



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.03.1998
SEC(1998) 576 final

Communication from the Commission

on

“the out-of-court settlement of consumer disputes”

and

Commission recommendation

on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes

SUMMARY

This Communication is **part of a series of Community initiatives** in the field of consumer access to justice that have been developed over the years.

The urgent need for Community action in regard to the settlement of consumer disputes was highlighted and confirmed in the consultations on the Green Paper (1993) and the Action Plan on “consumer access to justice and the settlement of consumer disputes in the single market” (1996).

The outcome of these discussions shows that **one of the paramount goals** is to facilitate the settlement of consumer disputes by resolving the problems arising from the disparity between the economic value at stake and the cost of its judicial settlement. In order to satisfy this objective, this Communication contains two features designed to improve access to justice for individual consumers¹:

- a claim form designed to facilitate communication between consumers and professionals and, should an amicable solution prove impossible, facilitate access to out-of-court procedures and
- a Recommendation laying down the principles applicable to out-of-court procedures for the settlement of consumer disputes².

¹ For the purposes of this communication “consumer access to justice” means the opportunity to exercise one’s rights in practice, not access to justice in the stricter sense, i.e. to the courts.

² The first Community initiatives in the field of consumer access to justice date from the 1980s. A first Commission Communication on consumer redress was transmitted to the Council in the form of a memorandum on 4 January 1985 (COM(84) 692 final), followed by a supplementary Communication dated 7 May 1987 (COM(87) 210 final). The European Parliament adopted a Resolution on the subject on 13 March 1987 (OJ No C 99, 13.4.1987, p. 203). The Council’s reaction was to adopt a Resolution on 25 June 1987 devoted solely to consumer redress (87/C 176/02, OJ No C 176, 4.7.1987, p. 2), in which it invited the Commission to supplement its analysis in view of the enlargement of the Community.

The Community dimension of the problem of consumers’ access to the law was also referred to in the European Parliament’s Resolution of 11 March 1992 (OJ No C 94, 13.4.1992, p. 217) and the Council Resolution of 13 July 1992 on future priorities for the development of consumer protection policy (OJ No C 186, 23.7.1992, p. 1). On 21-23 May 1992, under the aegis of the Council Presidency and the Commission, the third European Conference on consumer access to justice was held in Lisbon and was attended by some 300 experts from the 12 Member States of the European Community and certain EFTA countries. The conclusions of the meeting confirmed the concerns expressed in the course of the above-mentioned initiatives.

In its Green Paper on “Access of consumers to justice and the settlement of consumer disputes in the single market” (COM(93) 576 final of 16 November 1993), the Commission set out a number of proposals aimed at resolving individual and collective cross-border disputes. The aspects mentioned in the proposals included the free movement of actions for an injunction and the simplified settlement of disputes.

Following the Green Paper, the Commission tabled a proposal for a Directive on injunctions for the protection of consumers’ interests, which is in the process of being adopted (common position of the Council on injunctions for the protection of consumers’ interests (EC No 48/97 of 30 October 1997, OJ No C 389, 22.12.1997, p. 51) as well as a Communication on an action plan on consumer access

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to justice and the settlement of consumer disputes in the internal market (COM(96) 13 final of 14 February 1996). In its Resolution on this Communication (A4-0355/96, OJ No C 362, 2.12.1996, p. 275) the European Parliament gave its support to the objectives set out in the action plan and called on the Commission to undertake further work on the subject.

INTRODUCTION

1. THE PROBLEM OF ACCESS TO JUSTICE FOR INDIVIDUAL CONSUMERS

When it adopted the first programme for a consumer protection and information policy in 1975³, the Council of the European Communities enunciated five fundamental rights⁴. Since then, Community law has made substantial progress in this area. There are now several Community texts that endow consumers with a set of concrete rights which can be relied on in all the Member States. Product liability, consumer credit, doorstep selling, package holidays, overbooking in air transport, liability for air traffic accidents⁵, unfair terms, contracts negotiated at a distance, and timeshares - all are now addressed in EC law. Other texts have been proposed and are currently under discussion in such areas as the sale of consumer goods and associated guarantees. Thanks to the adoption of these rights at Community level, consumers can make the most of the large internal market, which was the objective underlying the Member States' decision to accept the Action Plan for a Single Market presented by the Commission to the Amsterdam European Council (strategic objective 4, CSE(97) 1 final of 4 June 1997).

The Member States, who are primarily responsible for consumer protection, have also adopted on their own initiative a multiplicity of laws providing for specific rights in consumers both in domains not covered by the Community texts and in harmonised domains covered by Community provisions allowing Member States to ensure a higher level of consumer protection. Moreover, in their relations with professionals - even in the absence of specific legislation - consumers enjoy the protection granted by the general rules of civil law.

However, if substantial rights are granted people without providing mechanisms to ensure their effective exercise, these rights have no practical value⁶. Hence, in order to ensure

³ OJ No C 92, 25.4.1975, pp. 1-16.

⁴ "The right to protection of health and safety, the right to protection of economic interests, the right to information and education, the right to representation, the right to fair compensation for damages in the form of rapid, effective and affordable procedures".

⁵ Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, OJ No L 285, 17.10.1997.

⁶ Access to justice, as far as consumers are concerned, constitutes a corollary of the substantial rights conferred by the Community legal order. Although, in the absence of Community regulations, Member States have the power to establish the procedures for access to justice which are necessary to ensure that these rights are fully safeguarded, Community law nevertheless imposes limits to that power. For example, legislation of this type may not discriminate against persons whom Community law entitles to equal treatment, and they may not restrict the fundamental freedoms guaranteed by the Treaty. Since Community law guarantees free movement of goods and services in the common market, it is a corollary of those freedoms that operators, including consumers, must be able, in order to resolve any disputes arising from their economic activities, to bring actions in the courts of a Member State in the same way as nationals of that State (judgment of 26 September 1996, *Data Delecta and Forsberg*, C-43/95, ECR 96 I-4661; judgment of 20 March 1997, *Hayes*, C-323/95, ECR I-171).

that reality is in step with the consumer protection framework designed by the Community and national legislators, consumers must be able to assert their rights, whenever they are infringed, through access to simple, swift, effective and inexpensive legal channels.

The specific problems encountered by consumers in exercising their rights have already been addressed in several position statements issued by the competent institutions. In real life there are a certain number of obstacles facing consumers who are seeking justice in the courts.

Firstly, there is the cost of legal consultation and representation, court fees and the cost of expert opinions (particularly as modern economies are characterised by increasingly complex products and services, sometimes beyond the judge's knowledge). Secondly, in certain countries plaintiffs may have to pay the defendant's costs if they lose their case, and in other countries they have to pay their own costs even if they win. Finally, because of the backlog of cases pending in certain Member States, long delays may arise before a case is judged. Besides these material factors, there are also barriers of a psychological order due to the complexity and formalism associated with court procedures. And consumers are often reluctant to sue because of their unfamiliarity with legal language and the hermetic rituals characteristic of judicial proceedings.

If things are complex enough in national disputes, they are even more complicated when more than one country is involved. The risk of getting involved in a cross-border dispute⁷ has been increasing with the proliferation of cross-border consumer transactions and the development of new selling techniques and services.

In view of the above it is fair to say that, in most consumer disputes – both national and cross-border – the proceedings are too long drawn out and their cost excessive⁸ when compared with the limited value of the dispute. In these circumstances many consumers do not even try to assert their rights and simply allow them to be infringed.

2. THREE APPROACHES TO A SOLUTION:

There are three possible ways of improving consumer access to justice: simplification and improvement of legal procedures, improvement of communication between professionals and consumers, and out-of-court procedures to settle consumer disputes. Far from being alternatives, these three approaches are fully complementary.

However, a fundamental difference distinguishes the first approach from the other two: while the first approach remains within the traditional framework of the judicial settlement

⁷ For a detailed description of the definition and all the specific or supplementary problems associated with it, see page 72 of the Green Paper.

⁸ This argument has been verified and borne out in the study on the "Cost of legal barriers for consumers in the single market". This study showed that the average cost (court fees plus lawyer's fees) of the judicial settlement of an intra-Community dispute concerning an amount of ECU 2 000 is approximately ECU 2 500 for the plaintiff even in the best of circumstances. The results of the study are summarised in the Action Plan on consumer access to justice and the settlement of consumer disputes in the single market, pages 8-11 (COM(96) 0013).

of disputes and aims to improve the existing systems, the two other remove these disputes from the judicial arena wherever possible.

a) The simplification and improvement of court procedures

Most Member States have mounted initiatives designed to simplify court procedures for “small disputes”, either generally or specifically in regard to consumer disputes. The idea common to these initiatives is to dispense with formalised procedures so that the case can be dealt with in a simplified manner, the involvement of a lawyer being optional, or to have the court itself seek to reach a settlement (either mandatory or at the discretion of the court or the parties). Despite some similarities there are many inter-country differences in the simplified procedures, especially in the criteria used to define small disputes and in regard to costs.

In its Action Plan of 14 February 1996 the Commission proposed creating a form, designed to simplify consumer access to court procedures. However, the results of the subsequent consultations showed that the Member States had misgivings about the benefits of a single form in the context of simplified court procedures - especially since the possibility of initiating such a procedure simply by dispatching a form would mean changes to the national rules of civil procedure in most countries. However, the work done in this context inspired the Commission to launch one of the initiatives in the out-of-court domain contained in this Communication (see section I.1 below).

This Communication does not address court procedures and therefore does not contain proposals referring to this primordial domain. Of course, this does not mean the Commission has opted not to encourage progress in the matter of court procedures. On the contrary, it will continue to study the need for common action and the form such action should take with regard to the operation of court procedures in the global framework of the internal market and the European legal area, in which connection its efforts will receive a considerable boost from the Amsterdam Treaty. It has also presented a Communication⁹ the main intent of which is to improve procedures for the enforcement of court decisions abroad and rules on determination of the courts empowered to hear cross-border disputes. This Communication, which takes account of consumer interests, also opens up a debate on a common EU approach as regards certain aspects of national procedural law. Moreover, a broader debate will be launched on the operation of simplified court procedures (for small disputes) in the context of the European legal area.

b) The improvement of communication between consumers and professionals

In order to counter the problems of consumer access to justice before the courts, the objective is to help consumers find an amicable solution to their disputes with the professional. Dialogue between the two parties and an amicable settlement of the dispute mean that consumers can avoid all the problems associated with going to court, while putting right the situation created by any infringement of their rights.

⁹ Communication from the Commission to the Council and the European Parliament “Towards greater efficiency in obtaining and enforcing judgments in the European Union” (COM(97) 609 final, of 26.11.1997).

The amicable resolution of disputes is also in the interest of professionals who, for their part, are keen to avoid litigation and to retain their clients.

Normally the dialogue takes place at the consumer's own initiative, with or without the involvement of consumer associations or other bodies whose mission is to help consumers.

However, fruitful communication is obstructed through lack of consumer information, the problems consumers have in formulating their complaints clearly and, in the case of cross-border disputes, their reluctance to initiate a dialogue with someone in a language other than their own.

Obviously, if an amicable solution proves impossible, there is no alternative but to have recourse to the bodies responsible for resolving consumer disputes.

The Commission has also launched an initiative in the field of financial services¹⁰, intended to allow the parties concerned, i.e. the financial services industry and consumer organisations, to reach voluntary agreements with a view to improving consumer information and access for consumers to redress procedures.

c) The creation of out-of-court procedures

Hence numerous initiatives in various Member States have opted for out-of-court solutions for the settlement of consumer disputes. The European Commission has long supported "pilot projects" at national or local level designed to put in place or develop systems of this kind.

In addition to court procedures, a whole range of "out-of-court methods" specifically designed to resolve consumer disputes currently exist in Europe. Sometimes these are supplementary or prior procedures, such as mediation or conciliation; sometimes they offer access to alternative mechanisms, such as arbitration. Since a given method may differ from country to country, and in order to avoid confusion as a result of this terminological diversity, it should be made clear that this Communication concerns methods which, no matter what they are called, lead to the settling of a dispute through the active intervention of a third party who proposes or imposes a solution. It does not concern procedures that merely involve an attempt to bring the parties together to convince them to find a solution by common consent.

Systems for the out-of-court settlement of consumer disputes differ greatly as regards their structure, operation and implementation.

Out-of-court instruments may be the fruit of initiatives by public authorities both at central level (such as the Consumer Complaints Boards in the Scandinavian countries) and at local level (such as the arbitration courts in Spain); they may also spring from initiatives promoted or organised by individual associations or sectors (e.g. bank and insurance company mediators / ombudsmen) or by professionals or establishments offering mediation or arbitration services as their main activity (e.g. lawyers or private arbitration centres).

¹⁰ Communication on "Financial services: enhancing consumer confidence" (COM(97) 309 of 26 June 1997, which constituted a follow-up to the Green Paper on "Financial services: meeting consumers' expectations" (COM(96) 209 of 22 May 1996)

Precisely because of this diversity, the status of the decisions adopted by these bodies differs greatly. Some are mere recommendations (as in the case of the Scandinavian Consumer Complaints Boards and most of the private ombudsmen), while others are binding only on the professional (as in the case of most of the bank ombudsmen); others still are binding on both parties (arbitration).

However, with an eye to safeguarding the interests of the parties involved, it is necessary to determine the extent to which out-of-court procedures can provide guarantees comparable with those offered by court procedures (notably independence and impartiality), while improving practical access to the settling of disputes. This question is all the more important in that the out-of-court system, despite its unquestionable merits, is not without its weaknesses, such as the flexibility which makes it possible to exclude strict application of the legal rules, the absence of appeal procedures in cases where decisions are binding, or difficulties in implementing a decision, especially in a Member State other than that in which it was made (the 1958 New York Convention on the enforcement of arbitral awards does not apply in all Member States of the European Union¹¹).

Providing certain guarantees of "good justice" in out-of-court procedures might reduce their drawbacks and also enhance the credibility of out-of-court systems for consumers, besides reinforcing mutual confidence between the bodies that exist in the different Member States.

¹¹ Portugal, for example, has not subscribed to this Convention (judgment of 25 July 1991, Rich, C-190/89, ECR I-3855). This means that the recognition and enforcement of arbitral awards are not guaranteed throughout the European Union.

I. THE CONTENT OF THE PROPOSED ACTION

With this Communication the Commission is launching two initiatives designed to improve consumer access to justice. The Commission's aim is to supplement the policy of the Member States in this area with a view to realising a "high level of consumer protection" in compliance with Article 129a of the Treaty; in keeping with the principle of subsidiarity (Article 3b of the Treaty), the content of the action is limited to what is necessary to achieve the objective, and the idea is that the proposed initiative will be implemented on a voluntary basis.

I.1 Encouragement of amicable settlement of consumer problems

In this context the Communication's paramount goal is to encourage and facilitate the settling of consumer conflicts at an early stage so that the parties can avoid the inconvenience of initiating proceedings (in court or, for that matter, out of court). To this end the Communication presents a "European claim form for consumers", designed to improve communication between consumers and professionals with a view to settling their disputes amicably. If the dialogue between the consumer and professional does not lead to a solution, this form could be used to initiate an out-of-court procedure. Ideally the bodies responsible for out-of-court settlement of consumer disputes should agree to open a procedure coming within their remit on the basis of simple lodgement of the European form, so as to make the most of the possibilities offered by this form.

This claim form may be used at both national and cross-border level, independently of the value of the claim or the type of consumer dispute in question. It is for the parties themselves to decide to what extent their problem through use of the form. As regards financial services in particular, the ongoing "dialogue" between the financial services industry and consumers is currently examining the appropriateness of this form for disputes concerning financial services.

The form will be available on the Internet for all interested persons and organisations (<http://europa.eu.int/comm/dg24>) in all the languages of the European Union. The form as such cannot be altered, but the organisations (firms, associations of firms, consumer organisations, consumer information centres, etc.) that propose its use to consumers may "personalise" it by printing their logo in the top right-hand corner.

The "consumer claim form", whose current wording is based on numerous consultations with the parties concerned and the Member States, has been designed with a view to "guiding" and orientating consumers in formulating their claims. It proposes a choice of multiple responses to help consumers indicate their problems and describe their claim, while leaving enough space for users to add supplementary details or to describe particular cases not covered by the form's lists. The combination of a multiple-choice system and free text will considerably facilitate translation in the case of cross-border disputes where the parties speak different languages. The Commission will make any technical changes to the form which may prove desirable.

This Commission initiative is a pilot project. After two years the Commission will evaluate the pertinence and impact of the form on the basis of the experience gained.

I.2. Providing appropriate safeguards in connection with the creation and operation of out-of-court bodies responsible for resolving consumer disputes.

The second strand of the Commission's initiative takes the form of a Recommendation designed to establish a series of principles applicable to the operation of out-of-court bodies (existing or yet to be created) for resolving consumer disputes.

The out-of-court procedures concerned by this Recommendation are those which, whatever their "legal nature" (decision, recommendation or settlement proposal), involve the mediation of a third party whose role is not confined to persuading the parties to reach agreement but who express a firm position concerning settlement of the dispute.

Respect for certain principles - such as independence, transparency and effectiveness - should contribute to a higher level of protection of consumer rights. In parallel, provision of these safeguards will make for greater reliability and confidence. This confidence must be built up at two levels: firstly, consumers - aware of the guarantees provided by the out-of-court procedures available to them - will be able to make the most of the out-of-court system in their own country, or that of another Member State in the event of cross-border disputes, without misgivings or reservations; secondly, the bodies responsible for the out-of-court settlement of consumer disputes in the different EU countries will have more confidence in each other, in connection with cross-border disputes. Mutual confidence will enable them to cooperate effectively in improving the processing of consumer disputes of a cross-border nature. The Commission will facilitate the networking of these bodies so as to promote their active collaboration in resolving specific cases. Ultimately, consumers should be able to refer cross-border disputes to the competent out-of-court body in the foreign country via the corresponding out-of-court body in their own country.

To this end, the existing out-of-court bodies in the Member States should respect the principles set out in this Recommendation. Consumer associations and trade associations - both individually and jointly - have a key role to play in realising this objective.

These principles may also make it easier for parties providing out-of-court settlement services established in one Member State to offer their services in other Member States.

In order to ensure a level of transparency and dissemination of information on out-of-court procedures in line with the principles set out in the Recommendation and to facilitate networking, the Commission intends to create a database of the out-of-court bodies responsible for resolving consumer disputes that offer these safeguards. In keeping with the principle of subsidiarity, the database will contain particulars communicated to the Commission by the Member States that wish to participate in this initiative. To ensure standardised information and to simplify the transmission of these data, the Commission is providing the Member States with a standard information form, annexed to this Communication.

Likewise, with an eye to transparency and the provision of information, each Member State could appoint a single contact point on its territory responsible for directing all interested parties to the bodies they should consult with a view to the out-of-court settlement of a specific consumer dispute.

The Commission will evaluate the implementation of this Recommendation in two years' time.

II. A EUROPEAN CLAIM FORM FOR CONSUMERS



Where appropriate, the seal of the body proposing use of this form to consumers

CONSUMER CLAIM FORM

This form has been drawn up by the European Commission's services and should not be changed by users. It is intended to improve communication between consumers and professionals in order, as far as possible, to reach an amicable solution to the problems which they may encounter in their various transactions. The form is available in all the official languages of the European Union (<http://europa.eu.int/comm/dg24>). Under no circumstances should it be sent to the European Commission, which has no power to intervene in this type of dispute!

DETAILS OF THE PARTIES

Complaint submitted by:

Name:.....
Address, street:
..... N°
Town, post code:
Country:.....
Tel:.....
Fax:.....
Email:.....

On behalf of: *
.....

Against:

Name:.....
Address, street:
..... N°
Town, post code:
Country:.....
Tel:.....
Fax:.....
Email:.....
Other particulars:
.....
.....
.....

* To be filled in only if the consumer's complaint is presented by a third party and not by himself. In this case, the consumer should put his signature under his name.

INSTRUCTIONS

- In order to identify your problem and your claim, the form offers a choice of answers to each question. Please choose the answers **(one or more)** most appropriate to your case and, where appropriate, provide additional particulars in the space reserved for this purpose.
- It is recommended that this form be accompanied by **copies of supporting documents** and be sent **by registered post with acknowledgement of receipt or any other means making it possible to establish proof of dispatch and receipt**. A copy should be kept.
- The claimant should give the professional an appropriate amount of time to reply (at least two weeks). The professional's reply must be communicated to the claimant by returning the entire form. The consumer must then send him the reply coupon (page 4).

WARNING: Most national laws stipulate a time limit after which persons may no longer seek redress through the courts. Sometimes this **limitation period** is relatively short, particularly in the case of purchases of goods. Whether or not the use of this form suspends this time limit is determined by the legislation applicable to the dispute.

CONSUMER COMPLAINT

I. PROBLEMS ENCOUNTERED:

Date on which problem(s) was (were) encountered (day/month/year):...../...../..... Indicate whether the problem has arisen for the first time or not:.....

Problem connected with:

- | | |
|---|---|
| <input type="checkbox"/> 1 Product not delivered | <input type="checkbox"/> 15 Inadequate information |
| <input type="checkbox"/> 2 Service not provided | <input type="checkbox"/> 16 Payment arrangements |
| <input type="checkbox"/> 3 Delay in delivering product | <input type="checkbox"/> 17 Price paid |
| <input type="checkbox"/> 4 Delay in providing service | <input type="checkbox"/> 18 Price increase |
| Duration of delay | <input type="checkbox"/> 19 Supplementary charges |
| <input type="checkbox"/> 5 Defective product | <input type="checkbox"/> 20 Unjustified costs/billing |
| <input type="checkbox"/> 6 Poor service | <input type="checkbox"/> 21 Terms of contract |
| Details | <input type="checkbox"/> 22 Coverage of contract |
| | <input type="checkbox"/> 23 Assessment of damage |
| <input type="checkbox"/> 7 Product not in conformity with order | <input type="checkbox"/> 24 Refusal to pay compensation |
| <input type="checkbox"/> 8 Products/services not ordered | <input type="checkbox"/> 25 Inadequate compensation |
| <input type="checkbox"/> 9 Damage suffered | <input type="checkbox"/> 26 Modification of contract |
| <input type="checkbox"/> 10 Refusal to honour the guarantee | <input type="checkbox"/> 27 Poor performance of contract |
| <input type="checkbox"/> 11 Refusal to sell | <input type="checkbox"/> 28 Rescission / cancellation of contract |
| <input type="checkbox"/> 12 Refusal to provide service | <input type="checkbox"/> 29 Cancellation of service |
| <input type="checkbox"/> 13 Fraud | <input type="checkbox"/> 30 Loan reimbursement |
| <input type="checkbox"/> 14 Incorrect information | <input type="checkbox"/> 31 Interest demanded |
| | <input type="checkbox"/> 32 Failure to honour commitments |

33 Additional information

.....

.....

34 Other type of problem

.....

.....

II. THE CIRCUMSTANCES:

(Indicate the date and place of purchase or signature of the contract, describe the product or service as well as the price, payment arrangements or any other information which may be useful in assessing your complaint:.....

.....

.....

.....

.....

III. REQUEST BY THE CONSUMER

To obtain:

- | | |
|---|---|
| <input type="checkbox"/> 35 Delivery of product or provision of the service | <input type="checkbox"/> 45 Correction of assessment of damage |
| <input type="checkbox"/> 36 Repair of the product or service | <input type="checkbox"/> 46 Payment of an indemnification in the sum of |
| <input type="checkbox"/> 37 Exchange of the product | <input type="checkbox"/> 47 Reimbursement of a down payment in the amount of |
| <input type="checkbox"/> 38 Cancellation of sale | <input type="checkbox"/> 48 Reimbursement of other payments effected in the amount of |
| <input type="checkbox"/> 39 Performance of the guarantee | <input type="checkbox"/> 49 Price rebate in the amount of |
| <input type="checkbox"/> 40 Honouring of commitments | <input type="checkbox"/> 50 Payment of damages in the amount of |
| <input type="checkbox"/> 41 Conclusion of a contract | |
| <input type="checkbox"/> 42 Rescission / cancellation of contract | |
| <input type="checkbox"/> 43 Cancellation of invoice | |
| <input type="checkbox"/> 44 Information | |

51 Other particulars:

.....

.....

52 Other type of request

.....

.....

IV. ADDITIONAL EXPLANATIONS (OPTIONAL)

.....

III. COMMISSION RECOMMENDATION No .../.../EC ON THE PRINCIPLES APPLICABLE TO THE BODIES RESPONSIBLE FOR OUT-OF-COURT SETTLEMENT OF CONSUMER DISPUTES

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and in particular Article 155 thereof,

Whereas the Council, in its conclusions approved by the Consumer Affairs Council of 25 November 1996, emphasised the need to boost consumer confidence in the functioning of the internal market and consumers' scope for taking full advantage of the possibilities offered by the internal market, including the possibility for consumers to settle disputes in an efficient and appropriate manner through out-of-court or other comparable procedures;

Whereas the European Parliament, in its Resolution of 14 November 1996¹², stressed the need for such procedures to meet minimum criteria guaranteeing the impartiality of the body, the efficiency of the procedure and the publicising and transparency of proceedings and called on the Commission to draft proposals on this matter;

Whereas most consumer disputes, by their nature, are characterised by a disproportion between the economic value at stake and the cost of its judicial settlement; whereas the difficulties that court procedures may involve may, notably in the case of cross-border conflicts, discourage consumers from exercising their rights in practice;

Whereas the "Green Paper on the access of consumers to justice and the settlement of consumer disputes in the single market"¹³ was the subject of wide-ranging consultations whose results have confirmed the urgent need for Community action with a view to improving the current situation;

Whereas the experience gained by several Member States shows that alternative mechanisms for the out-of-court settlement of consumer disputes - provided certain essential principles are respected - have had good results, both for consumers and firms, by reducing the cost of settling consumer disputes and the duration of the procedure;

Whereas the adoption of such principles at European level would facilitate the implementation of out-of-court procedures for settling consumer disputes; whereas, in the case of cross-border conflicts, this would enhance mutual confidence between existing out-of-court bodies in the different Member States and strengthen consumer confidence in the existing national procedures; whereas these criteria will make it easier for parties providing out-of-court settlement services established in one Member State to offer their services in other Member States;

¹² European Parliament Resolution on the Commission Communication "Action plan on consumer access to justice and the settlement of consumer disputes in the internal market" of 14 November 1996, OJ No C 362, 2.12.1996, p. 275.

¹³ COM(93) 576 final of 16.11.1993.

Whereas one of the conclusions of the Green Paper concerned the adoption of a Commission Recommendation with a view to improving the functioning of the ombudsman systems responsible for handling consumer disputes;

Whereas the need for such a Recommendation was stressed during the consultations on the Green Paper and was confirmed during the consultation on the "Action Plan" Communication¹⁴ by a very large majority of the parties concerned;

Whereas this Recommendation must be limited to procedures which, no matter what they are called, lead to the settling of a dispute through the active intervention of a third party, who proposes or imposes a solution; whereas, therefore, it does not concern procedures that merely involve an attempt to bring the parties together to convince them to find a solution by common consent;

Whereas the decisions taken by out-of-court bodies may be binding on the parties, may be mere recommendations or may constitute settlement proposals which have to be accepted by the parties; whereas for the purposes of this Recommendation these various cases are covered by the term "decision";

Whereas the decision-making body's impartiality and objectivity are essential for safeguarding the protection of consumer rights and for strengthening consumer confidence in alternative mechanisms for resolving consumer disputes;

Whereas a body can only be impartial if, in exercising its functions, it is not subject to pressures that might sway its decision; whereas, therefore, its independence must be guaranteed without this implying the need for guarantees that are as strict as those designed to ensure the independence of judges in the judicial system;

Whereas, when the decision is taken by an individual, the decision-maker's impartiality can only be assured if he can demonstrate that he possesses the necessary independence and qualifications and works in an environment which allows him to decide on an autonomous basis; whereas this requires the person to be granted a mandate of sufficient duration, in the course of which he cannot be relieved of his duties without just cause;

Whereas, when the decision is taken by a group, equal participation of representatives of consumers and professionals is an appropriate way of ensuring this independence;

Whereas, in order to ensure that the persons concerned receive the information they need, the transparency of the procedure and of the activities of the bodies responsible for resolving the disputes must be guaranteed; whereas the absence of transparency may adversely affect the rights of the parties and cause misgivings as to out-of-court procedures for resolving consumer disputes;

Whereas certain interests of the parties can only be safeguarded if the procedure allows them to express their viewpoints before the competent body and to acquaint themselves with the facts presented by the opposing party and, where applicable, the experts' statements; whereas this does not necessarily necessitate oral hearings of the parties;

¹⁴ Action Plan on consumer access to justice and the settlement of consumer disputes in the internal market, COM(96) 13 final of 14.2.1996.

Whereas out-of-court procedures are designed to facilitate consumer access to justice; whereas, therefore, if they are to be effective, they must remedy certain problems associated with court procedures, such as high fees, long delays and cumbersome procedures;

Whereas, in order to enhance the effectiveness and equity of the procedure, the competent body must play an active role which allows it to take into consideration any element useful in resolving the dispute; whereas this active role is all the more important when, in the framework of out-of-court procedures, the parties in many cases do not have the benefit of legal advice;

Whereas the out-of-court bodies may decide not only on the basis of legal rules but also in equity and on the basis of codes of conduct; whereas, however, this flexibility as regards the grounds for their decisions should not lead to a reduction in the level of consumer protection by comparison with the protection consumers would enjoy, under Community law, through the application of the law by the courts;

Whereas the parties are entitled to be informed of the decisions handed down and of grounds for these decisions; whereas the grounds for decisions are a prerequisite for transparency and the parties' confidence in the operation of out-of-court procedures;

Whereas in accordance with Article 6 of the European Human Rights Convention, access to the courts is a fundamental right that knows no exceptions; whereas since Community law guarantees free movement of goods and services in the common market, it is a corollary of those freedoms that operators, including consumers, must be able, in order to resolve any disputes arising from their economic activities, to bring actions in the courts of a Member State in the same way as nationals of that State; whereas out-of-court procedures cannot be designed to replace court procedures; whereas, therefore, use of the out-of-court alternative may not deprive consumers of their right to bring the matter before the courts unless they expressly agree to do so, in full awareness of the facts and only after the dispute has materialised;

Whereas in some cases, and independently of the subject and value of the dispute, the parties and in particular the consumer, as the party who is regarded as economically weaker and less experienced in legal matters than the other party to the contract, may require the legal advice of a third party to defend and protect their rights more effectively;

Whereas, in order to ensure a level of transparency and dissemination of information on out-of-court procedures in line with the principles set out in the Recommendation and to facilitate networking, the Commission intends to create a database of the out-of-court bodies responsible for resolving consumer disputes that offer these safeguards; whereas the database will contain particulars communicated to the Commission by the Member States that wish to participate in this initiative; whereas, to ensure standardised information and to simplify the transmission of these data, a standard information form will be made available to the Member States;

Whereas, finally, the establishment of minimum principles governing the creation and operation of out-of-court procedures for resolving consumer disputes seems, in these circumstances, necessary at Community level to support and supplement, in an essential area, the initiatives taken by the Member States in order to realise, in accordance with Article 129a of the Treaty, a high level of consumer protection; whereas it does not go

beyond what is necessary to ensure the smooth operation of out-of-court procedures; whereas it is therefore consistent with the principle of subsidiarity,

RECOMMENDS that all existing bodies and bodies to be created with responsibility for the out-of-court settlement of consumer disputes respect the following principles:

I

Principle of independence

The independence of the decision-making body is ensured in order to guarantee the impartiality of its actions.

When the decision is taken by an individual, this independence is in particular guaranteed by the following measures:

- the person appointed possesses the abilities, experience and competence, particularly in the field of law, required to carry out his function;
- the person appointed is granted a period of office of sufficient duration to ensure the independence of his action and shall not be liable to be relieved of his duties without just cause;
- if the person concerned is appointed or remunerated by a professional association or an enterprise, he must not, during the three years prior to assuming his present function, have worked for this professional association or for one of its members or for the enterprise concerned.

When the decision is taken by a collegiate body, the independence of the body responsible for taking the decision must be ensured by giving equal representation to consumers and professionals or by complying with the criteria set out above.

II

Principle of transparency

Appropriate measures are taken to ensure the transparency of the procedure. These include:

1. Provision of the following information, in writing or any other suitable form, to any persons requesting it:

- a precise description of the types of dispute which may be referred to the body concerned, as well as any existing restrictions in regard to territorial coverage and the value of the dispute;
- the rules governing the referral of the matter to the body, including any preliminary requirements that the consumer may have to meet, as well as other procedural rules, notably those concerning the written or oral nature of the procedure, attendance in person and the languages of the procedure;

- the possible cost of the procedure for the parties, including rules on the award of costs at the end of the procedure;
 - the type of rules serving as the basis for the body's decisions (legal provisions, considerations of equity, codes of conduct, etc.);
 - the decision-making arrangements within the body;
 - the legal force of the decision taken, whereby it shall be stated clearly whether it is binding on the professional or on both parties. If the decision is binding, the penalties to be imposed in the event of non-compliance shall be stated, as shall the means of obtaining redress available to the losing party.
2. Publication by the competent body of an annual report setting out the decisions taken, enabling the results obtained to be assessed and the nature of the disputes referred to it to be identified.

III.

Adversarial principle

The procedure to be followed allows all the parties concerned to present their viewpoint before the competent body and to hear the arguments and facts put forward by the other party, and any experts' statements.

IV.

Principle of effectiveness

The effectiveness of the procedure is ensured through measures guaranteeing:

- that the consumer has access to the procedure without being obliged to use a legal representative;
- that the procedure is free of charges or of moderate costs;
- that only short periods elapse between the referral of a matter and the decision;
- that the competent body is given an active role, thus enabling it to take into consideration any factors conducive to a settlement of the dispute.

V.

Principle of legality

The decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the State in whose territory the body is established. In the case of cross-border disputes, the decision taken by the

body may not result in the consumer being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which he is normally resident in the instances provided for under Article 5 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations.

All decisions are communicated to the parties concerned as soon as possible, in writing or any other suitable form, stating the grounds on which they are based.

VI.

Principle of liberty

The decision taken by the body concerned may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this.

The consumer's recourse to the out-of-court procedure may not be the result of a commitment prior to the materialisation of the dispute, where such commitment has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.

VII.

Principle of representation

The procedure does not deprive the parties of the right to be represented or assisted by a third party at all stages of the procedure.

THIS RECOMMENDATION is addressed to the bodies responsible for the out-of-court settlement of consumer disputes, to any natural or legal person responsible for the creation or operation of such bodies, as well as to the Member States, to the extent that they are involved.

ANNEX

INFORMATION FORM ON THE OUT-OF-COURT BODIES RESPONSIBLE FOR RESOLVING CONSUMER DISPUTES

PARTICULARS OF THE BODY: (Indicate the name, address, telephone and fax numbers, e-mail address, and any other details making it easier for interested persons to contact the body)

STRUCTURE: (Describe the composition of the body, stating whether it consists of an individual or whether it is a collegiate body, the duration of its mandate and the rules governing appointment and dismissal of the persons responsible for decision-making)

POWERS: (Describe the type of disputes treated, the geographical coverage and any existing thresholds as regards the value of the dispute)

PROCEDURE: (Describe the rules governing referral, notably any prior steps which must be taken by the consumer, the time limits within which consumers must take action, stating whether or not consumers must attend the proceedings in person, and whether the procedure is written or oral)

COSTS (Indicate the possible cost of the procedure and any rules on the sharing of fees at the end of the procedure)

NATURE OF THE DECISION: (Indicate whether the procedure culminates in a binding decision for one of the two parties, a mere recommendation or a settlement proposal)

ENFORCEMENT: (When the procedure leads to a binding decision, indicate how this decision is enforced)