

Directive on Injunctions for the Protection of Consumer Interests

What is it?

The “Directive on Injunctions for the protection of consumer interests” gives teeth to a wide range of Directives covering misleading advertising, consumer credit, TV broadcasting, package travel, unfair terms and distance selling, including how you can do e-business with consumers and your liabilities and responsibilities if things go wrong.

The proposed approach is for “nominated bodies” (e.g. the Consumer Association) to operate through national “clearing houses” (e.g. the Office of Fair Trade). The clearing houses would not resolve the dispute but could gather information and act on behalf of consumers by passing complaints on to sectoral regulators and to settlement procedures for specific industries.

The tribunal that makes the final decision on a dispute would be based in the producer’s country - giving the consumer more chance of seeing a judgement enforced by a local court. Where no mechanisms exist, countries would have to look their creation. Consumers would retain the option of recourse to the Courts but this would be very much a last resort.

In parallel, David Byrne, the Consumer Affairs Commissioner, has written to all EU member countries asking for information about their existing disputes settlement mechanisms and Erkki Liikanen, the Information Society Commissioner, has launched research into the dispute resolution procedures essential to the working of the E-Commerce Directive. This calls for jurisdiction in the Country of Origin save where this clashes with consumer protection laws in the Country of Destination.

What is at stake?

IT Managers wishing to take charge of E-Commerce for their organisation should point out the need to consider who should be trusted with the power not only to mediate any disputes their organisation may have with customers and suppliers but also the power to take out enforcement injunctions. Should it be an existing user or consumer group or trade association or does it need to be someone new? If you do not know, or feel the situation will change over time, then what are the criteria that should be used to “nominate” those to whom such powers should be given, to judge their performance and to “denominate” those who are inefficient, ineffective or abuse their position? Those who do not respond risk “self-regulation” by those who nominate themselves. When it comes to Computer Hardware, Software and Services which bodies would you trust to help resolve disputes on your behalf - NCC, TUA, CSSA, ISPA, BCS, IEE, TMA, IMIS? Do you know enough about them to make a choice?

DTI’s concern is to implement that Directive in such a way as:

- not to undermine existing regulatory and self-regulatory procedures
- not to place undue burdens on business
- to enable private consumer bodies, which meet strict criteria, to take action
- to ensure there is co-ordination between UK consumer bodies to prevent multiple challenges to businesses
- to require consumer bodies, including those from other Member States, to consult both the trader and a nominated public body before they take action

What Should you do?

You have until May 2nd to respond to the consultation document on the DTI website:
<http://www.dti.gov.uk/cacp/ca> (or phone 0207 215 6505).

After that date it will become increasingly difficult to change the organisation(s) empowered to handle disputes involving you (as a consumer) or your organisation (as a supplier of consumers). The commission target is to have the network in place by June 2001 at latest and it is working with the US Federal Trade Commission, said to be considering similar approaches.

You need to discuss within your organisation and with your peers which organisation(s) and channel(s) you wish to see handle any cross-border disputes which involve you and your organisation, whether as supplier or customer, and respond accordingly.

EURIM, the Parliament-Industry Group concerned with the politics of the information society, is running two parallel studies in this area.

- “Fair Dealing for Software and Services” currently has a business-to-business focus (major suppliers and their larger customers). Once the way(s) forward on Codes of Conduct, Disputes Resolution and Model Clauses have been identified and these have the support of a critical mass of market leaders, the focus will change to consumer software and services (e.g. shrink-wrapped licenses for PC Software or Internet Access or terms for that downloaded over the Net).
- “Consumer Disputes Resolution” follows through on EURIM’s work on Self Regulation and Consumer Protection with a review of existing business-to-business cross-border and on-line dispute resolution procedures to see what can be learned with regard to those for business-to-consumer transactions.

In both areas there is much to learn from “traditional” industries, such as Insurance or Civil Engineering, which have long had routines for handling problems not envisaged when the contract was agreed or where multiple jurisdictions are involved. The task is to find ways that are cost-effective for low value transactions and organisations in which both suppliers and consumers can have confidence. Visit www.eurim.org and then contact me if you wish to participate.

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