

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(87) 210 final

Brussels, 7 May 1987

SUPPLEMENTARY COMMUNICATION FROM THE COMMISSION
ON
CONSUMER REDRESS

COM(87) 210 final

SUPPLEMENTARY COMMUNICATION FROM THE COMMISSION
ON
CONSUMER REDRESS

The present communication is a supplement to an earlier communication (COM 84(692) final) on the same subject, transmitted to the Council at the end of 1984¹. It is intended to supply the Council with a complementary basis for discussion which takes into account more recent developments.

The importance of the problem of consumer redress, stressed since the first programme of 1975, was again underlined in the Commission's most recent communication on consumer protection of 1985, "A new impetus for consumer protection policy"². It may be appropriate to recall very briefly the basic idea underlying the problem at issue which is, in fact, simple to understand but not easy to put into practice: the protection of consumers' interests by improving and extending substantive rights remains incomplete, if they are not offered, in parallel, adequate means and procedures to enforce such rights.

On the basis of the orientation laid down in the communication of 1984 mentioned above, the Commission has continued and expanded its activities in this area; a more detailed report about them can be found in the annex hereto. When it concentrated its interest on ways and means of settling small claims arising from the supply of goods and services to the ultimate consumer, the Commission felt entitled and, in a sense, even obliged to do so since its activities in this area are defined by and, therefore, limited to the general objectives of its consumer programmes. Where there is a positive spill-over in to other areas of law it is, of course, welcome.

1 see Supplement 2/85 to the EC Bulletin

2 COM(85) 314 fin.

It is also appropriate to recall the activities in recent years of the Council of Europe in this area; the latter has published a number of resolutions and recommendations, in particular:

- Resolution No. (78)8 of 1978 on legal aid and advice;
- Recommendation No. R(81)2 of 1981 on the legal protection of the collective interests of consumers by consumer agencies;
- Recommendation No. R(81)7 of 1981 on measures facilitating access to justice;
- Recommendation No. R(84)5 of 1984 on principles of civil procedure designed to improve the functioning of justice;
- Recommendation No. R(86)12 of 1986 on measures to prevent and reduce the excessive workload in the courts.

These resolutions and recommendations contain a considerable amount of guidance and many useful proposals, but the process of implementing them has been slow and the results vary considerably. The general purpose of the Commission's activity is, therefore, to stimulate the implementation of these principles in order to obtain concrete improvements for the consumer.

In the meantime, the European Parliament has also been seised of the problem with particular reference to the Commission's communication of 1984, and it has adopted very recently, on 13 March 1987, a resolution on the subject³.

Apart from some regret expressed in that resolution about the Commission's relative abstention from proposals for immediate regulatory action at a Community level, the European Parliament has underlined, in particular, that the "protection of the interest of the consumer must be considered a corollary of the free movement of goods and services". The resolution thus makes the connection between the completion of the internal market and the need

³ not yet reported in the OJ

for better protection of consumers clear by express reference to articles 8A and 100A of the Single European Act.

In this context, the European Parliament has, in particular, requested the Commission to "examine the feasibility of setting up a Community agency to facilitate the exchange of information in order to enable individuals and small businesses to initiate small claims in any Member State of the EEC and to refer such claims to the relevant national court".

This opens up a new and enlarged Community dimension to the problem of consumer redress, which demands an increased interest on the part of the Commission in complaints and disputes arising from direct, transborder activities and from direct contacts between consumers from one Member State with trade and business enterprises in another.

Consequently, the Commission is about to engage a feasibility study on the establishment of such an agency as wished by Parliament. Even if the idea of setting up a genuine "Community agency" would seem, for the time being, rather ambitious, it should be possible, on the basis of the results of this study, to establish a flexible network of cooperation on a permanent basis between existing organisations, capable of ensuring a better follow-up of complaints. In this context, special attention will be paid to the possibility of consumer organizations from one Member State taking up a case originating in another Member State. The Commission will also launch a study on the scope and impact of existing national and international law relevant to trans-border cases. This study will, amongst other things, explore possible improvements in the legal framework for trans-border enforcement of consumer protection law.

The Commission will also examine, whether it is opportune to draft a framework directive introducing a general right for consumer associations to act in the courts on behalf of the general interest of consumers.

Moreover, the Commission will continue its action concerning pilot projects in the area of simplified procedures. This action has been put, quite recently, on a somewhat more solid basis through the creation of a special line for consumer redress within the Commission's budget for 1987. However, it still remains too limited to render this policy fully effective at a Community level.

Having thus summed up the broad lines of its action programme in the area of consumer redress, the Commission invites the Council:

- to recognise the importance of adequate treatment of consumer complaints and the need for providing appropriate means of redress, in particular in an economic context where, on the whole, consumer choice in the Community becomes ever wider but where, at the same time, conditions of supply become less and less perceptible to the individual consumer;
- to reaffirm in particular, its commitment to principles aiming at improved "access to justice" for consumers;
- to take note of the Commission's action programme in the area of consumer redress and of the budgetary needs which its proper execution implies, as well as to call on governments of Member States, in which practical initiatives, launched with the help of the Commission have shown positive results, to give appropriate consideration to such initiatives with a view to implementing them on a permanent basis at the national level;
- to admit the prominent role consumer organisations have to play both as intermediaries and as direct agents in the field of effective consumer redress, and to call on Member States to provide them with adequate means to assume this task.

ANNEX

Report on activities, already undertaken in the area of consumer redress, and summary evaluation

This report sets out in some detail what kind of actions to facilitate access to justice have received financial and technical support from the Commission, on which the European Parliament has also requested a report.

1. The major part of the Commission's activities has concentrated on pilot projects in various Member States for testing and improving simplified legal procedures. As a general remark it must be said that, due to restricted budgetary means, the number of such projects has been rather limited and that, therefore, only a few broad conclusions can be drawn from them and then only on a preliminary basis.

a) Pilot project in the United Kingdom

The Scottish Courts Administration, in collaboration with the Scottish Consumer Council, encouraged and supported financially by the Commission, set up a pilot project for a simplified procedure for the settlement of small claims in the Sheriff Court of Dundee (described in more detail under 1.14 of the Communication of 1984). During its test period from 1979 to 1981 the scheme was run on a voluntary basis. Following the broadly satisfactory results of this experience, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (amending the Sheriff Courts Act of 1971) was voted by the UK Parliament, which laid the legal basis for introducing a new small claims procedure in Scotland. Its main features are:

- the sheriff clerk may effect service of the summons on behalf of the pursuer (as defined by the Act);

- the hearing for all disputed claims below a certain sum will be informal. (in particular, no strict rule of law relating to admissibility or corroboration of evidence shall apply);
- in disputed cases there will be a "no expense" rule for claims below a certain sum and a fixed limit on expenses for claims above that figure; full expenses will be available in undefended cases and cases where one of the parties has acted unreasonably in pursuing or defending a claim;
- however, the sheriff (judge of the first instance) will be able to transfer cases to the summary cause or ordinary cause procedure if a difficult question of law or fact is involved.

Although practical experience, on a large scale, about the functioning of this new procedure and its impact upon consumer disputes is not yet available, this pilot-project seems to indicate how, on the basis of a concrete experiment, practical changes in procedure can be initiated which formerly had only been the subject of theoretical discussion.

b) Pilot projects in Belgium

From 1984-1986 the Commission financed two parallel pilot projects in Belgium. They took place, with the consent of the Belgian Ministry of Justice, at the "Juge de Paix" tribunals (court of first instance) of Deinze (province of Flandre Occidental) and Marchienne-au-Pont (province of Hainaut) respectively, with the active cooperation of the competent local judges, their registrars and the regional bars.

They employed to a large extent rules of civil procedure already existing under Belgian law, although not widely used in practice and consisted in the following:

- a legal "consultant" ("stafmedewerker" in Deinze, "juriste-délégué" in Marchienne-au-Pont) was established at the premises of each court, who could be contacted by the public at regular hours on several days of the week;
- his task consisted, first, in orientating an applicant in the various procedures, possibly applicable to his case, including the pre-trial steps necessary to be taken;
- where thorough advice on the substance of a case was needed, the consultant suggested that applicants should seek a lawyer's advice; such advice was offered in parallel with the help of the regional bars.
- where appropriate, he then helped applicants by using a standardised form to formulate their case, which was despatched to the opposing party with an invitation to make out his own case in writing and to come - voluntarily - for a meeting where a compromise might be negotiated;
- where such negotiations took place, they were guided by the consultant who did not, however, act as an arbiter, but limited his role to giving advice on procedural issues and on the observance of legally necessary formalities;
- where the negotiations led to a compromise, the compromise was handed over to the competent authority to be executed;
- if negotiations failed, the parties either entered into a formal arbitration procedure or submitted their case to the Juge de Paix, the original demand serving as a writ of summons;

- the services of the consultant were free of charge and their availability was given large publicity at the local level.

The pilot project must be considered as very successful, both as regards the general response from the public and as regards the percentage of cases settled amicably during the pre-trial phase. Even where cases went into the formal litigation procedure they could be handled more effectively by the Juge de Paix due to the preparatory work done by the consultant. The Belgian authorities are studying, at present, if and to what extent this scheme should be given a permanent basis under Belgian law.

c) Pilot project in Italy

Since October 1986, a pilot project broadly based on the lines followed under the Belgian projects, has been running in Italy, at the "Giudice Conciliatore" of Rome. The project was initiated by the Lazio Section of "Comitato Difesa Consumatori", and the Italian Ministry of Justice has given its consent. Due to a lack of facilities, it is impossible, in the context of this project, to establish the consultant at the premises of the relevant court itself, although this seemed an important feature, as in the other projects, to overcome the psychological barriers that often prevent ordinary citizens from going to court.

Apart from a very positive reaction from the public when the project was started, it is still too early to give any indications about its progress.

d) Further projects of a similar type are, at present, being discussed with authorities and organizations from several other Member States, in particular a proposal submitted by a Portuguese consumer organization.

Subject to the general reservation made above, the following preliminary summary conclusions may be drawn from the experimental projects:

- Lower courts (courts of the first instance) which are competent to deal with small claims, widely lack adequate staff and facilities for the reception of claimants, and to help them orientate themselves within the judicial system (pre-trial steps, time-limits, choice of procedure, etc.). The idea of the judicial system as a public service, is still not very widespread, nor that it should be available on reasonable conditions and, to a certain extent, even free of direct charge, as are many public services¹ ;
- where advice and help with regard to procedural questions (including the drafting of a claim or a writ of summons) is supplied, it seems difficult in practice, to dissociate it from advice on questions of substance concerning the merits of a case; in order to avoid any interference with the necessary neutrality of court staff on the one side and the tasks of the legal profession on the other, flexible solutions for cooperation with the bar and consumer advice centres must be looked for in every case;
- it seems that the availability of facilities for conciliation at the premises of a court itself (without, however, immediately involving a formal procedural step) can favour the amicable settlement of small disputes; it still remains to be examined in more detail whether participation in pre-trial conciliation should be made obligatory, or whether it would only lead to unduly protracted procedures.

1 an idea clearly formulated, for example, by the Consumers Consultative Committee in a report of 13.12.1983 - CCC/47/83 fin. at p.41.

- an interesting feature of the new procedure in Scotland is the no-expenses rule, which is a possible solution for the need to reduce costs.

2. As regards the possibility for consumers to defend their rights collectively before the courts or other competent authorities, either through class actions or through actions introduced by their organizations in the general interest of consumers, the Commission has limited its legislative initiatives until now to situations where such procedural rights could be linked with the defence of clearly defined substantive rights, in the context of their harmonization at the Community level (e.g. Art. 4 of the Misleading Advertising Directive, OJ No. L 250 of 19.9.1984, p.17).

The Commission notes with interest the request of the European Parliament, repeated again in its Resolution of 13.3.1987 on its Communication of 1984², for the introduction of a general legal instrument allowing for the protection of the collective interests of consumers. Such a request had also been formulated earlier by the Economic and Social Committee in an Opinion of 24.1.1979.³

The Commission still considers that the definition of such a general legal instrument would involve very substantial difficulties under traditional legal doctrine, in particular as regards the scope and meaning of the consumers' rights defensible under such a measure. For the time being, it will, therefore, continue to observe further developments in the Member States and

-
- 2 a request already formulated earlier in a Resolution of the European Parliament of 1977 - see OJ No. C 241 of 10.10.1977, p.23 (point 4).
 - 3 CES 104/79 on the basis of a report prepared by Mr Hilkens; this opinion was referred to by the Chairman of ECOSOC's section for Protection of Consumer Affairs in a letter of 11 November 1985 with comments on the Commission's 1984 Communication.

increase its contacts with government experts on this matter. However, in the absence of harmonization in areas of substantive law where such procedural rights might be appropriate, the Commission will take the possibility of a framework Directive on this subject more closely into consideration.

3. With respect to strengthening extra-judicial means of redress for consumers, in 1983/84 the Commission financed (together with the German Federal Ministry of Justice) a pilot project at the Verbraucherzentrale Hamburg (the regional consumer protection organization). The project focussed mainly on two major areas of consumer complaints: excessive interest rates for consumer credit, and the recruiting methods of certain book-clubs, as well as their conditions of membership. From a practical point of view, the project aimed at testing and putting into operation standardised forms and computer equipment in order the better to collect, assess and handle en masse consumer complaints of an identical or similar type.

The project was accompanied by a wide information campaign at the regional level, and it received a massive response from the public. Although most complaints, as a matter of principle, were disputed, from a legal point of view, by the businesses concerned, many were settled amicably afterwards, some immediately after the first letter of protest drafted with the aid of Verbraucherzentrale. Of the complaints about book-clubs, none went to the courts at all. As regards the complaints about consumer credit, a number had to be taken to the courts, with the support of Verbraucherzentrale, where substantial reductions of credit charges for consumers have been obtained, either by way of a compromise or by judgments. Moreover, these actions created in the courts an increased sensitivity about this type of consumer problem. The experiment has proved that the supply of adequate equipment and resources to consumer organizations, combined with appropriate information to the public, can operate effectively in

solving general consumer problems quickly and often at little cost. The Commission itself is, of course, not in a position to supply such assistance on a permanent basis.

As regards extra-judicial schemes for conciliation and arbitration, it has been suggested, in particular by the Economic and Social Committee in its report on the "Producer-Consumer Dialogue" of 1984⁴, that the Commission should examine setting up such schemes in connection with codes of conduct negotiated between business and consumer organizations at Community level. Indeed, such codes, where they exist at the national level, often provide for such schemes in order to settle consumer disputes. However, there remain substantial difficulties in the way of establishing such a dialogue which have been set out in the Commission's Communication on a "New Impetus for Consumer Protection Policy" (at par. 41). As regards adequate handling of consumer complaints and means of redress in particular, this approach may also bear the risk of leading to a different level of protection, depending on the business sector involved and the adherence of a complainant to a particular organization, whilst the applicable law in equivalent cases should be the same for everybody.

However, the Commission will continue its efforts in this respect and examine in more detail the possibilities for such an approach in a more closely defined sector, namely that of public services. This will be part of its other activities in this specific area, as set out in its Communication on a "New Impetus for Consumer Protection Policy" (at par. 39).

4. Apart from the Commission's programmes on general consumer information and education⁵, first steps have been taken in the

4 CES 839/83

5 See most recently the related Resolution of the Council and the Ministers for Education meeting within the Council, of 9 June 1986, OJ No. C 184 of 23.7.1986, p.21.

context of the Commission's initiative concerning "The Integration of Consumer Policy in the other Common Policies"⁶ to improve the information of Community citizens about Community law and its consequences in everyday life and facilitate their access to the procedures whereby that law is applied, especially through the establishment of complaints desks.

Moreover, the Commission, aiming at a more specialised public, has supported the launching of the "European Consumer Law Journal", published simultaneously in English, French and German. The first issue appeared in December 1986. This quarterly review, through a network of correspondents in all Member States, covers major legal developments of practical importance in the field of consumer law throughout the Community. Although run on a private basis, the financial contribution from the Commission being limited to the launching period, it is hoped that this publication will establish itself as a major source of information about the practical implementation of consumer protection through case law, both at the national and the European level. It will thus stress the important role which courts play in the enforcement of such law and permit a constant approximation of legal thinking. A small contribution has also been granted to the launching of a consumer law journal in Germany, "Verbraucher und Recht", which may be viewed as a complementary publication to the European review.

The European Parliament, in its Resolution of 13.3.1987, has also asked the Commission to update immediately the description of the situation in the Member States contained in the Communication of 1984, and its completion by information on those Member States which could not be included in that document. While the Commission will consider the possibility of a supplement on

6 COM(86)540 fin. at par. 13 and related Council Resolution of 15.12.1986, OJ No. C 3 of 7.1.1987, p.1.

Portugal and Spain (the situation in this latter country being particularly complex, since competences lie with the various regional governments as regards this subject), it does not think it appropriate to publish another complete report within such a relatively short period of time. The technical difficulty of collecting all the relevant information and its assembly and preparation for a comprehensive publication would involve a considerable time-lag with the result that some of the information will already be outdated at the date of publication.

Although a further general report, summarizing the situation at a given moment, would certainly be desirable and necessary at a later stage, the Commission, at present, prefers to stimulate an exchange of views and information on practical experiences in the Member States on a permanent basis.