protect consumers' interests, so as to ensure

1. The purpose of this Directive is to approximate the laws, regulations and administrative provisions of Member States relating to certain remedies aimed at protecting the collective interests of consumers

the smooth functioning of the internal market.

and persons exercising a commercial, industrial or craft activity, and the interests of the public at large, against the infringements referred to in Paragraph 2, with a view to ensuring the smooth functioning of the internal market.

2. For the purposes of this Directive, an infringement shall mean any act contrary to the directives listed in the Annex and transposed into the internal legal order of the Member States which harms consumers' interests.

2. For the purposes of this Directive, an infringement shall mean any act which harms consumers' interests, as enshrined in the directives listed in the Annex and transposed into the internal legal order of the Member States, or has unfair consequences for competitors or is contrary to the interests of the public at large.

#### Article 2

##### Actions for an injunction

1. Member States shall designate the court or authority competent to rule on the proceedings commenced by the qualified entities within the meaning of Article 3, and seeking:

Unchanged

a) an order, given at very short notice, and where appropriate by way of summary procedure, requiring the cessation of any act that is to be regarded as an infringement;

a) an order, (...) where appropriate by way of summary procedure, requiring the cessation of any act that is to be regarded as an infringement;

b) where appropriate, adoption of the measures needed to rectify the effects of the infringement, including publication of the decision;

b) where appropriate, to rectify the effects of the infringement by taking or requiring the necessary measures, including publication of the decision;

(c) an order against the losing party for payment to the plaintiff, in the event of failure to comply with the decision within a time-limit specified by the authority, of a fixed

c) an order against the losing party for payment to the State or the beneficiary provided for in national legislation, in the event of failure to comply with the decision

amount for each day's delay or any other amount provided for in national legislation, with a view to ensuring compliance with the decisions.

within a time-limit specified by the authority, of a penalty payment for each day's delay or any other financial penalty provided for in national legislation, with a view to ensuring compliance with the decisions.

2. When the action may, pursuant to a convention, be brought in a Member State other than the one whose legislation has allegedly been infringed, the competent authority hearing the case shall take the same measures as are laid down for infringements of national legislation.

Unchanged

*Article 2a (new)*

Where the national legislation of a member State establishes stricter conditions with regard to the recognition of the interest of federations under its jurisdiction bringing an action, these shall remain unaffected.

*Article 3*

**Entities qualified to bring an action**

1. For the purposes of this Directive, a 'qualified entity' means any body or organization which, according to national law, has a legitimate interest in ensuring that the provisions referred to in Article 1 are complied with, in particular:

1. For the purposes of this Directive, a 'qualified entity' means any body or organization which; being properly constituted according to the law in force in a Member State, has a legitimate interest in ensuring that the provisions referred to in Article 1 are complied with, in particular:

a) an independent public body, specifically responsible for protecting consumer interests, in Member States in which such bodies exist;

Unchanged

and/or

and/or

b) organizations with a legitimate interest in protecting consumer interests, as well

b) organizations with a legitimate interest in protecting consumer interests, as well as

as organizations representing firms or federations of firms, in accordance with the criteria laid down by their national law.

2. For the purposes of this Directive, and without prejudice to the rights granted to other entities under national legislation, each Member State shall draw up at national level a list of entities qualified to bring an action under Article 2. The bodies and organizations included in that list shall receive a document certifying their right to appear before the relevant courts or authorities.
3. The lists drawn up in accordance with paragraph 2, as well as any changes thereto, shall be communicated by the Member States to the Commission and shall be published in the *C Series of the Official Journal of the European Communities*.

#### Article 4

##### Intra-Community infringements

1. Member States shall take the measures necessary to ensure that any qualified entity whose interests are affected by an infringement originating in another Member State may seise the court or competent authority referred to in Article 2, on presentation of the document provided for in Article 3 (2).
2. Member States may provide that direct seisure referred to in paragraph 1 shall be sought only after a prior seisure of the qualified entity of the Member State having territorial jurisdiction, with a view to ensuring that it brings the action

organizations representing firms or federations of firms, in so far as they are able to seek the corresponding remedies under their national legislation.

2. For the purposes of this Directive, and without prejudice to the rights granted to other entities under national legislation, each Member State shall draw up at national level a list of entities qualified to bring an action under Article 2, including, where appropriate, the European organizations and/or federations existing in its territory provided they meet the criteria laid down by national law. The bodies and organizations included in that list shall receive a document certifying their right to appear before the relevant courts or authorities.

Unchanged

Unchanged

2. Member States may provide that direct seisure referred to in paragraph 1 shall be sought only after a prior seisure of the qualified entity of the Member State having territorial jurisdiction, with a view to ensuring that it brings the action provided for in Article

provided for in Article 2; in such case Member States shall give the qualified national entities a reasonable time-limit within which to react.

2; in such cases Member States shall give the qualified national entity a time-limit for reaction not exceeding 3 weeks from the date of reception of the application by the qualified entity concerned.

*Article 5*

**Prior notification**

1. Member States may introduce or maintain in force a requirement that the party that intends to seek an injunction shall issue a prior notification to the defendant; Member States which rely on this option shall ensure that the rules governing prior notification shall permit an action for an injunction within a reasonable time-limit.

1 Member States may introduce or maintain in force a requirement concerning the issuing of an injunction ordering the party responsible for the infringement to cease or eliminate its unlawful practices or prior notification of that party as a preliminary to the actions referred to in Article 2; Member States which rely on this option shall ensure that the rules governing such injunctions or prior notification shall permit an action for an injunction to be brought as quickly as possible.

2. The rules governing prior notification adopted by Member States shall be notified to the Commission and shall be published in the *C Series of the Official Journal of the European Communities*.

Unchanged

3. The limitation period shall cease to run once the prior notification has been issued.

Unchanged

*Article 6*

**Reports**

Every three years and for the first time no later than 31 December 2000 the Commission shall present the European Parliament and the Council with a report on the application of this Directive.

Unchanged

*Article 7*

**Provisions for wider actions**

This Directive shall not prevent Member States from adopting or maintaining in force provisions designed to grant representative organizations of consumers or professionals and/or public bodies and any other person concerned more extensive rights to bring action at national level. Unchanged

*Article 8*

**Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1997. They shall immediately inform the Commission thereof. Unchanged

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive. Unchanged

*Article 9*

Unchanged

***Entry into force***

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 10*

Unchanged

**Addressees**

This Directive is addressed to the  
Member States.

## LIST OF DIRECTIVES COVERED BY ARTICLE 1(2)

- Council Directive 84/450/EEC of 10 September 1984 (misleading advertising); OJ No L 250, 19.9.1984, p. 17;
- Council Directive 85/577/EEC of 20 December 1985 (contracts negotiated away from business premises); OJ No L 372, 31.12.1985, p. 31;
- Council Directive 87/102/EEC of 22 December 1986 - OJ No L 42, 12.2.1987, p. 48, as amended by Council Directive 90/88/EEC of 22 February 1990 (consumer credit) (OJ No L 61, 10.3.1990, p. 14);
- Council Directive of 89/552/EEC of 3 October 1989 (on the pursuit of television broadcasting activities): Articles 10 to 23; OJ No L 298, 17.10.1989, p. 23;
- Council Directive 90/314/EEC of 13 June 1990 (package travel, package holidays and package tours); OJ No L 158, 23.6.1990, p. 59;
- Council Directive 92/28/EEC of 31 March 1992 (advertising of medicinal products for human use); OJ No L 113, 30.4.1992, p. 13;
- Council Directive 93/13/EEC of 5 April 1993 (unfair terms in consumer contracts); OJ No L 95, 21.4.1993, p. 29;
- European Parliament and Council Directive 94/47/EC of 26 October 1994 (protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis); OJ No L 280, 29.10.1994, p. 83;
- European Parliament and Council Directive ... of ... (contracts negotiated at a distance).

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