

Presentation of three models for consumer's rights enforcement at the administrative level

I. Introduction

Dear Minister Hauk, dear Commissioner Kuneva, ladies and gentlemen,

I was asked to present the European as well as the national regulatory framework concerning the enforcement of consumer's rights, in the context of cross border trade of goods and services from a German perspective.

For Germany, cross border consumer protection is particularly important, especially with regard to the necessary development of the Single European Market.

Therefore I would like to thank you explicitly for the opportunity to present the German point of view on this important issue.

I would also like to express my gratitude to the European Consumer Centre in Kehl for the organisation of this conference.

II. The organisation of consumer protection in Germany

1. Overview

As far as the organisation of consumer protection in Germany is concerned there is a distinction between preventive and economic consumer protection.

The following speech will only deal with the economic consumer protection which means the protection of the economic and financial interests of consumers.

In this area the protection of consumer interests is guaranteed by civil laws covering the:

- initiation
- conclusion
- and fulfilment of consumer contracts, as well as the enforcement of consumer claims.

2. Public and private organisations

Consumer protection in Germany is predominantly organised by private organisations. Currently only very few state authorities exist with regard to the issue of economic consumer protection.

The most important players in the field of consumer protection at national level are the *Verbraucherzentralen* (Consumer Centres) of the 16 federal states and their head organisation the *Verbraucherzentrale Bundesverband* (Federation of German Consumer Organisations, VZBV).

The *Wettbewerbszentrale*, an organisation of the commercial economy, is also an important contributor in the field of consumer protection by promoting fair competition.

Since the reform of the German law against unfair competition (*Gesetz gegen unlauteren Wettbewerb*), it is straightened out that protection against unfair competition is not only in the interest of the competitors but also of the consumers.

Thus, we see that consumer policy is not an isolated political issue but also economic policy from the demand side.

Furthermore there is the Network of European Consumer Centres which is competent for the representation of the interests of European consumers, especially in cross border issues.

3. Financing

Even though consumer protection is essentially organised under private law, the consumer centres work is financed by public funds to a considerable extent. This may be an important difference to the situation in other countries.

At the federal level, for example in 2007, the Federation of German Consumer Organisations (VZBV) is financially supported with € 8, 7 million. In addition to that, project based funds are contributed to all consumer centres as well as to the VZBV.

III. Individual and collective consumer protection

1. Terminologies

The differentiation between individual and collective consumer protection is also of interest.

Individual consumer protection means the protection of the interests of a private individual in a concrete case.

In contrast, collective consumer protection reaches further and provides the protection of special group interests, in our case the interests of consumers.

2. The situation in Germany

The enforcement of rights in Germany is mainly organized on an individual basis. This means, that in general every individual is responsible for the enforcement of his own rights.

Of course consumers can search for competent legal advice.

The consumer centres also support consumers in extrajudicial procurement of their legal matters. Moreover, under certain circumstances they can assert claims in legal procedures for consumers.

Nevertheless Germany has got in the area of consumer protection several measures of collective redress:

- 1965 Implementation of action for injunction as a group action implemented into the law against unfair competition
- 1977 Implementation of action for injunction implemented into the law on general terms and conditions
- 2000 Implementation of the directive 98/27 on action for injunction with the introduction of a general lawsuit for consumer associations
- 2001 Creation of an independent law on action for injunction
- 2004 Implementation of the right on skimming-off extra profits into the law against unfair competition
- 2005 Adoption of the law on precedent law suits in capital market disputes (*Kapitalanlegermuster-verfahrensgesetz*)
- 2006 Extension of the law of action for injunction to cross border cases

III.A system change in the consumer protection policy induced by Regulation No 2006/2004/EC on consumer protection cooperation

1. Policy change on the EU level

The EC regulation on consumer protection cooperation is at present the most apparent sign of the changed EU policy on protection of the consumers economic interests.

Significant for this change is aside from matters such as the further harmonization of consumer protection laws, also reflections on structural issues in the field of consumer protection. Here the objective is the further improvement of the enforcement of rights.

Concerning the enforcement of rights and the linked structural questions, we can notice a preference of public structures at community level. While questions of legal enforcement were up to now predominantly reserved to national regulations, common rules shall now be indispensable - at least as far as the collective protection is concerned.

With its proposal of a regulation on consumer protection cooperation in 2003, the commission has consequently adopted a course of structural reorientation in consumer protection. The public enforcement structures will be given a priority – at least in cross border cases.

2. The consequences for Germany

However in Germany – as already mentioned – infringements of consumer protection regulations are pursued mainly by organizations under private law such as the consumer centres and the *Wettbewerbszentrale* by means of civil law.

The German system is marked by warning notices (*Abmahnungen*) and action for injunction (*Unterlassungsklagen*) connected with the possibility of an interim injunction (*einstweilige Verfügung*), which allows a rapid action.

The commission's objective to accomplish a change of the consumer policy also at the organisational level becomes obvious by the fact that its original proposition did not include the possibility to involve organizations under private law into the enforcement of consumer rights.

For Germany, the involvement of private organizations is an important issue.

The necessity to improve cross border consumer protection has always been an important topic in Germany. In order to create a better coordination at a community level the necessity was seen to create a single liaison office.

Nevertheless Germany did not want to renounce well functioning structures that were developed within decades in the field of the economic consumer protection in favour of an exclusively public solution.

Germany's doubts concerning an exclusively public structure were also shared by the European Parliament's Internal Market Committee. The majority of the committee was in favour of a concept for a resolution of the European Parliament which foresees that "organs and institutions with a legitimate interest in the prevention of infringements within the community" shall also be included.

Germany explicitly welcomes that, after intense consultations, the regulation on consumer protection

cooperation was also opened to other organisations outside the public sector.

The regulation states in article 4 clause 2, that besides to the responsible public authorities, organs which have a legitimate interest to intervene against infringements of cross border consumer rights can act as well. In Germany those are mainly the consumer centres but also the *Wettbewerbszentrale*.

IV. The application of the regulation 2006/2004 in Germany

1. Public level

With the *Verbraucherschutzdurchsetzungsgesetz* (act for the enforcement of consumer rights) that came into force on the 29th of December 2006 the precondition was met to apply the regulation on consumer protection cooperation.

The leading role concerning the application of the regulation on consumer protection collaboration is in the hands of the Federal Office of Consumer Protection and Food Safety (BVL), a federal authority under the competence of the Ministry of Food, Agriculture and Consumer Protection.

The BVL functions first of all as the single liaison office as set out in the regulation which ensures for Germany information exchange and coordination within the newly created European network.

The BVL is furthermore the competent authority for the majority of the legal fields that are covered by the regulation. Therefore it is its task to take the necessary measures in order to prevent the violation of consumer protection laws in cross border cases.

In the financial services and the air transportation sector, the Federal Financial Supervisory Authority and the Federal Aviation Office are the responsible authorities.

The authorities of the *Länder* (federal states) are competent in cases of infringements of the television directive, the law on price indication and the directive on human pharmaceuticals.

The competent authorities will be given the necessary competences allowing them to take efficient action against violations of consumer protection laws following closely the specifications of the EC regulation. The authorities can for example take the following measures:

- ask the concerned company for all necessary information
- inspect documents
- ask for the printout of electronic data
- enter business premises and working areas

When a violation is discovered by the authorities, the company has to correct the irregularity or to omit further infringements when recurrence is likely. Infringements of these public orders can be fined with fees up to € 250.000,00.

It is important to point out that the responsible public authorities can only take action in case of cross border cases and only in the collective consumer protection interest. This means that the authority can not take action in order to enforce claims of an individual consumer such as claims concerning the fulfilment of contracts or tort cases.

The Office acts with the objective to stop the violation of consumer rights and to prevent future infringements.

2. Involvement of private organisations

In order to maintain the private legal enforcement system which has been approved in the past, Germany made use of the possibility provided by the EC regulation.

Our consumer protection enforcement law stipulates clearly that the concerned public authority, before taking action itself, has to assign a qualified third party with the implementation of consumer rights.

Those organisations and associations can be considered as third parties, which are for example already entitled to act under the law on action for injunction or the law against unfair competition. These are in particular the Federation of German Consumer Organisations (VZBV) and the *Wettbewerbszentrale*.

The appointment of a third party can only be considered if the third party guarantees to fulfil this task correctly.

After the assignment, e.g. the consumer centres can take legal action against infringements with the legal measures which were already transferred to them. A rapid and effective intervention is guaranteed especially by the possibility of interim injunction.

The possibilities provided by the action for injunction law were even broadened by the consumer protection enforcement law. It is today ensured that consumer centres can for example take legal action against a German company that, by means of distance selling, affects a consumer from Holland.

Ultimately however the responsibility to act against violations of cross border consumer rights remains within the scope of the competent authority.

The competent authority has to ensure within the network of European authorities that legitimate requests for administrative assistance from other member states are enforced.

This is of particular importance when in a concrete case sanctions are necessary. Private third parties do not have these competences so that the intervention of the responsible public authority is indispensable.

An important point in the collaboration between the responsible public offices and dedicated third parties is the respect of data protection regulations. The concerned private bodies are particularly bound to these regulations.

The national consumer rights enforcement law authorizes the BVL to collaborate with private organizations in order to create a frame contract.

The contracts that shall be concluded with the VZBV and the "Wettbewerbszentrale" are currently in the final stage of the negotiation process. The key elements of this contract will be:

- data protection regulations
- regulations concerning the distribution of incoming requests for administrative assistance between the partners and
- the obligation to inform the responsible public authority

3. Involvement of other Member States

An important point is that according to Article 8 of the EC regulation Member States which express the request have to agree before a third party can be involved.

I would now like to appeal to all Member States not to constraint without any reason the possibilities the EC law opens to the involvement of third parties into cross border consumer protection.

I am confident that the exchange of experiences between the Member States will contribute to the mutual understanding of national law enforcement systems in their variety and also to accept national differences. This conference can certainly be a contribution to this issue.

Thank you very much!