

Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests (repealed)

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PARLIAMENT AND OF THE COUNCIL

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on injunctions for the protection of consumers' interests (repealed)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure laid down in Article 189b of the Treaty⁽³⁾,

- (1) Whereas certain Directives, listed in the schedule annexed to this Directive, lay down rules with regard to the protection of consumers' interests;
- (2) Whereas 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; whereas collective interests mean interests which do not include the cumulation of interests of individuals who have been harmed by an infringement; whereas this is without prejudice to individual actions brought by individuals who have been harmed by an infringement;
- (3) Whereas, 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 above Directives 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;
- (4) Whereas 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; whereas this constitutes a distortion of competition;
- (5) Whereas 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;
- (6) Whereas those practices often extend beyond the frontiers between the Member States; whereas there is an urgent need for some degree of approximation of national provisions

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designed to enjoin the cessation of the abovementioned unlawful practices irrespective of the country in which the unlawful practice has produced its effects; whereas, 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;

- (7) Whereas the objective of the action envisaged can only be attained by the Community; whereas it is therefore incumbent on the Community to act;
- (8) Whereas the third paragraph of Article 3b of the Treaty makes it incumbent on the Community not to go beyond what is necessary to achieve the objectives of the Treaty; whereas, 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; whereas the courts or administrative authorities competent to rule on the proceedings referred to in Article 2 of this Directive should have the right to examine the effects of previous decisions;
- (9) Whereas 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; whereas 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;
- (10) Whereas 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;
- (11) Whereas for the purposes of intra-Community infringements the principle of mutual recognition should apply to these bodies and/or organisations; whereas 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;
- (12) Whereas 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 Communities*; whereas, 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;
- (13) Whereas 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; whereas Member States should be able to require that this prior consultation take place jointly with an independent public body designated by those Member States;
- (14) Whereas, 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;

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- (15) Whereas 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;
- (16) Whereas the application of this Directive should not prejudice the application of Community competition rules,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 107, 13. 4. 1996, p. 3](#) and [OJ C 80, 13. 3. 1997, p. 10](#).
- (2) [OJ C 30, 30. 1. 1997, p. 112](#).
- (3) Opinion of the European Parliament of 14 November 1996 ([OJ C 362, 2. 12. 1996, p. 236](#)). Council common position of 30 October 1997 ([OJ C 389, 22. 12. 1997, p. 51](#)) and Decision of the European Parliament of 12 March 1998 ([OJ C 104, 6. 4. 1998](#)). Council Decision of 23 April 1998.