



HELLENIC REPUBLIC



Athens, 18 June 2009  
Ref. No: 2313

**To:**  
European Commission  
Directorate-General Health and Consumers  
Directorate B – Consumer Affairs  
B4 – Financial Services and Redress  
Rue de la Loi 200  
1049 Brussels  
Belgium

**Subject: Hearing on Consumer Collective Redress – 29 May 2009**

Dear Madams/Sirs,

The Hellenic Consumers' Ombudsman is pleased to have participated to the hearing on Consumer Collective Redress.

Please, find attached here our points of view and opinions on the issues raised.

Yours Sincerely

**Evangelos Zerveas**  
**Hellenic Consumers' Ombudsman**



ΑΚΡΙΒΕΣ ΑΝΤΙΓΡΑΦΟ  
από το πρωτότυπο.  
Αθήνα, .....18...06...09

The Hellenic Consumers' Ombudsman welcomes the initiative of the European Commission.

The propositions under discussion must be envisaged in the light of the acknowledgement on the one hand that consumers must have confidence to shop across borders and on the other hand that consumers are encouraged to act if it is the case of a collective claim. In Greece, there is a judicial collective action, the Hellenic Consumers' Ombudsman, the Hellenic Ombudsman for Banking- Investment Services, the General Secretariat of Consumers and the European Consumer Centre of Greece.

The collective action for the protection of the general interest of consumers was introduced for the first time by Law 2251/1994. It seeks the cessation and omission of any illegal action. Compensation for the remuneration of moral damages can also be sought. It is based on article 10 par. 16, which has been amended by art. 13 of law 3587/2007. The competent authority is the Multi-member Court of First Instance of the residence or the establishment of the defendant.

Greek law has been harmonized with Directive 98/27/EC (Presidential Decree 301/2002) and allows for affected persons/consumer associations in the EU to file an action in Greece, for the protection of the general interest of consumers in their country against a Greek supplier.

Collective actions have been filed relating to the general terms of consumer banking or insurance contracts. None of these cases dealt with damages suffered. They all had to rule on the issue of the legality of the specific behaviour of each supplier acting contrary to the law provisions. The consumer who has suffered damages can on the basis of this judgement make his claim to the supplier who has been sanctioned. If the supplier does not voluntarily meet the claim within 30 days, the consumer can proceed to the court, in order to demand an order of payment.

As the practice of operating cross-border transactions is not very expanded and not a really considerable number of cases has occurred, option 3 and especially strengthening ADR schemes seems for the time being to be the most suitable solution that will involve insignificant changes relatively to implementation costs and to the legal framework that already exists.

Especially in cases, where consumers could not adequately pursue on an individual basis their rights, such as abusive contract terms, where the amount in dispute may be of a minor value, unfair commercial practices, the ADR schemes can enable consumers to obtain satisfactory redress.

The out – of – court procedure offers an alternative and more flexible settlement of the dispute. In that concept, reinforcing already existing ADR schemes seems to be the most feasible solution.

We believe that the example of the Hellenic Consumers' Ombudsman constitutes a good and efficient example of ADR scheme. It is a fact that we can't yet cite examples of collective recourses to the Hellenic Consumers' Ombudsman with a cross – border element, but we consider that this is due to the relatively recent foundation of the institution. The article 3 par. 1 of the founding law 3297/2004 generally refers to consumer disputes and as a result it concerns disputes on an individual basis and collective disputes as well, while in the same article it is explicitly stated that consumer organizations can also recourse to the Ombudsman. In addition, the Hellenic Consumers' Ombudsman is entitled to accept the claims of consumers allocated in another Member State, as it is predicted in the article 4 par. 1 of the above law. We have already accepted and handled consumer disputes on individual basis according cross-border transactions from European citizens against traders installed in the Greek territory.

The Hellenic Consumers' Ombudsman is an Independent Authority supervised by the Minister of Development. Its role is to intervene in consumer disputes, bring the parties together to convince them to seek an out-of-court consensual settlement. The Ombudsman can also issue recommendations to traders and service providers, which are not binding. According to the available data the Ombudsman accepted 3.524 consumer complaints during the last year. Among these cases only a 14,6% consisted of unmeritorious claims, while from the cases finally handled and which are not pending, a high rate of 91,5% is successfully resolved, although the recommendations of the Hellenic Consumers' Ombudsman are of consultative nature. The high rate of compliance with the recommendations of the Hellenic Consumers' Ombudsman renders the scheme successful. It is estimated that the average time needed to resolve

a case is 6 months. Hellenic Consumers' Ombudsman does not rule out cases pending before a court.

Its function complies with the safeguards set by the 98/257/EC Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes and the Commission Recommendation of 4 April 2001 on the principles for out-of court bodies involved in the consensual resolution of consumer disputes. More precisely, the Ombudsman, through its founding law 3297/2004, guarantees the independence, impartiality of the mediation, the effectiveness, the legality, the liberty, the representation and the transparency of the procedure.

The procedure allows all parties involved to express their opinions, following the adversarial principle.

The consumer can recourse to the proceedings without a legal representative, the procedure is free of charges and a solution is reached in a short period of time.

The role of the Hellenic Consumers' Ombudsman is not punitive. It does not supervise compliance with the legislation of other Member States in consumer affairs. It only applies the Greek law. It is not competent to check if there has been a violation in another Member State of the consumer protection law, even if the trader who had acted in an unlawful manner resides in Greece.

The Ministry of Development funds the Hellenic Consumers' Ombudsman independently of the funding allocated to consumer organizations.

The Hellenic Consumers' Ombudsman has not yet dealt with a cross-border collective claim, although this is a possibility, but it has experienced various collective consumer claims on national level, where multiple consumers have been harmed by the same or similar practice of a supplier. A few examples are:

1. A bank put into the market bills of a company. Their value decreased suddenly, because of the bankruptcy of the company that issued them. As a result, that led to the total loss of the value of the investment products. The holders claimed that they have been victims of false information about the risks involved in buying these investment products. The case is still pending.

2. A company of household appliances closed before delivering the goods to the clients. Finally, the parent company undertook responsibility and either delivered the goods to the clients or reimbursed their money.
3. Consumers, clients of a bank resorted to the Hellenic Consumers' Ombudsman for the abusiveness of the terms of loan contracts that raised the rate of interest. The matter was successfully resolved.
4. After receiving multiple recourses of consumers, members of a consumer organization concerning the use of an abusive general term from an Insurance Company that allegedly raised the price of insurance rate agreed in a fixed contract, without setting prior criteria, a meeting took place in the offices of the Hellenic Consumers' Ombudsman between the representative of the consumer organization and the General Director of the Insurance Company, in order to reach an agreement.
5. Large suppliers of gas to households use abusive terms in their contracts concerning the pricing without setting prior criteria, known during the conclusion of the contract. Some companies have already complied with the recommendation and they have reformed their price-list.
6. Damages caused to the household appliances by the sudden interruptions of power supply. The cases are still pending.

Most of the claims are filed by individuals, frequently members of consumer organizations and because of the collective character that they present, they are grouped by the Hellenic Consumers' Ombudsman and handled as an entity.

It must be cited that Hellenic Consumers' Ombudsman, as an Independent Authority, can also act *ex officio* by identifying incriminated behaviours of traders and issuing recommendations that concern a large number of consumers, while the collective resolution of the problem is being achieved.

Some examples are cited below:

1. Several banks charge their clients with the cost of registration of a mortgage to the real estate registry. The Hellenic Consumers' Ombudsman issued a recommendation and two banks have already reimbursed the money to their clients.
2. Several banks used in their housing loan contracts floating interest rates, which were not connected with a basic interbanking interest rate (for example Euribor or ECB interest rates). It is still pending.

The Ombudsman is based in Athens, but there are Commissions for amicable settlement of consumer disputes that operate in each Prefecture, so that consumers and consumer associations not established in Athens can access to its procedure.

The so far action of the Ombudsman has positive results both for consumers and firms, by reducing the cost of settling consumer disputes and the lengthy and complex procedures that a court proceeding involves. If such mechanisms are introduced in all legal systems and function according to the above principles, a mutual confidence between the member states and the consumers will be established and we will achieve equity and efficiency across the European Union.

Certainly the possibility of the access to the courts for a group action can't be excluded and should function as well, but we believe that it urges the necessity to create or reinforce the already existing ADR schemes, as their advantages are various. In comparison with the judicial procedure, where litigation costs and lengthy, complex procedures have to be faced, in the out-of-court settlement these barriers are envisaged and the only barrier remaining is of the language used during the procedure. It is a fact that in some cases out-of-court settlement is not as effective as going to court, but problems such as the competent jurisdiction and the applicable law should not arise.

Furthermore, in the judicial redress system, fundamental principles applicable to the judicial procedure must be taken into account, while the out-of-court settlement is characterized by flexibility, meaning that the ADR scheme, the Ombudsman, for example, may decide on the basis of a code of conduct, alternative ways for consumers to obtain redress may be achieved, not only through reimbursement, but also through exchange of the faulty good, accepting offers, better terms of contracting, a discount on a future transaction etc. Through ADR, it is not necessary to end up with a winner and a loser, as it happens in the court procedure, but it is frequently the case of two winners who manage to keep as far as possible a continuing commercial relationship (win-win solution).

It is true that ADR mechanism has the weakness that its success is dependent on the willingness of the trader or service provider to use this mechanism, but we consider that there can exist available means to enable ADR schemes to require traders to compensate consumers. The publication of press releases containing the traders and

services providers who have denied collaboration with the ADR or who continuously break the law of consumer protection, can achieve a preventive effect of potential future wrongful conduct by traders. The publication of a case aims at public pressure damage and as a result loss of custom. Through this practice consumers are aware that their rights are infringed and that the particular problem concerns other consumers as well and as a result they become more willing to defend themselves if they can join together with others. ADR mechanisms can also take action into the field of information and prevention of unfair practices.

Internal complaint handling scheme is another mechanism of ADR. Traders and service providers must take self-regulation measures or expand the already existing, in order to gain goodwill of customers through a code of conduct and for that purpose guidelines could be set for the functioning of effective complaint handling mechanisms. An immediate communication and cooperation can be installed between the complaint handling mechanisms of the traders and the ADR schemes, in order to attempt the quick and amicable settlement of the dispute.

Consequently, through ADR consumers can get accessible, affordable and effective redress with minimal costs for all parties involved. The ADR ensures easier access to effective means of redress. It improves the function of the internal market by making it more competent, as traders who apply malpractices are appointed by press releases and as a result consumers feel protected and they are encouraged to shop across-border. This will play the role of a significant deterrent to traders. The judicial procedure can't be excluded as a potential future solution or as a last resort, but we believe that for the time being we should give a chance to ADR. Consumers must have a credible alternative way to get redress through ADR, which will also save the judicial system of overburden.

The access to the ADR systems will be facilitated through ECC-Net that provides information and advice to consumers on problems in relation to shopping across borders and indicates the available ADR schemes in Member States.

We strongly believe that the introduction in all legal systems of ADR mechanisms, either called "Ombudsman", or "Public Complaint Board", as in Finland or "National

Board for Consumer Complaints” as in Sweden, that will function under the same principles and safeguards is of crucial importance.

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