

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

1996/0025(COD) - 18/11/2008 - Follow-up document

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.