

Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (Codified version) (Text with EEA relevance)

DIRECTIVE 2009/22/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

on injunctions for the protection of consumers' interests

(Codified version)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests⁽³⁾ has been substantially amended several times⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) Certain Directives, listed in Annex I to this Directive, lay down rules with regard to the protection of consumers' interests.
- (3) Current mechanisms available for ensuring compliance with those Directives, both at national and at Community level, do not always allow infringements harmful to the collective interests of consumers to be terminated in good time. Collective interests means interests which do not include the cumulation of interests of individuals who have been harmed by an infringement. This is without prejudice to individual actions brought by individuals who have been harmed by an infringement.
- (4) As far as the purpose of bringing about the cessation of practices that are unlawful under the national provisions applicable is concerned, the effectiveness of national measures transposing the Directives in question, including protective measures that go beyond the level required by those Directives, provided they are compatible with the Treaty and allowed by those Directives, may be thwarted where those practices produce effects in a Member State other than that in which they originate.

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- (5) Those difficulties can disrupt the smooth functioning of the internal market, their consequence being that it is sufficient to move the source of an unlawful practice to another country in order to place it out of reach of all forms of enforcement. This constitutes a distortion of competition.
- (6) Those difficulties are likely to diminish consumer confidence in the internal market and may limit the scope for action by organisations representing the collective interests of consumers or independent public bodies responsible for protecting the collective interests of consumers, adversely affected by practices that infringe Community law.
- (7) Those practices often extend beyond the frontiers between the Member States. There is an urgent need for some degree of approximation of national provisions designed to enjoin the cessation of the unlawful practices irrespective of the Member State in which the unlawful practice has produced its effects. With regard to jurisdiction, this is without prejudice to the rules of private international law and the Conventions in force between Member States, while respecting the general obligations of the Member States deriving from the Treaty, in particular those related to the smooth functioning of the internal market.
- (8) The objective of the action envisaged can only be attained by the Community. It is therefore incumbent on the Community to act.
- (9) The third paragraph of Article 5 of the Treaty makes it incumbent on the Community not to go beyond what is necessary to achieve the objectives of the Treaty. In accordance with that Article, the specific features of national legal systems must be taken into account to every extent possible by leaving Member States free to choose between different options having equivalent effect. The courts or administrative authorities competent to rule on the proceedings referred to in this Directive should have the right to examine the effects of previous decisions.
- (10) One option should consist in requiring one or more independent public bodies, specifically responsible for the protection of the collective interests of consumers, to exercise the rights of action set out in this Directive. Another option should provide for the exercise of those rights by organisations whose purpose is to protect the collective interests of consumers, in accordance with criteria laid down by national law.
- (11) Member States should be able to choose between or combine these two options in designating at national level the bodies and/or organisations qualified for the purposes of this Directive.
- (12) For the purposes of intra-Community infringements the principle of mutual recognition should apply to these bodies and/or organisations. The Member States should, at the request of their national entities, communicate to the Commission the name and purpose of their national entities which are qualified to bring an action in their own country according to the provisions of this Directive.
- (13) It is the business of the Commission to ensure the publication of a list of these qualified entities in the *Official Journal of the European Union*. Until a statement to the contrary

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is published, a qualified entity is assumed to have legal capacity if its name is included in that list.

- (14) Member States should be able to require that a prior consultation be undertaken by the party that intends to bring an action for an injunction, in order to give the defendant an opportunity to bring the contested infringement to an end. Member States should be able to require that this prior consultation take place jointly with an independent public body designated by those Member States.
- (15) Where the Member States have established that there should be prior consultation, a deadline of two weeks after the request for consultation is received should be set after which, should the cessation of the infringement not be achieved, the applicant shall be entitled to bring an action, without any further delay, before the competent court or administrative authority.
- (16) It is appropriate that the Commission report on the functioning of this Directive and in particular on its scope and on the operation of prior consultation.
- (17) The application of this Directive should not prejudice the application of Community competition rules.
- (18) This Directive should be without prejudice to the obligations of the Member States concerning the time limits for transposition and application in national law of the Directives set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 161, 13.7.2007, p. 39.](#)
- (2) Opinion of the European Parliament of 19 June 2007 ([OJ C 146 E, 12.6.2008, p. 73](#)) and Council Decision of 23 March 2009.
- (3) [OJ L 166, 11.6.1998, p. 51.](#)
- (4) See Annex II, Part A.