

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	1996/0025(COD) Procedure completed
Protection of consumers: injunctions for the protection of consumers' interests	
Amended by 1998/0245(COD) Repealed by 2003/0099(COD) Amended by 2003/0134(COD)	
Subject 4.60.06 Consumers' economic and legal interests	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs, Citizens' Rights		19/03/1996
		PSE VERDE I ALDEA Josep	
	Former committee responsible		
	JURI Legal Affairs, Citizens' Rights		19/03/1996
		PSE VERDE I ALDEA Josep	
	Former committee for opinion		
	ENVI Environment, Public Health and Consumer Protection		20/03/1996
		PSE KUHN Annemarie	
Council of the European Union	Council configuration	Meeting	Date
	Consumers	2084	23/04/1998
	Fisheries	2037	30/10/1997
	Consumers	1997	10/04/1997
	Consumers	1969	25/11/1996
	Consumers	1917	23/04/1996

Key events			
30/09/1994	Additional information		Summary
24/01/1996	Legislative proposal published	COM(1995)0712	Summary
28/02/1996	Committee referral announced in Parliament, 1st reading		
23/04/1996	Debate in Council	1917	
29/10/1996	Vote in committee, 1st reading		Summary

29/10/1996	Committee report tabled for plenary, 1st reading	A4-0354/1996	
13/11/1996	Debate in Parliament		Summary
14/11/1996	Decision by Parliament, 1st reading	T4-0596/1996	Summary
25/11/1996	Debate in Council	1969	
23/12/1996	Modified legislative proposal published	COM(1996)0725	Summary
30/10/1997	Council position published	07497/1/1997	Summary
20/11/1997	Committee referral announced in Parliament, 2nd reading		
25/02/1998	Vote in committee, 2nd reading		Summary
25/02/1998	Committee recommendation tabled for plenary, 2nd reading	A4-0062/1998	
11/03/1998	Debate in Parliament		Summary
12/03/1998	Decision by Parliament, 2nd reading	T4-0144/1998	Summary
23/04/1998	Act approved by Council, 2nd reading		
19/05/1998	Final act signed		
19/05/1998	End of procedure in Parliament		
11/06/1998	Final act published in Official Journal		

Technical information

Procedure reference	1996/0025(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amended by 1998/0245(COD) Repealed by 2003/0099(COD) Amended by 2003/0134(COD)
Legal basis	EC before Amsterdam E 100A
Stage reached in procedure	Procedure completed
Committee dossier	JURI/4/09466

Documentation gateway

Legislative proposal	COM(1995)0712 OJ C 107 13.04.1996, p. 0003	24/01/1996	EC	Summary
Economic and Social Committee: opinion, report	CES1095/1996 OJ C 030 30.01.1997, p. 0112	25/09/1996	ESC	
Committee report tabled for plenary, 1st reading/single reading	A4-0354/1996 OJ C 362 02.12.1996, p. 0005	29/10/1996	EP	
Text adopted by Parliament, 1st reading/single reading	T4-0596/1996 OJ C 362 02.12.1996, p.	14/11/1996	EP	Summary

		0225-0236			
Modified legislative proposal		COM(1996)0725 OJ C 080 13.03.1997, p. 0010	23/12/1996	EC	Summary
Document attached to the procedure		SEC(1997)0935	13/05/1997	EC	
Council position		07497/1/1997 OJ C 389 22.12.1997, p. 0051	30/10/1997	CSL	Summary
Commission communication on Council's position		SEC(1997)2077	12/11/1997	EC	Summary
Committee recommendation tabled for plenary, 2nd reading		A4-0062/1998 OJ C 104 06.04.1998, p. 0006	25/02/1998	EP	
Text adopted by Parliament, 2nd reading		T4-0144/1998 OJ C 104 06.04.1998, p. 0196-0205	12/03/1998	EP	Summary
Follow-up document		COM(2008)0756	18/11/2008	EC	Summary

Additional information

European Commission

[EUR-Lex](#)

Final act

[Directive 1998/27](#)
[OJ L 166 11.06.1998, p. 0051](#) Summary

Protection of consumers: injunctions for the protection of consumers' interests

PREVIOUS COMMUNITY LEGISLATION: First Commission memorandum forwarded to the Council on 4 January 1985 (COM(84) 0692 final). Supplementary communication on 7 May 1987 (COM(87) 0210 final). The Council adopted a resolution on consumer redress on 25 June 1987 (87/C 176/02, OJ C 176, 4.7.1987). With the implementation of Directive 84/450/EEC, consumer organizations in all the Member States were empowered to take legal action against misleading advertising. The same legislative approach was chosen for Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. PREVIOUS POSITION OF EP: In its resolution of 13 March 1987 on consumer redress (OJ C 99, 13.4.1987, pp. 203-205) the EP welcomed the Commission proposals and called on the Commission to propose a directive harmonizing the laws of the Member States to provide for the protection of the collective interests of consumers, with consumer organizations given the possibility of acting in legal proceedings on behalf of the category they represent and of individual consumers. Improvement of the rights of individuals through changes to procedural law. SITUATION IN THE MEMBER STATES: See the Commission's Green Paper (COM(93) 0576 final, pp. 17 ff.)

Protection of consumers: injunctions for the protection of consumers' interests

OBJECTIVE: to facilitate consumers' access to justice via their representatives by coordinating national provisions on actions for injunction of practices which are contrary to Community consumer law. SUBSTANCE: the proposed action is based on the existence, at national level, of entities qualified to protect the interests of consumers which have occasion to bring injunction proceedings before the national courts of the Member States on account of practices which violate Community law. The proposal for a Directive lays down minimum conditions for mutual recognition of these qualified entities to enable them to act in cross-border situations. Where an unlawful practice has effects in Member State A but originates in Member State B, the qualified entity in country A will be able either to authorize the qualified entity in country B to institute proceedings before the court or competent authority of that country, or else itself to take action before that court or authority. The scope of the Directive is limited to practices coming within the remit of national laws that have been harmonized under other Community directives, namely those concerning misleading advertising, consumer credit, unfair terms in contracts, door-to-door selling, package travel and timeshares. Granting the power of action to the qualified entities of the Member States, establishing criteria for the entities' representativeness and laying down procedural details will in every case be matters for the national authorities. ?

Protection of consumers: injunctions for the protection of consumers' interests

Adopted at first reading under the codecision procedure was the report by Josep VERDE I ALDEA (PES, E) on legal steps to drop proceedings connected with protection of consumers' interests. The object is to protect consumers against infringements of certain Union directives and enable consumer associations to bring actions in another EU state. Rights of appeal of this type exist in all the Member States. Whereas the Commission was merely proposing coordination, the committee is calling for harmonization of the rules. A party has to establish a 'legitimate interest' in order to exercise its right of appeal. ?

Protection of consumers: injunctions for the protection of consumers' interests

The rapporteur, Mr Verde i Aldea (PSE, E), underlined the importance of the said proposal for a directive, which opened up new possibilities for consumers by introducing mutual recognition for consumer protection associations in each Member State. In this regard, the rapporteur also wanted to see similar organisations at European level being given access to the same legal system and added that it would be appropriate to put in place a set of arrangements for resolving disputes by amicable agreement, for example by means of arbitration. Finally, he called for the third pillar, namely justice and internal security, to be adopted into the Community system so that every citizen, and not just consumers, would be given proper access to the judicial system within the single market. Commissioner Bonino said that she could accept 20 of the 25 amendments tabled by Parliament; this meant that she rejected Amendments Nos 5, 12, 6, 19 and 25 (the last three because the concept of organising consumers at European level could not easily be translated into practice, nor was it compatible with the principle of proportionality).

Protection of consumers: injunctions for the protection of consumers' interests

Parliament adopted the report by Mr Josep VERDE I ALDEA (PSE, E) on injunctions for the protection of consumers' interests. Parliament called for a harmonization (whereas the Commission proposed a mere coordination) of rules with regard to protection of the collective interests of consumers, of persons exercising a commercial, industrial or craft activity and those of the public at large, against certain unlawful practices. Moreover, Member States should designate at national level the bodies and/or organizations qualified for the purposes of the Directive, including Europe-wide bodies or organizations established within their territory. Finally, where the Member States have established that there should be prior intervention by a national qualified entity with a view to initiating action, a deadline of not more than 20 working days should be set, to start upon presentation of the application for intervention to the competent body. After which, should the latter body fail to respond, the applicant would be entitled to bring an action before the competent authority without further notice. ?

Protection of consumers: injunctions for the protection of consumers' interests

The modified proposal for a Directive on injunctions for protection of consumers' interests accepts in full or in part 17 of the 20 amendments adopted by Parliament at first reading. In the light of the EP amendments, the main changes made are as follows: - 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; - setting of a time limit of three weeks after which, should the national qualified entity having territorial jurisdiction fail to respond, the applicant should be entitled to bring an action before the competent authority without further notice; - the purpose of the Directive is to approximate the rules designed to protect the collective interests of consumers and persons exercising a commercial, industrial or craft activity, and the interests of the public at large, against infringements harmful to consumers' interests; - with regard to actions for an injunction, the nature of the payment and the beneficiary will be determined by the national law applicable; - the distinction between the concept of being qualified to act and having an interest in doing so is clarified. The Directive introduces 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; - the Member States will apply the criteria laid down by their national law to any organization existing in their territories, irrespective of the national, transnational or European nature of such organizations/federations; - the rules governing prior notification must enable the action to be brought as quickly as possible, since it is done under summary procedure. ?

Protection of consumers: injunctions for the protection of consumers' interests

The common position largely takes over the Commission's amended proposal and hence Parliament's amendments accepted by the Commission. The most important point of divergence between the amended proposal and the common position concerns the scope of the proposed Directive, to the extent that the reference to companies' interests has been deleted; instead the common position focuses exclusively on protecting the collective interests of consumers. The Council has made provision for the collective interests of persons exercising a commercial, industrial, craft or professional activity to be re-examined no later than five years after the entry into force of the Directive. A further difference which should be mentioned is that the common position has not specifically taken into account the possibility for European organizations and/or federations to act as qualified entities. The common position also stipulates the scope of intra-Community infringements: a simplification has been introduced by deleting the initially proposed text concerning the document certifying the right of a qualified entity to bring proceedings before competent courts or authorities. According to the common position, it is sufficient for the Commission, once the Member States have informed it of the name and purpose of their national qualified entities, to draw up a list of such entities, which will be published in the Official Journal. The courts and administrative bodies must accept this list as proof of the legal capacity of the qualified entity without prejudice to their right to examine whether the purpose of the qualified entity justifies its taking action in a specific case. Another point to note is that the question of the law applicable is covered with reference to private international law. The applicable law should therefore normally be either the law of the Member State where the infringement originated or the law of the Member State where it has its effects. Finally, the Council would like the Directive to be implemented within a period of 30 months. ?

Protection of consumers: injunctions for the protection of consumers' interests

The Commission notes that the common position differs significantly from its own proposal, particularly as regards the interests of companies, which the Council text does not mention. However, in order to facilitate a compromise, the Commission is able to accept the common position to the extent that the consideration of these interests (which often coincide with consumers' interests) is not specifically excluded. ?

Protection of consumers: injunctions for the protection of consumers' interests

The report by Josep VERDE I ALDEA (PES, E) on injunctions for the protection of consumers' interests was adopted. The Committee is calling for the directive to enter into force sooner.?

Protection of consumers: injunctions for the protection of consumers' interests

Stressing the innovative aspect of this directive which would regulate, for the first time, the right of consumer associations to bring actions in any EU country, the rapporteur expressed his appreciation of the Council's work which had improved the technical aspect of the directive in question. As a result, he was against the amendments tabled on those professional categories not falling within the sphere of consumers. Commissioner Cresson said that the Commission would accept the conclusions of the Committee on Legal Affairs which had already rejected the last eight amendments. In particular, with regard to Amendments Nos 2, 4, 6 and 7 ? establishing a link between national law and the capacity of qualified entities to act ? Mrs Cresson considered that these represented a retreat from the common position, particularly as they would call into question the very purpose of the directive, namely the mutual recognition of entities qualified to bring actions.

Protection of consumers: injunctions for the protection of consumers' interests

In adopting the recommendation for second reading by Mr Josep VERDE I ALDEA (PSE, Esp), the European Parliament approved the common position unamended. The Council had accepted many of the amendments adopted by the European Parliament at first reading. ?

Protection of consumers: injunctions for the protection of consumers' interests

OBJECTIVE: to approximate the laws, regulations and administrative provisions of the Member States on injunctions for the protection of consumers' interests. COMMUNITY MEASURE: Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests. SUBSTANCE: the Directive is intended to prevent intra-Community infringements. To this end, it applies the principle of mutual recognition to entities qualified to bring an action, their qualification being defined in accordance with national criteria. On the basis of this principle, a qualified entity, which may be an independent public body and/or a consumers' organisation in a Member State where interests are affected by an infringement, may bring an action before the court or competent authority of another Member State where the infringement originates. Every three years, and for the first time not later than five years after the entry into force of the Directive, the Commission is to report to the European Parliament and the Council on its implementation. ENTRY INTO FORCE: 01/07/1998 DEADLINE FOR TRANSPOSITION: 01/01/2001 ?

Protection of consumers: injunctions for the protection of consumers' interests

The Commission reports on the application of Directive 98/27/EC on injunctions for the protection of consumers' interests, as required by Article 6(1) of the Directive. It notes that a major benefit of the Directive has been to introduce in each of the Member States a procedure for bringing injunctions to protect the collective interests of consumers. This procedure is being used by the consumer associations with some success for national infringements.

However, the use made of the Directive to counter cross border infringements has been disappointing. According to the Commission's information, only the UK's Office of Fair Trading (OFT, public authority in charge of consumer protection) has used the mechanism.

The main reasons mentioned by both the Member States and the interested parties to explain the small number of injunctions sought in another Member State are the cost of bringing an action, the complexity and length of the procedure and the limited scope of the injunction procedure. The main obstacle is the lack of resources in the light of the financial risks borne by any eligible qualified entity, but also in the light of the expertise required to deal with the different procedures in the various Member States.

Cost: consumer associations mentioned the administrative costs of preparing the file, court fees and lawyers' fees as posing particular difficulties. If the action is brought in another Member State, it will also entail translation costs, and there is added uncertainty about legal fees in another Member State (for example, citation fees or fees associated with notification of the ruling). The associations also mentioned the risk of duplicating lawyers' and experts' fees. The financial risk is all the greater when the action is brought in a Member State where the losing party has to bear all the costs of the procedure and, in particular, pay the costs of the successful party (in particular, some or all of their legal costs). This principle exists in most of the Member States.

Complexity and length of procedures: these are often invoked as obstacles to cross-border actions. The complexity is the result mainly of different injunction procedures in other Member States, subject to national judicial or administrative procedures. Existing uncertainties as to which law is applicable reinforce this perceived complexity. Whilst the Directive harmonises certain aspects of bringing an injunction in the Member States, it leaves them a certain amount of latitude. It allows them to choose a judicial or an administrative injunction procedure and whether or not to impose a prior consultation procedure and establish the associated arrangements. The Directive also allows Member States to adopt or maintain provisions giving qualified entities or any other party the entitlement to take more wide-ranging action. An analysis of the transposition of the Directive demonstrated the wide range of choices made by the Member States. Moreover, by not regulating many aspects of the injunction procedure, such as prescription periods or procedural deadlines and fees, the Directive allows the details to be fleshed out in national civil, commercial or administrative procedures, which can vary between States.

Limited impact of rulings: the associations and Member States consulted emphasised the sometimes limited impact of such injunctions. In most Member States, a ruling on an application for an injunction has a mitigated impact. It is mandatory only with respect to the case and the parties in question, i.e. the qualified entity which brought the action and the company which is the subject of the injunction. In practice, this means that if a company commits an infringement identical to that for which another company has already been convicted, a new injunction

must be sought to stop the new infringement. In the same way, the annulment of an unfair term in a contract proposed by a company does not prevent the same company from continuing to use this unfair term in a similar contract.

The CPC Regulation: Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC Regulation) establishes a network of public authorities responsible for protecting consumers and harmonises, to a certain extent, the investigative and enforcement powers of these authorities. This is a partial response to the difficulties raised by the implementation of the Directive, and its application should considerably improve the combating of intra-Community infringements. The adoption of the Rome II Regulation should also have an impact. The Commission takes the view that it would be preferable to await more detailed feedback on the application of the CPC and Rome II Regulations before drawing conclusions as to how to proceed with the Directive.

Conclusion: consequently, the Commission takes the view that it is not the time to propose any amendments to, or the repeal of, the Directive but that, on the contrary, it should continue to examine the application of the Directive. In particular, it takes the view that there is no reason to extend its scope to include the collective interests of businesses, or to generalise the prior consultation requirement.