

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION RECOMMENDATION

of 4 April 2001

on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes

(notified under document number C(2001) 1016)

(Text with EEA relevance)

(2001/310/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

Whereas:

- (1) In order to ensure a high level of consumer protection and to promote consumer confidence, the Community should ensure that consumers have simple and effective access to justice and encourage and facilitate the settling of consumer disputes at an earlier stage.
- (2) The continuing development of new forms of commercial practices involving consumers such as electronic commerce, and the expected increase in cross-border transactions, require that particular attention be paid to generating the confidence of consumers, in particular by ensuring easy access to practical, effective and inexpensive means of redress, including access by electronic means. The e-Europe Action Plan, agreed by the Feira European Council on 19 and 20 June 2000, recognised that for e-commerce to reach its full potential consumer confidence must be enhanced, in partnership with consumer groups, industry and Member States, by promoting access to alternative dispute resolution systems.
- (3) On 30 March 1998 the Commission adopted Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes ⁽¹⁾. However the scope of that Recommendation was limited to procedures which, no matter what they are called, lead to the settlement of a dispute through the active intervention of a third party, who proposes or imposes a solution. It did not concern procedures that merely involve an attempt to bring the parties together to convince them to find a solution by common consent.
- (4) The Council, in its Resolution of 25 May 2000 on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes ⁽²⁾, noted that those out-of-court bodies falling outside the scope of Recommendation 98/257/EC play a useful role for the consumer and invited

⁽¹⁾ Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (OJ L 115, 17.4.1998, p. 31).

⁽²⁾ OJ C 155, 6.6.2000, p. 1.

the Commission to develop in close cooperation with Member States common criteria for the assessment of such bodies which should ensure, *inter alia*, their quality, fairness and effectiveness. In particular it indicated that Member States apply such criteria to include such bodies or schemes in the network referred to in Commission working document on the creation of a European extra-judicial network (EEJ-Net) ⁽¹⁾.

- (5) Article 17 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the internet market ⁽²⁾ stipulates that Member States should ensure their legislation does not hamper the use of out-of-court schemes available under national law, for dispute settlement.
- (6) Electronic commerce facilitates cross-border transactions between business and consumers. Such transactions are frequently of low value and therefore the resolution of any dispute needs to be simple, quick and inexpensive. New technology can contribute to the development of electronic dispute settlement systems, providing a mechanism to effectively settle disputes across different jurisdictions without the need for face-to-face contact, and therefore should be encouraged through principles ensuring consistent and reliable standards to give all users confidence.
- (7) The Council, in conclusions adopted on 29 May 2000 ⁽³⁾, invited the Commission to draw up a Green Paper on alternative methods of settling disputes under civil and commercial law to take stock of and review the existing situation and initiate wide-ranging consultation.
- (8) The European Parliament in its opinion on the proposal for a regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽⁴⁾, called for the extensive use of extra-judicial dispute resolution for consumers transactions, in particular where the parties are domiciled in different Member States and in view of the cost and delay associated with going to court. The Council and Commission in their statement for the adoption of the above-mentioned Regulation stressed that in general it is in the interest of consumers and undertakings to try to settle their disputes amicably before resorting to the courts and reiterated the importance of continuing the work on alternative methods of dispute settlement at European Community level.
- (9) The principles set out in this Recommendation do not affect the principles laid down in Commission Recommendation 98/257/EC which should be respected by those out-of-court procedures which, no matter what they are called, lead to the settling of a dispute through the active intervention of a third party, who proposes or imposes a solution, usually by means of a binding or non-binding formal decision, upon the parties. The present principles should be respected by any other third party procedures, no matter what they are called, which facilitate the resolution of a consumer dispute by bringing the parties together and assisting them, for example by making informal suggestions on settlement options, in reaching a solution by common consent. The principles are limited to consumer dispute resolution procedures which are designed as an alternative to resolving the dispute in a court. Therefore customer complaint mechanisms operated by a business and conducted directly with the consumer, or where a third party carries out such services by or on behalf of a business, are excluded as they form part of the usual discussions between the parties prior to any dispute materialising that would be referred to a third party body responsible for dispute resolution or a court.
- (10) The impartiality of these dispute resolution procedures must be guaranteed to ensure that all parties have confidence in its fairness. Whether it is an individual or a group responsible for the dispute resolution procedure, appropriate measures should be taken to ensure impartiality and to ensure the disclosure of information to the parties demonstrating their impartiality and competence to allow the parties to make an informed choice as to whether to participate in the procedure.

⁽¹⁾ SEC(2000) 405. See Internet site:
http://europa.eu.int/comm/consumers/policy/developments/acce_just/acce_just06_en.pdf

⁽²⁾ OJ L 178, 17.7.2000, p. 1.

⁽³⁾ SI (2000) 519.

⁽⁴⁾ Opinion delivered on 21 September 2000 regarding Regulation (EC) No 44/2001 (OJ L 12, 16.1.2001, p. 1).

- (11) In order to ensure that both parties have access to the information they need, the transparency of the procedure must be guaranteed. The agreed solution resolving the dispute should be recorded and made available to the parties by the body responsible for the procedure to avoid later uncertainty or misunderstanding.
- (12) In order to enhance the effectiveness of these procedures in resolving cross-border disputes, they need to be easily accessible and available to both parties wherever they are situated. In particular electronic measures to facilitate this should be encouraged.
- (13) If such procedures are to provide a realistic alternative to a dispute going through the courts, they should aim to overcome the associated problems of cost, delay, complexity and representation. Measures guaranteeing proportionate or no costs, easier access, efficiency, the monitoring of the progression of the dispute and keeping the parties informed are necessary to ensure its effectiveness.
- (14) In accordance with Article 6 of the European Human Rights Convention, access to the courts is a fundamental right. Since Community law guarantees free movement of goods and services in the common market, it is a corollary of those freedoms that operators, including consumers, must be able, in order to resolve any disputes arising from their economic activities, to bring actions in the courts of a Member State in the same way as nationals of that State. Consumer dispute resolution procedures cannot be designed to replace court procedures. Therefore use of such procedures may not deprive consumers of their right to bring the matter before the courts unless they expressly agree to do so, in full awareness of the facts and only after the dispute has materialised.
- (15) The fairness of the procedures should be safeguarded by allowing the parties to provide any necessary and relevant information. Depending on the organisation of the procedure, information provided by the parties should be treated as confidential unless they expressly agree otherwise, or, if an adversarial approach is used at any stage appropriate measures should ensure its fairness. Measures should be envisaged to encourage and monitor the parties' cooperation with the procedure, in particular by requiring information that may be necessary for the fair resolution of the dispute.
- (16) Before the parties agree to a suggested solution on how to settle the dispute they should be allowed a reasonable amount of time to consider the details and any possible conditions or terms.
- (17) In order to ensure that procedures are fair and flexible and that consumers have the opportunity to make a fully informed choice, they must be given clear and understandable information in order that they can reflect on whether to agree to a suggested solution, obtain advice if they wish or to consider other options.
- (18) The Commission will include in its database of the out-of-court bodies responsible for resolving consumer disputes information provided by Member States regarding the use of such principles by consumer dispute resolution bodies falling within the scope of this recommendation in order to participate in the European extra-judicial network (EEJ-Net).
- (19) Finally, the setting out of principles for bodies responsible for consumer dispute resolution procedures not covered by the principles in Recommendation 98/257/EC seems, in these circumstances, necessary at Community level to support and supplement, in an essential area, the initiatives taken by the Member States in order to realise, in accordance with Article 153 of the Treaty, a high level of consumer protection. It does not go beyond what is necessary to ensure the smooth operation of consumer dispute resolution procedures. It is therefore consistent with the principle of subsidiarity,

HEREBY RECOMMENDS:

That the principles set out in Part II are respected by all existing and future bodies providing out-of-court consumer dispute resolution procedures falling within the scope of this recommendation as defined in Part I:

I. SCOPE

1. This recommendation applies to third party bodies responsible for out-of-court consumer dispute resolution procedures that, no matter what they are called, attempt to resolve a dispute by bringing the parties together to convince them to find a solution by common consent.
2. It does not apply to customer complaint mechanisms operated by a business and concluded directly with the consumer or to such mechanisms carrying out such services operated by or on behalf of a business.

II. PRINCIPLES

A. Impartiality

Impartiality should be guaranteed by ensuring that those responsible for the procedure:

- (a) are appointed for a fixed term and shall not be liable to be relieved from their duties without just cause;
- (b) have no perceived or actual conflict of interest with either party;
- (c) provide information about their impartiality and competence to both parties prior to the commencement of the procedure.

B. Transparency

1. The transparency of the procedure should be guaranteed.
2. Information about the contact details, functioning and availability of the procedure should be readily available to the parties in simple terms so that they can access and retain it before submitting a dispute.
3. In particular, information should be made available on:
 - (a) how the procedure will operate, the types of disputes that can be dealt by it and any restrictions on its operation;
 - (b) the rules governing any preliminary requirements that the parties may have to meet, and other procedural rules, notably those concerning the operation of the procedure and the languages in which the procedure will be conducted;
 - (c) the cost, if any, to be borne by the parties;
 - (d) the timetable applicable to the procedure, particularly with regard to the type of dispute in question;
 - (e) any substantive rules that may be applicable (legal provisions, industry best practice, considerations of equity, codes of conduct);
 - (f) the role of the procedure in bringing about the resolution of a dispute;
 - (g) the status of any agreed solution for resolving the dispute.
4. Any agreed solution for resolving the dispute by the parties should be recorded on a durable medium and should clearly state the terms and the grounds on which it is based. That record should be made available to both parties.
5. Information on the performance of the procedure should be made publicly available, including:
 - (a) the number and types of complaints it has received and their outcome;

- (b) the time taken to resolve complaints;
- (c) any systematic problems arising from complaints;
- (d) the compliance record, if known, of agreed solutions.

C. Effectiveness

1. The effectiveness of the procedure should be guaranteed.
2. It should be easily accessible and available to both parties, for instance by electronic means, irrespective of where the parties are situated.
3. The procedure should be either free of charge to consumers, or any necessary costs should be both proportionate to the amount in dispute and moderate.
4. The parties should have access to the procedure without being obliged to use a legal representative. Nonetheless the parties should not be prevented from being represented or assisted by a third party at any or all stages of the procedure.
5. Once a dispute has been submitted it should be dealt with in the shortest possible time commensurate with the nature of the dispute. The body responsible for the procedure should periodically review its progress to ensure the parties' dispute is being dealt with expeditiously and appropriately.
6. The conduct of the parties should be reviewed by the body responsible for the procedure to ensure they are committed to seeking a proper, fair and timely resolution of the dispute. If one party's conduct is unsatisfactory, both parties should be informed in order to enable them to consider whether to continue the dispute resolution procedure.

D. Fairness

1. The fairness of the procedure should be guaranteed. In particular:
 - (a) the parties should be informed of their right to refuse to participate or to withdraw from the procedure at any time and access the legal system or other out-of-court redress mechanisms at any stage if they are dissatisfied with the performance or operation of the procedure;
 - (b) both parties should be able to freely and easily submit any arguments, information or evidence relevant to their case on a confidential basis to the procedure unless agreement has been given by the parties to pass such information to the other party. If at any stage, the third party suggests possible solutions for resolving the dispute, then each party should have the opportunity to present their viewpoint and comment on any argument, information or evidence presented by the other party;
 - (c) both parties should be encouraged to fully cooperate with the procedure, in particular by providing any information necessary for a fair resolution of the dispute;
 - (d) prior to the parties agreeing to a suggested solution for resolving the dispute, they should be allowed a reasonable period of time to consider this solution.
2. The consumer should be informed in clear and understandable language, before agreeing to a suggested solution, of the following points:
 - (a) he has the choice as to whether or not to agree to the suggested solution;
 - (b) the suggested solution may be less favourable than an outcome determined by a court applying legal rules;
 - (c) before agreeing to or rejecting the suggested solution he has the right to seek independent advice;
 - (d) use of the procedure does not preclude the option of referring his dispute to another out-of-court dispute resolution mechanism, in particular within the scope of Recommendation 98/257/EC, or of seeking legal redress through his own judicial system;
 - (e) the status of an agreed solution.

THIS RECOMMENDATION

is addressed to Member States in so far as it affects them, in relation to those procedures designed to facilitate the out-of-court settlement of consumer disputes and to any natural or legal person responsible for the creation or operation of such procedures.

Done at Brussels, 4 April 2001.

For the Commission

David BYRNE

Member of the Commission
