

Injunctions for the protection of consumers' interests. Codification

2003/0099(COD) - 06/11/2012 - Follow-up document

The European Commission has presented a report on the application of Directive 2009/22/EC of the European Parliament and the Council on injunctions for the protection of consumers' interest.

To recap, Directive 98/27/EC of 19 May 1998 on injunctions for the protection of consumers' interests introduced a Court or administrative procedure enabling consumer organisations and/or public authorities to seek an injunction to stop a trader's practice that infringes a number of EU rules on consumer protection in all Member States. Directive 98/27/EC has been amended several times. In the interest of clarity, this Directive has been codified by Directive 2009/22/EC, which is currently in force.

A first report on the application of the Directive was adopted in November 2008. This second Commission report is based on the responses to questionnaires sent to public authorities and consumer associations.

1) Injunctions:

The report notes that it is **difficult to assess the number of injunctions** and that any estimate needs to be treated with care. Responses to the questionnaire sent to interested parties show that in total **5 632 actions for injunction were reported, most of which were national**. The Member States with the **highest number of actions for injunction reported**, as from 2008 are Germany (3,000 actions), Latvia: (956 cases), the United Kingdom (938 actions), Austria (500 actions) and Malta (267 cases).

The **economic sectors** which were most often mentioned by respondents as being most affected by injunctions are the following: (i) telecommunications, (ii) banking and investments, and (iii) tourism and package travel. Other sectors mentioned by several respondents are distance selling, insurance, energy, non-food consumer goods and passenger transport.

On the basis of the responses to the questionnaire, the following illegal practices that harm consumers' collective interests have resulted most frequently in the exercise of injunctions, in order of importance:

- unfair contract terms (the most frequent reason given);
- unfair commercial practices and misleading advertising, in equal measure.

2) A useful measure in spite of its limitations: the report underlines that despite its limitations, injunctive actions constitute a useful tool for the protection of the collective interests of consumers. Qualified entities are gradually becoming aware of the possibilities offered to them by the Directive and gaining experience with its use. The **main positive findings** concerning the Directive are the following:

- injunctions are a successful tool for policing markets, especially to ensure fair contract terms;
- injunctions work particularly well with market players who respect to a certain extent the law. However, against rough traders and criminal actors, injunctive actions are not always an appropriate mechanism to put a stop to illicit practices;
- the Directive has to a certain extent enhanced compliance with consumer protection laws among economic operators in certain sectors of the economy, although there are not enough data available to estimate this reduction in percentage terms;

- the Directive has had direct qualitative benefits for consumers, although it was not necessarily possible to express these benefits in monetary terms.
- the injunction procedure introduced by the Directive does not enable consumers who have suffered harm because of an illicit practice to obtain compensation. However, the possibilities of redress for consumers affected by a trader's practice that has been declared illegal following an injunction varies from one Member State to another.

However, the report notes however that there are considerable differences between the Member States in respect of both the levels of use and the effectiveness of this instrument. Moreover, even in those countries where the effectiveness of injunctions is recognised or where they are frequently used, their potential is not fully exploited due to the following reasons: the **high costs** linked to this type of action, the **length and complexity** of the procedures, the relatively **limited effects** of the rulings on injunctions and the difficulty of enforcing them. These difficulties are even more present in injunctions **with a cross-border dimension**.

Next steps: despite its limitations, injunctive actions are regarded by the overwhelming majority of stakeholders and experts as a useful tool with considerable potential if the shortcomings identified are addressed.

In its [resolution of 2 February 2012 on “Towards a Coherent European Approach to Collective Redress”](#), the European Parliament takes the view that the mechanisms introduced under Directive 2009/22/EC on injunctions for the protection of consumer interests can be significantly improved so as to foster cooperation and injunctive relief in cross-border situations.

The report lists a **series of measures proposed by stakeholders** to improve the effectiveness of injunctions:

- **Non legislative measures:** awareness-raising campaigns and training for qualified entities in the use of injunctions; the introduction of mechanisms (such as a website) to give publicity to injunction cases across Europe.
- **Possible changes in the legal framework:** the Directive leaves considerable latitude for Member States to design the characteristics of injunctive actions, including the procedural rules, as well as their scope and effects. Several respondents advocate a greater degree of harmonization (with regard to time limits for introducing the action, the deadline for rendering a court decision and costs) in the injunction procedures of the various Member States, at least for cross-border cases.

It has also been suggested to introduce some of the **measures which already exist in some Member States at European level**. The most important of these are the following:

- **extension of the scope of application** of the Directive to all consumer protection rules;
- **extension of the effects of the decisions:** allow consumers to benefit directly from a judgment following a successful case, rather than being obliged to introduce new proceedings to enforce their rights; clear provisions on the possibility of compensating consumers and the method of doing so should be introduced into the Directive; the limitation period for claims by consumers affected by the legal infringement could be suspended during the injunction proceedings;
- **fast-track proceedings** for interim measures;
- **right to information:** qualified entities should have the right of access to the name and legal address of businesses involved in unlawful practices; companies should be obliged to make available the standard contracts that they use;
- **financing:** the “loser pays” principle should continue to apply in actions for injunction. However, this principle should be applied in a flexible manner which is favourable to qualified entities, as is the case in some Member States ;

- **enforcement of decisions:** Member States should be required to impose dissuasive penalties for non-compliance with injunction orders, in order to ensure that unfair business practices are unprofitable for traders.

Lastly, several stakeholders, including public authorities from some Member States, declared that **a mechanism of collective redress for consumers should be introduced at European level**, in addition to possible improvements on injunctions.

The Commission **takes note of the issues raised by stakeholders** and their suggestions to address them. It will continue monitoring the application of the Directive in the Member States. It will further assess how best to address with Member States the issues identified in this report, and how to achieve improvements within the current legal framework.

In conclusion, the Commission considers that **there does not appear to be sufficiently strong reasons to propose amendments to the Directive at this stage**, and will review the situation when preparing the subsequent report on its application.