



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.5.2003
COM(2003) 241 final

2003/0099 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on injunctions for the protection of consumers' interests

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative measures should be codified after no more than ten amendments, stressing that this was a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules were clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake the codification of Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumer's interests³. The new Directive will supersede the various Directives incorporated in it⁴; their content is fully preserved, and they are brought together with only such formal amendments as are required by the codification exercise itself.

¹ COM(1987) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex II, Part A of this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Directive 98/27/EC and the instruments amending it, carried out by the Office of Official Publications of the European Communities, by means of a data-processing system. Insofar as the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex III to the codified Directive.

↓ 98/27/EC (adapted)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on injunctions for the protection of consumers' interests

(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 Committee⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁶,

Whereas:

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- (1) Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests⁷ has been substantially amended several times⁸. In the interests of clarity and rationality the said Directive should be codified.

↓ 98/27/EC Recital 1

- (2) Certain Directives, listed in the schedule annexed to this Directive, lay down rules with regard to the protection of consumers' interests.

⁵ OJ C [...].

⁶ OJ C [...].

⁷ OJ L 166 of 11.6.1998, p. 51. Directive as last amended by Directive 2002/65/EC (OJ L 271 of 9.10.2002, p. 16).

⁸ See Annex II, Part A.

↓ 98/27/EC Recital 2

- (3) Current mechanisms available both at national and at Community level for ensuring compliance with those Directives do not always allow infringements harmful to the collective interests of consumers to be terminated in good time. Collective interests mean 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.

↓ 98/27/EC Recital 3

- (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.

↓ 98/27/EC Recital 4

- (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.

↓ 98/27/EC Recital 5

- (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.

↓ 98/27/EC Recital 6

- (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 country 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.

↓ 98/27/EC Recital 7

- (8) The objective of the action envisaged can only be attained by the Community. It is therefore incumbent on the Community to act.

↓ 98/27/EC, Recital 8 (adapted)

- (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.

↓ 98/27/EC Recital 9

- (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.

↓ 98/27/EC Recital 10

- (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.

↓ 98/27/EC Recital 11

- (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.

↓ 98/27/EC Recital 12

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

↓ 98/27/EC Recital 13

- (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.

↓ 98/27/EC Recital 14

- (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 before the competent court or administrative authority without any further delay.

↓ 98/27/EC Recital 15

- (15) It is appropriate that the Commission report on the functioning of this Directive and in particular on its scope and the operation of prior consultation.

↓ 98/27/EC Recital 16

- (16) The application of this Directive should not prejudice the application of Community competition rules.

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- (18) This Directive should be without prejudice to the obligations of the Member States concerning the time-limits for transposition of the Directives set out in Annex II, Part B,

↓ 98/27/EC

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to actions for an injunction referred to in Article 2 aimed at the protection of the collective interests of consumers included in the Directives listed in Annex I, with a view to ensuring the smooth functioning of the internal market.

2. For the purpose of this Directive, an infringement shall mean any act contrary to the Directives listed in Annex I as transposed into the internal legal order of the Member States which harms the collective interests referred to in paragraph 1.

Article 2

Actions for an injunction

1. Member States shall designate the courts or administrative authorities competent to rule on proceedings commenced by qualified entities within the meaning of Article 3 seeking:
 - (a) an order with all due expediency, where appropriate by way of summary procedure, requiring the cessation or prohibition of any infringement;
 - (b) where appropriate, measures such as the publication of the decision, in full or in part, in such form as deemed adequate and/or the publication of a corrective statement with a view to eliminating the continuing effects of the infringement;
 - (c) insofar as the legal system of the Member State concerned so permits, an order against the losing defendant for payments into the public purse or to any beneficiary designated in or under national legislation, in the event of failure to comply with the decision within a time-limit specified by the courts or administrative authorities, of a fixed amount for each day's delay or any other amount provided for in national legislation, with a view to ensuring compliance with the decisions.
2. This Directive shall be without prejudice to the rules of private international law, with respect to the applicable law, thus leading normally to the application of either the law of the Member State where the infringement originated or the law of the Member State where the infringement has its effects.

Article 3

Entities qualified to bring an action

For the purposes of this Directive, a “qualified entity” means any body or organisation which, being properly constituted according to the law of a Member State, has a legitimate interest in ensuring that the provisions referred to in Article 1 are complied with, in particular:

- (a) one or more independent public bodies, specifically responsible for protecting the interests referred to in Article 1, in Member States in which such bodies exist; and/or
- (b) organisations whose purpose is to protect the interests referred to in Article 1, in accordance with the criteria laid down by their national law.

Article 4

Intra-Community infringements

1. Each Member State shall take the measures necessary to ensure that, in the event of an infringement originating in that Member State, any qualified entity from another Member State where the interests protected by that qualified entity are affected by the infringement, may seize the court or administrative authority referred to in Article 2, on presentation of the list provided for in paragraph 3 of this Article. The courts or administrative authorities shall 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.
2. For the purposes of intra-Community infringements, and without prejudice to the rights granted to other entities under national legislation, the Member States shall, at the request of their qualified entities, communicate to the Commission that these entities are qualified to bring an action under Article 2. The Member States shall inform the Commission of the name and purpose of these qualified entities.
3. The Commission shall draw up a list of the qualified entities referred to in paragraph 2, with the specification of their purpose. This list shall be published in the *Official Journal of the European Union*; changes to this list shall be published without delay, the updated list shall be published every six months.

Article 5

Prior consultation

1. Member States may introduce or maintain in force provisions whereby the party that intends to seek an injunction can only start this procedure after it has tried to achieve the cessation of the infringement in consultation with either the defendant or with both the defendant and a qualified entity within the meaning of Article 3(a) of the Member State in which the injunction is sought. It shall be for the Member State to decide whether the party seeking the injunction must consult the qualified entity. If the cessation of the infringement is not achieved within two weeks after the request for consultation is received, the party concerned may bring an action for an injunction without any further delay.
2. The rules governing prior consultation adopted by Member States shall be notified to the Commission and shall be published in the *Official Journal of the European Union*.

↓ 98/27/EC (adapted)

Article 6

Reports

1. Every three years and for the first time no later than 21 July 2003 the Commission shall submit to the European Parliament and the Council a report on the application of this Directive.
2. In its first report the Commission shall examine in particular:
 - (a) the scope of this Directive in relation to the protection of the collective interests of persons exercising a commercial, industrial, craft or professional activity;
 - (b) the scope of this Directive as determined by the Directives listed in the Annex;
 - (c) whether the prior consultation in Article 5 has contributed to the effective protection of consumers.

Where appropriate, this report shall be accompanied by proposals with a view to amending this Directive.

↓ 98/27/EC

Article 7

Provisions for wider action

This Directive shall not prevent Member States from adopting or maintaining in force provisions designed to grant qualified entities and any other person concerned more extensive rights to bring action at national level.

↓ 98/27/EC (adapted)

Article 8

Implementation

Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.



Article 9

Repeal

Directive 98/27/EC, as amended by the Directives set out in Annex II, Part A, is repealed, without prejudice to the obligations of the Member States concerning the time limits for transposition into national law of the directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

↓ 98/27/EC Article 9

Article 10

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

↓ 98/27/EC Article 10

Article 11

Addressees

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

↓ 98/27/EC Annex

ANNEX I

LIST OF DIRECTIVES COVERED BY ARTICLE 1⁹

↓ 98/27/EC (adapted)

1. Council Directive 84/450/EEC of 10 September 1984 concerning misleading advertising ☒ and comparative advertising ☒ (OJ L 250, 19.9.1984, p. 17) ☒ amended by Directive 97/55/EC of the European Parliament and of the Council (OJ L 290, 23.10.1997, p. 18). ☒
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↓ 98/27/EC (adapted)

2. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372, 31.12.1985, p. 31).
 3. Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42, 12.2.1987, p. 48), as last amended by Directive 98/7/EC (OJ L 101, 1.4.1998, p. 17).
 4. Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities: Articles 10 to 21 (OJ L 298, 17.10.1989, p. 23 as amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60).
 5. Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).
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↓ 98/27/EC Annex pt. 7

6. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).
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↓ 98/27/EC Annex pt. 8

7. Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating

⁹ Directive Nos 1, 6, 8 and 11 contain specific provisions on injunctive actions.

to the purchase of the right to use immovable properties on a timeshare basis (OJ L 280, 29.10.1994, p. 83).

↓ 98/27/EC Annex pt. 9 (adapted)

8. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p. 19) ☒ amended by Directive 2002/65/EC (OJ L 271, 9.10.2002, p. 16). ☒
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↓ 1999/44/EC Art. 10

9. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).
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↓ 2000/31/EC Art. 18(2)

10. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects on information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1).
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↓ 98/27/EC (adapted)

- ☒ 11. Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use: Articles 86 to 100 (OJ L 311, 28.11.2001, p.67). ☒
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↓ 2002/65/EC Art. 19

12. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p.16).
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ANNEX II

Part A

Repealed Directive and its amendments

(referred to by Article 9)

Directive 98/27/EC of the European Parliament and of the Council	OJ L 166, 11.6.1998, p. 51
Directive 1999/44/EC of the European Parliament and of the Council, Article 10 only	OJ L 171, 7.7.1999, p. 12
Directive 2000/31/EC of the European Parliament and of the Council, Article 18(2) only	OJ L 178, 17.7.2000, p. 1
Directive 2002/65/EC of the European Parliament and of the Council, Article 19 only	OJ L 271, 9.10.2002, p. 16

Part B

Deadlines for transposition into national law

(referred to by Article 9)

Directive	Deadline for transposition
Directive 98/27/EC	1 January 2001
Directive 1999/44/EC	1 January 2002
Directive 2000/31/EC	17 January 2002
Directive 2002/65/EC	9 October 2004

ANNEX III

CORRELATION TABLE

Directive 98/27/EC	This Directive
Articles 1-5	Articles 1-5
Article 6(1)	Article 6(1)
Article 6(2), first subparagraph, first indent	Article 6(2), first subparagraph, point (a)
Article 6(2), first subparagraph, second indent	Article 6(2), first subparagraph, point (b)
Article 6(2), first subparagraph, third indent	Article 6(2), first subparagraph, point (c)
Article 6(2), second subparagraph	Article 6(2), second subparagraph
Articles 7	Article 7
Article 8(1)	_____
Article 8(2)	Article 8
_____	Article 9
Article 9	Article 10
Article 10	Article 11
Annex	Annex I
_____	Annex II
_____	Annex III