

# EC ACCESS TO JUSTICE FOR CONSUMERS

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## *Introduction*

This brief paper seeks to map out the EC's activities in relation to access to justice and consumer protection. Particular emphasis will be placed on the role of ADR. Before looking at particular initiatives it is perhaps useful place these within the general framework within which EC policy on consumer access to justice has developed.

The first major push to improve access to justice came in November 1993 with the Green Paper on *access of consumers to justice and the settlement of consumer disputes in the single market* ((COM(93) 576). This surveyed national measures, addressed the particular problems of cross-border disputes and suggested a number of strategies for improving affairs. The proposal which was most developed concerned establishing mechanisms for injunction actions and as we shall see these have been adopted in a Directive 98/27/EC on injunctions for the protection of consumers' interests: OJ 1998 L166/51 (hereafter Injunctions Directive).

In the 1996 *Action plan on consumer access to justice and the settlement of consumer disputes in the internal market* COM (96) 13 we see amongst other things the intention to establish minimum criteria applicable to the handling of cross border disputes and the networking of out of court procedures. In 1998 the Commission adopted a *Communication on the out-of-court settlement of consumer disputes*: COM (1998) 198 which included the *Council Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes* (98/257/EC) (hereafter ADR Recommendation) and in 2001 the Commission adopted a *Recommendation on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes*: OJ 2001 L109/56 (hereafter the Consensual Resolution Recommendation). A form to assist with consumer complaints has also been devised. A network of national clearing houses has been established to channel disputes to appropriate ADR bodies, the EEJ-NET and a parallel organisation for financial disputes exists for financial disputes FIN-NET. ADR should also be improved by the encouragement of Codes of Conduct in the Green Paper on Consumer Protection COM (2001) 531 and the Follow-up Communication COM (2002) 289.

The Commission's *Consumer Policy Strategy 2002-2006* document COM (2002) 208 has the effective enforcement of consumer protection rules as one of its three objectives. This suggests a number of specific measures and also links into the Green Paper on *alternative dispute resolution in civil and commercial law* COM(2002) 196. Although wider than consumer law it is interesting that the

consumer model of establishing minimum criteria is suggested as a possible model for civil and commercial law more generally. A Communication is promised in the near future on Online Dispute Resolution.

In the following we will first consider the rules on ADR including the minimum criteria, networks and complaints form. Second we will look at the injunctions directive and finally some aspects of private international law. The debates about access to justice have also included reform of court systems by simplifying procedures and making access across borders easier and proposals which are nearing maturity about the availability of legal aid for cross-border consumer disputes. Another issue that has been discussed from time to time is the topic of a collective redress mechanism.

### ***ADR***

The ADR Recommendation recommends that bodies responsible for the out of court settlement of consumer disputes respect the following principles:

- independence,
- transparency,
- adversarial,
- effectiveness,
- legality,
- liberty,
- representation.

This Recommendation only applies to bodies who seek to settle disputes through the intervention of third parties. Schemes which merely seek to bring the parties together were excluded, but are now covered by the Consensual Resolution Recommendation, This invokes the principles of impartiality, transparency, effectiveness and fairness.

The EEJ-NET and FIN-NET operate as a clearing house through which consumers can be informed of ADR opportunities both within their own system and particularly in other countries. Some assistance might also be provided to consumers, concerning matters such as translations, but the schemes are still bedding in. Consumers can also approach European Consumer Centres (Euroguichets) for information on legislation and case law, assistance and advice on mediation, information concerning procedures, initial legal assistance and help with being directed to the appropriate authorities.

The Commission has also produced a complaints form that consumers could use when negotiating with traders or possibly when approaching an ADR body. The

use of a standardised format and a series of boxes to tick may overcome language problems to some extent.

### ***Injunctions***

In several member states there was the tradition of allowing consumer organisations or state bodies to seek injunctions to prevent practices that harmed the collective interest of consumers. These provisions had been included in a number of consumer law directives and the Injunctions Directive sought to standardise this practice.

Member states must designate courts or administrative authorities to hear injunction applications brought by qualified entities. These are bodies or organisations (either independent public bodies or private consumer organisations) having a legitimate interest in ensuring the protection of the collective interests of consumers as found in a list of measures listed in an annex to the directive. In the case of intra-Community infringements qualified entities from other member states shall have access to the appropriate court or administrative authority. Prior obligations to consult either the defendant or qualified entity can be introduced by member states, but this consultation obligation cannot delay the procedure for more than two weeks.

### ***Private international law***

Council Regulation on jurisdiction and enforcement of judgments in civil and commercial matters : OJ 2001 L12/1 (known as Brussels I) replaced the Brussels Convention. A similar process is now being undertaken to revise and bring within the Community legal order the Rome Convention on the law applicable to contractual obligations (Rome I) and a new set of rules for non-contractual obligations (Rome II). Surrounding the adoption of Brussels I there was much discussion about how best to deal with consumer disputes in e-commerce. The European Parliament had proposed that under some condition clauses could be introduced requiring consumer disputes to be referred to extrajudicial dispute resolution systems accredited under a scheme approved by the Commission. The Commission resisted this on that occasion. There are also issues as to whether this would be compatible with the Unfair Terms in Consumer Contracts Directive.

### ***Evaluation***

It is hard to draw any general conclusions from this brief survey. Much of the debate will lie on the detail which has not been touch on here. However, before evaluating it is important to place the Commission's endeavours in context. The value of many consumer disputes and the limited resources available to litigate them makes the satisfactory resolution of consumer disputes complex even in the

national arena. These problems are magnified in the European context as distance, language and cultural and legal diversity add increased hurdles to the quest for justice. The forces (both positive and negative) that drive consumers towards ADR schemes are accentuated in the cross-border context. It is noticeable that the Commission's ADR initiatives have been more successful than those directed at courts. This may be a combination of greater resistance from courts and also a greater priority given by the Commission to ADR as it views it as the point in the legal system most likely to deliver justice to cross-border consumers.

There are still debates to be had about what standards should be required of ADR schemes. Does, for instance, the requirement they comply with principles of private international law place too onerous a burden on them? On the other hand do consumers not need confidence that bodies in other countries meeting these standards really offer them a fair redress system? One might be sceptical about how many consumers really will gain redress in cross-border consumer disputes. It may also be the case that such protection will be expensive to administer and that this will tend to subsidise the relatively affluent cross-border consumer. Nevertheless in a society that believes in the rule of law and which wants to create a functioning internal market for consumers as well as business then access to justice seems to be an essential component. The Commission has produced some innovative measures which need to be given time to establish themselves and develop before they are fully evaluated.