

Commission Working Document on the creation of a European Extra-Judicial Network (EEJ-NET)

INTRODUCTION

In 1998 the Commission adopted a "Communication on the out-of-court settlement of consumer disputes"¹ with the aim of encouraging and facilitating the settling of consumer conflicts at an earlier stage. It was recognised that consumer disputes are usually characterised by the fact that the goods and services have a low economic value compared to the cost of seeking a judicial settlement. Consumers access to justice would thus be improved through access to simple, swift, effective and inexpensive redress channels.

Complementary to the usual judicial procedures, there are a wide range of "out-of-court" systems in Europe to deal with consumer disputes. These out-of-court systems are highly diverse in terms of structure and procedure. Precisely because of this diversity, the type of decisions taken can also vary widely. Some are no more than recommendations, others are binding only on the professional, while others apply equally to the two sides.

The Recommendation on the principles applicable to out-of-court procedures for the settlement of consumer disputes was included in the Communication². This established a number of minimum guarantees that the bodies responsible for the out-of-court settlement of consumer disputes in each Member State should offer to their users. The minimum guarantees take the form of seven "principles" - independence, transparency, respect of the adversarial principle, effectiveness, legality, liberty and representation – with which the out of court bodies should comply. Compliance with these principles is intended to guarantee consumers and traders that their cases will be treated with rigour, fairness and independence; with the expected advantage, of course, of a simpler and quicker settlement of their dispute.

The implementation of the Recommendation is in the hands of the Member States. They are expected to notify the Commission of the main particulars of those bodies that they deem to be in full conformity with the principles. In order to ensure free and easy access to this information it has been placed on the Commission's website. Member States made a good response and it is expected that soon all will have notified the Commission of these bodies. Some Member States notified not only existing extra-judicial bodies in the sense of the Recommendation but also some "conciliation" schemes. The Recommendation does not deal with extra-judicial schemes that merely involve an attempt to bring the parties together to find a solution by common

¹ COM(1998) 198 Final

² 98/257/EC OJ L 115, 17.04.98, p.31-34

consent. However these bodies could be useful to facilitate an amicable solution to the dispute and the Commission welcomes such initiatives and has taken them into account in the present discussion document.

The continuing expansion of economic activity within of the internal market inevitably means that consumers' activities are not only confined to their own country. Greater cross border consumption has arisen due to an increase in consumer travel and the emergence of new distance selling technologies like the Internet. This increase in cross border consumption, especially with the ever-increasing expansion of electronic commerce and the introduction of the Euro, is invariably likely to lead to an increase in cross border disputes. It is, therefore, necessary and desirable to create a network of general application which will cover any kind of dispute over goods and services. The 1998 Communication anticipated this:

"The Commission will facilitate the networking of these bodies so as to promote their active collaboration in resolving specific cases. Ultimately, consumers should be able to refer cross-border disputes to the competent out-of-court body in the foreign country via the corresponding out-of-court body in their own country."³

This approach, however, raised a number of practical obstacles to the operation of the network:

- **Structural** – In some Member States there is a single entity which handles consumer complaints whilst in others there are numerous bodies with different sectoral and geographical competence. There are not always corresponding bodies between Member States. For instance, if a UK citizen has some dentistry work whilst in Austria and on his return has a problem with the service, through whom can he file his complaint to the Zahnärztliche Bundesschlichtungsstelle (Federal Conciliation Office for Matters concerning Dentists) as no corresponding body exists in the UK?
- **Status** – Some out-of-court schemes are unable to provide information or advice to consumers on corresponding schemes in other Member States, as such matters are not within their terms of reference.
- **Inexperience** – Most bodies only deal with national complaints and have little experience of handling and processing cross border disputes.
- **Resource** – The majority of bodies do not have the resources to maintain sufficient information and provide advice for consumers engaging in a cross border dispute. Thus these bodies are unable to assist a consumer with the filing of a complaint which should be available to a foreign body (and probably in a different language).

³ COM(1998) 198 Final, p.10. At present, it is envisaged that the resolution of consumer disputes would take place in the supplier's country as such schemes are usually based on voluntary agreements made with enterprises on a national basis. It is unusual for an enterprise to be a member of an ADR scheme in a country where they are not established.

A number of steps were taken to address these challenges. First, a workshop was held in December 1998 on "*Alternative Dispute Resolution Schemes (ADR) relating to consumers disputes in the EU*", which brought together some 40 experts in the field of ADR schemes and several potentially "notifiable" bodies. Second, a conference held in November 1999 at Lisbon, Portugal reflected upon the future co-operation of a network of cross border consumer resolution.

These meetings highlighted many legal, practical and technical difficulties in establishing a network as foreseen in the Communication. Thus it was necessary to rethink our approach in order to establish a common ground between the bodies and promote confidence to ensure effective co-operation. It is thus now time to step forward to create an operational network of bodies complying with the Recommendation's core principles.

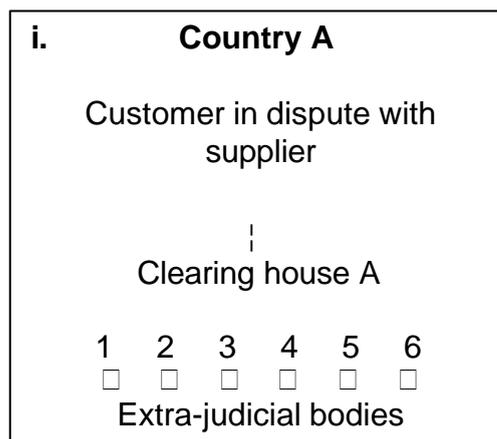
The Commission intends to hold in the first half of 2000 a conference with all the "notified bodies" from Member States and their representatives to discuss the practicalities of cross border resolution and to formally launch the Network. The Commission would welcome and encourage Member States to prepare the fundamental steps to create the supporting structures in advance of this launch.

In order to overcome the obstacles for a consumer to access relevant out-of-court bodies in other Member States it seems to be necessary to create central contact points in each Member State. These would act as a kind of "clearing house" providing information and advice to the consumer with a complaint about goods or services. The objective of such a network should allow the consumer to approach a single contact point in their Member State to obtain information about their national systems and, in cross border cases, to facilitate uncomplicated and swift access to a relevant out-of-court dispute resolution scheme in the country of the supplier. The foundation for such a project is being created and it is proposed to name this the **European Extra-Judicial Network (the 'EEJ-Net')**.

THE CLEARING HOUSE

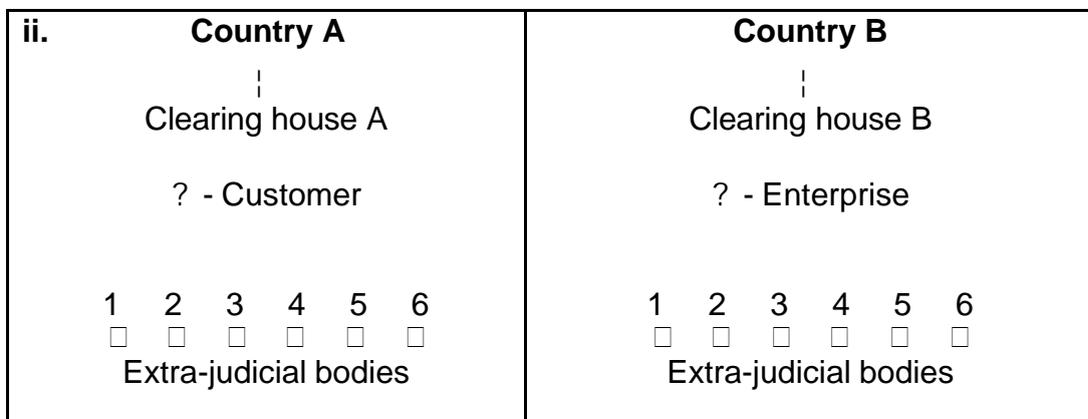
The main objective of the Clearing House is to act as a one stop national contact point. There are two distinct facets to this role:

- **National** – to provide national consumers with a single contact point where they can seek information about what out-of-court dispute resolution bodies exists in their jurisdiction and where they should address their complaint.
- Member States may also wish to consider incorporating further functions



that will benefit their consumers at national level.

- European** – Where the consumer has a complaint, which arises from a transaction with a supplier located in an another Member state, the Clearing House in the country of the consumer should be able to provide information and assistance. Such information would be obtained through the relevant Clearing House in the supplier’s country. The Clearing House would also provide assistance to the consumer in formatting and filing his complaint. The Clearing House would also act as a national information resource for Clearing Houses in other Member States who wished to advise their national consumers on the appropriate body in the jurisdiction to address a complaint. See diagram below:



It is envisaged that the Clearing Houses will carry out a number of specific functions. However this list is not exhaustive and therefore once the network begins to evolve and develop new functions and tasks may emerge.

Information

A key role of the Clearing House will be the storage and provision of comprehensive and current information about the national various bodies responsible for out-of-court-settlement procedures. This Clearing House should act as an information resource for the national consumer, other Clearing Houses and other bodies who wish to have access to dispute resolution systems in that country. The information should be easy to access and provided in a quick and uncomplicated manner. Namely :

- Information about the bodies responsible for out-of-court settlement within their jurisdiction. Member States have agreed to notify the Commission of those bodies that meet all the conditions set out in the Commission Recommendation. This information covering all Member States will be posted on the Commission’s own website. The national Clearing Houses should maintain and updated this information relating to their own jurisdiction.

- Information regarding other possibilities for consumers to seek a settlement instead of or before entering a formal dispute resolution mechanism. For example, conciliation based schemes.
- Information about their national small claims procedures as some complaints may be more effectively handled through these simplified court procedures than through extra-judicial measures.

Facilitator

The Clearing House will act as a primary point for the communication of complaints to out-of-court bodies. In this respect the Clearing House has a threefold function:

- **Filter** – See above diagrams i. and ii. for illustration: the Clearing House has a pivotal role in being able to identify the appropriate body in its jurisdiction that can deal with a specific complaint. The Clearing Houses will co-operate closely and ensure they have efficient and swift lines of communication. The Clearing House A in the consumer's country will assist in the preparation of a complaint and ensure that it is sent to the Clearing House B in the country where the supplier is situated. Clearing House B will then pass the complaint to the appropriate body in that jurisdiction and notify the consumer's Clearing House A to whom it has been passed. The Clearing Houses thus have this secondary function of receiving complaints from other Member States where the consumer is situated in order to direct them to the most appropriate out-of-court body. Where links are already established between sectoral bodies in the Member States the Clearing House's function will then be to direct the national consumer to the body in its own jurisdiction who has developed these links. An example where this is being developed is in the field of financial services where a consumer can direct a complaint through the responsible body in his own country in a cross border dispute.
- **Advice** – As far as it is possible the Clearing House A should determine whether an extra-judicial body could deal with the complaint, whether a small claims procedure would be more appropriate or if other types of consumer resolution schemes (e.g. conciliation) may be helpful. Depending on how the Clearing Houses develop it is foreseen that other functions could be included by Member States such as the prior assessment of the substance of the consumer's claim or even acting as the first stage of conciliation with supplier. Some examples would include where there is a specific sectoral complaint mechanism (e.g. in financial services), where no specific out-of-court body is designated for dealing with such complaints or where there is nothing wrong with the ordered goods but the consumer has merely changed their mind about the purchase.
- **Service** – the Clearing House A will assist the consumer in the preparation of their complaint before transmitting it to Clearing House B. The Clearing

House A, if necessary in the circumstances, can also provide an ongoing contact so that the consumer can obtain information about the progression of their complaint. This gives rise to some specific technical problems such as language and expert evidence. The key to overcoming these challenges is in the nature of the network itself and the use of simple and informal arrangements. For instance, a form like the European Complaint form existing in 11 languages (or similar form) may be employed covering most of the relevant aspects of the complaint. The development of new technological means (e.g. translation software) can reduce translation costs and time. The acceptance of expert evidence in relation to defective goods and services can be agreed through the co-operation of Clearing Houses and establishing mutual recognition.

Support for Policy-makers

As a single contact point in each Member State the Clearing House has a strategic role in monitoring and storing information about the level and nature of complaints. Such information is invaluable for the development of policy and future actions in this area.

RELATIONSHIP WITHIN THE NETWORK

The individual Clearing Houses should not be burdened by a complicated or bureaucratic structure but aim to ensure that the network is fluid and evolving. Whilst it is desirable to have a single contact point to focus the network in each Member State the network does not need to be overly centralised. It is envisaged that either Member States can create the Clearing Houses either as a specific new organisation or by allowing an existing national entity (e.g. public authority, private organisation, Euroguichet or Co-ordination Centres created under the Single Market Action Plan⁴) to take over the functions. It is for member States to determine the exact structure of the Clearing House and how it will oversee and co-ordinate national bodies. The Commission will study the possibility of providing some initial financial support for launching these projects in accordance with decision n° 283/1999/EC of the EP and of the Council of 25.1.1999, establishing a general framework for Community activities in favour of consumers. To this extent Member States could provide

⁴ Although the Co-ordination Centres network has so far mainly responded to complaints from business, the Commission is exploring ways of increasing its use by citizens. Co-ordination Centres are often based in national trade ministries or the central organisation of chambers of commerce, and some have already acquired experience in ADR which could be useful. DG Markt maintains a database of administrative contact points who act as a first 'port of call' for cross border enforcement questions, including ADR. Wider access to this database is being considered. In addition, the "Dialogue with Citizens and Business" programme, which aims to raise awareness about Single Market rights, has already promoted the EEJ-Net in a recent publication "Enforcing Your Rights in the Single European Market. It is essential to further raise public awareness about the network. The Dialogue could provide an efficient channel to achieve this.

a preliminary cost estimate of setting up the Clearing House. In any case, the Commission will provide ongoing support to the network through actions (e.g. meetings, conferences, web presence) designed to facilitate communication and co-operation between the national Clearing Houses.

The informality of the network encourages specific sectoral bodies to make contacts with their counterparts in other Member States. Links should be encouraged and fostered between bodies in the different Member States who handle the same sectoral complaints. The exchange of information and experience is key to ensuring co-operation and future development of the network. This is already developing in some fields such as financial services. Therefore, in some cases, it may be appropriate for the consumer's complaint to be routed through the national body with links to its foreign counterpart. The Clearing House should encourage the development of such synergies and ensure that these lines of communication are equally effective and efficient.

It is necessary to ensure that communication through the network is as simple and quick as possible. The Clearing House has a pivotal role in facilitating contacts between the various bodies and ensuring information beneficial to the entire network is distributed. However the Network and the bodies within it should be flexible and adaptable. The bodies, themselves, have an important role in sharing information and practical experience and establishing interactive links with similar bodies in other Member States.

FUNCTIONING OF THE NETWORK

The EEJ-Net (European Extra-Judicial Network) will be composed of all the notified bodies and the national clearing houses. It should be a decentralised and informal network. No harmonised proceedings should be imposed on the treatment of transborder complaints. Each complaint should be dealt with in the most effective and simple way, depending on the subject and on the special sub-networks possibly existing within the EEJ-Net. Access to the "clearing houses" should be free of charges or at moderate costs and should not add any unnecessary costs or administrative burdens for citizens, business or administrations themselves.

Some examples will help to clarify the situation and reference should be made to the above diagram ii.

A consumer in country A has a dispute with a seller in country B. How can he find out if an extra-judicial body exists in country B responsible for that kind of litigation and how can he contact this body in view of the settlement of the dispute?

Theoretically, the consumer has 4 options: contact directly the competent extra-judicial body in country B, contact the Clearing House in country B,

contact an extra-judicial body in country A or contact the clearing house in country A.

1. Contact directly the extra-judicial body in country B

In a limited number of cases, a very well informed and educated consumer may be able to directly file a complaint before the competent body in country B. He could have obtained the information directly on the European Commission's Web page or indirectly from a consumer organisation, a consumer information centre, etc.

2. Contact the Clearing House in country B

This possibility is a variation of the former. Instead of contacting directly the extra-judicial body in country B, the consumer contacts the Clearing House in country B, which will provide him with the necessary information and assistance.

3. Contact an extra-judicial body in country A

This possibility could be developed in areas where there would be sub-networks or bilateral protocols between the body in country A and that in country B. This could be developed in countries having a general extra-judicial body that covers the whole national territory for consumer complaints in general, as e.g. the Nordic countries and The Netherlands.

This could also be developed on a sectorial basis. For instance, the European Commission is promoting the creation of a specific network between the bodies responsible for the settlement of disputes in the financial sector. But this kind of initiative can also be taken by the bodies themselves on a European basis or on a more restricted basis, as a bilateral co-operation agreement between two similar bodies in two different Member States.

4. Contact the clearing house in country A

This will be the normal way to proceed for a "normal" consumer. The consumer will contact the Clearing House in his own country and the clearing house will provide him with the necessary information and assistance. But still, the procedure to be followed by the Clearing House would be entirely flexible. The Clearing House in country A can send the complaint to the competent body in country B directly or via the clearinghouse in country B. It can also refer the consumer to the national body that has a special arrangement with the competent body in country B (or both form part of a sub-network).

WIDENING THE NETWORK

The scope of the Recommendation was confined to consumer dispute resolution bodies which have procedures that "lead to the settling of a dispute through the active intervention of a third party, who proposes or imposes a

solution”⁵. Therefore a number of bodies which neither propose nor impose a decision were excluded from Member States notification. This would include all conciliation bodies which can play a constructive and cost effective role in resolving a dispute before the need for a longer and more complicated settlement procedure. The network could therefore include such schemes as an option for consumers as the first step in the settlement process. Member States would be responsible for assessing the effectiveness, fairness and adequacy of these procedures.

CONCLUDING REMARKS

The key to the success of this network is based on the collaboration and co-operation between the Clearing Houses. In view of the diverse and voluntary nature of the network it is not considered necessary at present to propose a Community instrument to launch this initiative.

The Commission believes the establishment of this network represents a significant contribution to access to justice, and to making the Internal Market work in practice for the benefit of citizens and business alike. Cross-border shopping is increasing, particularly with the ever-increasing growth in electronic commerce. This will bring both new opportunities for the consumer as well as new risks. It is important that if things go wrong, consumers can have access to practical and effective redress without resorting to judicial action. The European Council of Tampere in October 1999 stressed in its conclusions the need to improve access to justice in cross-border cases. One of the elements they referred to in achieving this aim was the use of alternative dispute resolution. The European Extra-Judicial Network (EEJ-NET) is an important milestone in achieving these goals and the Commission expects the strong support of Member States in realising the potential of this initiative.

⁵ 98/257/EC, OJ L 115, 17.04.98, p. 31-34