COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 576 final

Brussels, 16 November 1993

Green Paper

ACCESS OF CONSUMERS TO JUSTICE AND THE SETTLEMENT OF CONSUMER DISPUTES IN THE SINGLE MARKET

(presented by the Commission)

ACCESS OF CONSUMERS

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I. THE PROBLEM

I.A Access to justice

In countries governed by the rule of law, general norms oblige the legislator to establish a balance between each individual's rights and duties; if the rights recognised by the legal order thus created are infringed through a breach of one of these norms, a procedure (judicial or administrative) must exist in order to "render justice" to the victim and at the same time to redress the balance of interests as required by the legislator[1].

If such a procedure did not exist or was not "accessible" to the holders of the interest protected by the legal order, there would clearly be a gap between the legislator's designs and the reality experienced by citizens. The problem summarised here under the rubric "access to justice" is nothing other than that of this gap between law and reality.

Access to justice is at once a human right[2] and a prerequisite for an effective legal order -any legal order, including the Community one. As regards the latter, however, making access to justice work poses very particular and unprecedented problems.

The Community legal order has established a system of norms whose enforcement[3] is not normally the responsibility of a separate judicature[4] but that of the national courts, which normally adhere to the procedures established in the Member States[5].

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1 The difference between a "legal" and "moral" norm lies precisely in the coercive force of the former: the penalty for infringement is just a (coercive) application of the general norm to the concrete case.

2 Article 6 of the European Convention on Human Rights signed in Rome on 4 November 1950. The principle of equality before the law, which is common to the constitutional traditions of all the Member States, implies an **"equality of arms"** before the courts (as to the scope of this principle, see the judgments of the European Court of Human Rights in *Neumeister v. Austria (1968), Bönisch v. Austria (1985) and Feldbrugge v. Netherlands (1986)*). Concerning accession of the Community as such to this Convention see:

- Common Declaration of the Assembly, Council and Commission of 5 April 1977 (OJ No C 103 of 27.4.1977, p. 1);
- Communication from the Commission of 19.11.1990 (SEC(90)2087 final);
- Treaty on European Union, Article f, paragraph 2.

3 Direct in the case of a regulation, or via national transposing rules in the case of a Directive.

4 The Court of Justice of the European Communities reviews the legality of acts of the Council and the Commission (Article 173) as well as "respect of the law" in the interpretation (Article 177) and application (examples: Articles 169 and 170) of Community law but does not offer any "remedies" (direct redress) against the violation of subjective rights in relations between individuals. It is up to the national legal systems to safeguard individuals' subjective rights in their reciprocal relations (Delimitis v. Henninger Bräu, case C-234/89, ECR 1991, I, p. 935, section 45, Grounds; Automec Srl v Commission of the European Communities, Case T-24/90, ECR 1992, pp II-2223, Grounds 85).

5 Exceptions to this principle will be treated in Chapter III.D.2.

Hence the enforcement of Community law generally rests with a multiplicity of courts and procedures. This also applies to some national legal orders (example: United Kingdom), but in these cases it is "rectified" by an overarching instance of last resort (in the United Kingdom, the House of Lords). This is why we speak here of an unprecedented situation.

However, it follows from Article 7 of the Treaty that the national courts must be equally accessible to all individuals, without discrimination on grounds of nationality[6], and that the divergences between existing national procedures - which as such are quite legitimate - should not be such as to affect the equality of treatment of Community subjects in different countries who invoke respect of one and the same Community provision[7].

It is up to the national courts to enforce Community law in the context of their powers and using their own procedures. But this means that if access to justice at national level is impeded, the effectiveness (and non-discriminatory application) of Community law is placed in jeopardy.

Thus there is a need to start a discussion which, without prejudicing competences (national, intergovernmental, Community) could give all interested parties food for thought. This is the purpose of this Green Paper, which follows the approach set out in the Communication on "Increased Transparency in the Work of the Commission"[8] and the Council Resolution of 7 December 1992 on making the Single Market work[9].

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6 The principle of non-discrimination concerns both natural and legal persons: access to justice by consumer organisations or firms is addressed in the third part of this Green Paper.

7 This equality of treatment "*concerns not only the definitive finding of a breach of competition rules but embraces all the legal means capable of contributing to effective legal protection*", such as the possibility of obtaining provisional measures through the mechanism of an accelerated procedure (extract from Notice on Cooperation between National Courts and the Commission in applying Articles 85 and 86 of the EEC Treaty: COM 93/C 39/05, OJ No C 39 of 13.2.1993, p. 7, paragraph 11).

8 93/C63/03 OJ No C 63, 5.3.1993, p. 8.

9 92/C334/01, OJ No 334, 18.12.1992, p. 1.

Clearly the problem of redress does not affect consumers[10] alone. However, there are two reasons for opening the debate with a Green Paper devoted to "consumer access to justice"[11]. These can be summarised as follows.

I. Firstly, the "credibility" of European construction in the public eye.

Consumer protection is a domain of Community law that affects all European citizens in their everyday life, and which thus brings European construction "closer" to them - the gap between law and reality, summarised under the rubric "access to justice", would hence correspond to the disparity between the overarching principles of a "People's Europe" and the everyday experience of the European citizen.

II. Secondly, if there are disputes whose settlement clearly concerns the goal (and the management) of the Single Market, they are precisely those disputes which may result from this market - above all disputes in the context of consumer contracts[12].

In all Member States, non-performance or faulty performance of a contract entitles the promisee to bring an action with a view to settlement.[13] From an economic point of view there is also - and above all - a preventive aspect. If there are no effective procedures, cases of non-performance will proliferate, and eventually the market system will suffer; conversely, the existence of appropriate procedures for settling disputes encourages the "spontaneous" performance of contractual obligations.[14]

The function of dispute settlement procedures in a "Community" market is no different.

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10 For example, provision of redress for firms has already been the subject matter of two directives creating specific procedures for the award of public contracts (see Chapter III.D.2).

11 Consumer access to justice has always been treated as a separate chapter. The background to the dossier, which goes back to the seventies, is summarised in chapter I.B.1. The theme of this Green Paper is access of consumers to justice in civil law and out of court settlement of consumer disputes - mediators or ombudsmen who supervise the activities of public authorities are not covered in this analysis.

12 Free movement takes the form of a series of contracts (producer-distributor, distributer-trader, trader-consumer), but it is only in the latter that the economic function of the "chain" is realised (where there is no final consumer, production and distribution make no sense).

13 In a state governed by the rule of law disputes must be regulated through legal channels.

14 In economic terms the purpose of the litigation process is to internalise costs which would remain external if it were not for the existence of the process. The economic aspects are even more important in the case of consumer disputes. Often the consumer is at the mercy of the professional, not because he lacks discernment or because the professional is systematically trying to defraud him, but because consumer contracts are often for very small sums. Hence the consumer's loss does not justify his initiating a costly procedure.

However, in this "space without internal frontiers" (Article 8a of the Treaty), judicial frontiers still endure: the good functioning of the Single Market (and the confidence of the economic agents) hinges on a multiplicity of national procedures.

Thus there is a need to examine these procedures, which are used to regulate a growing number of transfrontier disputes, on the same lines as of procedures for the award of public contracts (see Chapter III.D.2).

I.B Consumer access to justice

I.B.1 Background

This Green Paper is a follow-up to the first Communication from the Commission on consumer redress, transmitted to the Council in the form of a memorandum on 4 January 1985 (COM (84) 692 final) and a Resolution of the European Parliament of 13 March 1987 (OJ No C 99 of 13.4.1987, p. 203). The first Communication was followed by a "*supplementary*" Communication of 7 May 1987 (COM (87) 210 final).[15]

The Council responded in a Resolution of 25 June 1987 devoted exclusively to consumer redress (87/C 176/02, OJ No C 176 of 4.7.1987, p. 2), in which it invited the Commission to complete the analysis, taking into account the enlargement of the Community (Spain, Portugal and Greece had not been covered in the communications).

The *specific* problems which consumers encounter in establishing their rights and the *Community* dimension had already been acknowledged in the Council Resolution of 14 April 1975 (Preliminary Programme of the European Economic Community for a Consumer Protection and Information Policy)[16].

In this Resolution, five *"categories of fundamental rights"* of the consumer are established, the third being the *"right to proper redress for ... injury or damage by means of swift, effective and inexpensive procedures"* (paragraphs 3 and 32).

The time, cost and effectiveness of the procedure were thus the three candidates for analysis (since this first resolution) with a view to evaluating the *"barriers"* which might prevent consumer access to justice.

These principles were reiterated in the Council Resolution of 19 March 1981 (Second Programme of the European Economic Community for a Consumer Protection and Information Policy)[17] and by the Council Resolutions of 23 June 1986 (Future Guidelines

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15 These Communications can be obtained from the Consumer Policy Service's documentation unit (archives).

16 OJ No C92 of 25.4.1985, p. 1-16

17 Oj No C 133 of 3.6.1981, p. 1-12

for Community policy for the Protection and Promotion of Consumer Interests[18]) and 9 November 1989 (Future Priorities for Relaunching Consumer Protection Policy[19]).

In the above-mentioned Communication 84/692, which surveyed the situation in the nine Member States[20] as of 31 December 1982, the Commission affirmed that the *"overall aims .. remains clear: to ensure that consumers throughout the Community enjoy a broadly similar standard of redress."*

To attain this objective and *"while not excluding the long-term possibility of a binding legal solution"*, the Commission committed itself *"to supporting pilot schemes in order to learn how to solve the problems experienced in practice ... and ... on the basis of the information thus obtained, to propose concrete solutions"* (solutions mentioned include: *changes in the legal system itself, setting up of administrative or extra-judicial procedures*, or *arbitration and conciliation procedures, arrangements improving consumer advice and information).*

On the basis of the guidelines set out in these Resolutions, the Commission began to support "pilot schemes" at national and local level, with a view to assessing the practicality of the new procedures[21] or how best to improve existing ones[22].

In 1987, in its supplementary Communication COM(87)210, the Commission gave an overview of the most recent developments (including recommendations adopted by the Council of Europe in this domain) and drew certain general conclusions, *"only on a preliminary basis"* (paragraph 1 of the Annex), concerning the four pilot projects which it had been supporting. Moreover, the Commission announced in its Communication that it intended to study *"whether it was opportune to draft a framework directive introducing a general right for consumer associations to act in the courts on behalf of the general interest of consumers"* (penultimate paragraph, p. 3).

This final point had also been addressed in the Resolution which the European Parliament adopted on 13 March 1987 (Resolution on consumer redress)[23], calling upon the Commission *"to propose a directive harmonising the laws of the Member States to provide for the protection of the collective interests of consumers; giving the consumers' associations the possibility of acting in legal proceedings on behalf of the category they represent and of individual citizens"*.

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18 OJ No C 167 of 5.7.1986, p. 1-2

19 OJ No C 294 of 22.11.1989, p. 1-3

20 Spain, Portugal and Greece were not covered.

21 Example: pilot project at Dundee, Scotland.

22 Example: pilot project at Deinze and Marchienne-au-Pont (Belgium).

23 OJ No C 99, 13.4.1987, p. 203-205, paragraph 4

Following the transposition of Directive 84/450/EEC, most of the Member States have accorded consumer associations the right to bring actions in the field of misleading advertising[24].

The same philosophy was recently upheld in Directive 93/13/EEC on unfair terms in consumer contracts,[25] which must be transposed by 31 December 1994 at the latest.

In addition the Commission, from the Eighties onwards, has continued to analyse existing procedures[26] and how to improve things in a large number of studies and pilot projects.

From the beginning the "pilot projects" instrument was informed by the principle of subsidiarity - instead of proposing a single model for one and all, different approaches were advanced and "tested" at national or local level, the choice of projects to be supported being based on three main criteria:

- **decentralisation** (management of projects was always entrusted to consumer associations or national or local authorities);
- **co-financing** and cooperation (as far as possible - in certain countries no public money is available for consumer protection) with the national or local authorities concerned;
- adaptation of the initiative to the country's legal and socio-economic environment.

The results of this analysis are summarised in the second part of this Green Paper, which also reviews projects supported from 1987 (date of adoption of the latest Communication in this domain).

THE WORK OF THE COUNCIL OF EUROPE

On 8 January 1993, the Council of Europe adopted a Recommendation [R(93)1] on effective access to the law and to justice for the very poor.

This is a sequel to several recommendations published by the Council of Europe between 1978 and 1986, discussed in the above-mentioned Commission Communication COM (87) 210.

At present, a project group on effectiveness and fairness of civil justice is preparing two draft recommendations, the first of which concerns improvement in redress in civil procedures.

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24 In certain countries this was already the case even before adoption of the Directive, but in other countries - such as Italy - it was the legislation transposing the Directive which first gave consumer associations the right to institute proceedings.

25 OJ No L 95 of 21.4.1993, p. 29

26 Whether they belong in the context of legal procedures or the domain of self-regulation.

I.B.2 Completion of the Single Market and the new dimension of the problem

In the past, the settlement of consumer disputes was considered to be an almost exclusively national problem. Any attempt to probe into the "Community" dimension was countered on the following lines: the "average" consumer would not go abroad to do his shopping and suppliers of services would generally have to open an outlet in each country, thus permitting "national" control on the part of the host country.

At present, this objection stands on very weak foundations for the following reasons:

a) the principle of host country control has been replaced, in many key domains, by the principle of source country control in, with a view to fully assure the free movement of services;

b) the spread of new techniques of "distance selling and provision of services" (for the legal definition and for more about the quantitative dimension of this selling technique, see the Commission's amended proposal for a directive[27] and the explanatory memorandum which accompanied the initial proposal[28]) now means that products can cross all geographical frontiers without the intermediary of a local distributor; in the event of problems, the consumer would have nobody to turn to in the country where he lives;

c) consumer mobility, notably in frontier regions - partly in consequence of the abolition of customs controls and the new VAT rules for private individuals - is expected to grow rapidly;

d) intra-Community tourism (thanks also to the above-mentioned measures) is growing steadily[29], and in most cases problems concerning goods or services (hotel, transport, Eurocheques) purchased abroad cannot be settled during the holiday: if a tourist's rights are infringed and the trader refuses immediate settlement, the problem has to be solved working from a country other than the one in which it arose[30].

In all these cases the consumer is domiciled in a country other than the one in which the professional is established.

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27 COM (93) 396 final

28 OJ C 156 of 23.6.1992, p. 14

29 Council Decision (92/421/EEC) of 13 July 1992 on a Community action plan to assist tourism (OJ No L 231 of 13.8.1992, p. 26) stresses the importance of supporting initiatives which "improve the information of tourists and their protection, in areas such as ... time-share arrangements, over-booking and procedures for redress" (paragraph 4 of the Annex).

30 This situation concerns not only tourists: the official (or national expert) who goes to Brussels for a Council meeting (or for a meeting of experts) faces the same difficulties if his luggage is stolen from a hotel foyer or if he is a victim of overbooking or buys a defective product. He will clearly not be able to settle the problem before he leaves unless the professional agrees to immediate reimbursement.

After all, the objective of the Single Market is the creation of "*an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty*" (Article 8a of the Treaty).

However, this free movement takes place in an area in which legal frontiers still exist. Consequently, the disputes which may arise from the above-mentioned contracts (cases a, b, c and d) will remain "transfrontier" disputes[31].

Taking these points into account, the question is to determine:

a) what specific and supplementary difficulties (as compared with a similar domestic dispute) arise from the transfrontier nature of performance of the contract;
b) will these difficulties prevent or dissuade consumers (or SMEs) from benefiting from the Single Market and, if so, to what extent.

The Green Paper will attempt to answer these questions.

For the present, let us recall that the new dimension of the problem has already been discussed in several Community documents:

- the Resolution of the European Parliament of 10 March 1992;
- the Council Resolution of 13 July 1992;
- the opinions adopted by the Economic and Social Committee on 26 September 1991 and 24 September 1992.

In its Opinion on Consumer Protection and Completion of the Internal Market adopted on 26 September 1991 the Economic and Social Committee affirmed that:

"The problems of access to the courts which the creation of a European area will pose are far from having been resolved. If there is a dispute, the single Market will be replaced by 12 - or even more - legal systems, all jealous of their independence and sovereignty. European political leaders will have to address the problem of the settlement of cross-frontier disputes if they are not to produce an imperfect, inconsistent economic system. The Committee urges

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31 According to the definition proposed here, a dispute is a transfrontier one when the complainant is domiciled in a country other than the one in which the defendant is legally established (see Chapter III.A.2).
In principle, the "specific" difficulties or supplementary difficulties which arise are as follows:
- the court handling the case is not the court of the country in which the consumer is resident (cases c and d);
- the legal documents may be required (letters rogatory) in a country other than that of the adjudicating court (cases a, b, c and d);
- service of the documents must take place in a country other than the one in which the complainant is domiciled (cases a, b, c and d);
- enforcement of the judgment may be required in a country other than the one of the adjudicating court (cases a and b).

Other supplementary difficulties (or "barriers") may concern, for example, translation of the court documents,attendance in person of the parties and legal aid. The international conventions applicable in this domain will be dealt with in the third part (chapter III.A.3) of this Green Paper.

the Commission to carry out as a matter of urgency the work needed to identify possible solutions to the problem of settling cross-frontier disputes."

On 21, 22 and 23 March 1992, under the aegis of the Portuguese Presidency and the Commission, the "Third European Conference on Consumer Access to Justice"[32] was held in Lisbon. Approximately 300 experts from the 12 Member States of the EEC and certain EFTA countries participated (the problem of transfrontier disputes also arises a fortiori, for the European Economic Area which was the subject of the agreement between the EEC and the EFTA).

The conclusions of the four working parties (access to law and justice, legal procedures, out-of-court procedures, protection of collective interests and transfrontier disputes) confirm the concerns already voiced by the Economic and Social Committee and the European Parliament.

I.B.3 The Sutherland Report and the strategic Programme on the internal market

In March 1992 the Commission invited a group of independent personalities, under the chairmanship of Mr Peter Sutherland, to prepare a report on the functioning of the Internal Market[33].

The Report ("The Internal Market after 1992: meeting the challenge") was presented to the Commission on 26 October 1992 and transmitted by the Commission to the Council, the European Parliament and the Economic and Social Committee. This report "*examines in depth the issues which need to be resolved to enable Community law to be administered fairly and equitably*" and considers "*what is required to meet the continuing expectations ... of those involved in the marketplace - consumers and businesses*" (preface, ultimate and penultimate paragraph).

Considering "*that the rules of the Internal Market must have equivalent effect throughout the Community*" (page 3, penultimate paragraph) and that "*it is not enough to pass laws and simply hope that they will be applied evenly in all Member States*" (page 5, first paragraph), the Report formulates a series of "*recommendations*".

As regards access to the courts (pages 34 to 39) the Report affirms that "*doubts about the effective protection of consumer's rights need to be overcome. The issue should be given rapid attention by the Community*" (Recommendation No 22, page 35).

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32 The first Conference on Consumer Access to Justice had been held in Montpellier in France in 1975 and the second in Ghent in Belgium in 1982. A summary of the conclusions of these conferences is provided in Communications (84)692 and 87(210).

33 The members of this "high level group on the functioning of the Internal Market" were: Peter Sutherland (chairman), Ernst Albrecht, Christian Babusidux, Brian Corby, Pauline Green and Giuseppe Tramontana.

In the Communication from the Commission to the Council and the European Parliament of 2 December 1992 (SEC(92)2277 final - The Operation of the Community's internal market after 1992 - Follow-up to the Sutherland Report), Recommendation No 11 is retained (page 12, third indent of paragraph 31).

The working document "on a strategic Programme on the internal market", (COM(93)256) presented by the Commission in June 1993, recognised the necessity of establishing a consistent operational framework on access to justice; this framework is to integrate a group of actions which aim at the diffusion, transparency and application of community law. The Green Paper is to be replaced within this framework and endeavours to carry out the following analyses : a study of the procedures existing in the Member States (part II) and an analysis of the difficulties in appplying these procedures to "transfrontier" disputes (part III).

The second three-year Commission action plan in the field of consumer policy adopted on 28 July 1993[34] established *"selective priorities to raise the level of consumer production,"* including access to justice and the settlement of disputes (Part II, paragraphs 36 to 39).

The action plan announces new initiatives, mainly concerning the settlement of transfrontier disputes.

Part IV of this Green Paper describes certain initiatives which might be envisaged, taking into account the principle of solidarity, in the perspective of the three-year action plan.

In-depth consultations with the parties concerned on the options envisaged will give us a clearer idea of the scope for Community action in this domain.

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34 COM(93)378 final

II. THE SITUATION IN THE MEMBER STATES

II.A Introduction

In view of the Communications already presented by the Commission (COM(84)692 and COM(87)210), the following analysis mainly concerns developments since 1987[35];

Procedures applicable to consumer disputes which date from before 1987 are referred to in the form of a "cross-reference" to these Communications.

To provide a better overview the national chapters have been structured around four themes, three of which were already addressed in Communication (84)692:

- legal procedures applicable to (individual) consumer disputes;
- out-of-court procedures especially devoted to these disputes (arbitration is treated only in this perspective), including mediators and ombudsmen (and similar structures) which have recently been created in various economic sectors;
- the protection of collective interests[36], including both the capacity to bring an action on the part of consumer organisations and the powers of certain administrative bodies (examples: consumer ombudsman in Denmark, Director of Fair Trading in the United Kingdom);
- the "*national*" pilot projects, for countries in which such projects have been implemented (a table summarising the pilot projects supported by the Commission is annexed to the Green Paper); transfrontier initiatives are dealt with in Chapter IV.E.

The situation in the individual Member States was discussed at a meeting of national experts held in Brussels on 9 February 1993. Following this meeting, the draft version of each national chapter was sent to the national authorities for review and the text was verified and completed after receipt of their comments. Thanks to this feedback it has been possible to prepare a picture of the situation at 30 April 1993.

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35 Except for the Member States which were not covered by the Communications (Spain, Portugal and Greece).

36 The legal defence of collective interests is not to be confounded with the collective defence of individual interests - hence "class actions" are considered as a separate category.

II.B The current situation in the Member States

1. Legal procedures

The Act of 3 August 1992 amending the Judicial Code (Moniteur Belge of 31.8.1992) reformed many procedural rules with a view to removing the court backlog and the unjustified delays in enforcement (explanatory memorandum, first and second paragraphs).

The importance of this reform for consumer disputes mainly concerns amendments relating to:

- the jurisdiction *ratione summae* of the justice of the peace, which is raised to BEF 75 000 BEF (ECU +/- 1 871);

- the maximum non-appealable claim, which is raised to BEF 50 000 (ECU +/-1 247) for the justice of the peace and BEF 75 000 for the court of first instance;

- the introduction of the voluntary attendance instance and the "requête contradictoire" (joint application by both parties) (the latter is standard whenever voluntary attendance is provided for by law);

- succinct hearings;

- time limits for filing submissions and rules concerning invalidity;

- penalties for vexatious or dilatory appeals.

This Act entered into force on 1 January 1993.

2. Out-of-court procedures

An arbitration procedure (geschillen commissie) has been created by consumer organisations and professionals in three specific sectors: travel agencies, laundries and furniture sales. The decisions of the arbitration committees are binding on the parties, just like any arbitration decision, and the consumer who decides to go to arbitration must pay a sum which is proportional to the value of the claim. The Ministers of Justice and Economic Affairs have officially recognised the contribution of the committee that deals with travel disputes, particularly by providing it with offices and administrative staff.

In the financial sector, certain procedures for settling disputes have been established by the professionals bodies (Ombudsman of the Belgian Banking Association, Disputes Commission of the Savings Bank Group, Ombudsman of the insurance companies, Stock Exchange Ombudsman); decisions under these procedures are not binding.

As regards certain public services (post, telephone, railways), the Act of 21.3.1991 provides for the establishment of an ombudsman service. The ombudsmen have been nominated by the Royal Decrees of 22.12.1992 and may, at the request of the parties, invoke arbitration.

3. Authorities

The Inspection Générale Economique (Economische Algemene Inspectie) has broad powers in the field of information, prevention, determination and punishment of infringements of economic regulations. In accordance with the Act of 14 July 1991 on commercial practices (Moniteur Belge of 29.8.1991), agents of the IGE are entitled to issue an "admonition" to the infringer, ordering him to desist. If the injunction is not heeded, the Ministry may:

a) forward the dossier (which is considered valid until the contrary is proved) to the Royal Prosecutor, in the case of penal offences;

b) bring an action for an injunction before the commercial court (Article 95).

The Minister's agents may also propose that the infringer pay a sum, leading to withdrawal of the charges (Article 116).

In the domain of foodstuffs, the power to investigate lies with the foodstuffs inspectorate.

4. Representative actions

The action for an injunction provided for in Article 95 of the Act on commercial practices of 14 July 1991 may also be brought at the request of "an association whose goal is to defend consumer interests, which is a legal person and is represented on the Consumer Council or is approved by the Minister for Economic Affairs" (Article 98). This action is brought before the commercial court, in accordance with the relevant procedures; the judgment is provisionally enforceable, though it is open to appeal and no surety is required.

An action for an injunction may be brought against any act, including penal offences, which infringes the provisions of the above-mentioned Act, whose scope is very wide (inter alia, it regulates advertising for the purposes of Directive 84/450/EEC). Moreover, its "specific" provisions are supplemented by an umbrella clause in Article 94, which outlaws "any act which is contrary to fair practice in the commercial field by which a vendor harms or is liable to harm one or several consumers".

Other actions to protect collective interests may be brought by consumer organisations in specific domains, notably:

- consumer credit (Act of 12 June 1991, Moniteur Belge of 9.7.1991);
- financial services (Act of 4 December 1990, Moniteur Belge of 22.8.1990);
- misleading advertising in the liberal professions (Act of 21 October 1992, Moniteur Belge of 17.11.1992).

5. Pilot projects

Two parallel pilot projects in Marchienne-au-Pont and Deinze were supported by the Commission from 1984 to 1986. These projects have already been described in the supplementary Commission Communication on consumer redress (COM(87) 210 final) in 1987. They centred on the establishment of a legal consultant (stafmedewerker) at the "juge de paix" tribunals (court of first instances).

A centre of lawyers specialised in consumer law was created by order of the Liège Bar, which pays part of the costs. The fees required by the centre are flat rate and below standard rates for all disputes up to a ceiling FB 75 000 (ECU +/- 1 871).

The centre drew inspiration from an experiment launched in 1981 by the Paris Bar (see Chapter on France) and has the same name (AARC - Avocat, Assistance et Recours du Consommateur -Lawyer, Aid and Redress for the Consumer).

A similar initiative called ABC (Advocaat Bijstand Consument - Consumer Aid Lawyer) was recently launched by the Ghent Bar.

DENMARK

1. Court procedures

Consumer disputes before the Courts are dealt with in accordance with the general rules of civil procedure.

Most consumer claims are dealt with by the subdistrict court (Byret). Legal representation before this Court is not compulsory (Article 259, Administration of Justice Act) and the Court itself is obliged to assist parties that are not legally represented (Article 339, paragraph 4 of the same Act). If a consumer is sued in a case which may be dealt with by any of the boards mentioned below, he may request that the case is submitted to such a board (Article 361 of the Administration of Justice Act). It is the duty of the Court to inform the consumer about this right.

2. Out-of-court procedures

Since 1975 the Consumer Complaints Board, which is a public administrative body, has been handling consumer disputes. The Board deals with individual disputes concerning a wide range of goods and services within certain price limits. In 1992, the Board dealt with 2 823 cases.

The chairman of the Board is a court judge; consumer and business interests are also represented.

The decisions of the Board are not legally binding, but most are complied with by the business community. If a decision is not complied with the matter can be brought before the Courts. The Secretariat of the Board assists the consumer in this respect. Consumers with an annual income under a certain specified limit may in these cases be granted free legal aid.

Apart from a minor fee paid by the consumer, courts costs are covered by the Board.

The average time between the application and the decision is about 6 months.

The Consumer Complaints Board has approved a number of private boards set up by trade associations in cooperation with consumer organisations.

A more detailed description of these boards is given in the first Commission's Communication on consumer redress (EC Bulletin, Supplement 2/85).

3. Protection of collective interests

The office of *"Consumer Ombudsman"* was set up in 1975 under the Marketing Practices Act.

The Consumers Ombudsman has a general market-regulating function, designed to protect the average consumer without taking the situation of individual consumers and concrete legal disputes into account. The idea is to prevent future infringements of the legislation.

The rules for the Consumers Ombudsman's activities are laid down in the Danish Marketing Practices Act. Basically, no marketing may be in conflict with fair commercial practices, nor may misleading statements be made. There are penalties for infringements in the form of fines or prohibitions. However, the Consumer Ombudsman cannot order a business to pay damages to a consumer.

The Consumer Ombudsman seeks through negotiation to get the business community to comply with the Marketing Practices Act. Such negotiation can result in indicative guidelines setting out codes of conduct for specific areas, such as advertising of prices, marketing of alcoholic beverages or manufacturer guarantees.

The Consumer Ombudsman can request the Maritime and Commercial Court to issue injunctions prohibiting illegal marketing practices. In urgent matters he can issue an interim injunction which has to be confirmed by the Court.

Usually, the Consumers Ombudsman's intervention is successful even before this stage: in 1992, the Court was asked for only four injunctions and one injunction was issued by the Ombudsman himself.

Moreover, consumer organisations may seek injunctions against infringement of the Marketing Practices Act, provided that they have a legal interest in the case.

A more detailed description of the Marketing Practices Act and the Consumer Ombudsman is given in the above-mentioned communication (EC Bulletin, Supplement 2/85).

GERMANY

1. Court procedures

A simplified procedure was established by the *"Rechtspflege-Vereinfachungsgesetz"* of 17/12/1990 (Bundesgesetzblatt I, 2847) and came into force on 1 April 1991: according to the new Article 495a ZPO (Code of Civil Procedure), *"the court may conduct the procedure according to its reasonable discretion, if the value of the claim does not exceed DM 1 000 (approximately 512 ECU)"*. On 1 March 1993, this financial ceiling was raised to DM 1 200 (+/- 615 ECU) under the *"Gesetz zur Entlastung der Rechtspflege"* of 11/01/1993 (Bundesgesetzblatt I, p. 50).

The ordinary procedure which applies to claims falling under the competence of the *Amtsgericht* (up to DM 10 000 or approximately 5 121 ECU) is anyway simpler than the one before the other Courts:

- the complaint may be filed by the party itself and posted to the Court, as it just has to set out the facts and submit evidence;
- theoretically, it may even be lodged orally (Article 496 ZPO) at the clerk's office, who will refer it to the competent court;
- the defendant is asked by the Court whether he wants to defend; is he does not reply within two weeks, the Court can issue a judgement by default;
- at any stage of the procedure, Article 279 ZPO obliges the Court to consider the possibility of an amicable agreement;
- legal representation is not required;
- normally, the case is disposed of one single act hearing. As a result, 80% of cases are completed in less than 6 months.

Another simplified procedure, which is called *"Mahnverfahren"* (Articles 668 ff. ZPO), can be used to collect money: normally, in a *"Mahnverfahren"*, the consumer is the defendant (the procedure is not used by him but against him).

As far as consumer contracts are concerned, specific rules exist which give exclusive jurisdiction to the Court of the place where the consumer has his domicile or residence (Door-to-door Sales Act, Distant Education Act); generally speaking, choice of jurisdiction in consumer cases is only permitted after the dispute has arisen (Article 38 ZPO).

2. Out-of-court procedures

Several alternative redress schemes exist and were already summarised in the first Commission's Communication on consumer redress (COM(84) 692); the most important is that of the Chambers of Trade and Industry *("Schlichtungsstellen der Industrie-und Handelskammern")* which handle about 10 000 complaints each year (90% of which are settled amicably).

As far as the former GDR is concerned, the Unification Treaty (Einigungsvertag) stated that some GDR acts will remain in force: among them, the Act on the Municipalities Complaint Boards (*"Gesetz über die Schiedsstellen in den Gemeinden"*: GB1 DDR I, 1527) introduced a Conciliation Board (one chairman and two deputies) to be appointed by the Municipal Council.

In 1992, the Federal Association of German Banks (Bundesverband deutscher Banken) introduced an "*Ombudsman*" scheme: individual consumer's complaints which have not been settled within one month by the "*Consumer Clients Complaints Office*" (each bank should have such an office) will be submitted to the Ombudsman. If the amount involved does not exceed DM 10 000 (approximately ECU 5 120) the Ombudsman's decision is binding on the bank (but not on the consumer). The scheme is also available to professional customers where complaints about crossborder payments are concerned: a crossborder payment is a payment within the meaning of EC Recommendation 90/109 (Transparency of Bank charges relating to crossborder transactions).

3. Representative actions

Consumer associations have the right to bring an action for an injunction or withdrawal of unfair contract terms listed in Articles 9 to 11 of the General Contractual Terms Act (Allegemeine Geschaeftsbedingungen Act of 09/12/1976: Bundesgesetzblatt I, 3317).

Furthermore, consumer associations may bring an action for an injunction against misleading advertising and related "*unfair trade practices*" under Article 13 of the Unfair Competition Act 1909 (Gesetz gegen den unlauteren Wettbewerb) as modified by the Act of 21/07/1965 (Bundesgesetzblatt I, 675).

Both procedures are triggered when an "*Abmahnung*" (warning) has not been complied with: in 1991, the Verbraucherschutzverein (Consumer Associations' Union) launched 632 "*Abmahnung*" procedures, which were complied with in some 50% of the cases.

The "Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V." and "Verein zur Bekämpfung der Wirtschaftskriminalität" (business organisations with large adherence from German industry and trade) operate in a similar fashion; where consumer and business interests coincide in cases of unfair competition they implicitly also act on behalf of consumers.

4. Pilot projects

A pilot project (advice on consumer credit) was carried out in Hamburg and is described in the supplementary Communication from the Commission on consumer redress (COM(87) 210).

A second pilot project, carried out in 1990-1991, focused on the development of software for legal and technical counselling in the field of credit. Three modules are now available: Computer Assisted Loan Services (CALS : advice on credit contracts), Computer Assisted Debt Advice System (CADAS: counselling for over-indebted households) and Information System on Financial Services (FIS: a general databank of statutory and case law). The system is now being aligned with the situation in other Member States and is being networked with parallel systems. The software is now being used by all regional consumer organisations (Verbraucherzentralen der Länder).

A third pilot project, based in Halle (former GDR) is starting in 1993 and is designed to improve advice for overindebted consumers.

GREECE

1. Court procedures

Articles 466 to 472 of the Civil Code establish a simplified procedure for disputes up to a ceiling of Drs 60 000 (+/- ECU 227). A lawyer's assistance is not required, the procedure is oral (the justice of the peace prepares the record) and the court must attempt to reconcile the parties before handing down judgment.

2. Out-of-court procedures

Act 1961/91 of 31.9.1991 provides for the creation of local conciliation committees, composed of a consumer representative, a representative of the chamber of commerce and a representative of the bar. If the conciliation attempt fails, these committees adopt an "opinion" which is not binding but which must be considered by the court hearing the case.

3. Representative actions

Act 2000/91 of 24.12.1991 established an action for an injunction in respect of commercial practices of firms which exercise exclusive rights or have specific privileges, whenever these practices can adversely affect the health, safety or economic interests of consumers (for example, Article 27.2 of this Act prohibits the marketing of dangerous products, misleading advertising and unfair terms). Such actions may be brought only by associations which meet the criteria set out in Article 35 of Act 1961/91 and have been approved by the Ministry of Trade.

4. Pilot projects

In May 1992 a pilot project supported by the Commission of the European Communities was launched with a view to providing legal aid to consumers. The project was designed and managed by a consumer organisation.

In the context of this project "legal advice bureaux" have been opened to the public in four Greek cities (Athens, Kavala, Drama and Eraklion). Their objective is to give the consumer any legal aid required in connection with information, mediation, conciliation and - when the general interest is at stake - instituting legal proceedings.

The project is particularly important because legal aid in Greece is less developed than in the other Member States. The eligibility conditions are such that the vast majority of citizens are excluded.

Moreover, several "guides" have been made available to the public, containing information on consumers' rights under Community law.

(5)

SPAIN

1. Simplified court procedures

An oral procedure ("*juicio verbal*") is foreseen in the case of disputes whose value does not exceed PTA 80 000 (+/- ECU 519). These disputes are normally dealt with by a justice of the peace ("*juzgado de paz*") and a lawyer's assistance is not required. Claims in excess of PTA 80 000 are dealt with by "*Juzgados de primera instancia*", by applying one of the three following procedures:

- "*juicio de cognición*" for claims between PTA 80 000 and 100 000 (+/- ECU 5 190);
- "*juicio de menor cuantía*" for claims between PTA 800 000 and 160 000 000 (+/ ECU 1 038 140);
- "*juicio de mayor cuantía*" for claims in excess of Pta 160 000 000.

The court may try to effect conciliation at the request of one of the parties; this request may be submitted to the court of the locality where the complainant is domiciled, regardless of the jurisdiction *ratione loci* of this court (Articles 460 and 463 of the Code of Civil Procedure).

2. Out-of-court procedures

Consumer protection is enshrined in the Spanish constitution itself: pursuant to Article 51, the public authorities "shall ensure, with the aid of effective procedures, protection of the safety, health and legitimate economic interests of consumers and users".

On the basis of this constitutional tenet, Act 26/1984 of 19 July 1984 (Framework Act on Consumer and User Protection) establishes a specific arbitration system for consumer disputes (Article 31). Act 36/1988 of 5 December 1988 concerning arbitration provided, in its two first "supplementary provisions", that such arbitration would be free of charge; the government was mandated to "regulate the name, nature, nomination procedure and territorial jurisdiction" of the arbitration boards.

The regulation (REAL DECRETO) was adopted by the Spanish government on 30 April 1993 and provides for the implementation of a "SISTEMA ARBITRAL DE CONSUMO" with the aid of "JUNTAS ARBITRALES DE CONSUMO".

The "JUNTAS ARBITRALES DE CONSUMO" are established under an agreement between the central government (which has exclusive powers regarding arbitration) and the autonomous and local administrations (to which the *juntas arbitrales* must answer).

These are permanent bodies with both administrative and pre-litigation functions. It is the juntas which are responsible for running the system, registering requests for arbitration and finalising the arbitration bond.

Under the aegis of this organ, "COLEGIOS ARBITRALES" (arbitration committees) will be designated with a view to settling disputes.

These arbitration committees will consist of a chairman, representing the government, a representative of consumers' and users' organisations, and a representative of the professional bodies belonging to the arbitration system.

The procedure is free of charge, except for the expert's fees (which are borne by the party requesting the expert report). The request for arbitration must be submitted in writing to the JUNTA ARBITRAL, which examines its validity and may attempt to mediate.

In the context of the arbitration procedure, a conciliation agreement may be concluded and endorsed by a "laudo".

The decisions of the COLEGIO ARBITRAL have the same binding force as a judgment.

The firms which belong to the arbitration system receive a "DISTINTIVO OFFICIAL" (official sticker) so that consumers can identify them. A register of firms that have received this "distintivo" will be kept and updated by each junta arbitral.

As regards disputes between banks and users, a "*servicio de reclamaciones*" has been established at the Central Bank (Act of 12.12.1980). Any dispute which has not been resolved within two months by the claims department of the bank concerned may be referred to this service.

3. Administrative authorities

A "DEFENSOR DEL PUEBLO" was established under Act No 3/1981 of 6 April 1981 to protect the rights enshrined in the first chapter of the constitution against abuses of the administration.

His powers of inquiry are exercised either ex officio or at the request of a private individual or an organisation; the "SUGERENCIA" (recommendation) he issues is not legally binding.

4. Representative actions

Consumer organisations are entitled to bring actions under Act 3/1991 of 10 January 1991 (Act concerning Unfair Competition) against "acts of unfair competition which directly affect consumer interests" (Article 19).

The "general" definition of unfair competition (Article 5) is very wide: it concerns "any act which is directly contrary to the requirements of good faith".

Actions brought by consumer organisations (Article 18) may have as their object:

1. "establishment" of the act of unfair competition (formal declaration);
2. suspension (admonition) or prohibition of such action (preventive action);

3. "annulment" of the effects (repudiation);
4. rectification of the misleading, incorrect or false information.

1. Simplified court procedures and the Dijon-le Creusot pilot project (March 1988 - December 1990)

In the mid-eighties, simplification of the legal settlement of small claims was the subject of an in-depth exchange of ideas between the French government (Ministry of Justice, Ministry of the Economy and notably its Directorate-General for Competition, Consumption and Prevention of Fraud) and the Commission of the European Communities.

On 4 March 1988 the French government adopted Decree No 88-209 establishing new procedures before the court of first instance, viz the: declaration before the court registrar (simplified referral) and the injunction to act.

At the same time the Commission of the European Communities decided to finance a host structure with a view to encouraging the use of the new procedures in the two "pilot" cities of Dijon and le Creusot.

The mechanism established at the Dijon and le Creusot courts of first instance in the context of the pilot project comprised:

- creation of a host structure open to the public and managed by a lawyer specialised in consumer law, with its own office, with a view to advising the parties (information on the various procedures, assistance in preparing the file, information on the hearing procedure and enforcement of the decisions, referring citizens to other institutions or legal professionals who may be called on to resolve the dispute);

- creation of "standard forms" for plaintiffs and defendants;

- establishment of special conciliation hearings to deal with consumer and housing disputes;

- creation of a steering committee.

The procedures covered by the pilot projects were as follows:

a) Conciliation: anyone who wishes to effect a conciliation may submit his request, free of charge, to the registrar of the court of first instance, either in the form of an oral declaration or of a simple letter addressed to the registrar (Article 830(1) of the New Civil Code); the registrar informs the parties as to the venue, date and time of the conciliation session; the parties are obliged to attend in person (they may not be represented by an authorised agent); if the parties reach agreement, they request the judge to enter this agreement in the record; the record is signed by the parties and judge and an order for enforcement may be attached to them without the need to pursue the matter further.

b) Simplified referral (for small claims not exceeding FF 13 000 +/- ECU 973). The writ served by a bailiff[37] is replaced by a declaration made directly to the court registrar, who himself convenes the parties; the declaration (written or even oral - Article 847-1(1), New Code of Civil Procedure) states the identity of the parties and the subject of the request accompanied by a brief statement of the grounds; the invitation addressed by the court registrar to the defendant must be cited.

c) Injunction to act: this procedure allows anyone to whom a contractual obligation is owing to request the court (through a simple written request) to enjoin performance in kind of this obligation (hence the idea is to secure rapid performance of the contract rather than to obtain damages); if the request seems justified, the court of first instance issues an order which is at once an injunction to act and is not open to appeal (the defendant may set out his defence at the hearing) and an invitation to the parties to attend a hearing (which is convened only if the defendant challenges the injunction); in case of complete or partial failure to comply with the injunction, the court hands down a definitive judgment after attempting to reconcile the parties.

The courts of first instance, created under an Order of 22 December 1958, may rule on all personal actions valued at up to FF 30 000 (+/- ECU 4 553) (for claims up to FF 13 000, it is also the court of last resort; claims exceeding this sum are open to appeal). Hence it deals with most consumer disputes of a civil nature.

For the consumer, the big advantage is that he does not have to engage a solicitor; the parties may defend themselves.

A second noteworthy feature is the preliminary conciliation procedure (at the request of one of the parties) which may lead to an agreement between the parties (debated in the presence of the judge) which has the same binding force as a judgment.

The Decree of 4 March 1988, while confirming the judge of first instance " in his vocation as representative of a form of justice that is accessible, effective, cheap, close to the user, humane and sufficiently rapid" was designed to cover all kinds of small claims and not only consumer disputes.

The objective of the pilot project was to facilitate, in the two pilot cities, the implementation of the new procedures provided for in the decree (in parallel with the relaunching of the conciliation procedure already envisaged) and to evaluate their impact, mainly as regards access of consumers to justice.

From 10 March 1988 to 31 December 1990, 787 conciliation dossiers were registered (of which 564 at Dijon and 223 at le Creusot); as to the two procedures created under the Decree of 4 March 1988, the statistics reveal that there were 362 simplified referrals and 93 injunctions to act between 1 January 1989 (date of entry into force of these procedures) and 31 December 1990.

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37 Estimated cost in 1988: approximately FF 200 (+/- ECU 30) for FF 13 000 (+/- ECU 1 973) claimed.

As regards conciliation, the result was impressive: at Dijon alone, there were 170 conciliation dossiers in 1988, 191 in 1989 and 203 in 1990, as compared with 51 conciliation dossiers in 1987 (i.e. before the project was launched); these cases were concluded within an average of 43 days after the date of referral to the court and only very rarely (in seven cases altogether) did the complainant have to pay costs.

As regards simplified referrals (declaration to the court registrar), 362 dossiers were opened, of which 142 in 1989 and 220 in 1990; 58% of these cases led to a judgment favourable to the complainant, 11.8% to unfavourable judgments, 21.5% to withdrawals from suit, 5% cancellations and 3.5% conciliations; on average the hearing took place 56 days after the date of registry of the declaration with the court registrar and a final decision was reached 116 days after the date of registry (but when the cases were not appealed, the average period was only three months).

However, the injunction to act was not widely used (46 cases in 1989, 47 cases in 1990), and rejections were numerous (44 altogether); the court's order was obtained within 11 days on average and a final decision handed down within an average of 93 days. It seems that this procedure is useful only in "straightforward" cases relating to the performance of an unchallenged and unchallengeable contractual obligation.

In 1990 the courts of first instance dealt with a total of 506 154 cases (all procedures together); average duration was 4.3 months.

2. Out-of-court procedures

1) PO Box 5000

PO Box 5000 is a unique address (created in 1977) to which consumers may send their claims or request for information; the secretariat - which is managed in each department by the Departmental Directorate for Competition, Consumer Affairs and the Prevention of Fraud - classifies incoming mail by dossier type and is responsible for follow-up, either directly (e.g. if the letter mentions the existence of facts which constitute an infringement) or by sending the dossier to the professional organisation concerned or to a consumer organisation. The idea behind this system is to provide a single and easily remembered address for all consumers.

2) Conciliators specialised in consumer disputes

The conciliator's task is "to facilitate, to the exclusion of any legal procedure, the amicable settlement of disputes relating to rights which the interested parties can freely dispose of" (Article 1 of the Decree of 20 March 1978), irrespective of value or nature (the conciliator's powers do not extend to disputes relating to the status and capacity of individuals, divorce, and public policy in general); his jurisdiction covers one or several cantons and the is characterised mainly by the complete absence of formalities.

The conciliator is appointed by order of the first judge of the court of appeal and has his office at the town hall; matters may be referred to him in writing, by telephone or in person; if one of the parties refuses to attend, the conciliator cannot coerce him.

In the event of (full or partial) conciliation the conciliator drafts a statement of agreement; the conciliation statement is enforceable only if the two parties consent; otherwise it is just a simple contract.

Decree 93-254 of 25 February 1993 (amending and supplementing the above-mentioned Decree 28-381) provides for "conciliators exclusively responsible for settling disputes between persons acting by way of trade and consumers". These conciliators must have at least five years' legal experience "acquired in the field of consumer affairs or at an approved consumer association" (Article 1). The procedure provided for in Decree 28-381 has not been amended, but consumers "may be accompanied by a person of their choice" (this person may be a representative of a consumer organisation or any other individual).

3) The conciliation committees

Under the aegis of the Departmental Consumer Committees (consisting of an equal number of consumer representatives and representatives of professional bodies), several agreements have been signed concerning the establishment of "joint conciliation committees" made up of representatives of professionals in the branch covered by the agreement and representatives of the signatory consumer organisations.

A referral may be made to the conciliation committees either by a signatory association or a signatory professional, which limits the scope of this type of settlement, since the consumer himself may not directly address the committee.

4) The overindebtedness committees

The Act of 31 December 1989 on the prevention of difficulties linked with overindebtedness has established a mechanism for amicable settlement by committees, created in each Département, which are composed of representatives of the government and consumer or family associations; the secretarial infrastructure is provided by the Bank of France.

The job of these committees is to establish the debtor's degree of overindebtedness and to try to reconcile the parties, with a view to drawing up a contractual settlement scheme; if this procedure fails, the debtor or the creditors may refer the matter to the court of first instance with a view to obtaining remedy at law.

3. Aid in accessing justice

Aid in accessing justice, introduced by Act 91-647 of 10 July 1991, comprises aid in obtaining legal advice (by enabling the beneficiary to obtain information on his rights and duties, advice as to how to invoke his rights, and assistance in preparing legal documents)

and aid in connection with non-judicial or administrative procedures (such as the overindebtedness committees). This - highly innovative - text fills in the gaps in traditional legal aid, which normally (in most countries) does not provide for assistance in disputes with the administration (with a view to obtaining a decision or in the context of mandatory pre-trial remedies) and applies only to the courts as such.

4. The AARC service

The AARC (Avocat Assistance et Recours du Consommateur - Solicitor, Assistance and Redress for the Consumer) is a counselling and redress centre created in 1981 by order of the advocates at the Paris Bar, with a view to reducing the cost of "small claims" in the consumer domain.

The advocates have offices open to the public and their fees are flat rate (200 francs for consultation on a dossier, 400 francs for an amicable settlement or "list of arguments" providing guidance to the consumer who wishes to undertake his own defence at the court of first instance, 900 francs for instituting proceedings).

Since its foundation the AARC has dealt with 500 dossiers and taken approximately 4 500 telephone calls (free of charge).

5. Representative actions and "actions in joint representation"

Act 88-14 of 5 January 1988 (in abolishing Article 46 of Act 73-1193 of 27 December 1973) provides that "approved" consumer associations may request the civil courts or criminal courts acting in a civil matter "to order the defendant or the accused, where applicable with sanctions, to undertake any measure designed to terminate illegal acts or to remove an illegal term from the individual or standard contract proposed to the consumer" (the request is filed with the civil courts when its purpose is compensation for damages incurred by one or several consumers by virtue of circumstances which do not constitute a penal infringement).

Hence, this is a representative action, which is brought by an organisation on behalf of interests which "transcend" particular interests.

This Act has recently been supplemented by Act 92-60 of 18 January 1992 which has created an action in joint representation: when several consumers have suffered individual damages which were caused by one and the same professional, and which have a common origin, any duly recognised representative association may, if it has been designated by at least two of the consumers concerned, sue for damages before any court on behalf of these consumers.

The same Act (Article 12) establishes that "a consumer code shall be created" which "shall consolidate the legislative and regulatory texts laying down rules relating to individual or collective relations between consumers and persons acting by way of trade, notably those relating to fair practice and safety of products or services".

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The preparatory work has since been completed and the text is now before the Council of State.

1. Court procedures

A procedure to deal specifically with small consumer claims was formally established in December 1991 (District Court - small claims procedure - Rules, 1991).

The procedure, which is currently operating on a pilot basis in Dublin, Cork, Sligo and Swords, is intended to be progressively phased in throughout the rest of the country. A small claim is defined as any civil proceedings brought by a consumer against a seller in relation to any goods or services purchased in which the amount of the claim does not exceed IRL 500 (625 ECU approx.) and which is not a claim under Irish Hire Purchase law or a claim in respect of a breach of a leasing agreement.

Each participating district Court has a small claims Registrar whose special responsibility is to oversee the implement and procedure: he assists the consumer in filling out the form (special application forms were created) and process the claim, which essentially is to record it and to send the completed form to the respondent. Where the respondent admits the claim and wishes to make arrangements for payment. he simply fills out the form and returns it to the Registrar.

If the respondent wishes to dispute the claim, or wishes to make a counterclaim, he must do so on the appropriate form within 15 days of receiving it.

If within 15 days the respondent does not reply, then the claim will automatically be treated as undisputed and the District court will make an order for the amount claimed to be paid within a stipulated period of time (what is more, the Registrar will assist with the enforcement procedure if payment is not made).

Where a notice of intention to dispute the claim is given, the Registrar will try to settle the dispute between parties: he may interview both parties and/or invite both parties to discuss the claim together.

If an agreement cannot be reached, the Registrar will bring the case to the District Court for a hearing. The initial fee (IRL 5, 6 ECU approx.) covers the cost of this Court hearing and the claim can be brought without a solicitor: the Registrar will attend the hearing and outline the alleged facts.

In the period mid December 1991 to mid October 1992, 646 claims were received into the small claims system (450 in Dublin, 99 in Cork, 39 in Sligo, 5 in Swords); 379 of them (58.7%) were settled without the need for a Court hearing, 78 (12.1%) were listed for a hearing and 189 (24.3%) were ongoing.

2. Out-of-Court procedures

Several out-of-Court procedures have been established on the initiative of specific business sectors: among them, the insurance ombudsman scheme and the credit institutions ombudsman scheme. Membership of both these schemes is voluntary but the companies which adhere to them are bound by the Ombudsman's decision; the consumer on the opposite can always take the matter to Court.

The claims brought before the Ombudsmen may not involve an amount exceeding IRL 100 000 (124 965 ECU approx.) for insurances and IRL 25 000 (31 240 ECU approx.) for credit institutions.

A parliamentary Ombudsman (appointed by the Irish President) investigate complaints from anybody (natural or corporate persons) feeling that they have been unfairly treated by certain public bodies; although the outcome of the procedure is not binding, all recommendations of the parliamentary Ombudsman have been followed so far.

3. Representative actions

The Director of Consumer Affairs (created by the consumer information act, 1978) is the main enforcer of consumer legislation.

He is statutorily independent and has a variety of powers to deal with false or misleading advertising, misleading price indications and so on.

In this capacity, he can secure an injunction *"to cease and desist"* against any practices contravening the Consumer information act. He also promotes the creation of private codes of practice (example: code of advertising standards).

4. Pilot projects

A pilot project, called *"Consumer Personal Service"* (CPS) has been run by the Consumers' Association of Ireland since June 1990.

The project is meant "*to inform, advise and assist the consumers who encounter problems with goods and services they buy*"; a fixed fee of IRL 19 (24 Ecu approx.) is paid by the consumer who will be assisted, no matter how far the proceedings will be taken.

A prime objective is to find an out-of-court settlement but in case of need full legal assistance is provided before the courts.

In the period June 1990 to May 1993, the CPS received 780 complaints; some 100 cases were taken before the Courts, including 40 to be heard by the Small Claims Court.

1. Court procedures

The Code of Civil Procedure was recently overhauled on the basis of Acts 353 of 26.11.1990 (urgent measures concerning civil procedure) and 374 of 21.11.1991 (establishing the justice of the peace).

The entry into force of some of the above-mentioned provisions was carried forward by Act No 477 of 4.12.1992; consequently, the reform will be fully effective as of 3 January 1994.

The most important effects of the reform, from the consumer/user viewpoint, may be summarised as follows.

a) Establishment of the justice of the peace

The procedure before the justice of the peace is governed by special provisions (Article 316ff of the Code of Civil Procedure), which partly draw their inspiration from the provisions governing the procedure before the "*conciliatory judge*"[38].

The procedure is a simplified one in that:

- an action may be brought in the form of a simple declaration before the judge, who will keep a record and convene the parties (time limits for attendance have been halved, as compared with the norm);
- at the hearing, the justice of the peace listens to the parties and tries to effect conciliation; if the parties come to an agreement, this is entered in the record, which is enforceable;
- if conciliation fails, the justice of the peace invites the parties to set out the facts, produce documents and, where relevant, proof;
- a second hearing may be scheduled only if circumstances so require;
- the judgment must be handed down within 15 days of the hearing.

The request for "non-litigious" conciliation, already provided for in the provisions concerning the conciliatory judge, may also be submitted to the justice of the peace, irrespective of the value of the claim; however, the record which establishes the parties' agreement will be enforceable only if the dispute falls within the jurisdiction of the justice of the peace.

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38 In effect the justice of the peace will replace the former "*conciliatory judge*" and will have broader jurisdiction.

The jurisdiction *ratione summae of* the justice of the peace is fixed at Lit 5 million (+/- ECU 2 790), or Lit 30 million (+/- ECU 16 732) in the case of disputes concerning civil liability in connection with motor vehicles and ships; hence, most consumer claims are covered.

The freedom not to engage a lawyer is however limited to disputes whose value does not exceed Lit 1 million (+/- ECU 558) and the judgment "in equity" to disputes of up to Lit 2 million (+/- ECU 1 115).

b) Interim measures

All tribunals of first instance (justice of the peace, "*pretore*", court) may order interim ("anticipatory") measures in the context of procedures that will be introduced as of 2 January 1993: these measures will take the form of an order to deliver ("*injiunzione di consegna*") or to effect payment.

c) The time limits

The new rule on time limits (and notably the amendment to Article 184 of the Code of Civil Procedure) should reduce the average duration of court proceedings, which is very high in Italy[39].

This new rule will take effect in 1994.

d) Provisional enforcement

Provision enforcement of a judgment of first instance (which up to now was the exception) becomes the rule for actions brought after 1 January 1993; suspension of the provisional judgment can only be ordered by the court of appeal on real and serious grounds (Article 283 of the Code of Civil Procedure).

The purpose of this amendment to the Code of Civil Procedure is to discourage appeals made with the sole purpose of prolonging the procedure ("dilatory" appeals).

2. Out-of-court procedures

Arbitration tends to be expensive and so as a rule is beyond the reach of private individuals: it is normally used by firms. Thanks to arbitration a binding decision can be obtained far more rapidly than by going through the regular courts.

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[39] 538 days in the case of the "preture", 1 166 days before the lower courts and 1 119 days before the courts of appeal.
Source: Ministry of Justice, Documenti Giustizia 1-2/1993, p. 269. The statistics refer to all civil cases in 1991.

A special arbitration procedure has been established for disputes involving the telecommunications service, based on an agreement concluded on 24 July 1989 between the SIP (the telecommunications authority) and 12 consumer organisations.

This project was piloted in Lombardy and Sicily and subsequently extended to six other regions; it now covers the whole country and the settlement procedure has been revised.

There are two distinct phases: the user (after having exhausted the SIP's own claims procedure) may approach the regional conciliation committee, made up of one SIP nominee and one nominee of the consumer organisations.

The conciliation procedure ends with a statement of conciliation or non-conciliation. In the case of non-conciliation the user may appeal to an arbiter (chosen by agreement between the SIP and the signatory associations) whose competence is limited to claims not exceeding Lit 3 million. The arbiter decides "on the basis of equity" and the costs are borne by the losing party, but a "ceiling" has been established for the arbiter's fees.

In the banking sector an "Agreement on the creation of a claims bureau and bank ombudsman" was recently concluded under the aegis of the ABI (Italian Banking Association). Under this agreement, a claims office is to be established in each bank or credit institution by 15 April at the latest. From this date, a national bank ombudsman (a five-member body) may be approached by any consumer who has exhausted the internal claims procedure (for which a time limit of 16 days has been established). The ombudsman's services are free of charge and the ombudsman's decision is binding on the bank (without affecting the consumer's right to bring legal action) within the ceiling laid down by the agreement (Lit 5 million).

As regards publicity, a "GUIRI DI AUTODISCIPLINA PUBBLICITARIA" (self-regulatory advertisement standards board) was set up in 1966, and has handed down a total of 1 076 decisions; the self-regulatory advertising code applied by this board is regularly updated. The nineteenth version took effect on 15 June 1993.

As regards relations between citizens and government, a "DIFENSORE CIVICO" (ombudsman) exists in each of Italy's 20 regions and provides information, counselling and assistance to all citizens (or organisations of citizens) on request. The powers of the *difensori civici* are governed by regional laws, but normally their opinion is not (legally) binding on the administration.

3. Protection of collective interests

In principle, organisations representing a collective interest would not have the "interest in bringing an action" required by Article 100 of the Code of Civil Procedure (in accordance with the prevailing school of thought).

However, more recent legislation has recognised their right to bring an action in specific domains.

The collective interest of consumers (who in Italy are not protected by any public authority, such as the Danish ombudsman or the Irish Director of Consumer Affairs) is governed by the following statutes:

- Legislative Decree No 74 of 25 January 1992 transposing Directive 84/450/EEC on misleading advertising;
- Act 287 of 10 October 1990, concerning protection of competition and the market, which recognises the collective interest of consumers (and also the right of their organisations to bring an action) in the case of mergers, abuse of a dominant position or restrictive practices.

Consumer organisations may bring civil actions in criminal cases under the terms of Act 462 of 7 August 1986 concerning the "prevention and suppression of adulterated foodstuffs".

4. Pilot projects

A project called "Access of consumers to justice" proposed by a consumer organisation and financed by the Commission of the European Communities was established in Milan on an experimental basis as of January 1991. The service provided under the project is completely free of charge and the offices are open to the public on all working days between 13.00 to 19.00.

The main task of this service is to inform the consumer about his legal rights and how to avail of them. If a claim appears to be substantiated an attempt may be made to effect an out-of-court resolution so as to settle the dispute amicably, if the consumer so wishes.

If this does not work the service may assist the consumer in all disputes brought before the conciliatory judge (where the assistance of a lawyer is not required). If the dispute falls outside the jurisdiction of the conciliatory judge, the consumer is invited to consult his lawyer or the law society.

What singles out this project is the use of the non-litigious conciliation procedure (Article 321 of the Code of Civil Procedure), which is also envisaged in the Act establishing the justice of the peace. This procedure used to be largely ignored in practice.

From November 1991 to October 1992 the service received 1 302 requests for information and/or intervention. Each case was examined. A total of 357 files were opened. Of these, 119 of them were resolved under the out-of-court procedure by agreement with the respondent, while 18 were resolved in the procedure before the conciliatory judge (15 non-litigious, three defended.)

At 31 October 1992, 220 disputes were pending of which 25 were before the conciliatory judge.

The good results of this pilot project led to the opening of a second centre with a view to evaluating the impact of the initiative in a different socio-economic milieu (Forli).

A second project launched by a consumer organisation (and linked to the implementation of the conciliation and arbitration procedure described in point 2) provides training to aspiring members of the telecommunications conciliation committees.

1. Simplified court procedures

Two simplified procedures exist to facilitate recovery of debts: the payment order (Articles 48-58 of the Civil Code) and the sequestration of salary (Decree of 11.11.1970, Mémorial 1970, 1314).

Given their objective, these procedures have virtually never been initiated by consumers who, on the contrary, are normally at the receiving end. On very rare occasions, consumers have initiated the first type of procedure.

No simplified procedure (such as the injunction to act in France) is available for consumers seeking performance of a contract.

The "summary procedure" device opens the way to interim measures in the event of urgency or orders pertaining to debts, pending judgment on the merits.

2. Out-of-court procedures

Apart from ordinary arbitration (whose cost is normally disproportionate to the sums at issue in consumer claims) there are no out-of-court procedures which are legally binding on the professional.

3. Representative actions

Consumer associations may bring an action to protect collective interests against unfair terms (Act of 25.8.1983, Article 5) and unfair commercial practices (Act of 27.11.1986, Article 21). These actions are reserved for "consumers' associations represented at the Price Committee" of the Grand Duchy of Luxembourg.

1. Court procedures

On 30 December 1991, a new procedure was introduced before the Kantongerecht (Subdistrict Court of first instance) which has jurisdiction in the case of:

a) claims not exceeding HFL 5 000 (2 284 ECU approx.)
b) claims concerning rent of housing or hire-purchase, regardless of amount.

Under the new procedure, the writ of summons can be sent to the defendant as a registered letter (to his end, the plaintiff has to fill out a form) instead of being served by the bailiff. The defendant may choose to defend himself orally before the Court or to file a written reply (legal representation is not required); if the defendant does not reply, the claim will be awarded unless it is unsubstantiated.

The judge can also try to effect conciliation (if so requested, or even on his own initiative); to this end, he can order the appearance of the parties in person ("*comparitie*": 19, Code of Civil Procedure).

A special provision concerning consumer complaints has been introduced, according to which a consumer can initiate the procedure before the Court of the place where he lives (Article 98, par. 3 Code of Civil Procedure); a choice of jurisdiction is permitted only after the dispute has arisen (Article 100 CCP). A possibility of obtaining a provisional judgement (in urgent cases) is given by Article 116 CCP.

2. Out-of-Court procedures

The so-called "*Ombudsmen*" which have been created in some sectors (life insurance ombudsman, savings banks ombudsman and so on) cannot actually settle disputes: their "*advice*" is not binding.

However the "*geschillencommissies*" can issue binding recommendations ("*bindend advies*") which have the force of a contractual obligation: once the parties agree to submit a dispute to such a Commission, non-compliance with its "*recommendation*" is regarded as a breach of contract.

The *"geschillencommissies"* must be formally recognised by the Minister of Economic Affairs, who checks that they satisfy certain conditions such as procedural guarantees and impartiality.

Almost all of them adhere to an umbrella Foundation which was set up jointly by the business branch organisations and the Consumentenbond (consumer association).

A geschillencomissie is composed of one consumer representative, one representative of the business branch organisation and one impartial chairman; the consumer (who must have

tried to settle the dispute with the supplier before initiating the procedure), has to pay a fee varying from HFL 27.5 (approx. 12 55 ECU), to HFL 150 (approx. 69 ECU); the procedure is mainly written, but a hearing may take place if so requested by one of the parties.

In 1991, the geschillencommissies belonging to the Foundation received 5 162 complaints, (1 867 of which were filed with the geschillencommissie on travel); the average duration of the procedure was 4.2 months.

A similar binding recommendation can be issued by some disciplinary boards, including the Supervisory Boards of the Dutch Lawyers' Association, the Royal Notary Brotherhood and the Medical Disciplinary Board (which are regulated by statute) and the Arbitration Institute of the building societies (which is not).

As far as advertising is concerned, a foundation called "STICHTING RECLAME CODE" was established in 1964 and includes leading advertisers, consumer organisations and media (except TV broadcasting, which is vetted by a special public body). It runs the "RECLAME CODE COMMISSIE", whose decisions may be appealed before the "college van beroep": the self-regulatory system has therefore developed a two-tier scheme.

3. Protection of collective interests

Consumer organisations have a general right to sue in defence of consumer interests. Until now, this right was mainly based on case law, but a draft regulation (Bill 22.486) is intended to give it a statutory basis.

Under present case law, consumer organisations can only ask for an injunction or prohibition and they must be *"representative"* (this somewhat vague condition may pose difficulties for the court). The right to ask for a prohibition or rectification of misleading advertising is granted to consumer organisations under Article 6/196 of the Civil Code; actions against misleading advertising are subsidised by the Government.

A similar action is regulated by Article 6/240 with respect to *"general conditions which are used or are destined to be used in contracts with persons whose interest are entrusted to a legal person"*.

1. Simplified court procedures

The Portuguese Code of Civil Procedure (Articles 793c et seq.) provides for a simplified procedure for "small claims" ("*processo sumarissimo*").

This type of procedure covers not only so-called consumer disputes, but also all disputes of a civil character below a specific ceiling (corresponding to 250 000 Escudos, +/- ECU 1 333) and concern payments under contract, compensation for damages and the delivery of moveable goods (Article 462(1)).

A lawyer's assistance is not required and legal costs are paid by the losing party (including the winning party's lawyers' fees, where relevant).

In 1990 the Ministry of Justice launched a programme entitled "Citizens and Justice" (*Citadão e Justiça*) designed to improve transparency in relations with the administration, and to promote information, training and citizen participation, as well as access to the law and to the courts; consumer protection is one aspect of the access of citizens to justice.

In the context of this programme, Decree-Law No 211 of 14 June 1991 created a sort of simplified procedure consisting of a joint submission by the parties and involving fewer formalities, shorter time limits and lower costs.

The Organic Law on the Legal System (Act No 38 of 1987, amended by Act No 24/92 of 20 August 1992) provided for the creation of "lower instance courts", also called "small claims courts" (Decree No 446 of 8 July 1988 and preamble to the Decree No 214 of 17 July 1986 governing the Organic Law on the Legal System). The establishment of these courts requires implementing regulations currently in preparation.

An attempt to effect conciliation "may take place at any time during the procedure if the court considers it opportune, but the parties cannot be convened more than once to this end" (Code of Civil Procedure Article 509(4)).

However, this step is not obligatory, except in the case of the "small claims" procedure, where it takes place at the start of the hearing (Code of Civil Procedure, Article 796/3). For other forms of the normal procedure this is done at the preparatory hearing but only when the judge considers it possible to settle the dispute without handing down a judgment (Code of Civil Procedure, Articles 508 and 787).

- Provisional enforcement of the judgment:

  In general, provisional enforcement is possible, since appeals do not have staying effect (Code of Civil Procedure, Article 47/1, Article 693/2 and Article 740).

- Urgent measures:

The Code of Civil Procedure provides for a series of urgent measures prior to the main proceedings (Code of Civil Procedure, Article 381ff).

- Penalties for dilatory tactics:

  Dilatory tactics during the trial are considered as evidence of bad faith and the court may fine the party concerned and order him to pay damages (Code of Civil Procedure, Article 456/1 and 2).

- Legal protection for foreign nationals:

  Legal aid, which may include both waiving of expenses and free assistance for persons of insufficient means, is governed by Decree-Law No 387-B/87 of 29 December 1987 and applies to foreign nationals in application of the constitutional principle by virtue of which whoever "lives or resides in Portugal enjoys the same rights and is subject to the same obligations as the Portuguese citizen" (Constitution, Article 15(1), cf. also Decree-Law No 391/88 of 26 October 1988, Article 1).

  Even if he is not domiciled in Portugal, the Community national benefits from this aid, provided he lives there.

  This aid is one of the forms of legal protection provided by the legal advice centres located throughout the country under the agreements signed by the Ministry of Justice and the Law Society (Decree-Law No 391/88).

2. Out-of-court procedures and pilot projects

Some large firms and public bodies have already unilaterally appointed "ombudsmen" whose task it is to receive and amicably settle claims by clients or to improve services. Examples include the Portuguese Post and Telecommunications Organisation and the municipality of Lisbon.

The trend in Portugal is to create broad-based voluntary arbitration bodies to deal with consumer disputes.

These institutions are still experimental, although the Lisbon ombudsman has been in existence for approximately four years; hence we discuss them under the rubric "pilot projects".

Apart from these general arbitration bodies, a few private sectoral arbitration mechanisms are making a timid debut, for example in the domain of car repairs.

a) The Lisbon pilot project

The Municipality of Lisbon, the INDC (National Institute for Protection of the Consumer), the Lisbon Union of Traders and the DECO (Portuguese Consumer Protection Association) signed an agreement on 28 October 1988 concerning the creation, on an experimental basis, of an arbitration centre for consumer disputes.

The INDC, the Municipality of Lisbon and the Commission of the European Communities provided the initial funding.

Circular (Despacho) No 155/90 of 23.2.1990 of the Ministry of Justice authorises the creation of an arbitration centre and Circular No 103/91 of 8.3.1991, also from the Ministry of Justice, totally waives legal fees for arbitration decisions under this project.

This experiment was possible thanks to close cooperation between the different participants (government, municipality, Association of Traders, Association of Consumers, European Communities). The centre (which has its own headquarters at the municipality of Lisbon), has the following structure:

- a host service staffed by two lawyers;
- a director;
- an arbiter-judge appointed by the Superior Council of the Bench.

The host service hears consumer complaints; when these appear *prima facie* admissible, they are entered in special forms together with supporting evidence.

Finally, the centre invites the two parties in writing with a view to conciliation. The agreement, in the form of a document drafted by the service's lawyer, is subsequently approved by the judge-arbiter and has the same status as a judgment.

If conciliation fails, the case is submitted to the arbites-judge, accompanied by the trader's defence and documentary evidence.

After examining the evidence, the judge immediate hands down a judgment, unless expert opinions and examinations are needed. Witnesses are normally summoned by the parties.

Pursuant to Act No 31/86 of 29.8.1986 (Article 26), the arbiter's decision is enforceable just like court of first instance decisions and it is this court that is also entitled to issue any appropriate injunctions.

The arbiter's jurisdiction concerns consumer disputes not exceeding 500 000 Escudos (+/- ECU 2 665) and covers the Lisbon area (i.e. the contract must have been concluded in Lisbon). The service is free and swift irrespective of the stage at which it is invoked.

From 20 November 1989 (date of opening of the centre) to 19 November 1992, the centre dealt with 3 160 dossiers (mainly just inquiries); 600 cases were settled through mediation and conciliation, 390 gave rise to an arbitration ruling. Only 6% of the parties convened for the conciliation and arbitration phase failed to show up. On average, 40 days elapsed between submission of the request and the judgment.

A new agreement was signed on 15 march 1991, and the arbitration centre is now recognised as a permanent arbitration centre for consumer disputes. Recently it was transformed into an association, and so it now has a legal personality and administrative and financial independence, its funding being guaranteed under a new protocol concluded with the ministries.

On 11 March 1992 an agreement was signed between the municipalities of Lisbon and Madrid. Pursuant to this agreement, consumers living in Madrid may submit a claim for purchases effected or Lisbon, and vice-versa; the claim is forwarded to the competent instance (Junta Arbitral de Madrid, Lisbon arbitration centre) of the place of purchase and the consumer (to avoid travel costs) may be represented by a consumer organisation.

b) Coimbra pilot project

The Coimbra arbitration court/arbitration centre was created under a protocol signed on 15 April 1992 between the Ministry of Justice, the National Institute for Protection of the Consumer, the Municipality of Coimbra, the Portuguese Association of Consumer Law and the Coimbra Commercial and Industrial Association. Since then other consumer organisations and professional bodies have joined and the system is now fully operative.

The articles of association, structure and functioning of this institution are much the same as the Lisbon centre, though the two centres differ in that the jurisdiction of the Coimbra centre may be extended to neighbouring municipalities, and one of them - Figueira da Foz - has already decided to opt in. Consequently, responsibility for dealing with and informing consumers and, where relevant, conciliation, lies with existing local services at municipal level (CIAC). These are a sort of first instance and have links with the common arbitration court, which is responsible for endorsing agreements or (if conciliation fails) settling disputes. As in the case of Lisbon, the agreement approved by the judge-arbiter or his decision are binding.

The arbitration court has jurisdiction over disputes for sums of up to 500 000 Escudos, the value being adjusted annually in line with the general consumer price index.

As with Lisbon, the Coimbra project is partly funded by the Commission of the European Communities.

c) The pilot project of Porto and the Ave Valley (Vale do Ave)

The Porto arbitration centre for consumer disputes at was set up under an identical protocol, signed on 14 September 1992, and is due to open soon.

Its jurisdiction, which is initially limited to the city of Porto, may be extended to the metropolitan zone (hence covering neighbouring municipalities in the metropolitan area).

The Porto arbitration centre draws its inspiration from the two other centres. Like Lisbon, it has a central office for welcoming and providing legal information to consumers, while like Coimbra its activities may be extended beyond the city as such. Finally, the Porto centre has a unit that provides consumers with general information on the market, and not just legal information.

The consumer disputes arbitration centre of the Ave Valley, based in Guimarães, was created under a protocol dated 15 March 1993, and involves the same central and local bodies (Association of Municipalities of the Ave Valley) and local associations representing consumers and suppliers. Its jurisdiction is intermunicipal, comprising in principle all municipalities of the Ave Valley.

3. Representative actions

Act No 29 of 22 August 1981 (Articles 12 and 14) confers rights on Portuguese consumer associations. And although under the Act (Articles 13(h) and 10/3 combined) associations may bring civil actions to defend collective interests - as assistants to the Ministry of Public Order - the structure of the procedure does not appear to give the holders of these interests (whether they are identified or not) the right to appear by proxy.

According to the National Consumer Protection Institute, this is "an omission which should be expressly remedied so as to bring procedural law (notably as regards "ad causam" legitimacy) in line with this positive law".

Portuguese law does not provide for collective action to enjoin cessation of misleading advertising. Hence there are no measures of the kind envisaged in Article 4(a) of Council Directive 84/450/EEC of 10 September 1984.

"Popular action" is provided for in Article 52 of the Constitution and a bill to implement this principle is currently being drafted.

1. Court procedures

UK is divided into three different jurisdictions: England and Wales, Scotland, Northern Ireland.

In each of them a small claim procedure has been created, which can be summarised as follows:

a) **England and Wales**: a small claim is a claim for UKL 1 000 (1 285 ECU approx.) or less made through a County Court.

Small claims can be filed without the help of a lawyer: special forms and information leaflets have been produced by the Lord Chancellor's Department which are simple and user-friendly; the fee depends on the amount which is claimed [40]. The Court will post a copy of the summons and a reply form to the defendant, who has 14 days to reply.

If the defendant does not reply, the Court can be asked to send him an order to pay (judgment by default). If the defendant disputes the claim, the case will be automatically referred for hearing by the District Judge.

The county Court Rules 1981 state that the hearing *"shall be informal and the strict rules of evidence shall not apply"*; legal representation is permitted but is discouraged by the rules on costs, which provide that the successful party is normally not entitled to recover his costs of representation[41]. Lay representation has been permitted by the Lay Representatives (Right of Audience) Order 1992. It has been estimated that in 1989, some 12 500 consumer disputes were handled by the small claims procedure.

b) **Scotland**: a small claims procedure was introduced by the Act of Sederunt (Small Claims Rules) 1988 and the Small Claims (Scotland) Order 1988, which took into account the results of an EC pilot project in Dundee.

A small claim is a claim for UKL 750 (965 ECU approx.) or less made before a Sheriff Court (all actions within the definition must be brought under the small claims procedures, unlike England and Wales, where some choice is available); the procedure can also be used for higher amounts provided both parties agree.

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40 10 pence for every pound up to UKL 500; 60 pounds fixed fee for claims between UKL 500 and UKL 1 000).

41 However, the District Court has discretion to award such costs if the opponent has acted unreasonably.

The procedure is quite similar to the English one.

c) **Northern Ireland**: a small claims procedure was introduced in 1979 (Judicature NI Act 1978, Section 97).

A small claim is a claim for UKL 1 000 (1 285 ECU approx.) or less made before a County Court.

Unlike Scotland, there is no preliminary hearing in the Northern Ireland procedure: as a result, 98% of cases are dealt with within 12 weeks of being lodged in the Court Office.

Another specific feature is the possibility of using the facilities of an *"Enforcement of Judgments Office"*.

2. Out-of-Court procedures

A very wide range of alternative redress mechanisms have been created, most of which are tailor-made for a particular sector.

Roughly speaking, they can be divided into three groups:

a) Conciliation and arbitration schemes

The Consumer Arbitration Agreements Act 1988 gave consumers the choice to elect for arbitration as an alternative to using the courts. In order to guarantee a free choice, this Act stated that an agreement in a contract cannot deprive consumers of their right to go to court.

Most consumer arbitrations take place as a result of arbitration schemes contained in codes of practice drawn up by trade associations in consultation with the Office of Fair Trading: under section (124(3) of the Fair Trading Act 1973, the Director General of Fair Trading has a duty *"to encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers in the United Kingdom"*.

Since 1974, 29 such codes have been drawn up in consultation with the OFT, which has established a model procedure for complaints handling.

In addition to the schemes approved by the OFT, a number of other low-cost arbitration schemes have been set up. The main problem of these schemes is ignorance of their existence; a major exception is the scheme set up by the Association of British Travel Agents (756 arbitrations in 1989).

If conciliation by the trade association does not achieve a satisfactory settlement, most of the codes give the consumer the option of referring the dispute to independent arbitration; in the case, a registration fee must be paid, which is subsidised and lower than the usual fee for arbitrations and will be refunded if the

consumer wins the case. The decision of the arbitrator is binding on both parties and conducted on a documents only basis (no oral hearings).

Some arbitration schemes have been set up in the financial services sector following the Financial Services Act 1986, which requires any self-regulation body or recognised professional body to have *"effective complaint handling procedures"*.

b) Private sector "*ombudsman*" schemes

The private sector "*ombudsman*" schemes vary in detail, but it is possible to identify some common factors. Generally speaking, the "*ombudsman*" is an independent person whose function is to settle a dispute between a company and its customer, ideally through mediation or conciliation, but ultimately by making a decision. This decision is normally binding for the company (insurance ombudsman, banking ombudsman) where membership is voluntary: where membership is compulsory (building societies ombudsman, legal service ombudsmen) the Ombudsman decision is not binding.

Unlike the arbitration scheme, the Ombudsman scheme never binds the consumer: if dissatisfied with the decision, the consumer may always resort to legal action. Another difference is that the consumer does not have to pay any fees: the only condition is that the complaints mechanisms of the member organisation must have been exhausted.

These features probably explain the increasing success of the scheme (10 215 enquiries received by the insurance ombudsman in 1989, 3 915 by the banking ombudsman in the same period). The Office of Fair Trading, in order to prevent possible abuses of the *"title"*, recently called for *"minimum standards"* for admission to the profession.

c) Public utility schemes

Most public utilities have been privatised recently. To protect the interests of consumers, the statutes authorising privatisation created a public official with the title Director General whose role is to act as the industry regulator.

Nevertheless, a majority of these public officials have no power to enforce their decision (an exception is the Director General of Electricity Supply): the recent "*citizens' charter*" indicated there would be further legislation to improve the situation.

3. Protection of collective interests

The Fair Trading Act 1973 created the post of Director General of Fair Trading, who is required to protect consumers by making sure that trading practices are as fair as possible and by encouraging competition among businesses. His office (OFT: Office of Fair Trading) has operated since 1974, working closely with the Department of Trade and Industry, with local authority trading standards departments and with self-regulating bodies.

The OFT is independent and does not form part of any ministry. Its Consumer Affairs Division has the fundamental aim of promoting and safeguarding the interests of consumers: in its regulatory role it administers certain provisions of the Consumer Credit Act 1974, the Estate Agents Act 1979 and the Control of Misleading Advertisements Regulations 1988; it proposes and promotes changes in the law and practice where the interests of consumers are being harmed; it provides information, primarily in the form of advisory leaflets.

According to the Fair Trading Act, sections 35 and 38, the Director General of Fair Trading can bring proceedings before the Restrictive Practices Court against the person (or the corporate body) which has (in the course of his business) *"persisted in a course of conduct which is (a) detrimental to the interests of consumers in the United Kingdom, whether those interests are economic interests or interests in respect of health, safety or other matters, and (b) is to be regarded as unfair to consumers"*, in accordance with the provisions of section 34. Before taking the Court action, the Director *"shall use his best endeavours to obtain a satisfactory written assurance"* that the trader will refrain from continuing that course of conduct and from carrying on any similar course of conduct in the course of that business: the action can be taken in so far as the Director is unable to obtain such a written assurance or the written assurance has not been observed. *"Unfair conduct"* is defined as conduct involving breaches of the criminal law and/or breaches of the civil law (other than a contractual duty). Consumer complaints must be taken into account in deciding whether to pursue this course of action (section 34(4) Fair Trading Act). Such complaints form the basis of evidence enabling the Director to take action. The powers conferred on the Director under the Fair Trading Act are not such as to result in individual redress for a consumer.

Consumer organisations cannot at present, under UK law, themselves take action on behalf of individual consumers.

4. Pilot projects

An EC-funded pilot project was run in Dundee (Scotland) and has already been described in the Commission's first Communication on consumer redress (COM(84) 692). This project has been given a strong follow up and was taken into account by the Small Claims Order 1988 mentioned in § 1 (creation of a small claims procedure in Scotland).

III. THE COMMUNITY DIMENSION OF THE PROBLEM

III.A Protection of individual rights

III.A.1 The existing procedures

A "comparative" analysis of current procedures in the Member States shows that attempts to improve the settlement of individual disputes have followed one of two tracks:

- simplification of court procedures applicable to "small disputes" (as part of a more general reform or in the context of "targeted" measures, as will be seen below);
- alternatively, the creation of out-of-court procedures (conciliation, mediation, arbitration) specifically devoted to consumer disputes (at the initiative of the public authorities or, more often, industry).

In one country, the law now allows a third alternative in the shape of a joint representation action: consumer organisations may sue on behalf of consumers who have "suffered individual harm caused by an act of one and the same professional and having a common origin" (France: Act 92/60 of 18 January 1992, Article 8).

This action is founded on an express warrant, which must be given in writing by each consumer concerned: it is not an action to protect a collective interest but rather the collective exercise of individual rights of action.

The joined cases facility, foreseen in the legislation of most Member States, is partly a response to the same requirement (to avoid a multiplicity of decisions, possibly irreconcilable, when several suits are filed against one and the same defendant and relate to the same *petitum et causa petendi*).

Nevertheless, the joined cases facility is a simple option (for the judge) and occurs *ex post*: by contrast, a joint representation action means that a cluster of suits can be grouped together, filed and judged in one go, *ex ante*, in a single case (the writs, etc. concerning the parties are addressed, from the start, to the association that has been given power of attorney).

III.A.1.a COURT PROCEDURES

As regards the simplification of court procedures, the legislative amendments may be classified as:

I. reform of the Code of Civil Procedure, designed not only to simplify the settlement of "small claims" but also to streamline procedures in general and eliminate the backlog of pending cases (Belgium: Act of 3 August 1992; Italy: Acts 353 of 26 November 1990 and 374 of 21 November 1991; Germany: Act of 11 January 1993);

II. creation of "simplified" procedures (a term whose meaning will be fleshed out below) for disputes of a civil character below a certain sum (France: Decree No 88/209 of 4 March 1988; Netherlands: Act of 30 December 1991; Portugal: Decree

No 211/91 of 14 June 1991; United Kingdom: Act of Sederunt - Small Claims Rules - 1988);

III. creation of a (simplified and) special procedure solely available to consumers for disputes whose value does not exceed a specific sum (Ireland: District Court - Small Claims Procedure - Rules, 1991).

So far we have used the term "simplified procedure"very broadly, meaning the goal legislators have in mind rather than the technical details of the simplified procedure as such. Indeed, while the proclaimed objective is almost always the same (efficiency of procedures, better access of citizens to justice, removal of the backlog of cases), how it is achieved will vary with the Member States' legal traditions.

In all Member States, disputes below a certain value[38] are governed by a specific procedure whose common features are:

1. simplified procedures for bringing an action (simplified referral - a registered letter, or a simple declaration recorded by the judge or a clerk of the court) and
2. the fact that a lawyer's assistance is not required and
3. a prior attempt to effect conciliation (which is mandatory in most countries) by the presiding judge.

The main variable is the "quantification" of the value below which this procedure is triggered.

Points 1, 2 and 3 are common to the following procedures up to the sum indicated in each case[39]:

Belgium:	Juge de paix	BFR 75 000	ECU 1 871
Denmark:	Byret	DKR 500 000	ECU 66 836
Germany:	Amstgericht	DM 10 000	ECU 5 121
Greece:	Juge de paix	DR 60 000	ECU 227
Netherlands:	Kantongerecht	HFL 5 000	ECU 2 284
Portugal:	Processo sumarissimo	ESC 250 000	ECU 1 333
United Kingdom:	Small claims scheme	UKL 1 000	ECU 1 285
Northern Ireland:	Small claims scheme	UKL 1 000	ECU 1 285
Scotland:	Small claims scheme	UKL 750	ECU 965
Spain:	Juge de paix	PTA 80 000	ECU 519
France:	Saisine simplifiée	FF 13 000	ECU 1 973
Ireland:	Small claims scheme	IRL 500	ECU 625
Italy*:	Juge de paix	LIT 5 000 000	ECU 2 789

38 In seven Member States this sum corresponds to the court's *ratione summae*; in the others it is equivalent to a ceiling which triggers application of a simplified procedure for courts of first instance.

39 Conversion into ECU was carried out on the basis of the standard rate applied by the Commission in June 1993.

* (a lawyer's assistance is required if the value of the dispute exceeds LIT 1 000 000)

Thus the ceiling for "small claims" varies enormously. However, a general principle seems to be emerging in all the Member States. Briefly: the cost of a procedure (court costs, lawyer's fees, expert's fees) should not be out of proportion to the value at issue.

This principle should brook no derogations except when the complexity of the case justifies them clearly - indeed the European Court of Human Rights has developed a principle which is quite similar, concerning the interpretation of "reasonable delay", required by Article 6 of the European Convention on Human Rights.

This is a principle which does not tend to favour one party (plaintiff or defendant) or one category of parties: the procedural formalities are reduced so that the cost of the procedure is "reasonable" (taking into account the value at issue) for all parties concerned (firm and consumer, plaintiff and defendant) as well as for the administration of justice.

This principle gives due consideration both to equity and national budgetary constraints.

The role of "conciliation" in these procedures is a crucial one: in many countries this is highlighted by the "name" given to the competent judge (*justice of the peace* in Belgium, in Greece, in Italy and Spain; in France also the courts of first instance have assumed the functions which were formerly those of the justice of the peace).

The likelihood of successful conciliation is in fact greater when it is initiated by the same judge who (if conciliation fails) will have to hand down the judgment; moreover, this conciliator's credibility is underpinned by his independent and impartial status.

Apart from this "common denominator", disparities between "ordinary" procedures are very great. The procedures for introducing the action, calculating the time limits, the costs of the procedure, recovery of experts' fees, the role of the judge in the production of proof, conditions for the award of legal aid (in a nutshell, the structure of the case) are the product of country-specific traditions: rules of procedure as a whole represent a delicate balance and can only be harmonised gradually and with the utmost caution.

An emerging trend in the Member States concerns the provisional enforcement of the judgment of first instance. In the countries which have adopted this approach (such as Italy), the measure is designed to dissuade "dilatory appeals" (appeals whose only goal is to prolong the dispute. Indeed in some countries, such as Belgium, such appeals may be subject to penalties).

However, the length of ordinary procedures varies enormously from one Member State to another: in 1991, for a civil case valued at between ECU 3 000 and ECU 4 000, the average time lag between the institution of proceedings and the judgment was 4.3 months in France (courts of first instance) and 38.9 months (1 166 days) in Italy (Tribunali)[40].

In a rule of law Community the principle of equality of treatment should also apply to citizens who invoke, before the national courts, compliance with a given Community rule.

III.A.1.b OUT-OF-COURT PROCEDURES

Besides court procedures, a number of specific out-of-court procedures for the settlement of consumer disputes have been established at national level. These procedures were summarised in Part II (national chapters).

Such procedures are sometimes an alternative to going to court (arbitration of consumer disputes)[41] but more often they are complementary or pre-litigation procedures (mediation and/or conciliation)[42].

As regards the disputes covered by these procedures, most Member States have adopted a sectoral approach. Normally, initiatives are taken in a specific economic sector (banks, insurance, telecommunications, etc.). Sometimes it is the public administration[43] that sets up the structure, sometimes they are established unilaterally, and sometimes after "negotiation" with consumer organisations.

In certain Member States the body responsible for dealing with the disputes is a public authority (example: Consumer Complaints Board in Denmark), but in most countries it is a private body (permanent or temporary, consisting of one or several members).

Other differences concern how the body is designated (in the case of collegiate bodies, consumer organisations and businesses are normally represented) as well as the legal status of membership on the part of professionals (normally, membership is on a case-by-case basis, but in some case candidate firms may have to commit themselves to accepting the system "a priori").

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40 Source: official statistics of the Ministries of Justice of France and Italy.

41 *Juntas arbitrales* in Spain, consumer arbitration centres in Portugal, Geschillencommissie in the Netherlands.

42 Sometimes both types are combined: the parties may submit their questions to arbitration after having tried to effect conciliation.

43 Example: United Kingdom.

As regards the legal effects of the procedure, the differences are also considerable, ranging from a simple recommendation (in the case of most private ombudsmen), to a decision binding on the professional but not the consumer (example: bank ombudsman in most Member States), or to a decision binding on the two parties (arbitration).

This multiplicity of initiatives (and the welcome many of them have received) proves that the "demand" for justice, as regards consumer disputes, is not "satisfied" in certain Member States by the existing court procedures.

From the point of view of "users" (both consumers and industry), the cost and duration of a court procedure is very often disproportionate to the value at dispute. This explains the development of alternative (or supplementary) instruments for settling disputes alongside (or upstream of) court procedures.

This trend, in the absence of measures designed to facilitate "public" access to justice, is likely to continue. From the economic viewpoint, it corresponds to a "demand".

However, there is also the question as to the extent to which the guarantees of independence (or at least impartiality), which in rule-of-law states are invested in the judiciary, can be assured by the new "judges" who are increasingly being called on to settle disputes outside the framework of the courts proper.[44]

II.A.2 "Transfrontier" disputes

III.A.2.a SPECIFIC AND SUPPLEMENTARY BARRIERS

Chapter I.B.2 discussed cases in which transactions between professionals and consumers are increasingly likely to give rise to a "transfrontier" problem. It was here that the notion of "transfrontier disputes" was aired.

In the context of this Green Paper, and without wishing to rule out more stringent definitions, the expression "transfrontier dispute" is employed whenever:

- t|he plaintiff (natural person) is domiciled in a country other than the one in which the defendant (professional) is legally established or
- the plaintiff (professional) is legally established in a country other than the one in which the defendant (natural person) is domiciled[45].

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44 See also Chapter IV.D.

45 In the definition proposed here, we have used the notions ("domicile" and "establishment") contained in the Brussels Convention. However, the terminology used in the international conventions is not consistent:

- as regards physical persons, mention is sometimes made of the "domicile" (Article 13 of the Brussels Convention), and sometimes of the "habitual residence" (Rome Convention, Article 5, and The Hague Convention on the law applicable to products liability of 1973), or again the "place in which the person is located" (The Hague Convention on civil procedure of 1954);

By comparison with similar disputes of an "internal" nature, settlement of a transfrontier dispute is compounded by a number of specific and supplementary difficulties.

In general these "complications" arise from:

1. the question of the law applicable to the substance (*lex causae*) and procedure (*lex fori*) of the dispute (for at least one of the parties it will always be a "foreign" law, hence the necessity to have recourse to a lawyer, even where this is not theoretically required by law);

2. the competent court (for at least one of the parties it will always be a "foreign" court - hence the need to engage a second lawyer practising at the court in question);

3. submission of the documents (which must always "cross" a frontier - hence the application of formalities and time limits which may be far more critical than when submitting documents within a given country);

4. translation of the documents (those emanating from the party domiciled in a country other than the country of the competent court - hence the supplementary fees for this party);

5. the court documents (to the extent that these may be required in a country other than the one of the court handling the case - hence additional delays connected with the sending of letters rogatory");

6. enforcement of the judgment (if the losing party is domiciled in a country other than the one in which the court has handed down its decision, enforcement must be preceded by what is called "recognition" of the foreign decision).

To sum up, these are supplementary and specific "barriers" which, on top of the existing "barriers" applying to national disputes (cost, duration and complexity of the procedure as well as the psychological reluctance which results from this) may seriously hinder access to justice, at least for private individuals - in the face of all these barriers, the average citizen will often dispense with invoking his rights.

III.A.2.b THE INTERNATIONAL CONVENTIONS

With a view to improving the above-mentioned situation, several conventions have been signed by the Member States either in a Community context (Article 220 of the Treaty) or in the context of The Hague Conference on Private International Law.

At present however, none of these conventions are in force in all the Member States:

- as regards legal persons, mention may be made of the seat (Brussels Convention, Article 16.2) or the main establishment (The Hague Convention of 1973, Article 4), or again "other establishment" (Brussels Convention, Articles 5 and 13).

- the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, whose extension to Spain and Portugal has been delayed because four of the signatory states have not yet ratified it;

- the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, whose extension to Spain and Portugal has been delayed because the Netherlands is the only Member State that has ratified it to date;

- The Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil and commercial matters, which was signed by all the Member States in the Community, but has not been ratified by any of them.

- The Hague Convention of 10 March 1970 on the taking of evidence abroad in civil or commercial matters, which was ratified by eight Member States but not by the others.

Other conventions, such as The Hague Convention of 25 October 1980 designed to facilitate international access to the courts, have only been signed by a minority of the Member States.

As regards the conventions which have been signed by all the Member States one can reasonably hope that they will soon be in force throughout the Single Market. This would already be a step in the right direction.

When all the ratifications are in, "intra-Community" disputes should pose fewer problems than other "transfrontier" disputes, and intra-Community trade can only but benefit.

However, the need for legal "certainty" in the marketplace means that certain problems which have not been resolved by the existing conventions must be looked at more closely.

III.A.2.c OUTSTANDING PROBLEMS

Firstly, as regards the law applicable, the Convention of Rome applies only to contractual obligations (and there are many exceptions - see Article 1). Hence, cases of non-contractual liability are thus governed by the private international law of the Member States, which may lead to conflicting solutions.

For example product liability[46] law has been partially harmonised (Directive 85/374/EEC), but important differences still remain with regard to:

- the "ceiling" as regards damages resulting from death or personal injury (Article 16)
- the exclusion of agricultural products (Article 15a)
- development risks, which may be invoked as a defence (Article 15b)

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46 In the TMCS case (C-26/91, ECR I-3967) concerning a direct action by a subsequent purchaser against a seller, the Court of Justice of the European Communities recently confirmed the non-contractual nature of the *action*, for the purposes of classifying the action with a view to determining the competent court

- compensation for non-material damages (ninth recital).

Consequently, there will be big differences depending on which law is applied; since neither the Directive nor the Rome Convention tell us which law applies, a Convention on this issue was signed in The Hague on 2 October 1973, but only four of the Member States have ratified it.

Secondly, the signature of the Agreement on the European Economic Area was preceded by a Convention (Lugano 1988) which will enable the Convention of Brussels to be extended to the EFTA Member States, but no extension has been provided for in the case of the Convention of Rome.[47] Consequently, determining the law applicable to relations between EC nationals and EFTA nationals may depend on 72 (12 by 6) combinations of bilateral conventions and/or rules of private international law.

On the other hand the Brussels Convention establishes what one might call the "free movement of judgments". However, the five cases in which judgments are not recognised provided for in Article 27 (and in particular the first and second cases) amount to a supplementary control by the presiding court. For example, Article 27(2) of the Convention requires the court to examine whether the documents were served "in sufficient time" even when the court of the state of origin has already decided, in a separate trial, that the document was in order: the court to which a request for recognition has been submitted is not therefore bound by the opinion of the court of the state of origin[48].

Moreover, uncertainties in application result from reference to national systems as regards the notion of referral. Both in the cases of *lis pendens* (Article 21)[49] and in the case of related actions (Article 22) it is the "court first seized" that matters. However, the "point of departure" of the procedure is not defined by the Convention, and so the risk of conflicts of jurisdiction exists (in certain countries, the dispute is held to be pending from the date the document instituting the proceedings is served to the defendant; in other countries, the case must have been registered with the clerk of the court; in one country *lis pendens* is triggered by admission of the claim, while in yet another the relevant date is that on which the clerk of the court sends the document to the defendant).

III.A.2.d SMALL CLAIMS

All this goes to show that transfrontier disputes can be exceedingly complex, even in the case of an intra-Community dispute. The barriers listed above (points 1-6) become de facto

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47 An initial discussion of the problem has been started in the context of European Political Cooperation.

48 As the Court of Justice has consistently held (see inter alia the judgment of 16 June 1981, Klamps v. Michel, ECR 1981, 1.593).

49 CJEC, Case 144/86, Guais Maschinenfabrik v. Palumbo (1987), ECR 4861 and Case C-351/89, Overseas Union Insurance v. New Hampshire Insurance (1991), ECR I-3317.

unsurmountable if the sum at issue does not justify the additional costs that arise from the transfrontier (or intra-Community) nature of the case.

Indeed the simplified procedures introduced in the Member States (Chapter I.B) are very difficult to apply when the complainant is domiciled in a Member State other than that of the defendant:

- the "short" time limits cannot be applied[50];
- the freedom not to engage a lawyer (a freedom which is somewhat theoretical even in the context of "national" procedures) is pure fantasy given the complexity of the problems (both in regard to substance and procedure) associated with "transnational" cases;
- attempts to effect conciliation, because they presume the attendance of the parties in person, imply (at least for one of the parties) travel expenses which are often in excess of the value at issue.

Attempts to simplify procedures applicable to "small claims" which have been applied at national level in all the Member States cannot therefore be effective beyond the legal frontiers. But in the absence of a procedure that is "proportionate" to the value of the dispute, the private individual is deprived of his remedies: at this moment there are probably no "small" transfrontier claims in the Single Market. But then, in the medium term, there will no longer be any transfrontier consumers - the equation "no disputes = no problems" is specious because consumers who have "abandoned" a transfrontier dispute will also soon "abandon" all transfrontier transactions.

From the consumer viewpoint the notion of "small" dispute is misleading: a dispute that is relatively small for a firm may not necessarily be so for private individuals - the ceilings set by Member States for triggering a simplified procedure (arithmetic mean: approximately ECU 1 800) often exceed a normal monthly salary. For the average citizen, this dispute is hence just as "small" as a month's turnover is for a firm[51].

From the point of view of business, "small" disputes may in aggregate be non-trivial economically. Since any transaction may give rise to a dispute (indeed, forward studies try to assess the likely percentage), the importance of procedures for settling disputes - even "small" ones - is vital for businesses as well as for consumers. In the absence of effective procedures, there will be no legal certainty and no economic certainty.

From the point of view of the administration of justice, the notion (*ratione summae*) of "small dispute" is behind a "simplification" of procedures whose goal is to "reconcile" a duty

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50 The Civil Codes provide for a longer time limit when documents have to be served abroad; the court documents must follow the so-called "letters rogatory" procedure and the case documents must be translated.

51 Moreover, lawyers' fees, court fees and expertise fees, in the case of a transfrontier dispute will be far higher than in a similar domestic case. There is no "legal protection", these expenses will have to be advanced by the individual who will often be strapped for funds.

(to render justice) and a budgetary requirement (the cost of the procedure). If the dispute is "transfrontier", reconciling the two objectives is more difficult.[52].

From the point of view of a Community based on the rule of law , it is hard to see why private individuals, as well as professionals, should be subject to discrimination arising from the "intra-Community" nature of their business dealings. After all if they have done business, it is because they have taken at face value the promise of a "space without frontiers" (Article 8a of the Treaty).

The complexity of the treatment of intra-Community disputes is partly due to the (legal and judicial) frontiers which still exist.

Although lowering of these frontiers may be the subject of other conventions, the costs of processing intra-Community disputes will still remain very high, both for the administration of justice and for the parties concerned.[53]

Hence the question is to see whether other instruments exist and to what extent they could be applied to transfrontier disputes.

The notion of "class action" (a collective action brought by an individual, group of individuals or an organisation acting on behalf of a category) has been introduced into most of the "common law" countries but does not belong to the legal traditions of most of the Member States of the Community.

The joint representation action (which is based on an express - not an implicit - warrant from persons who have been injured through the behaviour of a defendant) seems to be far closer to the general procedural principles common to the Member States, but so far has been introduced only in one Member State (France).

The simple joining up of connected cases, in the case of transfrontier disputes, poses technical problems already discussed in this chapter (notion of the "court of first seizure").

In Chapters III.B.1 and III.B.2 we therefore examine another category of procedures - instruments which enable the prevention or enjoin the cessation of unlawful acts[54] rather than (and before) having to "calculate the damages"[55].

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52 To the "normal" cost of a court procedure one must add translation costs, costs of serving the documents, letters rogatory and above all the time devoted to all these operations by clerks of the court, bailiffs and sometimes even the judge himself.

53 Legal aid (both as regards counselling and aid before the courts) is dealt with in Chapter II.C.

54 Order for an injunction in the collective interest.

55 Individual or collective action for damages.

III.B Protection of collective interests

III.B.1 The existing procedures

The relatively new notion of collective interest was introduced into national legislations in the course of the last century. Member States have adopted a variety of measures for its legal protection.

All the national legislations examined now recognise the existence of a category of interests whose scope is:

- wider than that of individual interests (which are defended via the right of individual action) but
- more limited than that of the general interest (whose defence lies with the Ministry of Public Order).

The unprecedented nature of the interest protected by the legislators (substantive law) made it necessary to adapt existing legal procedures or to create new ones.

To accommodate the collective interests of consumers, statutory amendments to the relevant procedural rules were introduced in all the Member States of the Community in recent years.

The most significant difference in legislative technique does not concern the existence of a "representative action" as such (which makes it possible to invoke the protected interest before the courts) but rather the criteria defining who is entitled to bring an action: in certain Member States, protection of collective interests has been accorded to the social groups (organisations of consumers and firms), whereas in other Member States it is the task of a public authority. The survey of national legislations may be summarised as follows:

In three Member States, the protection of collective interests has been confided to an autonomous or independent administrative authority (Director General of Fair Trading in the United Kingdom, Fair Trading Act, 1973; Consumer Ombudsman in Denmark, Marketing Practices Act 1975; Director of Consumer Affairs in Ireland, Consumer Information Act, 1978).

In eight Member States consumer organisations have been recognised as having a *locus standi* (Germany: Gesetz gegen den unlauteren Wettbewerb 1909, amended in 1965 and the Act of 9 December 1976 concerning unfair terms; Greece: Act No 2000 of 24 December 1991; Spain: Act No 3 of 10 January 1991; France: Act No 14 of 5 January 1988 and Act No 60 of 18 January 1992; Italy: Act No 287 of 10 October 1990 and Legislative Decree No 74 of 25 January 1992; Luxembourg, the Acts of 21 August 1983 and 27 November 1986; Netherlands: Articles 6/196 and 6/240 of the new Civil Code; Portugal: Act No 29 of 22 August 1981).

In one country, legal protection of collective interests may be undertaken both by consumer organisations and by an administrative authority (Belgium: Act of 14 July 1991 on commercial practices, Articles 95 and 98 and Act of 12 June 1991 on consumer credit).

As regards the object of the action (*petitum*), all the Member States allow organisations or the competent authority to obtain an injunction or prohibition order in respect of forbidden

or unfair commercial practices (irrespective of the civil, penal or administrative nature of the infringement).

As regards the definition of a commercial practice as "unlawful" or "unfair" (*causa petendi*), certain countries have introduced a "general clause" (normally accompanied by an indicative list) whereas others have opted for an exhaustive "inventory" (examples: misleading advertising, unfair terms, abuse of a dominant position).

But the point to note is that *actions for an injunction* are provided for in all the Member States, in respect of certain commercial practices which can "prejudice" the good functioning of the market. This is a "regulator" which enables both consumers and business competitors to prevent - rather than cure - the consequences of certain abuses.

The preventive function of the action for an injunction is assured through specific procedural rules: the action is prepared and introduced in the form of summary jurisdiction (accelerated procedure) and the judgment is normally enforced on a provisional basis[56].

Unfortunately, this "*regulatory mechanism*" was conceived by each Member State from its own national perspective.

In the Single Market, while commercial practices may move freely, the rules of procedure stop at the frontiers, which (still) correspond to the limits of jurisdiction of each state - the *lex fori*.

III.B.2 Difficulties in applying the existing procedures in the case of transfrontier commercial practices

Pursuant to the Fair Trading Act (sections 35 and 38) the Director General of Fair Trading exercises his powers in respect of any practice "which is detrimental to the interests of consumers in the United Kingdom".

- If Danish consumers get mailshot "solicitations" from an English firm and this solicitation is considered "unfair" both under the Fair Trading Act and Danish law, the Director of Fair Trading will not be able to exercise his powers (since to do so would put him *ultra vires*) and it will be very difficult for the Danish Consumer Ombudsman to exercise his (unless he orders the opening of all mail coming from the United Kingdom - which might clash with other legal provisions).

- If English consumers are victims of timeshare scams in Spain or frauds connected with the purchase of alcoholic beverages in Calais, all the Director of Fair Trading can do about it is contact his Spanish or French equivalent (if there is one) or address consumer organisations in these countries; however, the latter will not be able to demonstrate an "interest in bringing an action" before the national courts.

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56 In certain countries, the action for an injunction may be accompanied by a fine and/or publication of the decision.

- If French consumers, having borrowed money from an English bank, are victims of an infringement of the 1974 Consumer Credit Act, there is nothing either French or English organisations can do for them (in the United Kingdom the *locus standi* lies only with the Director of Fair Trading).

The representative actions provided for in Luxembourg legislation can only be brought by an "association of consumers represented at the price commission" of the Grand Duchy (and in effect there is only one consumer organisation represented at this commission).

- If a misleading television advertisement broadcast from Luxembourg is addressed (solely) to Belgian viewers, associations in neither Belgium nor Luxembourg can demand the discontinuation of this advertising. Belgian associations cannot do so because they are not represented at the Grand Duchy's price commission, whereas the Luxembourg association does not have any "interest in bringing an action" in the legal sense.

- If the general contractual conditions applied by Luxembourg banks contain unfair terms, German savers with current accounts in Luxembourg can only turn to the above-mentioned Luxembourg association (since German associations are not represented at the Luxembourg price commission) and if certain terms apply only to "foreign" clients, this association will not have an interest in bringing an action (in the legal sense of course).

- If French consumers are victims of an unlawful commercial practice (both under Luxembourg law and French law) emanating from Luxembourg, their organisations will not be able to bring an action before the tribunals of the Grand Duchy, while the Luxembourg association will not be able to justify an interest in bringing an action in accordance with the *lex fori*.

The representative actions provided for in French legislation are reserved for "*registered associations provided they have been approved to this end*". However, this approval, required for bringing an action, is reserved for French associations (Decree No 88-586 of 6 May 1988).

- If German consumers are harmed by a commercial practice which is unlawful (according to French law) and has taken place in France, the German consumer organisation will not be able to refer the matter to the French courts; if the commercial practice (for example distance selling by a French firm) took place in Germany and is illegal according to German law, the organisation would be able to sue before a German court and consequently demand enforcement of the judgment in France, but the "accelerated" nature of the procedure would be completely frustrated.

- If Italian consumers have been victims of the same commercial practice in Italy, they will not even have this option: Italian law does not provide for collective action except in cases of misleading advertising.

These examples could be multiplied.

And yet, an action for an injunction often makes it possible to avoid a multiplicity of (individual) actions with a view to obtaining damages: it plays both a "preventive" role and is a source of considerable "savings" in the administration of justice.

In a Single Market, where goods and services circulate freely, the principle of "free movement" should also apply to legal instruments designed to ensure the discontinuation of unlawful practices.

Article 24 of the Brussels Convention provides that "application may be made to the courts of a contracting state for such provisional, including protective, measures as may be available under the law of that state, even if, under this Convention, the courts of another contracting state have jurisdiction as to the substance of the matter".

Hence, in urgent cases the appellant may in principle address himself to the court of the place where the measure is to be enforced; this principle (of proximity and effectiveness) might be a formidable instrument if the "court of the place where the measure was to be enforced" could be seized by the organisations (or authority) of the place where the damage has occurred[57].

At present, we are faced with the following paradox:

- the organisations/authorities of the place where the harm occurs do not have the capacity to act (the *locus standi* being reserved under the *lex fori* to the "national" organisations);
- the organisations/authorities of the place where the measure is to be enforced do not have an interest (in the legal sense) in bringing an action (the interests of "national" consumers are not affected by a practice addressed to "foreign" consumers).

Rebus sic stantibus, it is enough to shift the locus of unlawful practices beyond the border represented by the *lex fori*, to be virtually out of reach of any action for an injunction. The purpose of the Brussels Convention (Article 24) is perverted and the principle of non-discrimination (Article 7 of the Treaty) would appear to be jeopardised, in so far as the *lex fori* reserves the right of action to "national" organisations.

At any rate it is hard to see how the Single Market can work properly in these circumstances.[58]

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57 The Commission has received a total of 42 complaints concerning misleading advertising addressed by a German firm (Homevertrieb) to clients domiciled exclusively outside of Germany (mainly in France).
Several decisions were handed down in 1989 by the French courts condemning this firm, but to date it has not been possible to enforce any of them. A request deposited on 29 January was rejected by the clerk of the competent German court, on the grounds that the defence had changed address and could not be contacted. In the meantime a firm called "Chance Vertrieb" (which uses the same post office box as "Homevertrieb") took its turn to address to French consumers advertising which was very similar to that already condemned by the French courts.

58 See Chapter IV.A.

III.C Aid for legal advice and legal aid

III.C.1 Aid for legal advice

The pilot projects prompted by the Commission (see in particular the ongoing projects in Ireland, Italy and Greece) show that a very large percentage of consumer disputes can be settled without going to court at all, provided a counselling service is made available to consumers (this service must be free of charge or at least its price must be "accessible" to the consumer).

- In the United Kingdom, the local authorities finance almost 1 000 "Citizen Advice Bureaux", where advice is provided largely by volunteers.

- In France, Act 91-67 of 10 July 1991 introduced, alongside legal aid, aid for legal advice, which enables the beneficiary to obtain information as to his rights and duties, advice on how to invoke his rights, and assistance with a view to preparing court documents.

These are just some examples (by no means exhaustive) which might be considered when discussing the limits of "classical" legal aid, which is reserved exclusively for disputes before the courts, while all the citizen may need is a simple piece of advice (something which is not provided for in the vast majority of the existing systems).[59]

III.C.2 Legal aid

Member State rules on legal aid vary enormously, with regard to:

- the conditions for eligibility (level of income and sometimes wealth, accompanied in certain countries by a summary assessment of the "well-foundedness" of the contemplated action);
- the domain covered by the system (out-of-court procedures, such as arbitration and administrative procedures are not covered in most Member States);
- the way it is exercised (and, notably, the possibility of choosing one's lawyer).

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[59] In this connection, see Recommendations R (93)1 on effective access to the law and to justice for the very poor, adopted by the Council of Europe on 8 January 1993.

In the context of the Commission's Medium-Term Action Programme to combat exclusion and promote solidarity (1994-1999), the discussion on effective access to justice, to out-of-court conflict settlements and to the courts for the least privileged is also mentioned. The following measures deserve consideration:

- the development and funding of citizen-friendly legal services or centres
- recourse to mediation and conciliation
- access to the courts
- possibility for non-profitmaking non-governmental organisations to institute proceedings in order to protect the rights of persons who cannot defend themselves because of their being in a position of dependency.

Legal aid is a critical factor in transfrontier disputes: the cost of these disputes is often higher than the cost of similar dispute of a domestic nature (see Chapter III.A.2) and, given the complexity of the legal issues, there is no way of dispensing with a lawyer's assistance even where it is not theoretically required (small claim procedures, justice of the peace).

The eligibility conditions, and notably the income levels to which entitlement to legal aid is linked, ignore this dimension. The blunt facts are that someone who could normally afford the lawyers' fees or bring an action personally "in an ordinary dispute" is often unable to pay the costs (or bring an action himself) in the case of a similar dispute of a transfrontier nature.[60]

Taking these points into account, and in order to learn more about the existing situation, the Commission commissioned the Conseil des barreaux de la Communauté européenne to carry out a research project. The Conseil des barreaux has since produced:

A. a draft "Guide to Legal Aid"

B. a report for the Commission on the provisions governing legal aid in the Member States.

This study should also provide food for thought on the topic of legal aid in transfrontier disputes; in this connection, the question of eligibility of non-profitmaking associations should also be broached.

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60 In the Cowan Case, the Court of Justice ruled that "the prohibition of discrimination laid down in particular in Article 7 of the EEC Treaty must be interpreted as meaning that in respect of persons whose freedom to travel to a Member State, in particular as recipients of services, is guaranteed by Community law that State may not make the award of State compensation for harm caused in that State to the victim of an assault resulting in physical injury subject to the condition that he hold a residence permit or be a national of a country which has entered into a reciprocal agreement with that Member State" (Grounds, 20, Judgment of 2 February 1989, ECR, p. 122).

III.D Community law and remedies

III.D.1 The link between substantive law and remedies

In its judgment of 19 November 1991 (joint cases C-6/90 and C-9/90; ECR 1991, p. 5357) the Court of Justice of the European Communities confirmed that "it has been consistently held that the national courts whose task it is to apply the provisions of Community law in the areas within their jurisdiction must ensure that those rules take full effect and must protect the rights which they confer on individuals. [.....] The full effectiveness of Community rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain redress when their rights are infringed by a breach of Community law".

Hence the link between substantive law and remedies ("ubi jus, ibi remedium") has been affirmed very clearly in this judgment of the Court of Justice: if it is not possible to obtain redress when rights recognised in Community law are infringed, the very effectiveness of Community law itself is jeopardised.

According to the Court of Justice, implementing these remedies is a genuine obligation for the Member States, which "is to be found in Article 5 of the Treaty, in which the Member States are required to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under Community law" because "among these is the obligation to nullify the unlawful consequences of breach of Community law (see, in relation to the analogous provision of Article 86 of the ECSC Treaty, the judgment in Case 6/60, Humblet v Belgium [1960] ECR 559)."

Is this obligation satisfied by simply providing a remedy, irrespective of its content and procedural rules?

According to the Court of Justice, this is not so: even if "[I]n the absence of Community legislation it is for the internal legal order of each Member State to designate the competent courts and lay down the detailed procedural rules for legal proceedings", nevertheless "the substantive and procedural conditions for reparation of loss and damage laid down by the national law of the Member States must not be less favourable than those relating to similar domestic claims and must not be so framed as to make it virtually impossible or excessively difficult to obtain reparation"; at any rate the procedural rules should "fully safeguard the rights which the individuals derive from Community law".

Hence, even in the absence of a Community rule, the procedural rules for access to justice are also covered by an obligation under Community law. This is confirmed by the Court's judgment of 9 November 1983, 199/82 (ECR p. 3595) concerning a Member State whose redress procedures concerning the repayment of taxes levied in breach of Community law are such as to render obtaining reparation "excessively difficult".

The case law of the Court of Justice in this domain (and notably the judgments of 19 November 1991 and 9 November 1983) may be summarised as follows:

- recognition of a substantive right on the part of the Community legal order always implies recognition of a right to bring an action (otherwise the "full effect" of Community law will not be assured): the existence of appropriate remedies is thus required under Community law;

- the implementation of these remedies by the Member States is a genuine obligation, which is founded in Article 5 of the Treaty: it is an obligation to "nullify the unlawful consequences of a breach of Community law";

- the procedural rules of access to justice do not depend on the arbitrary will of the Member States. Even in the absence of a Community rule, the substantive and procedural conditions laid down by national legislations may not:

  . be less favourable than those which concern similar domestic claims or

  . make it virtually impossible or excessively difficult to obtain reparation;

  and they must

  . fully safeguard the rights which individuals derive from Community law.

It is up to the Commission, as the "guardian" of Community law (Article 155 of the Treaty of Rome) to ensure compliance with these conditions and to require (where relevant on the basis of Article 169 of the Treaty) that the Member States take the necessary measures.

III.D.2 Remedies in Community legislation

"In the absence of Community legislation, it is for the internal legal order of each Member State to designate the competent courts and to lay down the detailed procedural rules for legal proceedings".[61] Hence the Court of Justice does not exclude a Community rule which would designate the competent court or lay down the detailed procedural rules for a specific domain, in the context, for example, of a directive.

Here, Community legislation already provides several examples.

1) **Council Directive 92/13/EEC of 25 February 1992**
   Legal basis: Article 100a

This Directive (coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors) is almost entirely devoted to the creation of "appropriate review procedures ... made available to suppliers or contractors in the event of infringement of the relevant Community law or national rules implementing that law".

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61 CJEC, Judgment of 19 November 1991, cited above (ECR 1991, p. 5357).

The Community has not merely made it incumbent on Member States to create an appropriate review procedure, but it has also regulated procedures concerning:

- the interest in bringing an action (Article 1, paragraph 3);
- interim measures, including suspension (Article 2, paragraph 1, point a);
- setting aside of decisions taken unlawfully (Article 2, paragraph 1, point b);
- "other measures", such as an order for the payment of a particular sum (Article 1, point c);
- award of damages (Article 2, paragraph 1, point d);
- burden of proof (Article 2, paragraph 7);
- "effective" enforcement of the provision (Article 2, paragraph 8);
- grounds for the decision (Article 2, paragraph 9);
- means of appeal (Article 2, paragraph);

and even a conciliation procedure which the Directive regulates in great detail (Articles 9 to 11).

It goes without saying that a Directive like this, even if the goal concerns substantive law (transparency of the markets and guarantee of non-discrimination), goes to the very core of the judicial law of the Member States. Indeed there was no alternative - it was the only way to ensure the full effect of the measures envisaged.

Moreover, the recitals clearly justify the instrument selected in the light of the objective in question:

- "Whereas Council Directive 90/531/EEC ... lays down rules for procurement procedures to ensure that potential suppliers and contractors have a fair opportunity to secure the award of contracts, but does not have any specific provisions ensuring its effective application";

- "Whereas the existing arrangements at both national and Community level for ensuring its application are not always adequate";

- "Whereas the absence of effective remedies or the inadequacy of existing remedies could deter Community undertakings from submitting tenders";

- "Whereas the opening of procurement in the sectors concerned to Community competition implies that provisions must be adopted to ensure that appropriate review procedures are made available to suppliers or contractors in the event of infringement of the relevant Community law or national rules implementing that law";

- "Whereas it is necessary to provide for a substantial increase in the guarantees of transparency and non-discrimination and whereas, for it to have tangible effects, effective and rapid remedies must be available".

2) **Council Directive 89/665/EEC of 21 December 1989**
Legal basis: Article 100a

Within the domain of public contracts, similar provisions (although less detailed) were introduced by Directive 89/655/EEC on the "coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts" (in this case the words "review procedure" actually figure in the Directive's title).

Here also the legal basis chosen by the Council was Article 100a, even if the (main) objective of the Directive was the creation of a review procedure.

This legal basis is no other than the one which establishes the goals pursued by the Treaty: in so far as provisions of substantive law were not sufficient to attain this objective, the "procedural" provisions are mandated in just the same way.

3) Council Directives 84/450/EEC of 10 September 1984 (legal basis: Article 100) and 92/28/EEC of 31 March 1992 (legal basis: Article 100a)

Directive 84/450/EEC (relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising) adopts a similar approach as regards the link between a protected interest and review procedures.

This Directive provides for the implementation of "adequate and effective means ... for the control of misleading advertising in the interests of consumers as well as competitors and the general public" (Article 4, paragraph 1).

In effect, the second paragraph of Article 4 confers upon the courts (or the administrative authorities) powers enabling them to order (or to institute appropriate legal proceedings to this end):

- the cessation of misleading advertising;
- the prohibition of misleading advertising which has not yet been published but whose publication is imminent. Moreover, these measures must be taken under an accelerated procedure, and Article 6 provides for a reversal of the burden of proof concerning the "accuracy of factual claims in advertising".

An identical provision is contained in Article 12 Directive 92/28/EEC on the advertising of medicinal products for human use.

Directive 93/13/EEC on unfair terms in consumer contracts more recently confirmed this approach, since it contains "procedural" arrangements (Article 7) with innovatory features vis-à-vis the domestic law of certain Member States.

In all three cases (as in the domain of public contracts), the establishment of review procedures, as well as the definition of certain procedural rules, has been the subject of Community rules to ensure that the interests at stake are protected as fully as possible (transparency and non-discrimination in the award of public contracts; protection of consumers and competitors with regard to misleading advertising or unfair terms).

4) Council Directive 89/552/EEC of 3 October 1989

Legal basis: Articles 57 (paragraph 2) and 66

Council Directive 89/522/EEC concerning "coordination of certain provisions laid down by law, regulation or administration action in Member States concerning the pursuit of television broadcasting activities".

In the context of this coordination, Article 23 introduces a "right of reply" in favour of "any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts".

This is a genuine remedy which the Community legal order has created with a view to safeguarding a protected substantive right.

The obligation on the Member States to establish an **effective right** of reply to television broadcasting bodies is set out in Article 23(3) of the Directive, which runs: "Member States shall adopt the measures needed to establish the right of reply or the equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States".

Finally, judicial monitoring of the right of reply is provided for in Article 23(5) of the same Directive: "Provision shall be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies can be subject to judicial review".

5) **Council Directive 93/7/EEC of 15 March 1993**
Legal basis: Article 100a

Following the adoption of Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods, Council Directive 93/7/EEC of 15 March 1993 provides for "proceedings ... with the aim of securing the return of a cultural object which has been unlawfully removed" from the territory of a Member State (Article 5).

These proceedings may be brought by the Member State from which the object was unlawfully removed (the plaintiff Member State) against the possessor (or failing him, the holder) before the competent court of the Member State on whose territory the cultural object is located (the requested Member State).

The time limit for these "return proceedings" for all Member States is set out in the Directive itself (Article 7), which also specifies the circumstances under which return proceedings may not be brought (Article 7.2), compensation which must be awarded to the possessor who has "exercised due care" in acquiring the object (Article 9), cases of donation or succession (Article 9, paragraph 3), and expenditure incurred in implementing a decision (Article 10).

Pursuant to Article 4.6 of the Directive, the competent authorities of the requested Member States may, without prejudice to Article 5, first "facilitate the implementation of an arbitration procedure, in accordance with the national legislation of the requested state and provided that the requesting state and the possessor or holder give their formal approval".

In effect this directive (legal basis: Article 100a) recognises a genuine right to bring an action (*locus standi*) not on the part of the owner of the object but on the part of the entity

which represents the "general" interest which has been infringed through the (unlawful) export of the object.

In this connection it should be noted that the requesting Member State, whose interest and capacity to bring proceedings before the courts of the requested Member State is recognised by the Directive, is not necessarily the owner of the cultural object (most of the objects belong to private collections): the right to bring proceedings is not linked to the holding of a substantive right (property of the object) but to the representativeness of the general interest (protection of the cultural heritage).

This example yet again confirms the link that exists between a protected interest and a remedy (right to bring proceedings), whose absence would vitiate the protection afforded by substantive law: this is very well put by the common law maxim "*ubi remedium, ibi ius*".

SOME CONCLUSIONS

The "contributions" of the Community legislator in the field of judicial law were motivated by:

a) the need to "guarantee the effective application" of Community law (Directives 92/13/EEC and 89/665/EEC) i.e. its "effectiveness" (Directives 92/28/EEC and 84/450/EEC).

b) the opportunity for "any person whose legitimate interests have been damaged ... to effectively exercise such right or remedy" (Directive 89/552/EEC).

c) the link between the representativeness of an interest protected by a legal order and the right to bring proceedings, which enables a person to "react" to the infringement of a rule protecting the interest (Directive 93/7/EEC).

The last example serves to remind us that:

1. the Community legal order protects only individual interests;
2. the link between the interest protected by the legislator and the remedy (which must ensure that protection is effective) implies that a right of redress may be exercised by the entity that represents the protected interest (which is not always an individual).

Clearly, and taking into account the subsidiarity principle, the Community legislator's rules pertaining to remedies cannot but be exceptional - in principle, recognition of a subjective right (or a collective interest) by the Community legal order does not imply the creation of any remedy (or procedure) over and above those which are supposed to exist in each Member States anyhow.

Nonetheless, in the above-mentioned cases, the harmonisation of certain procedural rules (or the creation of a specific remedy) would seem necessary whenever existing national procedures cannot guarantee the effective (and non-discriminatory) application of the provisions in question.

As to the Council, it has drawn on the following legal bases:

- Article 100 (Directive 84/450/EEC of 10 September 1984);
- Articles 57 and 66 (Directive 89/552/EEC of 3 October 1989);
- Article 100a (Directives 89/665/EEC of 21 December 1989, 92/13/EEC of 25 February 1992, 92/28/EEC of 31 March 1992, 93/7/EEC of 15 March 1993 and 93/13/EEC of 5 April 1993).

IV. THEMES FOR DISCUSSION

IV.A The free movement of actions for an injunction

Competition law and consumer law are the two essentials of a properly functioning market economy, which allow it to achieve its basic objective - free access to the market for firms and freedom of choice for consumers[62].

In all the Member States these freedoms are assured by two types of rules:

- the first level (substantive law) aims at establishing the minimum "rules of the game" (in the absence of which the less scrupulous player, not the better one, comes out on top)[63];
- a second level (procedural law) which establishes a "regulator" and procedures which make it possible to prevent and/or penalise the infringement of the above-mentioned rules[64].

As regards the first level, there has been an "approximation" of national provisions within the Community - minimum "rules of the game" exist and have made it possible to create the internal market, but their practical enforcement (i.e. the functioning of the market) hinges on a multiplicity of national procedures and "regulators".

In Chapters III.A.2 and III.B.2 we examined the problems of "movement" between the existing national procedures and the possible consequences.

Partly to avoid a situation like this, in competition law a "dual level" of Community rules was enshrined in the Treaty from the outset: the rules of the game were established by Articles 85 and 86, while Article 87 provides for the adoption of "any appropriate regulations or directives to give effect" to these principles. This has made it possible to adopt a series of rules of procedure[65].

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62 The interdependency of these two freedoms is also enshrined in Articles 85 and 86 of the Treaty. In many Member States, the monitoring authority is however one and the same: the Office of Fair Trading in the United Kingdom; the Direction Générale de la Concurrence, de la Consommation et de la Répression des fraudes in France; the Ministère des Affaires Economiques in Belgium; Autorità Garante della Concorrenza e del Mercato in Italy.

63 From the point of view of firms that respect the rules of the game, the infringement of consumer law also distorts competition in favour of the firm that is responsible. Misleading advertising is an example.

64 In the Member States these procedures may be invoked either by consumer organisations or by organisations of firms, or by the public authority responsible for the smooth functioning of the market.

65 Council Regulation No 17/62 of 6 February 1962, Commission Regulation No 27/62 of 3 May 1962, Commission Regulation No 99/63 of 25 July 1963, Council Regulation No 19/65 of 2 March 1965 and others. In this domain not only is the procedure a Community one but the "regulator" is also a Community regulator.

As regards the other domains where substantive law has been approximated, procedural rules were sometimes introduced on the basis of Article 100a (the directives which follow this approach were discussed in Chapter III.B.2) - indeed Article 100a was introduced by the Single European Act with a view to facilitating (qualified majority instead of unanimity provided for Article 100) the "approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment[66] and functioning[67]" of the Single Market.

As the national legislations show, no market can work properly without a "regulator" and a "procedure" for enforcing the rules of the game (since otherwise these rules would be ignored) in the interests of consumers and business alike.

As regards unlawful commercial practices (such as misleading advertising or unfair terms), national procedures are ineffective (and the national regulators cannot exercise their role) when the unlawful practice has its origin in another Member State (typical examples were discussed in Chapter III.B.2); moreover, the existing situation sometimes gives rise to discrimination[68].

Bearing this in mind, the good functioning of the Single Market requires that the principle of free movement also be applied to measures designed to ensure the discontinuation of unlawful (transfrontier) practices.

To achieve this end, there are only three solutions:

- either there is a Community "regulator", who applies a Community procedure[69];
- or a Community procedure is made available to the national regulators (harmonisation of actions for an injunction);

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66 Substantive law.

67 Since the good functioning of the Single Market depends on a wide range of procedures, the procedural barriers fall fully within the ambit of Article 100a, first paragraph; this is also clear from the second paragraph of the same article, according to which "Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to rights and interests of employed persons". The procedural provisions are not mentioned among the "excluded material".

68 Member States that allow actions to protect collective interests reserve them exclusively for national organisations (see Chapters III.B.1 and III.B.2). Article 7 of the Treaty prohibits "any discrimination on grounds of nationality" (first paragraph) and provides (second paragraph) that "the Council may, on a proposal from the Commission and after consulting the Assembly adopt, by a qualified majority, rules designed to prohibit such discrimination".

69 This is the approach in competition law. The Sutherland Report considered a similar solution by proposing the establishment of an "ombudsman responsible for examining problems raised by consumers".

*- or one simply allows the existing national procedures (without harmonising them) to exercise the effects for which they were designed (mutual recognition of the "*locus standi*").

These different solutions must be examined in the light of the subsidiarity principle, according to which the Community, in areas which do not fall within its exclusive competence, just take action "if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community" (article 3 B, paragraph 2 of the Treaty on European Union).
Concretely, this means that the need for any new Community action must be demonstrated. In order to do that, three questions must be answered :

- What is the european dimension of the problem ?
- What is the most effective solution, taking into account the means at the disposal of the Community ?
- Which added-value does the Community action give in comparison to isolated actions by the Member States ?

Besides the test of need, the Treaty on European Union establishes that any action by the Community, falling or not within its exclusive competence, shall not go beyond what is necessary to achieve its objectives (article 3 B, paragraph 3).

By this point of view, the intensity of Community action should leave Member States the greatest "manoeuvring margin" for this application.
To sum up, the subsidiarity principle requires that the intervention of the Community legislator (the Council and the Parliament) be confined to the essentials.

In this case, the Commission considers that the first solution mentioned above (creation of a "community regulator") is not justified at this stage.
Indeed, the multitude and richness of mechanisms existing in Member States, both at national and local level, do not allow the conclusion that the addition of a "regulator" at Community level as such would constitute a concret added-value to the existing situation.

On the other hand, the second and the third solutions (harmonisation of actions for an injuction and mutual recognition of the "locus standi") deserve to be examined; this examination will be restricted, according to the proportionnality principle, to barriers which currently prevent the "free movement of procedures".

In the light of the above, the candidate options may be summarised as follows :

Option 1: "Minimum" harmonisation with respect to the conditions[70] governing actions for an injunction which, in each Member State, may be initiated by the bodies representing[71] the interest injured by an unlawful commercial practice.

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70 In most of the Member States, these conditions may be summed up by the notion of "interest in bringing an action".

71 Consumer organisations as well as organisations of firms.

This measure should be accompanied by mutual recognition by the Member States of the organisations' right to bring proceedings[72].

Option 2: Mutual recognition of existing actions for an injunction, meaning recognition of a right to bring an action on the part of the bodies representing the injured interest identical to the one already recognised to "national" entities (under the *lex fori*)[73].

In both cases - in line with the subsidiarity principle - the definition of the criteria of "representativeness" (capacity to bring proceedings) is a matter for the Member States - depending on the legal traditions of each country, it might involve an administrative procedure (recognition) or, again, application by the courts of general criteria concerning representativeness.

The entity representing the injured party in a Member State would hence be empowered to bring proceedings against an unlawful commercial practice before the court of the country in which the decision is to be enforced. This is the proximity criterion set out in Article 24 of the Brussels Convention (see chapter III.B.2) which allows "urgent" measures to take effect (the exequatur procedure was not designed for this type of decision; if not enforced immediately, an action for an injunction is pointless).

Hence actions for an injunction could be employed in a preventive capacity (this being their recognised purpose), no matter what country the unlawful practice originated in, and enforcement of the Brussels Convention (Article 24) would be facilitated. The good functioning of the Single Market means that a swift decision is required[74].

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72 A German organisation (representing the interests of consumers or firms according to German case law) could initiate an action for an injunction in France, if the unlawful practice had its origin in that country, while an approved French organisation (according to French law) could bring an action in Germany against practices originating in Germany.

73 For example, the Danish consumer ombudsman (or a Danish organisation of firms) could initiate an action for an injunction in the United Kingdom under the terms of English law against an unlawful commercial practice addressed to Danish consumers but originating in the United Kingdom. By the same token, the Danish consumer ombudsman would have access to the French Courts whenever an unlawful commercial practice originating in France is addressed to Danish consumers) and "approved" organisations would have access to United Kingdom courts (whenever an unlawful practice originating in the United Kingdom is addressed to French consumers).

74 The Sutherland Report also (page 33, Recommendation No 22) suggests "Member States could provide better (and non-discriminatory) rights at court to consumer associations".

IV.B Legal aid

The experience gained in the Member States shows that it is illusory to provide for a right to bring proceedings if the holder lacks the resources required to exercise it. This applies to natural persons and legal persons alike.

Although the action for an injunction does not provide for compensation for damages, the association which brings the action has to foot the bill (lawyer's fees, expert report, justice) and in transfrontier cases these costs will probably be prohibitive (quite apart from the risk of losing the case).

Often consumer organisations do not even have enough resources to bring actions against unlawful practices originating in their own country, let alone abroad.

This problem will have to be tackled at the same time and in the context of the discussion referred to under point 1, if the right to bring proceedings is not be a purely symbolic one.

As regards legal aid to private individuals, the Commission is currently examining the Report which has been prepared by the Conseil des barreaux de la Communauté éuropéenne (see Chapter III.C.2); this report could be the topic of an in-depth discussion.

IV.C Simplified settlement of transfrontier disputes

The deterrent role of actions for an injunction will surely help reduce the number of "individual" disputes, but it would be utopian to expect them to wither away altogether.

The complexity of settling transfrontier disputes could seriously frustrate the Single Market; the specific and supplementary barriers to the settlement of these disputes (see Chapter III.A.2) could dissuade consumers as well as small and medium-sized firms from making the most of free movement.

The Eurobarometer survey (38.1 of 23 December 1992) clearly shows what the European citizen wants from the Community institutions; To the question "Do you think that consumer protection should be the same in all the Member States of the European Community", 88.9% of respondents answered yes (as opposed to 5.2% no and 5.9% indifferent). This is a formidable figure: if for other Community policies opinions are divided and vary with the Member State, Community protection of consumers is desired by a clear majority (84 to 92.8% of the respondents) in all the Member States[75].

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[75]

Belgium	88.2%	Denmark	85.5%;	Germany	84.0%;
Greece	91.4%;	Spain	90.0%;	France	88.9%;
Ireland	88.1%;	Italy	92.5%;	Luxembourg	85.8%;
Netherlands	92.8%;	Portugal	86.5%;	United Kingdom	90.6%

In its first Communication on consumer redress (COM(84)692), the Commission affirmed that "the overall aim remains clear: to ensure consumers throughout the Community enjoy a broadly similar standard of redress" (second paragraph of the summary).

Article 57, paragraph 3, of the Brussels Convention[76] provides for the existence of "provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities": in the particular matters, a Community act could thus lay down certain procedural rules (which incidentally is not ruled out by Article K of the Treaty on European Union, whose provisions will apply "without prejudice to the powers of the European Community" - Article K1, first paragraph).

Moreover, the new institutional framework for judicial cooperation allows not only recourse to traditional procedures but also new forms of cooperation, such as the adoption of common actions. Following the entry into effect of the Treaty on European Union, the Commission intends to make the most of the new opportunities offered in the domain of judicial cooperation in civil matters under Title VI of the Treaty.

However, before broaching the question of powers (Community, intergovernmental, or national), the preliminary step is to decide what initiatives to develop.

This is why a follow-up mechanism of transfrontier disputes should be created with a view (a) to identifying the problems encountered in practice and (b) to establishing priorities: the choice of instruments (powers) should not precede the analysis of the objectives to be pursued (harmonisation, mutual recognition, greater cooperation between the Member States).

This follow-up mechanism could consist of judges and independent experts (one or several experts from each Member State) commissioned to prepare a report on the functioning of procedures for regulating transfrontier disputes in civil matters; on the basis of this report the Commission could prepare an agenda (ignoring the question of competences) for submission to the Council, the European Parliament and the Economic and Social Committee. More generally, the creation of meeting-places for Member State judges is indispensable if we are to bring about a European "judicial space". This innovation would permit the pooling of useful information for dealing with practical cases and would be respond to a key requirment - namely involvement of judges in judicial cooperation, because it is they who in all the Member States, day in day out, render justice and will hence be called on to put into effect at practical level the results of this cooperation.

IV.D Self-regulation and the dialogue between consumers and professionals

The sums at issue in most consumer disputes are too low for a private individual to contemplate the cost of a transfrontier court procedure; for firms as well, costs often bear no relation to the value of the claim. This hardly stimulates confidence in the internal market.

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[76] Added to Article 25, paragraph 1 of the Accession Convention of 1978.

Out-of-court procedures can therefore play an important role in the settlement of transfrontier disputes.

However, consumers still place little trust in "self-regulatory" bodies: even in the country with the most complete ombudsman framework (United Kingdom) the competent department estimates[77] that "ombudsman schemes themselves might benefit from having to comply with minimum standards"[78] .

Serious consideration should be given to the creation of a code of conduct and to what exactly is understood by "mediator/ombudsman": according to a study by the National Consumer Council[79], the majority of respondents[80] "said that the internal complaints procedures which they had to exhaust before going to the ombudsman were a complete waste of time".

Such a code of conduct is a prerequisite for any kind of "networking" of existing structures, with a view to out-of-court settlement of transfrontier disputes.

This does not necessarily mean more regulation: the minimum conditions to be fulfilled to obtain an "ombudsman label" is something consumer organisations and the professional sectors concerned could discuss together (possibly, under the aegis of the Commission).

Examples such as the Lisbon pilot project, the Danish Consumer Complaints Boards and the Netherlands Geschillencommissie prove that consumers will trust instances other than the court, provided their organisations are represented or (at least) have been involved in defining the criteria that ensure the transparency of the procedure.

Any other approach risks being labelled as "misleading advertising" which in the medium term could jeopardise the very idea of "alternative" justice ("alternative disputes resolution").

As regards transfrontier money transfers, a Recommendation was adopted by the Commission on 14 February 1990[81], whose sixth principle states:

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77 "Consumer redress mechanisms: a report by the Director General of Fair Trading into systems for resolving consumer complaints", November 1991.

78 Page 10 of the above-mentioned report.

79 "Ombudsman Services: Consumers' Views of the Office of the Building Societies Ombudsman and Insurance Ombudsman", June 1993.

80 1 637 consumers whose claims were treated in 1991 and 1992.

81 Commission Recommendation 90/109 of 15 February 1990 on the transparency of banking conditions relating to cross-border financial transactions (OJ No L 67 of 15 March 1990, p. 39).

1. Any institution participating in a cross-border financial transaction should be capable of dealing rapidly with complaints lodged by transferor or the transferee in connection with the execution of the transaction or with the statement relating to it.
2. If no action is taken on a complaint or no answer received within three months, the complainants may refer the matter to one of the Member States' parties competent to deal with complaints from users. The list and addresses of such national bodies should be available on request from any institution undertaking cross-border financial transactions.

A similar approach might be adopted by other sectors when the frequency of transfrontier transactions justifies Community intervention (taking into account the subsidiarity principle): the Recommendation is an instrument which would allow the sectors concerned sufficient play to accommodate national idiosyncrasies, while the "sectoral" approach could target specific problems associated with certain types of transactions (distance selling, motor car sales, package trips).

IV.E Transfrontier cooperation

Awareness of the Community dimension of the market lies behind four initiatives designed to promote transfrontier cooperation to combat unfair or unlawful commercial practices; two of these are pilot projects supported by the Commission.

It would be a good thing to consolidate these initiatives, so as to cover all the Member States (which is not yet the case for any of the four initiatives).

1. Cooperation between the national authorities in regard to transfrontier commercial practices

An "International Marketing Supervision Network" was recently set up by the national authorities responsible for consumer protection in the 20 OECD countries.

Pursuant to the protocol signed at the London meeting of 26 and 27 October 1992, the main objective of the network is to encourage practical measures to prevent dishonest cross-border marketing practices; it is also designed to protect the consumer's economic interests.

To this end the network maintains regular contacts (notably via an annual conference) and cooperates in preventing dishonest commercial practices; a (rotating) presidency is responsible for the secretariat and organises an annual conference. France currently has the presidency.

2. Cooperation between the self-regulatory bodies with regard to transfrontier advertising

The European Advertising Standards Alliance, created with a view to encouraging professional self-regulation in advertising at European level, recently established a procedure for dealing with complaints about transfrontier advertising (advertising emanating from a broadcaster not residing in the country of reception).

This procedure is based on mutual acceptance of national codes of conduct, as well as decisions taken by the national self-regulatory body in question: complaints are treated by the organisation of the country from which the advertising has been broadcast, which examines them on the basis of its own rules and applies its own penalties.

The self-regulatory bodies commit themselves to taking all the decisions required to ensure compliance with the decisions taken by their counterparts in the broadcasting countries; in the case of simultaneous broadcasting to several countries, each organisation is responsible for its own territory, and national cultural idiosyncrasies may justify differentiated decisions depending on the source country.

3. Cooperation between consumer organisations in frontier regions

A pilot project supported by the Commission was launched at the end of 1991 to promote cooperation between consumer organisations in the domain of transfrontier disputes.

To this end a questionnaire was distributed to identify the most common types of transfrontier disputes; on the basis of the results of this survey, a series of bilateral seminars were organised between lawyers working for consumer organisations at each frontier site, with a view to comparing the legislation and case law in each country governing the subjects treated. This training should allow the lawyer-advisers located at "frontier posts" to give consumers from their country a certain idea as to the "foreign" law that applies across the border.

These seminars have made it possible to establish, for each frontier site, a package of "legal files" dealing with the most commonly encountered problems in the regions concerned; these files are placed at the disposal of all interested organisations, notably the European consumer information agencies.

Up to now eight consumer organisations in five Member States have participated in this project.

4. Cooperation between advisory bodies in the field of credit and overindebtedness

On the basis of a project first launched in Germany (see Germany report point X) software has been developed which is now used in several Member States (Belgium, France, Ireland and the United Kingdom) with a view to facilitating the work of advisers in the field of credit and overindebtedness.

An identical basic format is adapted and loaded with Member-State specific data (statutes, case law, etc.). This software makes it possible to check the well-foundedness and, where relevant, the "legality" of requests for reimbursement (in particular the relevant credit rate) made to the consumer, so that a debt clearance plan can be proposed to him. The database information, which was initially prepared by the Member States, may now be exchanged between organisations from different countries.

V. CONCLUSIONS

The Commission wishes to trigger a discussion between all the interested parties on the basis of the approaches outlined in this Green Paper, which may be summarised as follows:

1. study of the appropriate legal instrument for implementing Article 24 of the Brussels Convention, notably as regards actions for an injunction brought by the authorities and/or consumer organisations as well as by professional bodies, in respect of unlawful transfrontier commercial practices (see Chapter IV.A);

2. allocation of financial resources (legal aid, Community or national subsidies, other) to help the above-mentioned organisations meet the cost of transfrontier procedures (see chapter IV.B);

3. creation of a follow-up mechanism of transfrontier complaints, with a view to recording problems encountered in practice; to this end a survey should be carried out among European consumers to learn more about the type of complaints made and the degree of "satisfaction" as to how these complaints are handled (see Chapter IV.C);

4. promotion of codes of conduct at Community level, whose minimal criteria might be the subject of a Commission recommendation with a view to improving the functioning and transparency of the private "Ombudsman" systems (see chapter IV.D);

5. closer contacts between different consumer arbitration bodies with a view to exchanging experiences on this subject; in this context, we recommend exploring in greater detail the role of certain bodies (such as chambers of commerce and industry) in the creation of voluntary arbitration systems, either at sectoral or regional level (see chapters concerning the Out-of-Court procedures in Germany, Spain and Portugal);

6. consolidation of existing transfrontier cooperation initiatives so as to include all the Member States, and launching of other pilot projects, so as to promote dialogue between consumers and professionals in regard to the settlement of consumer disputes (see Chapter IV.E);

The purpose of this Green Paper is to open a debate between all the parties concerned. The various options summarised here are not exhaustive, and do not cover all the aspects of what is indeed a very vast subject, the settlement of disputes.

Comments, remarks or contributions sent to the Commission will give us a better understanding of what the interested parties expect and where Community action may be called for, taking into account the principle of subsidiarity.

These contributions should be submitted, by 31 may 1994 at the latest, to the following address:

Commission of the European Communities
Consumer Policy Service
Director General
Rue Joseph II, 70
B-1040 BRUSSELS

In June 1994 the Commission may organise a meeting with a view to possible formulating concrete orientations. The parties who have submitted written comments by the above-mentioned deadline would be invited to this meeting.

ISSN 0254-1475

COM(93) 576 final

DOCUMENTS

EN **06 10**

Catalogue number : CB-CO-93-614-EN-C

ISBN 92-77-61512-5

Office for Official Publications of the European Communities
L-2985 Luxembourg