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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(84) 692 final

Brussels, 12 December 1984

Memorandum from the Commission

Discussion paper: CONSUMER REDRESS

COM(84) 492 final

This paper outlines the problems faced by consumers seeking redress. It describes the situation at Member State and Community level, suggests possible lines of action for future work in this field, and invites comments from interested parties on the issues it raises.

CONSUMER REDRESSI INTRODUCTION

The European Community was established for the benefit of its citizens. The preamble of the EEC Treaty expresses this idea in describing the constant improvement of living and working conditions as an essential objective. One aspect of the Community's concern for its citizens is its interest in access to justice, in particular the right to obtain a just and fair settlement of disputes arising out of ordinary consumer transactions.

The EEC is based on the concept of a common market, a market without barriers or obstacles to trade. In an undivided market trade spreads across national frontiers which previously acted as natural barriers. This should be to the advantage of the consumer. However, it could act to his disadvantage if, having acquired goods or services from a foreign firm, he were to find that the contract was subject to the law of another EEC Member State, or even that the courts of another Member State had jurisdiction. That possibility has been taken into account by the two conventions which have been agreed between the Member States: the Judgements Convention (1) and the Convention on Contractual Obligations (2) respectively. They adopt common rules on jurisdiction, enforcement of judgements and conflict of laws. Very briefly, the parties may choose by agreement where a case may be heard and which law shall apply. If they do not choose, then common rules are laid down in the conventions. Special regard is paid to the position of the consumer - if his contract is with a firm which:

- offers to do business or advertises in the consumer's country of habitual residence; or
- receives the consumer's order in his country, directly or through an agent; or
- arranges for the consumer to visit another country to make a purchase;

then the consumer can decide where the case is to be heard and the law which shall apply.

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- (1) Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 - OJ L 304, 30.10.1978, p.77.
- (2) Convention on the law applicable to contractual obligations - OJ L 266, 9.10.1980, p.1.

It is settled this way because it would clearly be unjust for a consumer to find himself forced to bring or defend proceedings in a foreign country, subject to laws which may deprive him of his rights under the law of his habitual residence, in these circumstances.

The great majority of cases in which consumers seek a remedy at law do not, however, involve transactions to which the Conventions apply: and yet it is clear that the conditions on which redress may be obtained in such cases vary considerably from one Community Member State to another. For this reason, the Second Consumer Action Programme, adopted by the Council of Ministers on 19 May 1981 (1), included, like its predecessor, the right of redress among the five consumer rights on which it is based. Under the heading "Advice, Help and Redress", the Programme includes the following principles:

"consumers should receive advice and help in respect of complaints and of injury or damage resulting from purchase or use of defective goods or unsatisfactory services"

"consumers are also entitled to proper redress for such injury or damage by means of swift, effective and inexpensive procedures" (2)

These principles form an integral part of the programme, closely related to the section on the economic interests of consumers. If the position of consumers is to be improved as a result of EEC directives (such as those concerning misleading advertising and those proposed by the Commission regarding product liability and consumer credit (3), then it is important that rights deriving from those directives should be capable of being exercised or defended.

This paper outlines briefly the problems faced by consumers seeking redress and suggests possible lines of action at Community level. Four annexes, which form the greater part of the paper, describe the current situation in the Member States under the headings:

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(1) Council Resolution of 19 May 1981 on a second programme of the European Economic Community for a consumer protection and information policy; OJ C 133, 3.6.1981, p.1

(2) Idem, p.9.

(3) Misleading Advertising: Directive of 10.09.1984, OJ L 250, 19.09.1984
Consumer Credit: OJ C 80, 17.03.1979
Product Liability: OJ C 241, 14.10.1976.

III

- simplified judicial proceedings;
- defence at law of collective interests;
- conciliation and arbitration;
- consultation centres.

As far as possible, the annexes describe the situation as of 31.12.1982.

II THE PROBLEM STATED

In general, there are a number of obstacles in the way of consumers seeking redress before the courts of justice. First and foremost is the cost of legal advice and representation, which may exceed the amount in issue, together with the ever-present threat in some countries that the losing party in legal proceedings may have to pay the costs of the other side. The proceedings may be slow; a case may take a long time to be reached in the court's list of cases for hearing; it may be adjourned and require several court attendances by the consumer during working hours.

Quite apart from these material factors there are also psychological barriers to be overcome. Consumers may be overawed or intimidated by the atmosphere of the courthouse or the courtroom, by the formality of the proceedings and of legal language and even by judges' and advocates' robes.

Sometimes legal proceedings are not ideally suited to the protection of consumers in so far as they are limited to individual redress.

For example, where misleading advertising affects a large number of people, a collective action may be more appropriate than proceedings brought by an individual. Some EEC Member States have recognised this fact by allowing consumer associations to sue on behalf of consumers collectively to restrain abuses. Where the question is one of compensation rather than prevention, another possible solution is a class action for damages brought by one or more persons on behalf of a larger number. The class action is virtually unknown in the Community. There are some who have reservations about this approach. Experience in the USA has shown that it can give rise to undue pressure upon defendants, especially where class actions are

pursued by lawyers operating on a contingency fee (1).

Efforts have been made in some Member States, by simplifying court procedures for small claims, to overcome the obstacles which consumers face in seeking redress. The special County Court procedure in England and Wales, for example, is a considerable step in this direction. Northern Ireland also has improved County Court procedures, while in Scotland, which has its own legal system, a pilot scheme aimed at developing new procedures was in operation from 1979 until 1981. It was partially funded by the Community.

Other Member States have adopted alternative solutions. For example, Denmark has established a Consumer Complaints Board to deal with claims for compensation by consumers. The Board resolved disputes by a process of conciliation and arbitration. This approach exists, of course, in other Member States, often under private conciliation or arbitration schemes, although even private schemes may evolve in response to the intervention of a public authority. The codes of practice negotiated by the Office of Fair Trading with British trade associations generally cover the handling of complaints from dissatisfied consumers.

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(1) i.e. paid by retaining a proportion of the damages recovered, as much as 30%-40% in some cases. This system is not accepted by lawyers practising in the Community.

The disadvantage of most conciliation and arbitration procedures is their voluntary nature. The parties must agree both to have their dispute resolved in this way, and to comply with the decision reached by the conciliation or arbitration body, for such procedures to be effective.

Adequate advice and information are prerequisites to the success of any scheme to provide redress for consumers. Unless a consumer knows that he or she has a right to redress or a defence to a claim by a trader such schemes might as well not exist. This may well be one reason why efforts in the Member States to improve access to justice, using that expression in its widest sense to include extra-judicial procedures, have to some extent not met the success they have deserved. However, it is probably also true to some extent that consumers have not made full use of these procedures because they do not meet their needs. Finally, in some cases, lack of funds has led to the closure of a number of consumer advice centres and arbitration schemes (1).

III THE COMMUNITY DIMENSION

During recent years there has been widespread concern about the inadequacy of traditional legal systems to deal with minor claims. Individually, each case is of little importance. Collectively, the fact that a large number of people are unable to exercise or defend their rights can only give rise to discontent and a lack of respect for the law.

This realisation has led to a number of developments in which the European Community has played an important role.

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(1) Further details of procedures to facilitate access to justice in the Community are set out in the Annex to this document.

The Commission organised a colloquium on judicial and extra-judicial protection of consumers, which took place at Montpellier in 1975. It focussed attention on the problems faced by consumers in seeking justice and the various means by which attempts have been made to resolve disputes fairly in the field of consumer protection (1).

Many of the subsequent initiatives found their roots in proposals made at Montpellier; for example, there followed in 1977 a report in the European Parliament⁽²⁾ by Mr Brégégère and a resolution calling for:

- a) a regulation to improve, simplify and harmonise legal procedures applicable in consumer cases, including a right of action for consumer associations on behalf of their members;
- b) a directive on the creation of conciliation and arbitration schemes.

The resolution on the Second Consumer Programme also calls for an improvement in consumer access to justice (3).

The Economic & Social Committee adopted in 1979 a report⁽⁴⁾ prepared by Mr Hilkens requesting the Commission to take action by:

- a) improving the information and education of consumers;
- b) encouraging the establishment of consumer advice centres, and of conciliation and arbitration schemes;
- c) preparing a directive on small claims procedures;
- d) proposing a directive giving consumer associations the right to bring general interest actions (that is to say, to defend the interests of consumers collectively), even where no direct loss has been suffered.

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(1) The proceedings were published by the Commission in 1976.

(2) Doc. PE 47.778 fin.

(3) Doc. PE 65.917 fin.

(4) Doc. CES/93/79 fin.

1980 saw the completion of the final volume in the major work on access to justice prepared by Professor Capelletti of the European University Institute of Florence. It is an exhaustive treatment of this subject and a rich source of material for those working in this field(1).

There have also been important developments outside the framework of the Community. A resolution on legal aid and advice was adopted by the Council of Europe on 2 March 1978. It enunciates the principle that it is the State's responsibility to see that legal advice is available to those who would otherwise not be able to afford it.⁽²⁾ On 14 May 1981 the Council of Europe adopted a resolution on access to justice, which states a series of principles, covering such matters as the cost and length of proceedings (3).

These resolutions take the form of recommendations to Member States of the Council of Europe, which include all the EEC countries, and the Community participated in the preparatory work leading to their adoption. However, with regard to legal aid, special considerations arise in cases involving consumer issues, in which the cost of traditional legal procedures may often exceed the sum in dispute. It is, therefore, questionable whether legal aid should be available in these circumstances, or whether it is an unjustifiable allocation of funds, especially in the adverse economic climate currently prevailing. The reduced costs of simplified procedures could create a more favourable balance between the sum in issue and the expense of proceedings, and thus eliminate the need for legal aid.

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(1) Access to Justice, general editor Prof. M Cappelletti, pubs. Giuffr -Sijthoff.

(2) Resolution No. 78(8) of the Committee of Ministers.

(3) Recommendation No. R(81)7 of the Committee of Ministers to Member States on measures facilitating access to justice.

IV THE GHENT COLLOQUIUM

Most recently, in 1982 a second colloquium on consumer access to justice was organised for the Commission, this time in Ghent. Some sixty experts, including both academic and practising lawyers, drawn from all the Member States of the Community, discussed possible ways of making court procedures more accessible to consumers.

The value of the Ghent Colloquium is that it identified a great many of the issues involved in establishing new or improved procedures for securing consumer rights. The discussion ranged over such matters as:

- the nature of the proceedings;
- the structure of the court;
- the feasibility of limiting new procedures to consumer cases only;
- the conduct of the case;
- the form of the proceedings;
- the role of the judge;
- the representation of the parties;
- the right to an appeal;
- conciliation;
- access to the court.

Without attempting to analyse these various aspects comprehensively, the following summary gives some account of the questions which need to be answered by anybody who wishes to see an improvement in redress for consumers. In general, these questions refer to judicial proceedings, but it should be remembered that they are equally applicable to administrative proceedings.

1. The nature of the proceedings

Should these be judicial or administrative? If judicial, should a special court system be set up, or should new procedures be set up within existing courts?

The answer to these questions depend on a number of factors. Special new court systems to deal with consumer cases would be very expensive and present problems of funding (as would the setting up of new administrative tribunals). This suggests that it would be better to set up new, simplified procedures within existing courts. On the other hand, account should be taken of the psychological barriers

which often discourage consumers from using traditional courts: whether simplified procedures alone would be sufficient to overcome these barriers in every case is very hard to predict.

2. The structure of the court

Should the judge be assisted by lay assessors?

This would have the advantage of considerably reducing costs, by dispensing to a great extent with the need for expert witnesses: assessors could be chosen who were themselves expert in the field in question. However, a court with lay assessors would probably have to be a centralised body (as it might prove extremely difficult, or much too expensive, to staff a large number of such courts with assessors). Such a court would, therefore, have to operate largely on the basis of written submissions, which might frustrate the aims of speed and simplicity, as well as causing problems for unrepresented parties. Experience shows that many people have difficulty in expressing themselves clearly in writing, even where court forms have been simplified - although this does help to some extent.

3. Limits to the court's competence

- a) Should special simplified procedures be available only in consumer cases in the strict sense, or in all small claims cases?

It might prove very difficult to draw a precise line between consumer cases and other small claims. Moreover, there seems to be no justification for denying the benefits of simplified procedures to small claimants generally. However, it would almost certainly be appropriate to limit the jurisdiction of the court in some way: for example, by excluding claims for personal injuries and defamation, matrimonial causes and disputes over title to land.

- b) Should these procedures be available to all categories of claimant?

Experience in the Member States shows that small claims procedures are often used by suppliers suing consumers. It

is sometimes suggested that, as these procedures are intended to benefit private claimants, suppliers should be either excluded from bringing actions under them, or discouraged by higher court fees than those payable by private claimants, otherwise improved procedures become no more than an improved form of debt collection. However, two of the arguments against excluding suppliers in this way are: first, excluding a particular category of claimant seems wrong in principle, as the courts should be open to all: and suppliers should not be denied the benefit of a simplified procedure for recovering lawful debts; secondly, if suppliers were to be excluded, they would simply bring actions against consumers using the standard procedures: effectively denying consumer defendants the benefit of the simplified procedure.

- c) Should there be an upper limit to the amount for which claims might be brought under the special procedure?

By its very nature, a small claims procedure would probably require such a limit to be set. Even if the procedure were limited to consumer cases in the strict sense, such a limit would seem advisable: where large sums of money are at stake, parties are more likely to be prepared to incur considerable expense in defending their claim (or may indeed qualify for legal aid).

4. The conduct of the case

- a) Should procedural rules and language be simplified?

It is widely agreed that elaborate procedural rules discourage many intending litigants, especially small claimants who are not legally represented. Similarly, many legal terms are almost meaningless to many lay people. Some simplification would therefore seem desirable.

However, given that the underlying purpose of procedural rules is to ensure that the case is conducted fairly and to safeguard the rights of both parties, would simplification simply mean second class justice. Is second class justice better than none at all? Legal terms are used in traditional legal proceedings because they have a precise meaning, known to

judges and lawyers, and it is clearly desirable that claims should be framed in unambiguous terms. It is hard, therefore, to see how the use of such terms could be completely excluded.

- b) How far is it possible, or desirable, to speed up court procedures?

The answer to this question and the preceding one are closely connected. Some of the procedural delay in dealing with cases may be unavoidable: it is obviously essential, if the procedure is to be fair, that sufficient time should be allowed for the service of notice of the claim on the defendant and for the defendant to enter a defence or counter-claim.

- c) Should the procedure be oral or written, or a combination of the two?

An entirely oral procedure could well increase the duration of hearings and make the identification of the issues more difficult. An entirely written procedure would save the parties from the need to attend a hearing, for which they might have to take time off work. On the other hand, it would increase the difficulty for the court of choosing between conflicting claims. It therefore seems that a hybrid procedure would be best. The exact balance between the oral and written parts of the procedure would depend, for example, on whether the special court procedures were centralised or were available in a number of local courts. (See question 2 above).

- d) What role should the judge play?

A passive role is not necessarily appropriate to small claims procedures, especially if the parties are not legally represented. If simplified procedures are to be made available, it may be better for the judge to have an active, interventionist role in the conduct of the case.

- e) Should lawyers be permitted to represent the parties?

As lawyers' fees represent a major part of the cost of litigation, one way of limiting costs would be to discourage parties from being legally represented - for example, by providing that such fees were not a recoverable expense.

It would not seem desirable, however, to ban lawyers from representing claimants, as this would discriminate against consumers: many commercial firms, in their litigation with consumers, would continue to be represented by specialists who were lawyers in all but name.

- f) Should decisions be subject to appeal or review by a superior court?

It might not be in the interests of justice to exclude completely the possibility of decisions being reviewed by a superior court - for example, where the court had made a mistake of law. However, the grounds on which a case might be reviewed should, in the interests of speed and economy, be kept to a minimum. The decision whether or not to allow a case to be reviewed should be taken by the superior court.

5. Conciliation

Should a special conciliation procedure be set up? Who should attempt conciliation, and at what stage during the proceedings?

A pre-trial conciliation procedure is justified if it allows time and money to be saved by allowing the parties to agree on a just solution to their dispute without bringing the case to trial.

If, however, the special procedure for trying small claims cases is informal, and the judge is given an active role, there seems no reason why attempts at conciliation should not simply be seen as a natural part of the procedure: indeed, one of the advantages of a preliminary hearing is that it shows whether conciliation is possible.

6. Access to the court

In view of the fact that court hearings are normally held during working hours, so that most litigants need to take time off work to attend, and may suffer loss of earnings as a result, should special measures be taken, either to provide for hearings to be held in the evening or at weekends, or to compensate litigants for loss of earnings?

Evening or weekend hearings would probably solve the problem, but would add considerably to the court's running costs. Other possible solutions would be to require paid leave to attend court

hearings to be given to employees, a course hardly likely to appeal to employers, or to allow loss of earnings as a recoverable expense to the winning party.

7. Collective action

Should some provisions be made for the bringing of representative or class actions by, for example, consumer organisations? (This question was not examined at Ghent but has been included here because of its clear importance in any discussion on future developments in consumer redress).

Class actions allow a defendant to be sued by an individual, group of individuals or organisation acting in the name of a class of persons who have been injured by the defendant's behaviour. They are therefore particularly appropriate as a means of providing redress in cases where a large number of individuals has suffered loss as the result of a single event, or a series of identical events, but where the amount of loss suffered by each member of the class is too small to justify his bringing an individual action. For example, if a tour operator unilaterally and in breach of contract with his customers ended a package tour one day early, the amount of damages recoverable by each customer might be very small. However, the loss suffered by the class as a whole would be considerable. The traditional system of individual action is of little use in such cases, as very few people are prepared to go to law to defend their rights unless the damages significantly outweigh the expenses incurred in recovering them. This clearly leads to injustice. A system of class actions would make it worthwhile to bring actions in such cases by allowing costs to be spread: experience in the United States of America shows that class actions are economically feasible even where the amount claimed by individual members of the class is very small indeed (even as low as \$10). This is to some extent due to the system of contingency fees: indeed, it is open to question whether class actions are feasible in the absence of such a system.

Many other issues must also be examined, for example, if class actions were to be introduced, it would be necessary to lay down rules to permit the definition of membership of a class (so as to exclude very large, amorphous classes such as "all car users") and to simplify the assessment of damages in cases where the defendant's act gives rise to a large number of claims. It would also be necessary to deal with an objection of principle:

that it is undesirable, and a misuse of the court's proper function, to allow "windfall" compensation to people not sufficiently motivated to bring an individual action. This objection could be met by requiring claimants specifically to "opt in" to the proceedings - which would of course be feasible only if the class were so defined as to enable its members to be readily identified.

V POSSIBILITIES FOR ACTION

The preceding account shows that the role of the Community in the field of consumer access to justice could take a variety of forms. Both in the European Parliament and the Economic & Social Committee it has been proposed that the Community should introduce legislation requiring changes in the legal procedures of Member States. Experience shows that this could be a difficult and long-drawn out approach, unlikely to produce results during the Second programme.

A second possible line of action is for the Commission to address a recommendation to Member States. However, this approach is likely to lead to a repetition of the principles already enunciated by the Council of Europe. It would be undesirable for the Commission to go over the same ground with national experts. Even if it did so, it is unlikely that any different conclusions would be reached, bearing in mind that the Community participated in the meetings held by the Council of Europe to prepare their Recommendation. The Commission can well endorse the statement of principles which it contains.

Another possibility is for the Community to follow a pragmatic approach. Access to justice has been the subject of numerous discussions in a variety of settings. Many works have been written expounding theories on how to overcome the shortcomings which are generally agreed to exist. The principles which facilitate access to justice have been identified. But the real problem remains how to put the principles and the theory into practice. It can only be done by experiment. Consequently, the Second Programme proposes that pilot projects should be encouraged nationally and locally, so that the efficacy of new procedures can be assessed in practice.

The proposals for these projects should be formulated to suit the circumstances of each country. There is no question of introducing a Community-wide small claims procedure. The principles of access to justice are international. The Council of Europe's Recommendation shows that to be so. However, these principles are like seeds; planted in the soil of the Member States, the way in which they develop will be strongly influenced by the local soil and climate.

There are a variety of ways in which the Community can encourage activities designed to facilitate access to justice. Financial support, even if modest, is of primary importance. A number of worthwhile schemes have failed through lack of funds. Technical support may also be relevant. For example, expert advisers could be engaged to formulate proposals for new schemes, to devise the methodology for assessing their efficacy, or to examine the results they produce, where possible, by comparison with existing procedures.

As previously mentioned, the importance of information cannot be over-estimated. Consumer organisations have a special part to play in this respect.

- The existence of new dispute resolution procedures must, in general, be publicised if consumers are to know and take advantage of them.
- The publication of a simple guide to the procedures available for the resolution of cases involving consumer issues could serve a useful purpose; understanding the procedures will diminish the apprehension of the consumer, may even enable him to handle his own case.
- New computer-based information systems could provide easy access to a large volume of reference material in the field of consumer redress. Experimental systems are beginning to emerge: the Community might well offer financial support for the development of such systems.
- An interchange of information on developments in the field of access to justice throughout the Community and beyond its frontiers could be of value to consumer and professional organisations, as well as to the governments of Member States. The Commission could act as a centre for the distribution of such information, or confide this activity to a university or an appropriate consumer or professional

body. The results of studies could be included, as could reports of cases concerning consumers, in so far as they shed light on the subject of access to justice.

In implementing the above proposals, the Commission could consult, on a regular basis, a group of expert jurists.

The measures outlined above should be considered as a whole. Information and advice for consumers about their rights and the means whereby those rights may be exercised or defended are, or should be, complementary. The combined impact of these measures would have a wider effect than to bring about improvements for consumers, even though it is in the framework of consumer policy that they are proposed. Facilitating access to justice for consumers could also improve the counselling and handling of disputes over a wider range of cases.

The actions proposed would be of direct consequence to a large number of people, and constitute a worthwhile contribution to improving the quality of life in the Community.

VI SUMMARY

The purpose of this paper is both to provide information on the current position at Community and Member State level and to focus attention on the subject of redress in a way which will promote developments in this field of benefit to consumers.

The overall aim, in the Commission's view, remains clear: to ensure that consumers throughout the Community enjoy a broadly similar standard of redress. The Commission sees greater merit, while not excluding the long term possibility of a binding legal solution, in concentrating for the time being on the promotion of appropriate action at national level in this field of redress. To this end it will continue to support pilot schemes, in order to learn how to solve the problems experienced in practice by claimants seeking redress and will, on the basis of information thus obtained, propose concrete solutions. These might take the form of: changes in the legal system itself; the setting up of administrative or extra-judicial procedures, or procedures for arbitration and conciliation; arrangements for improving consumer advice and information in this area; or a combination of all or any of these.

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In so doing, the Commission will cooperate, where appropriate, with national and local authorities and consumer and professional bodies and invites comments from interested parties on the issues raised in this paper with a view to preparing future work in the field of consumer access to justice at Community level.

ANNEX 1

SIMPLIFIED LEGAL PROCEDURES

1.01 Some years ago certain countries of the New World (Australia, Canada, USA) drew up simplified rules of civil procedure, all aimed at settling disputes in a minimum of time, without unnecessary formalities, and as cheaply as possible.

These changes in legal procedure were based on the idea that there are a number of disputes - such as disputes between consumers and traders - in which the amount at stake is too small or the question at issue too straightforward for the parties concerned (or one of them) to be expected to accept the expense, difficulties and time involved in a traditional lawsuit.

At present, simplified procedures exist in five Member States - the Federal Republic of Germany, France, Italy, the Netherlands and the United Kingdom.

1.02 There are in the FEDERAL REPUBLIC OF GERMANY no special legal channels which are available only to consumers or which simplify access to the law and the courts specifically for consumers.

In principle, the rules of procedure regulate access to the courts and the enforcement of claims for all (natural and legal) persons, regardless of whether they are plaintiffs or defendants, or whether they are acting in their capacity as consumers.

Nevertheless, in the last twelve years numerous laws and individual provisions have been introduced which are designed to provide special protection for "consumers". It should, however, be stressed in this connection that there is no uniform definition of "consumer". Procedural law does not use this term. It often refers to other criteria such as "instalment sales" and "purchaser" (Section 6 a of the Gesetz betreffend die Abzahlungsgeschäfte-law on instalment sales), "participant" (Section 26 of the Fernunterrichtsschutzgesetz - law on the protection of participants in home study courses) or the court of the place where the defendant has his habitual place of residence (Section 29 a of the Zivilprozessordnung - Code of Civil Procedure). The aim of such provision is to protect the

party whose financial position is normally weaker (e.g. purchasers in the case of instalment sales, participants in home study courses, tenants, etc.). Occasionally this aim is achieved by excluding the party whose financial position is normally stronger from the protection afforded by certain legal provisions (e.g. the registered trader in Section 8 of the law on instalment sales, the trader in the context of a contract connected with the operation of his business, in Section 24(1)(1) of the Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen - law on general business conditions) or by permitting freedom of contract on certain matters only between parties normally in a financially strong position (as with the permissibility of agreements on the choice of court under Section 38 of the Code of Civil Procedure).

Other provisions made it easier for parties whose financial position is weak to obtain access to the law and the courts by exempting them from the costs of a proposed prosecution or defence or requiring them to pay only a reduced amount in keeping with their financial situation (e.g. the provisions of the Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen - law on legal advice and representation for persons with low incomes and of the Gesetz über die Prozesskostenhilfe - law on assistance with the cost of litigation. The legal provisions in these cases also make no reference to the term "consumer". They are geared more to the personal and financial circumstances of the parties in each case.

Finally, the legislative authorities have in recent years taken increasing account of the need to protect financially weak or inexperienced parties in certain aspects of procedure. This has found expression for example in greater obligations on the courts to inform, educate and assist parties and in rules which allow simpler and more rapid proceedings. Such rules, which primarily take account of the needs of financially weak or inexperienced parties, generally benefit other parties too.

1.03 The German Code of Civil Procedure contains various provisions on simplified procedures which allow a claim to be enforced quickly and at relatively little cost. It must be emphasized once again, however, that these simplified procedures have not been created

especially for consumers but are generally open to all (natural and legal) persons.

1. The arbitration procedure previously in force (Schiedsurteilsverfahren) gave courts dealing with disputes over property claims the freedom to determine their own procedure if the value of the item of property in dispute did not exceed 50 DM at the time the action was brought. The provisions governing this procedure were repealed with effect from 1 July 1977 by the Gesetz zur Vereinfachung und Beschleunigung gerichtlicher Verfahren (Vereinfachungsnovelle)- Law on the simplification and acceleration of legal proceedings (Amending law)- of 3 December 1976 (BGBl (Official Gazette) I, page 3281).

However, the amending law introduced another provision which allows procedures to be simplified to a certain extent in the case of disputes concerning property of a relatively small value: under Section 128(3) of the Code of Civil Procedure, the Court may, in the case of disputes concerning property claims, "order of its own motion that the matter be dealt with in writing, if representation by a lawyer is not required, if the value of the item of property in dispute does not exceed DM 500 at the time the action is brought and if one of the parties cannot reasonably be expected to appear before the court because of the distance involved or on other valid grounds".

2. Summary proceedings (Mahnverfahren) (Section 688 et seq. of the Code of Civil Procedure) above all permit a simplified, rapid and inexpensive enforcement of debts. This procedure provides holders of claims which are not expected to be contested with a simple and inexpensive means of obtaining an enforcement order and thus avoiding lengthy and costly judgment proceedings. In response to an ex parte claim by the applicant, the validity of which is not examined, the registrar (Rechtspfleger) of the district court (Amtsgericht) issues a so-called Mahnbescheid (order for payment) against which the debtor may, within a period of two weeks, raise an objection. If the debtor does not enter an objection within the time limit, a further application by the creditor leads to the issue of the so-called Vollstreckungsbescheid (order for execution) which is equivalent to

a default judgment declared fit for use as a temporary title for execution and against which the debtor can still raise an objection, once again within a period of two weeks. With his objection to the order for payment or the order for execution, the debtor can have the claim brought by the applicant examined by the court. Then only an application from one of the parties is needed for litigation to proceed. If litigation is commenced, then the summary proceedings were merely a special form of introduction.

The summary proceedings have considerable practical importance. In 1980 around 4.6 million summary proceedings were brought. Only in 11.6% of cases were they followed by litigation. The Code of Civil Procedure allows summary proceedings to be dealt with by computer. In part of the Federal Republic of Germany the computer processing of such proceedings is to be introduced before the end of 1982.

Summary proceedings are open to all parties and consequently are also used to enforce claims against consumers. For this reason the amending law and supplementary regulations introduced a number of provisions providing special protection for the party against whom the application is brought, which is often the party whose financial position is the weaker.

For example, standard forms have been introduced to inform the debtor of his rights and the possible course the proceedings will take. His access to the court is made still easier by the fact that a form for entering an objection is attached to the order for payment. His need for protection is also taken into account by the fact that in the event of an objection the legal proceedings are automatically assigned to the court under whose jurisdiction he normally comes.

3. The Code of Civil Procedure also lays down rules for various other simplified procedures for the easy, rapid and inexpensive enforcement of claims in certain areas of substantive law. The following should be mentioned in this connection:

- the simplified procedure for review of maintenance claims (Sections 641 1 et seq. of the Code of Civil Procedure), which was introduced by the Gesetz zur vereinfachten Abänderung von Unterhaltsrenten - law on the simplified procedure for review of maintenance payments - of

29 July 1976 (BGBl. I, page 2029) and allows maintenance payments for minors which have to be made on the basis of a judgment or other enforceable title to be adjusted more easily to changed economic circumstances (cf. also Section 1612 a of the Bürgerliches Gesetzbuch - Civil Code);

- the procedure for fixing regular maintenance (Section 642 et seq. of the Code of Civil Procedure), which was introduced by the Gesetz über die rechtliche Stellung der nichtehelichen Kinder - law on the legal status of children born outside marriage - of 19 August 1969 (BGBl. I, page 1243) and allows a simplified procedure for fixing such a child's maintenance claim against his or her father if he has been ordered to pay regular maintenance.

Once again, these are not procedures intended to serve the specific interests of the "consumer" but simple, rapid and inexpensive procedures designed to enable the maintenance claims of minors or children born outside marriage to be adjusted more easily to changed economic circumstances.

- 1.04. Finally, mention should be made of the interim legal protection procedures (restraint and interim injunction (Sections 916 et seq. of the Code of Civil Procedure)). These are summary proceedings to secure the creditor's claim. The point at issue in these proceedings is not the debt itself, but whether security for it should be ordered. Proceedings of this type are also to be found in other legal systems.

- 1.05 In FRANCE, in addition to the quick, simple and inexpensive procedures of the courts of first instance (tribunaux d'instance) the "injunction to pay" procedure is ~~of some interest~~ to consumers.

This is essentially a written procedure created by a Law of 25 August 1937, which applied solely to commercial debts of a limited amount, and was extended by a Law of 4 July 1957 to cover small civil debts (of less than FF 2 500 per month or less than FF 5 000). Since the Decree of 28 August 1972 this procedure has applied to any contractual debts irrespective of the amount.

The creditor must petition a judge of first instance (civil debt) or the president of the commercial court (commercial debt) in order to obtain authorization to notify the debtor of an injunction to pay.

A registered letter accompanied by the supporting documents is sufficient and it is not necessary to employ a lawyer.

If the judge considers that the petition is not justified, the creditor may not appeal against the decision rejecting it and must follow the traditional procedure.

Otherwise, the judge will issue an order of injunction and communicate it to the debtor at the same time as the petition. The debtor is informed by a bailiff of the decision given, and may, within a period of one month, file an objection to the order. In the absence of an objection, the order is made enforceable and has all the effects of a judgment given after full argument on both sides.

In order to file an objection, the debtor must send to the registrar of the court which issued the order a registered letter with acknowledgement of receipt. This objection gives him access to the court. The parties are convened simply by registered letter and must attend the hearing.

No appeal is allowable against the decision thus delivered by the judge if the amount of the debt exceeds FF 7 000.

1.06 In ITALY, the judges of first instance - the conciliator and the praetor - may follow rules of procedure which - at least in theory - are meant to provide quick, inexpensive settlement of minor disputes (up to Lit 50 000 for the conciliator and Lit 750 000 for the praetor).

The basic characteristics of these rules may be summarized in four points:

- (i) The court consists of a single judge, who follows the case through from beginning to end.
- (ii) The periods within which litigants must appear are shortened (three days for a party residing within the jurisdiction of the court, half the normal period in other cases).
- (iii) The judge may point out to the litigants omissions and irregularities in their submissions and of his own motion order witnesses to appear where the litigants have made reference to people who seem to be acquainted with the facts of the case.
- (iv) Lastly, the litigants may appear before the court in person, without having to be represented by a lawyer (authorization has to be requested from the praetor but not from the conciliator).

1.07 The simplified procedure also covers two important types of procedure

often used by Italian judges: the injunction procedure and the procedure provided for under Article 700 of the Code of Civil Procedure.

Under the first procedure, a person to whom a sum of money or a given quantity of fungible goods is *due*, or who is entitled to the delivery of specific goods, may, if his right is evidenced in writing, ask either the praetor or the court (depending on the amount of money owed or the value of the goods of which delivery is sought) to issue against the debtor an order to pay the sum owed or against the person responsible for delivery an order to supply the goods in question. It is also possible to ask that the order be declared immediately enforceable and it is for the judge to decide whether or not the request should be granted.

The procedure provided for under Article 700 of the Code of Civil Procedure authorises any person who urgently needs court ruling, because his right is seriously and immediately threatened, to seek, usually from the praetor, an urgent measure of a provisional nature which will be applicable until such time as the praetor himself or the court (depending again on the amount at issue) has given a final ruling.

Neither the injunction procedure nor the procedure provided for under Article 700 of the Code of Civil Procedure is, in itself, a procedure reserved for consumers.

1-08 On 29 November 1979, the Italian Government presented a draft law amending the powers of the praetor and the conciliator. According to this draft, the former will have jurisdiction over disputes involving amounts not exceeding Lit 4 000 000, and the latter over disputes

involving amounts not exceeding Lit 1 000 000 (Lit 2 000 000 in the case of compensation for damage or injury caused by road accidents).

The Government also presented, on 27 May 1981, a complex draft law delegating powers with a view to drawing up the new Code of Civil Procedure, the main feature of which will be a simplification of every aspect of civil procedure.

1.09 In IRELAND, claims up to the value of IRL 2 500 may be determined in the District Court, which sits in over 200 venues throughout the country for the hearing of such matters. There are two procedures available to aggrieved persons, one which can be used where the amount at issue is a fixed sum, and a somewhat less simple procedure where the amount recoverable is determined by the court.

Where the amount claimed is fixed, the aggrieved person (the plaintiff) makes out a "Summary Judgment Civil Process" specifying the amount claimed and details of the claim, affixes a stamp for court fees, serves a copy on the defendant, and lodges the original in court. If the defendant pays the claim and appropriate costs within 10 days of receiving the Civil Process, that is the end of the matter. If he serves notice of intention to defend within 10 days, the issue goes for hearing before the court. If notice of intention to defend is not served within the time limit, the defendant is held to have admitted the claim; the plaintiff lodges a sworn statement in the Court office in support of his claim with a request for judgment and a decree for the amount at issue is signed by the District Justice without the court hearing.

Where the claim is not for a fixed sum the plaintiff must use the ordinary civil process procedure. This is similar to the summary judgment procedure described above as regards service on the defendant - if the defendant pays the amount claimed and appropriate costs within 4 days of receiving the civil process, the matter is at an end. If the defendant does not give notice of intention to defend, a hearing is nonetheless required before the plaintiff can be awarded a decree. The defendant may, when giving notice of intention to defend, lodge in court a sum (generally less than the amount claimed) which he alleges is sufficient to satisfy the claim. The plaintiff may accept this at any time before the day of the hearing, in which case the matter is at an end; if he does not accept, and the court does not award him an amount greater than the amount lodged, he is liable for the defendant's costs incurred after the lodgement.

Hearings are held in open court before the District Justice. Each side may be represented and may call its own witnesses and examine the opponent's witnesses. Evidence is given on oath and the normal rules of evidence apply. The District Justice has power to award a decree or dismiss, with or without costs.

- 1.10 In the NETHERLANDS the courts of first instance may deal with disputes involving sums of FL 3 000 or less and it is not necessary to employ a lawyer; the parties may conduct their case *in person*. No appeal lies where the sum at issue is below FL 1 500.

Moreover, in the event of a claim for an amount not exceeding FL 1 500 payable under a contract, the court can be asked to issue an order to pay (Article 125 k of the Code of Civil Procedure). The order is issued only if no objection is filed. The request is made directly to the court without the services of a bailiff. This "recovery procedure" is intended mainly for suppliers. However, if the party against whom the action has been brought (generally the consumer) objects, the case is immediately referred for an ordinary hearing.

Wherever an immediate court decision is sought, it is possible, whatever the amount involved, to submit an application for interim

measures to the President of the District Court (Article 289 of the Code of Civil Procedure). This procedure is of a highly informal nature, although the applicant must employ a lawyer. The President's decision is in theory only provisional, but in most cases it is in practice final.

None of the three procedures referred to above applies only to disputes involving consumers, nor were they introduced for that purpose. Consumers may, however, avail themselves of them should the need arise.

1.11 In the UNITED KINGDOM the situation in England and Wales should be distinguished from those in Scotland and Northern Ireland.

In England and Wales a series of reforms initiated in 1972 and 1973 enabled simplified procedures to be introduced. As early as 1976 a report by the National Consumers' Council entitled "Justice out of reach" drew attention to the fact that few cases were brought before the county courts by private individuals (9% of the actions) although this procedure was widely used by traders. In 1979 it published a report entitled "Simple justice" on small claims procedures, which concluded that such claims must still be dealt with by the county courts, but that the system was in need of reform. For the record, county courts have general jurisdiction in civil matters (with a few exceptions, such as actions for defamation) and are courts of first instance.

England and Wales are divided into 310 districts, each with a county court, grouped together into 18 circuits, each circuit having one or more judges.

Each county court has its administrative staff and its "registrar".

It is undoubtedly the registrar who plays a pivotal role in these reforms. He is a kind of assistant judge, appointed by the Lord Chancellor from solicitors with at least seven years experience and has always performed administrative and judicial tasks (interlocutory cases, collection of court fees). The judge may delegate his judicial powers to him when the defendant does not appear at the hearing or when the subject of the action is not contested. He may also give a

decision in a case, unless the parties concerned object, where the amount involved in the dispute does not exceed £200, and in all cases where the parties concerned agree to his so doing. Where the registrar exercises judicial powers, an appeal may be brought against his decisions, first before the judge, then before the Court of Appeal.

Under the simplified procedure the plaintiff normally tries to achieve a compromise solution either directly or via Citizens' Advice Bureaux and Consumer Advice Centres.

Independently of such a settlement or in the event of failure to achieve such a compromise, he must complete a form applying for a summons, which the court is responsible for transmitting to the defendant. Where a sum of money is involved a "default summons" is sent, in other cases an "ordinary summons". So it is the plaintiff who chooses between the two types of summons, a choice which is not always an obvious one.

- 1.12 In the case of a default summons the defendant must inform the court within the next 14 days whether he intends to defend himself, seek adjournment or make a counter-claim. If the defendant fails to reply during this period the plaintiff completes a form enabling him to obtain a judgment which is enforceable immediately. If the defendant accepts the claim but objects to the terms of payment, the registrar will arrange a meeting in order to determine the terms of payment. If the defendant contests the default summons or where an ordinary summons is involved, a preliminary hearing is arranged and the registrar attempts conciliation or refers the case to arbitration. Arbitration awards are definitive and have the authority of final decisions. If necessary, they may be enforced by distraint. At present referral of a case to arbitration may be decided by the registrar himself at the request of one of the parties concerned, provided that the dispute does not involve a sum of money in excess of £500 (if the claim is for a sum in excess of £500, the agreement of both parties is necessary); the traditional rules of evidence do not apply. The arbitrator may, with the consent of the parties concerned, decide without holding a hearing on the basis of the documents provided by them. Hearings are informal and may be held in private in accordance with a procedure chosen by the arbitrator himself.

If a party does not appear at the hearing, the arbitrator may still make an award. The arbitrator may also on his own initiative consult an expert. In practice, the arbitrator is virtually always the registrar of the court. In cases involving sums of less than £500 the party losing the action cannot normally be made liable for barrister's fees and solicitor's charges ("no cost" rule).

It would seem that the frequency of, and reasons for, recourse to arbitration vary greatly from one registrar to another. Even in cases involving sums of less than £500, where arbitration, if requested by one of the parties, ought to be automatic, the registrar may turn down the request (in cases involving sums of more than £500 one of the parties involved, but not the registrar, may object to the judge).

In general, if the statistics are to be believed, arbitration is being increasingly used to settle minor disputes between consumers and traders. According to the figures, the number of disputes settled by arbitration rose from 8 245 in 1976 to 10 017 in 1977, 9 879 being dealt with by the registrar. In 1979 the registrar dealt with 13 222 cases.

And yet it has to be pointed out that it is seldom the consumers who take the initiative in using this procedure. While cases concerning the supply of goods or services account for 63.4% of those dealt with, the plaintiffs are firms in 52% of the cases. Moreover, those defending consumer interests estimate that the parties concerned continue to be represented by lawyers in a high proportion of the cases (hence the persistence of high costs).

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1.13 In Scotland, the Sheriff Courts (Scotland) Act enabled the Sheriff Court Rules Council to prepare the rules of a new rapid procedure which became applicable, as from 1981, to cases involving sums of £1000 or less.

Under this "summary cause procedure" an action for payment begins with a writ of summons in which the pursuer must set out in writing the object of his claim. This writ is notified to the defender, who may reply by completing one of the two questionnaires corresponding to the following two situations: either the defender contests the validity of the claim or he accepts it and proposes terms of payment.

If either of the forms is returned and/or the terms of payment are rejected, the case goes to court. Where it is the terms of payment that are rejected, the court acts immediately. Where the defender contests the validity of the claim, there is a hearing during which witnesses may be summoned, written evidence produced and the traditional rules of evidence and of adversary proceedings are applied. The procedure is, however, simplified in that it is not necessary to set out in writing the grounds put forward by the pursuer or the defender, and there is no period of adjustment for finalising written submissions and presenting them. Nor is there any discussion before the hearing devoted to examining the evidence and in general no time elapses between the hearing and the delivery by the sheriff of a written judgment. In point of fact, the sheriff normally gives his decision orally at the end of the hearing. The right of appeal to the sheriff-principal is confined to matters of law. There may be a further appeal to the Court of Session but only if the sheriff-principal gives leave.

The Scottish Consumers' Council therefore suggested that a working party be set up not to press for changes in a reform which has been in application only for a short while but to study a parallel, more simplified procedure. The study made by this working party led in January 1979 to the setting up of a local experiment - the Dundee

Voluntary Pilot Scheme, financed in part by the Commission of the European Communities.

1.14 The Dundee procedure applied provided that the dispute involved a sum not exceeding £500.

The pursuer could serve the writ himself or have it served by the administrative staff of the sheriff's office by means of a simple form, accompanying it with any documents relating to the dispute. The court costs payable upon submission of this form depended on the amount of the claim (varying from £1.50 to £7.50) and no party had to pay more than £4.25 towards his opponent's costs.

The form was delivered to the defender either by post or by the sheriff's administrative staff. If the defender agreed to submit to the simplified procedure he had to return the form with his comments in reply within 14 days and the sheriff's administrative staff then passed it on to the pursuer.

If the defender did not return the form within the specified period or if he refused the invitation to give his comments in reply, the case could be dealt with only under the traditional procedure, provided that the pursuer issued a summons under that procedure. Use of the Dundee procedure was therefore purely voluntary.

The procedure could be used only by individuals or small traders. A party could be represented by a lawyer, provided that he paid the relevant fees. With the agreement of the arbitrator, a party could be represented by a layman.

The two arbitrators involved in this experiment were the sheriffs of Dundee. The arbitrator attempted to get the parties to settle their differences by compromise. If he failed, he settled the dispute himself by a decision against which there was no appeal. The hearings were held in private and were as informal as possible.

This experiment was publicised by the media, a press officer of the Scottish Consumers' Council and by means of brochures and notices. A local committee was formed and information on the

rules of the system was also provided by the local citizens' Advice Bureau and Legal Advice Centre and by the information centre, the administrative staff of the Sheriff Court and certain solicitors.

The experimental scheme was in operation from January 1979 until 31 December 1981 and is now being evaluated by the appropriate Scottish authorities.

- 1.15 In Northern Ireland a special procedure for determining small claims (any claim where the sum involved does not exceed £300, excluding certain specific matters) was introduced by the Judicature (N.I.) Act, 1978. Northern Ireland is divided into four circuits, each circuit having its "registrar" (see under England and Wales above). The procedure is simplified in that the normal rules of evidence do not apply. While a party may be represented by a lawyer, the fees cannot be recovered from the losing party (except in a small number of exceptional cases). The registrar's decisions are final and conclusive.

About 7000 disputes were settled in this way in 1981.

- 1.16 In GREECE a special procedure for small claims may be applied by any of the 300 courts presided over by a judge of first instance. It may be used in cases in which the application concerns movable property, where the amount claimed does not exceed DR 12 000. The simplified procedure is as follows: the parties are not legally represented and the judge gives them active assistance as he is not bound to apply the normal rules of procedure prescribed by the Civil Code.

ANNEX 2

DEFENCE AT LAW OF COLLECTIVE INTERESTS

2.01 In the legal tradition common to the various Member States of the Community - whether they be "civil law" or "common law" countries - a natural or legal person may not institute legal proceedings unless he establishes a direct personal interest, in other words unless he is qualified to act.

However, the interest of a number of consumers, or of consumers generally, may be affected by a trade practice or a dangerous product, either actually or potentially. Since no one can take proceedings merely to compel the performance of a statutory duty, who then should be entrusted with the defence of this "collective" or "general" interest?

In some cases, this task will be entrusted to the public prosecutor's office, which has far wider responsibility for defending the interests of the community as a whole. (A)

In other cases, the protection of consumer interests is more specifically assigned to a public body, a kind of "public prosecutor's office" specialising in trading and consumer problems. (B)

In the third type of case, an aggrieved individual consumer may bring an action to defend both his personal interests and those of all consumers who are in the same situation as himself. (C)

Finally, in the last type of case, the defence of the collective interest of consumers is entrusted to associations satisfying certain criteria. (D)

2.02 (A) Actions brought by the public prosecutor

In most Member States of the Community those rules of consumer law which have a penal aspect are subject to sanctions under the normal rules of criminal procedure. Offences are investigated by the ordinary police or by authorities specialising in economic matters,

and a public prosecution is brought against offenders in the competent criminal courts, in defence of the general interest and of the community as a whole.

2.03 In FRANCE, where the public prosecutor's office decides whether or not to proceed, the procedure known as "constitution de partie civile" enables an aggrieved individual consumer, or a consumers' association, to set criminal proceedings in motion despite failure to act by the public prosecutor's office. This procedure is not, however, without its risks ("dénonciation calomnieuse" (false accusation) A.373 of the penal code) and involves certain expenses ("consignation"(deposit) of at least FF 1,000). It should also be pointed out that the individual consumer or association which resorts to this procedure may claim damages only for the injury they have themselves suffered and cannot be awarded (to distribute on a pro rata basis) damages for the injury suffered by a group or body of consumers.

2.04 In the UNITED KINGDOM, any consumer or consumer protection association may institute criminal proceedings in the event of violation of the Trade Descriptions Acts of 1968 and 1972 if the public authorities (Trading Standards Department of the local authorities in Great Britain, Department of Commerce in Northern Ireland) do not do so.

In Scotland, on the other hand, only the Procurator Fiscal can institute criminal proceedings. It should also be noted that the public authorities are free, particularly in so far as criminal law applied to economic matters is concerned, to arrange compromise solutions and thus put a stop to the harmful acts or practices without recourse to legal proceedings.

2.05 In BELGIUM, the Public Prosecutor is responsible, under the Law on trade practices of 14 July 1971, for bringing actions to put a stop to certain irregularities which are considered offences.

2.06 (B) Actions brought by a specialized body

1. In two Community countries - Denmark and the United Kingdom - administrative bodies exist whose task it is to protect consumer interests in general against trade practices which could be harmful to them.
2. In the UNITED KINGDOM the Fair Trading Act, 1973 introduced an administrative mechanism which is simple and yet diversified. The Director-General of Fair Trading (DGFT) appointed under the Act is responsible for monitoring trading activities in the United Kingdom with a view to identifying unfair trade practices and monopolies and for making appropriate recommendations to the Secretary of State and providing him with information and assistance.
3. The DGFT, the Secretary of State or any other minister concerned may ask the Consumer Protection Advisory Committee whether the trade practice which has attracted their attention is contrary to the economic interests of consumers. The DGFT provides the Committee with any information and help it may need. When the Committee has given its opinion, the Secretary of State may take measures to solve the problem. In practice, the Committee has seldom been consulted and there are few cases in which statutory measures adopted in this way have given rise to legal proceedings.
4. The DGFT also has to collect evidence of persistent trade practices which are unfair to consumers in that they infringe civil or criminal law and are prejudicial to their interests. Where the existence of such a practice is established, the DGFT tries to persuade the person concerned to undertake in writing that he will refrain in future from the practice in question or any other similar practice.

If the DGFT cannot obtain such an undertaking, or the undertaking is not respected, he may refer the matter to the Restrictive Practices Court or the appropriate county court, which may issue an order prohibiting the offender from continuing to indulge in such practices.

The DGFT's Annual Report states that there were 60 such undertakings in 1980 in a wide variety of fields. Since the introduction of the Act 288 assurances, undertakings or orders have been obtained by the Office of Fair Trading.

5. The DGFT has a duty to promote the conclusion and application by trade organizations of codes of good conduct favourable to consumer interests. As has already been stated, some of these codes provide for recourse to arbitration or conciliation procedures. Twenty voluntary codes of conduct have been concluded under the auspices of the Office.
6. Where the DGFT has reason to believe that a monopoly situation exists, he may refer the matter to the Monopolies and Mergers Commission, subject to the approval of the Secretary of State. He must also investigate mergers which might call for an inquiry and recommend measures to the Secretary of State.
7. Under the Competition Act, 1980 the DGFT may inquire into the practices of firms which are allegedly distorting competition and, if necessary, refer the matter to the Monopolies and Mergers Commission.

On the Secretary of State's instructions, the DGFT inquiries into and reports on price questions about which public opinion has reacted strongly.
8. He also keeps a register of restrictive trade agreements and has to submit them to the Restrictive Practices Court for assessment, unless he is dispensed from having to do so by the Secretary of State on the grounds that the agreements are not sufficiently important to justify an investigation.
9. The DGFT is also authorized to publish information and advice for the benefit of consumers.
10. Under the Consumer Credit Act, 1974, he administers the consumer credit authorization arrangements, follows social and commercial

trends in relation to consumer credit and hire purchase and ensures that the Act, together with its implementing Orders and Regulations, is implemented and complied with.

11. Under the Estate Agents Act, 1979, the DGFT has certain powers of supervision over estate agents, follows social and commercial trends in relation to property transactions and ensures that the Act is implemented and complied with.

2.07 In DENMARK, the Law of 14 June 1974 on trade practices (Markedføringslov), which has been applied since 1 May 1975, set up a special administrative institution to provide protection for consumers as a whole, the Consumer Ombudsman ("Forbrugerombudsman"). The latter ensures that improper trade practices of firms are rectified and generally that all the provisions of the Law of 14 June 1974 are properly applied. On his own initiative or following a complaint from individuals, the Ombudsman may, by negotiation, persuade persons who fail to observe the statutory provisions to put an end to their illegal practices and comply with the Law of 14 June 1974. If the Ombudsman does not succeed by negotiation, he may request the Maritime and Commercial Court in Copenhagen to issue an injunction prohibiting the illegal practice in question.

A trader who violates such a prohibition may be fined or be imprisoned for a period of up to six months and anyone who refuses to provide the Ombudsman with the information he requires or gives him inaccurate information is also liable to a fine. The criminal proceedings in question are also instituted before the Maritime and Commercial Court in Copenhagen.

The report of the activities of the Consumer Ombudsman shows that this department takes action against a wide variety of practices contrary to the interests of consumers and encountered both in the marketing of products and in the provision of public or private services: contractual clauses, misleading and unfair advertising, advertising of prices, conditions of guarantees, bonuses, discounts, competitions with prizes.

2.08 In Ireland, the Consumer Information Act, 1978 created the post of Director of Consumer Affairs. The Director, who is statutorily independent in the performance of his functions, has a variety of powers to deal with false or misleading trade descriptions, misleading advertising and misleading price indications, etc. In the first place he can request in writing that persons contravening the Act should discontinue or refrain from so doing. A further step would be to secure an injunction to "cease and desist". The Director also has the power to bring or prosecute proceedings in relation to offences under the Consumer Information Act. Since the Director took up office in 1979 a number of successful prosecutions have been made.

The functions of the Director also include the promotion of codes of practice. He was, for instance, recently involved to a considerable extent in the drawing up of a new code of standards for the advertising industry.

2.09 (C) Individual actions in the general interest

1. In the "common law" countries, there are three procedures which enable an individual to act in the interest of the public:
 - (a) the "relator action" enables an individual who is not qualified to act himself to bring an action as a member of the public through the Attorney-General, provided the latter first gives his consent, with a view to preventing unlawful activities.
 - (b) The "class action", also known as the "representative action" in England and Wales, is based on the fiction that all the individuals concerned by the dispute are acting in person and are represented by the party actually before the court.

For such representation to be valid:

- the claim of the party bringing the action must be typical of those of the members of the class represented;
- there must be too many members of this class for it to be possible in practice to find an alternative solution;
- the members of the class must have received notification of the proceedings.

(c) The public interest action may be brought by an individual, bypassing the Attorney-General, in order to ensure the application and protection of rights belonging to the public in general or to a section of the public.

The party bringing the action must, however, be the holder of a right which he is seeking to have enforced or have suffered special loss or damage as a result of the infringement of the public's right.

2. The relator and class action are possible in theory in the United Kingdom (except Scotland) and Ireland and are also used in Australia, Canada and the United States.
3. It should, however, be pointed out that in England and Wales relator actions are not used to defend the collective interests of consumers. They are used more for defending the interests of inhabitants or a particular locality against illegal acts by the local authority, the protection of the environment (in particular against certain town planning projects) and for the administration of trusts.
4. Class actions or, as they are defined in England and Wales, "representative proceedings by one or more persons on behalf of a larger number", are governed by special procedural provisions (Order 15, Rule 12, of the Rules of the Supreme Court and Order 5, Rule 8, of the County Court Rules).
5. The effect of the representation procedure is that all the persons represented are party to the action, are covered by the decision given and are bound by that decision. However, the conditions to be met before the procedure can be used are so restrictive that they have prevented it from being developed, particularly in the field of consumer law. In particular, the persons "represented" must have a common interest, have suffered identical injury and be eligible for the same compensation.
6. The plaintiff and those whom he represents must have the same interest in bringing the action. It is not sufficient for them to have suffered a common loss for which they seek compensation. Thus, for

example, in a case in which shippers of goods had brought a representative action because the goods were lost as a result of a shipwreck, the court held that the common interest was insufficient because the shippers were not sending the goods to the same destination (*Markt v Knight* (1910) 2 KB 1021).

7. Consequently, consumers will seldom be able to institute a class action based on a vendor's contractual liability. It would not, however, be inconceivable for a request for an injunction to be brought by a group of consumers injured by the same illegal practices of a trader.

8. In the Romano-Germanic law countries there are two institutions which indirectly give an individual consumer the right to bring an action on behalf of consumers generally. Firstly, there is the "action civile", which enables the individual consumer to set in motion criminal proceedings without being dependent upon the willingness of the public prosecutor's office to do so and, secondly, the "action for cessation" that an aggrieved consumer may bring in Belgium on the basis of Article 55 of the Law of 14 July 1971 on trade practices (see above).

9. In Scotland a procedure similar to the representative action may be used. Each individual concerned brings his own action and all the actions save one are suspended with the parties' agreement, so that a single test case then serves as a model for the settlement of all the others.

10. In the common law countries, and particularly in England and Wales, any person or organization may institute criminal proceedings unless the right to prosecute is specifically reserved. This principle applies in particular in the case of infringements of the Trade Descriptions Acts of 1968 and 1972. It is quite possible for individual consumers or groups representing the interests of consumers to

bring an action if the public authorities (in this case the Trading Standards Departments of local authorities) do not act.

11. It should be noted in passing that a consumer may be all the more tempted to institute proceedings if he is able to obtain compensation (claim for damages or "compensation order") in the event of criminal proceedings. In the United Kingdom, criminal courts can, after passing sentence under the Trade Descriptions Acts, make a compensation order requiring the defendant to pay compensation for any loss, damage or personal injury caused by the offence or any other offence taken into consideration by the court in its decision.

2.10 (D) Actions brought by consumer associations

In three Member States consumer associations are expressly entitled to bring actions to defend the collective or individual interests which they represent. However, the type of action brought, the effect of any judicial decision obtained and the conditions which a consumers' association must satisfy in order to be able to bring such an action vary considerably from one country to another.

2.11 FEDERAL REPUBLIC OF GERMANY

Consumer associations may bring actions in two specific cases. On the basis of the 1909 Law prohibiting unfair competition (UWG), since 1965 associations have been able to institute proceedings, in particular by means of an accelerated procedure, to put a stop to unfair practices harmful to consumers (e.g. misleading advertising). At present associations cannot claim damages on behalf of consumers who have suffered injury, although the Federal Government has recently proposed to the legislative body an amendment of the 1909 Law which would enable individual consumers or traders to be awarded such damages. The new provisions would make it possible for the consumer to surrender his individual rights to compensation to the association so that the latter can act against the dealer or manufacturer responsible. If such an action succeeded the sum of money obtained could be divided among the consumers who had surrendered their rights, after deduction of the costs involved in the proceedings.

Against this new background, the consumer associations' role would be to obtain compensation not for a collective claim as such but only for a "collectivized" individual claim.

Under the 1976 Law on general business conditions, consumer associations can bring an action against a trader to prohibit his use of unreasonable contract terms. The action may be brought under an accelerated procedure. If the action is successful, any consumer may invoke the ruling in his contractual relations with the trader who applied these unreasonable terms. (Rulings in favour of consumer associations are published in the Bundesanzeiger (Federal Journal) and may also be published in the local press at the request and expense of the associations).

The consumer associations allowed to bring actions under the Law prohibiting unfair competition and the Law on general business conditions must satisfy certain specific legal requirements.

2.12 Both according to its statute and in practice, the association must provide information and advice for customers. In addition, associations which wish to bring actions against unreasonable contract terms must incorporate other associations also involved in consumer protection, or consist of at least 75 natural persons. Similar conditions are laid down in the Federal Government's draft law amending the Law prohibiting unfair competition in respect of actions for injunctions brought by consumer associations under that law. In theory, therefore, all consumer associations which satisfy the above conditions may take legal proceedings: consumer centres (Verbraucherzentralen) of the 11 Länder, the Consumers' Association (Arbeitsgemeinschaft der Verbraucher - AgV), the Foundation for Comparative Testing (Stiftung Warentest) and the Consumer Protection Association (Verbraucherschutzverein - VSV). In practice, however, the majority of actions brought against unfair competition and unreasonable contract terms originate from the VSV. The consumer centres of the Länder have expressly authorized the VSV to seek injunctions on their behalf.

2.13 In the GRAND DUCHY OF LUXEMBOURG, the Grand-Ducal Regulation of 23 December 1974 on unfair competition, as amended by the Grand-Ducal Regulation of 17 December 1976, enables the consumers' associations represented on the Prices Commission, i.e. in the case in point the Luxembourg Consumers' Union, to take two types of action in the collective interest of consumers.

- (i) It may institute an action to put an end to the act of unfair competition or the failure to comply with Articles 5 to 10 of the Regulation of 23 December 1974, which concern special sales and clearance sales. The action is brought and heard as in the case of summary proceedings before the President of the Commercial Court. The latter may also order that the decision be posted up outside the offender's business premises and published in full or in part in newspapers or by any other means, the cost of these two advertising measures being borne by the offender.
- (ii) It may also bring a civil action before the criminal courts. The Luxembourg Consumers' Union has brought these two types of action on a number of occasions.

2.14 In BELGIUM, the Law of 14 July 1971 on trade practices enables consumer associations to obtain through the courts the cessation of acts constituting an infringement of the provisions of that law which protect both competitors and consumers: registered designation of origin, advertising, loss leaders, liquidation, clearance sales, tied sales, free gifts, auctions, forced sales and itinerant trading. The procedure takes the form of summary proceedings before the President of the Tribunal de Commerce (Commercial Court). The latter may order that the offending act be stopped and also that his judgment be published in the newspapers or publicised elsewhere at the expense of the offender. Such publication cannot, however, be prescribed unless

it helps put an end as quickly as possible to the offending act, in view of the effects of that act, and it cannot be enforced until the decision has become final (no possibility of appeal). Proceedings to obtain compensation for damage suffered and criminal proceedings are dealt with by the civil or criminal courts under the rules of general law.

In order to be able to bring an action for cessation, consumer associations must satisfy a number of conditions. Their object must be the protection of consumers; they must enjoy legal personality and be represented on the Conseil de la Consommation (Consumer Council). The Belgian courts seem to interpret the first two conditions in a way restricting the admissibility of actions by consumer associations.

For instance, by a judgment of 1 October 1976 (JT 2/4/1977, p. 241), the Turnhout Commercial Court declared inadmissible an action instituted by associations which did not satisfy the constitutional formalities laid down by the Law of 27 June 1921 on non-profit-making associations (publication or statutes and deposit of a list of members) and thus adopted a formal conception of the existence of legal personality.

In addition, in the same judgment, the Turnhout Court decided that an association grouping together cooperatives cannot claim to represent the interests of consumers. It thereby adopted a strict interpretation of the condition whereby the corporate object of the association which brings an action for cessation must be protection of the consumer.

2.15 In FRANCE a distinction is made between two types of association.

Registered associations within the meaning of the Law of 1 July 1901 may bring actions before civil or administrative courts. They may also lodge complaints with the public prosecutor's office. This rule applies in the same way to registered associations set up for the protection of certain social categories of the environment, or aimed at promoting artistic, sporting or leisure activities.

The Royer Law specifically confers on approved consumer associations the right to bring a civil action before any court in order to obtain compensation for direct or indirect damage to the collective interest

of consumers (and not only in the case of the offences provided for in this law, namely misleading advertising and discriminatory advantages.

The Royer Law does not, however, enable consumer associations to bring a civil action in the event of infringement of the rules of free competition. This exclusion can be seen as a vestige of the traditional principle whereby only the public prosecutor's office may protect the general interest by means of criminal proceedings.

Independently of the criminal conviction, the court dealing with the civil action may order that the practice be stopped, without imposing a penalty, and publication of the judgment and of corrective advertisements (in cases of misleading advertising).

In this case, then consumers benefit indirectly from the decision delivered following proceedings to which they have not been party.

It is, however, impossible for aggrieved consumers each to obtain a share of the damages by arranging for a consumers' association to sue on their behalf. Compensation for the damage suffered must be the subject of separate claims in the case of each consumer.

Three criteria must be met before an association can be approved and bring a civil action. The association must:

- i. have been in existence for more than a year (age criterion);
- ii. be representative (at least 10 000 members nationwide, no precise number regionally or locally);
- iii. produce and distribute publications or be on call to provide advice and hold consumer information meetings.

Approval is an administrative procedure. It is granted by ministerial order (national associations) or prefectorial order (local or regional associations).

Ten national associations have been approved by ministerial order and 47 regional or local associations have been approved by prefectorial order.

In France, no recent official statistics are available on the number of cases in which civil actions have been brought by consumer associations.

It should be noted that certain consumer associations have adopted the habit of requesting that judgments be published in "50 millions de consommateurs" and "Que choisir", the two monthly magazines aimed at consumers generally.

- 2.16 In the UNITED KINGDOM, there are no bodies or associations with the power to bring actions to defend the collective interests of consumers. The Director-General of Fair Trading and the local authorities perform their duties by virtue of the statutory powers vested in them and must of course act within the limits of those powers. In England and Wales the Attorney-General's powers are based on the common law, which consists of the general body of judicial decisions. For example, it has recently been established that he could not be forced to give his consent to a person wishing to bring a case for the sole purpose of asserting a public right.

Representative proceedings may be instituted by or against "one or more persons on behalf of a larger number" with a common interest in the case. The persons acting jointly are not regarded as "a larger number" unless they are more than five, unless the sum claimed is very small or unless all the persons concerned wish to be represented.

- 2.17 In the NETHERLANDS, individual consumers and, since 1980, consumer organizations may bring an action before a civil court to seek the prohibition or amendment of misleading advertising (Article 1416 of the Civil Code).

In 1981 a draft law on the banning of unfair general conditions of sale was presented to Parliament. This draft proposes that certain

organizations or associations may ask the Court of Appeal at The Hague to declare that clauses contained in certain general conditions are unfair.

2.18 In DENMARK, Article 13 of the Marketing Act contains provisions concerning the institution of the civil proceedings provided for in the law. Such actions may be brought not only by the Ombudsman but also by other persons having a legal interest therein, for instance a consumer, a businessman or an association of businessmen or consumers. Under the general rules of the Law on civil proceedings (Article 253), any person with a legal interest in seeing a party to a dispute win his case before the court, may intervene in that case in order to support the party in question. The general interest of associations in promoting their aims may warrant such intervention, even if the party concerned is not a member of the association. The public authorities may also intervene where the court decision on a point of law is of great interest to the authorities in dealing with identical or similar cases.

2.19 In ITALY, consumer associations are not entitled to institute legal proceedings in order to defend the collective interests of consumers.

Since Article 2601 of the Civil Code states that trade associations may bring actions to put a stop to acts of unfair competition, certain authors - such as Professors Santaga and Ghidini - suggest that the same facility should be made available to consumer associations.

With regard to the conditions which consumer associations should satisfy in order to bring such actions for cessation or other "collective" actions, the approach of Professor Ghidini - as explained in Montpellier in 1975 and in his book "Per i consumatori" - is both original and interesting.

Professor Ghidini considers that the interest of the consumer is the combination of an individual interest and a group interest: an

individual interest in the protection of specific interests relating to given situations (health, hygiene, economic benefits, etc.) and a group interest to the extent that it belongs in an identical manner to everybody.

This group interest must, however, be recognized and protected for the benefit of everyone in the same way, independently of any division or organization of individuals into groups or social categories. Even if the threats to that interest are normally felt at the individual level, in actual fact they affect the group as a whole. The reaction of the individual to the threat in question assumes importance for the group as a whole. After all, the interests of consumers, according to Professor Ghidini, are permanently threatened in that they depend directly and "technologically" on the system of production and are potentially in conflict with those of producers.

From this analysis Professor Ghidini draws a number of logical conclusions as regards legal action by consumers.

Firstly, he considers that the protection of an interest must be afforded to everyone who can prove that the interest has been objectively affected, even if that person has not personally suffered from such infringement of the interest. From this he deduces that any consumer or user, or any group of consumers or users, whatever the manner in which it is organized and whatever the number of its members, may act to request protection of an interest provided that it can prove that the interest in question has been infringed.

Secondly, he considers that since the interest of the consumer is both an individual and a group interest, the association or group has the same rights as the individuals concerned and that again no condition or restriction should be imposed on the defence of the right to protect consumers, by taking into account the number of members or the representatives of the organization in question. According to Professor Ghidini, all these conditions are based (wrongly) on a corporatist conception of the interest of consumers.

ANNEX 3

CONCILIATION AND ARBITRATION

CONCILIATION AND ARBITRATION CENTRES

3.01 Since traditional legal proceedings prove too cumbersome, too slow and too expensive for dealing with disputes involving small sums, some countries have sought other, less costly, procedures that are more easily accessible to consumers. Of these, the introduction of conciliation and arbitration bodies has often given satisfactory results. Conciliation and arbitration centres exist in six Community countries (Belgium, Denmark, Federal Republic of Germany, France, Netherlands, United Kingdom) and we shall describe them below.

Of the countries referred to, only Denmark and France have introduced public arbitration bodies, although they are very different from each other. In Denmark, apart from the many private bodies, there exists an appeals board, which normally deals with all disputes concerning goods and services. In France, Post Office Box No. 5 000 was created to deal with the problems of consumers with regard to purchases and services. All disputes, except those concerning the status of persons and disputes between individuals and a public authority, may, however, be referred to the juge conciliateur in the town halls.

In the Federal Republic of Germany, the Netherlands and the United Kingdom, the arbitration systems are private; they operate within the framework of voluntary codes of conduct.

It should be noted that the decisions of the various arbitration boards are more or less binding but are never enforceable, which means that the plaintiff must go to court if the defendant does not comply.

There are no arbitration boards in Italy. The second paragraph of Article 102 of the constitution expressly forbids the creation of extraordinary or special judges although it allows the establishment of specialized sections attached to ordinary courts, even with the participation of competent private individuals. The legislature has not, however, seen fit to avail itself of this facility so far.

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3.02 As it is often difficult to define in the member countries the respective areas of conciliation and arbitration, these two matters will be dealt with under the same heading. First of all, we shall describe the essential features of each of the two systems.

Conciliation bodies normally act in three ways.

- (1) Preventive action. Conciliatory bodies may conclude with certain categories of firm, agreements in the nature of a code of ethics in order to obviate, or at least reduce, the possibility of disputes with consumers.
- (2) The ending of reprehensible practices on an amicable basis. Where complaints about irregular commercial practices on the part of certain traders are referred by consumers to a conciliatory body, the latter may make representations to the traders informing them that complaints have been made about them and inviting them to put a stop to the reprehensible practices. Action of this kind is generally effective, particularly if it comes from bodies which are highly representative and enjoy unquestionable moral authority.
- (3) Amicable settlement of disputes.
A conciliatory body which has received a complaint from a consumer can easily propose to the other party involved an amicable arrangement which will take account in an equitable fashion of the respective interests of the parties concerned. Here again the quality of the arrangement will depend to a large extent on the reputation enjoyed by the conciliatory body; the same will apply to the conditions under which the arrangement, accepted by common accord of the parties concerned, is implemented.

Arbitration bodies

The arbitration bodies make it possible to prevent the courts from becoming congested by disputes involving small sums. The procedures employed by them are also quicker and less formal and sometimes less expensive than traditional legal proceedings. Moreover, the fact that

the arbitration bodies are generally organized by the individual trades or professions to a large extent simplifies the problems. The powers of these bodies and the extent to which arbitration awards are binding vary according to the country concerned.

Below we describe the various conciliation and arbitration systems existing in the Community countries.

3.03

BELGIUM

An interesting initiative has just been taken by the President of the Brussels Commercial Court. On 1 May 1979 a special department was set up to deal with questions and complaints concerning trade practices. Consumers and small and medium-sized firms can now turn to it with any complaint or dispute relating to dishonest commercial practices (selling methods, labelling, indications of price and quality, advertising, order forms, etc.). Disputes can be settled by means of the conciliation procedure which was already provided for by law but rarely applied until now.

Mention must also be made of the procedure introduced by the Belgian Judicial Code whereby the dispute is submitted at the request of one or both of the parties to "juge conciliateur" (conciliating magistrate), who tries to bring about an agreement. If this attempt fails, the parties may appear in court the same day so that their dispute can be settled by a judgment.

There are also in certain specific fields quasi-judicial arbitration procedures operating with the assistance of such trade bodies as the "Vertrouwenscommissie van de verbruikers en textielreinigers" (Select Committee of Consumers and Cleaning Firms) in the case of the dry cleaning and laundry trade.

3.04

DENMARK

In Denmark, three types of institution may arbitrate or take conciliatory action in disputes involving consumers.

Firstly, there is the ombudsman for the protection of consumer interests, whose office was created by the Law of 1 May 1975. Secondly, there is the Consumer Complaints Board, which came into existence on 1 June 1975.

Lastly, there are the private appeals bodies approved by the Consumer Complaints Board.

A. The ombudsman for the protection of consumer interests

The ombudsman for the protection of consumer interests is appointed on the same terms as a judge. The law does not, however, confer upon him the status of judge nor a status comparable to that of the ombudsman who is elected by Parliament and is independent of the civil service. The consumer ombudsman is simply a senior official responsible for his own department. The latter comprises, apart from the ombudsman himself, a departmental head with a legal training and eight lawyers and administrators. The decisions of the ombudsman may not be brought before any other authority but, in the performance of his duties in general, the ombudsman comes under the Ministry of Commerce.

The ombudsman has a number of tasks, of which the main one is to ensure compliance with the provisions regarding normal commercial practices and the other provisions of the law. How he is to exercise this supervisory role has never been specified. Everyday experience has shown, however, that the exercise of this supervision has been facilitated as a result of the assistance given by consumers, traders, trade associations, the press and various bodies which make requests or complaints to the ombudsman.

The ombudsman is required to ensure that vendors act in accordance with the law. The principal means at his disposal is that of negotiation in order to obtain the voluntary agreement of those concerned. Negotiations are used as a way of achieving both the establishment of general rules and the adoption of specific

measures. The aim is to enable the ombudsman to exert an influence, for instance, in connection with the definition of the principles relating to the terms of standard contracts or advertising content so that the legitimate interests of consumers are taken into consideration. In cases where the law has been broken, the ombudsman would also try first of all to negotiate an amicable solution. This procedure proves to be more effective than a long, expensive court case. No legal sanctions can be applied if the agreements concluded between the ombudsman and various trades or industries are not observed. What at first sight might appear to be a weakness works perfectly well in practice, however, in the sense that the vast majority of those concerned do respect the agreements that have been concluded.

If the ombudsman considers that a vendor has infringed the provisions of Articles 1 to 5 of the Law on trade practices, and negotiations do not bring about a change in attitude, he may institute civil proceedings to have the offending practice banned.

The ombudsman may himself order a provisional ban pending the decision of the court. The action to have the provisional ban confirmed must be brought no later than the following working day. The ombudsman is not the only person who can bring an action for a definitive ban; anyone who has a legal interest to defend may do so.

3.05 B. The Consumer Complaints Board

The Law setting up the Consumer Complaints Board entered into force on 1 June 1975.

As with the Law on marketing practices, the Law establishing the Consumer Complaints Board was based on the work of the committee set up to study consumer problems. One of the tasks of the committee was to study the possibility of establishing a procedure for examining complaints that would be both quick and satisfactory, both for consumers and for the business circles involved. It was also to submit, if necessary, a bill on this subject. The committee's findings were brought together in a report which advocated that a law on marketing practices be adopted, an ombudsman responsible for

consumer protection be appointed, and a Consumer Complaints Board be set up.

The broad lines of the committee's proposals were embodied in the bill which the Government submitted in spring 1974, and which was adopted by the Folketing in June 1974.

Among the general points made by the committee, on which the law is based, we shall mention the following:

"The Committee is of the opinion that experience in Denmark, as abroad, has shown that there exists an evident need to improve the possibilities available to the consumer for settling disputes resulting from the purchase of consumer goods or from contracts involving consumption."

3.06 The Committee also considered that reform of the procedure should be bound up with cooperation between the courts and the extra-judicial appeals bodies. On this matter, it should be pointed out in particular that:

"The Committee attaches ... the utmost importance ... to cooperation between the appeals bodies and the courts." For this reason it should be regarded as a fundamental principle that an appeal lodged with an extra-judicial body should not rule out the possibility of bringing the matter before the traditional courts. While the disputes in question traditionally come under the jurisdiction of the courts, it must be noted that at present the appeals are not being brought before the courts and that, alongside the latter, a number of appeals bodies have been established which enjoy great confidence. Even a radical reform of judicial procedure cannot offset the advantages connected with the existence of such bodies. In addition to the economic and psychological factors referred to, these bodies have rapidly accumulated a wealth of experience which gives them incontestable authority in these matters and their intervention makes it far more easy to distinguish between simple disagreements and real disputes.

The Committee was not of the opinion that a satisfactory extra-judicial procedure could be worked out by merely altering and harmonizing the appeals bodies that exist on a voluntary basis. While the maintenance of some of these bodies was likely to present problems of an economic nature, it was virtually impossible to reorganize them in such a way as to cover the whole of the consumer sector.

1. Terms of reference of the Consumer Complaints Board

a. General principle of the law

The general principle of the law is that consumer may lodge appeals with the Board concerning goods and services.

The concept of consumer is defined more precisely in the explanatory memorandum, where it is stated that only the final consumer may lodge an appeal with the Board. This does not, however, rule out the possibility of a trader or manufacturer lodging a complaint concerning goods used by him in his business provided that those goods are not used for production purposes or are not acquired with a view to being resold.

The text of the law does not state whom the complaint must be lodged against, but it emerges from the explanatory memorandum that only appeals against traders are covered. Even if this is not expressly stated in the explanatory memorandum, the trader must also be acting in his business capacity.

Complaints concerning goods or services may be brought before the Board.

The underlying principle in the law and its explanatory memorandum is that the Board will take a decision after examining the legal aspects of the case.

b. Exceptions

Under Article 2 of the law, the Minister for Commerce may adopt provisions whereby cases involving goods or services supplied by public undertakings may be brought before the Board. This applies to electricity, gas and heating supplies and the carriage of goods and persons.

The decree of the Minister for Commerce concerning the Board's field of action stipulates that only appeals involving goods or services whose value is not less than Dkr 100 or more than Dkr 10 000 are admissible. Also, a number of sectors are excluded from the Board's terms of reference, such as building materials, new buildings, alterations, maintenance and repair works on properties and the letting of properties or parts of properties; motor vehicles, their components and maintenance and repair work on motor vehicles; foodstuffs and stimulants; services rendered by members of the professions; credit and insurance.

2. Lodging of appeals with the Board and preparation of the investigation

In order to be able to lodge an appeal with the Board, the consumer must first have approached the trader without success. The appeal will be lodged using the special forms drawn up by the Board. These forms may be obtained from consumers' and trade associations and from the offices of public authorities, particularly from court registries, whose administrative staff will, if necessary, help those concerned to fill in the forms. When the appeal is lodged, the applicant must pay a fee of Dkr 25.

The Board has a secretariat at present consisting of one head of legal service, seven lawyers and twelve other staff. The secretariat is responsible for dealing with written requests, telephone calls and personal visits by consumers. Experience has shown that it is possible for the secretariat to satisfy and deal with a very large number of enquiries without further formality so that there is no need for formal investigation.

The secretariat is responsible for drawing up the dossier for investigation of a case by the Board, the two parties being given a specified period of time within which to submit their comments, in the event of any enquiries or requests for information.

The secretariat may endeavour to settle the dispute amicably by proposing a solution that is equitable for both parties. It may also reject complaints which it considers cannot be investigated by the Board and those which seem to be obviously without foundation. The Board may authorize the secretariat to decide cases concerning goods, work or services the value of which does not exceed a certain amount, currently Dkr 200.

3. Composition of the Board and investigation of cases

Under Article 4 of the law, the Board consists of a bureau and representatives of consumer interests and business circles, who will be appointed by the Minister for Commerce. The chairman of the board will be a lawyer, who must satisfy the general conditions required in order to be appointed as a judge in Denmark. In addition to the chairman, a vice-chairman, who is a judge, will be appointed. The Board has 52 members, representing consumers and traders, who take part in the work in rotation.

Article 5 stipulates that at least one member of the bureau must participate in the investigation of a case by the Board. At least two members chosen by the bureau to represent on an equal basis consumers and businessmen must also take part in an investigation.

It is the Board which decides whether an appeal is admissible and whether it is competent to act (it rejects appeals which require the hearing of witnesses on oath or a difficult legal examination).

The parties cannot appear before the Board while the investigation is in progress, but the chairman may authorize them to do so, together with any witnesses, if special circumstances so require.

The Board may require the unsuccessful party to bear all or part of the cost of expert opinions or of the fees paid.

In all other cases, the Board itself bears the cost of any expert opinions it considers necessary.

The Board adopts its decisions by majority vote.

The Board's decisions, which are public, may not be the subject of an appeal to another administrative authority. The Board acts in complete independence both in the investigation and in its decisions.

4. Details of the activities of the Complaints Board

During the first four months of the Board's activities, 2 850 enquiries were made to the secretariat by consumers, including 2 000 telephone calls, a good hundred or so personal visits and approximately 750 written enquiries.

The enquiries were broken down as follows:

standard contracts regarding the delivery of newspapers and books: approximately 125;

the purchase and repair of cameras, watches and optical instruments: 125;

The purchase and repair of bicycles and motor cycles: 50;

furniture, furnishing fabrics and furnishing goods: 250;

clothing: 275;

ironmongery: 150.

It soon became apparent that certain forms of selling, such as door-to-door selling or other forms of sale outside the vendor's business premises, such as mail order sales, give rise to an extremely high number of complaints. It should also be pointed out that these complaints concerned a small number of traders.

It was found that in the cases investigated by the Board most of the complaints were justified. The Board held that consumers did not have to observe the contracts they had concluded since the latter were void or that the consumers could rescind their purchase contracts in view of the major defects which they contained.

It should be pointed out that the secretariat is entitled to reject complaints which do not seem to be within the Board's jurisdiction or where it is clear that the consumer cannot succeed. It deals with about 40% of the cases submitted to the Board in this way.

3.07 C. Private appeals bodies and their relations with the Board

At the time when the law setting up the Consumer Complaints Board entered into force, a considerable number of private appeals bodies existed which covered a large part of the consumer sector. These bodies were not abolished but a system of approval was instituted for those which wished to continue their activities, and provision was made for the possibility of setting up new private bodies after the entry into force of the law. Collaboration between consumers' representatives and business and trade circles on these private bodies was entirely satisfactory and there was no reason to overload the public sector. It is the Board which approves private appeals bodies. The effect of this approval is that the Board itself cannot deal with complaints concerning areas for which there exist private appeals bodies. Nor can the decisions taken by these bodies be the subject of an appeal to the Board.

Approval may be granted only if the rules governing the body offer the parties concerned adequate guarantees (composition of the body, procedure). Approval may be limited in time and revoked if the Board considers that the required conditions are no longer met. The Board has laid down certain principles regarding the conditions to which approval is subject:

1. The body must consist of an equal number of representatives of consumers' organizations and of traders.

2. The body must have the necessary knowledge of the law to investigate complaints and have as chairman, if possible, a lawyer offering every guarantee of impartiality.
3. Rules governing eligibility are laid down with regard to the members of the body and the staff of the secretariat.
4. The body's activities must cover the whole or the bulk of the commercial activities of a given branch or sector.
5. Each party must be able to submit his comments within a specified period and have access to such information held by the other party as is important for the decision and to the reports of experts used for the purposes of the investigation.
6. The body must adopt its decision after examining the legal or technical aspects of the facts of the case. It may, however, bring about an amicable settlement of a case on a basis which would not suffice as the ground of a decision.
7. The body must act in plenary session, each member having access to all the information regarding the dispute. Decisions must be taken by simple majority.
8. Decisions and amicable agreements must be recorded in writing. Decisions must be accompanied by a statement of grounds. Decisions and amicable agreements must be signed by the chairman of the body or by the person empowered by him to do so.
9. The parties concerned must receive a copy of the decision or of the amicable agreement and must also be informed of the manner in which an appeal may be made to the courts.
10. Neither of the parties may make a payment to the other party while the case is being investigated.
11. Anyone must be able to examine the decisions of the body.

Appeals may be made to the Minister for Industry against decisions of the Board relating to the approval of private appeals bodies.

Up to 1 January 1976, the Board granted approval of private bodies in the following sectors:

Estate agencies, insurance, secondary residences, gas or electrical

domestic appliances, driving schools, building, fur trade, radio and television sets, travel agents, cleaners, laundries, air conditioning plant, sanitary installations.

3.08 D. The courts' relations with the Board and the private bodies

a. Free choice between the Board and a private body

A dispute may not be referred simultaneously to the courts and to the Board or a private body. The law stipulates that the parties may not bring an action before the courts on the matters in dispute while the case is pending before the Board or a private body.

Where an action is pending before a court and the consumer wishes to refer the matter to the Board or a private body, the court will suspend the case for an indeterminate period. It will inform the consumer of the possibility of referring the matter to the Board or a body. The consumer has an absolute right and the court does not have to decide whether or not his request is justified.

b. Enforcement of decisions of the Board or a private body

Neither decisions of the Board nor decisions adopted by private bodies are enforceable. The law stipulates that either of the parties may refer the matter to the courts where the Board or a private body has given a decision. If the decision of the Board or the body is not complied with, the secretariat brings, at the request of the applicant or on his behalf, an action before the courts. A consumer whose complaint is partly or entirely upheld by the Board or a private body does not therefore have to take legal proceedings himself.

It has also been laid down that consumers who satisfy the conditions making them eligible for legal aid are exempt from any costs in connection with actions brought by them (or by the secretariat) for the purposes of securing the enforcement of a decision of the Board or a private body or of an amicable agreement concluded as a result of their intervention. The same applies where the action is brought by the opposing party in

order to obtain an amendment of the decision or the amicable agreement to the detriment of the consumer. The consumer will, if he satisfies the conditions for exemption from payment, not pay costs to the opposing party if he loses the case; any costs to be paid to the opposing party are borne by the Treasury.

There are no precise statistics on the number of persons in Denmark who qualify for legal aid, but as the conditions are not very strict it can be put at 80% of the population.

3.09

FRANCE

In France, conciliation, which used to be compulsory before every court, was in 1958 retained only before courts of first instance specializing in everyday disputes.

In November 1977 "Post Office Box No 5000" was introduced in every department to clear up on a friendly basis any difficulties encountered by consumers in relation to goods and services.

At the same time, "conciliateurs" were introduced at cantonal level. Their task is more general than that of P.O. Box No 5000. They can deal with any dispute and do not specialize in the consumer field.

Attached to the directorate of competition and consumer affairs of each department, P.O. Box No 5000 is contacted simply by letter. The staff classify complaints according to whether they involve:

- (i) a contractual dispute between traders, tradesmen and consumers arising at the time of a consumer transaction;
- (ii) an instance of failure to comply with the rules in force complained of by consumers;
- (iii) requests by consumers for advice and guidance.

Where the claim suggests that an infringement has been committed or where the consumer seeks help and advice, the letter is sent direct to the appropriate administrative department. Where the dispute is of a contractual nature, the letter is sent to one or more consumer or trade associations.

Where mere transmission of the claim does not result in a settlement, the file may be sent to a tripartite conciliation board consisting of representatives of the authorities, consumers and the trade concerned.

The "conciliateurs" differ in many respects.

Appointed by the first President of the Cour d'Appel (Court of Appeal), at his discretion, without any special condition as to their representativeness, they act in the name of equity.

No specific instrument specifies their powers or the procedure applicable before them.

The "conciliateurs" usually receive complainants at the town hall and then invite the other parties to appear with a view to reaching an agreement. As a rule, no written record is kept of the meetings. The agreements concluded before them are not recorded in writing.

When this formality is completed, the minutes must be lodged with the court registry and may be accompanied by an order for enforcement.

The number of cases dealt with by these bodies is much smaller than that submitted to the ordinary courts. They are too recent an institution, however, for definitive conclusions to be drawn from their relative success.

3.10

NETHERLANDS

There are in the Netherlands a large number of conciliation and arbitration bodies which provide aggrieved consumers with a way of making their complaints heard without too much expense or unpleasantness. From the legal point of view, these bodies vary considerably. Some make awards on a basis of arbitration, others in the form of "binding recommendations", and yet others in the form of non-binding opinions. As well as these bodies, there are disciplinary boards. All of these institutions also differ widely as regards their regional distribution, composition, procedure, cost of access, popularity, etc.

The various bodies of this kind are more often than not divided up by sector of activity. Apart from the advantage of the discipline provided by a trade organization, these bodies offer the further advantage that proceedings are less formal and time-consuming. However, it is only as a result of the highly structured nature of trades and businesses in the Netherlands that these bodies are able to operate effectively.

A number of examples are given below to illustrate the various types of conciliation and arbitration bodies.

3.11 Committees for dealing with disputes

There has long been in the Netherlands a whole series of committees for dealing with disputes, whose task it is to examine claims by consumers concerning transactions with traders and to give a ruling on such claims. Such decisions mostly take the form of a "binding recommendation" delivered on the basis of a clause which is often already contained in the contract and provides that, in the event of a dispute, the parties will refer the matter to a third party to decide how the contract should be interpreted or performed. Strictly speaking, the binding recommendation therefore forms part of the contract. It is therefore possible to ask the court, as in the case of any other part of a contract, to give a ruling on its value (that is to say its reasonableness and fairness). In certain sectors of activity, such committees are set up either by consumer organizations

in cooperation with trade associations, or by the trade associations themselves, or by independent experts. Although these committees have certain advantages from the consumer's point of view (speedy, informal procedure, generally low costs, opinions of specialists), they may also, because of their semi-judicial nature, not provide adequate safeguards as to the quality of the procedure and the impartiality of the judgment. The authorities have considered it advisable to improve the processing of complaints from consumers. In 1975 they set up for that purpose a system whereby committees for dealing with complaints are approved and financed, so as to promote the creation and continued existence of those which deal, in each sector of activity, with consumer complaints, provided they satisfy a number of criteria. Since then, nine such committees have been approved. The Consumentenklachten foundation provides for the needs of eight of them (travel, leisure, household goods, dry-cleaning, laundering, the laying of floors, the installation of kitchens and the public services (water, gas, etc.)), by means among other things of government grants, while the Bontwaarborg foundation supports the committee which deals with disputes concerning furs.

An important condition for the approval of committees is that their composition must guarantee their impartiality. This means that if representatives of the trade concerned sit on the committee, an equal number of representatives of consumer associations must also sit on it. Moreover, the chairman must be independent of the groups on the committee and he must have a law degree.

Another important condition is that committees for dealing with disputes must operate in accordance with the requirements expressly laid down. Their rules of procedure must, in particular, specify the type of dispute admissible, the time limit and procedure for referring the matter to the committee, the hearing of the parties, the type of decision, the grounds for the decision and its communication.

Hearings must be held in public and decisions must be published.

Although the procedure is inexpensive, claimants must contribute to the costs, their share varying from FL 20 to FL 45. If the claim proves well-founded, this contribution will be reimbursed by the defendant.

There are also a number of committees which do not have approval, such as the ANWB-BOVAG committee, within which the ANWB represents consumers and BOVAG the motor trade. This committee gives rulings free of charge in the form of binding recommendations in response to written complaints concerning vehicle repairs or second-hand car guarantees.

3.12 Arbitration tribunals

In contrast to the committees for dealing with disputes, for which no express provision is made by law, the activities of "arbitrators" are governed in a fairly detailed manner by the Code of Civil Procedure. The Code makes a distinction according to whether or not an arbitration clause exists.

The arbitrators must decide cases "according to the rules of law", unless the parties empower them to act as mediators. The enforcement of arbitration awards requires the "exequatur" (order) of the tribunal's chairman. The latter may not examine the substance of the case, the only ground for refusing the "exequatur" being failure to comply with the necessary formalities.

The main reasons for choosing arbitration are as follows:

1. specialist knowledge of the arbitrators;
2. speeding up of the procedure, which is less formal.

It would appear, however, that in practice proceedings are often fairly lengthy and not necessarily less expensive.

In the Netherlands, an example of an arbitration tribunal is the Arbitration Council for the Building Industry. The Council consists of a large number of members (building experts) who may be chosen by the parties to the dispute or appointed by the Council's chairman to sit on an ad hoc arbitration committee.

The procedure is at first written, then oral, with, if necessary, an on-the-spot enquiry. It generally gives rise to an arbitration award (see above).

In addition to the arbitration tribunals for each sector of activity, there is the Dutch Arbitration Institute which hears appeals, and any person may approach it if necessary.

3.13 Consultation or conciliation bodies

There are a large number of bodies of this type, only a few of which will be mentioned here by way of example.

First of all, the consumer organizations "Consumentenbond" and "Consumenten Kontakt" both have consultation and conciliation services. Their members may seek, either in writing or by telephone, assistance in solving, or preventing, all sorts of problems.

There are also various specialist organizations such as the householders' association (in the housing sector) and the ANWB (in the highways and waterways sector) which give advice to their members (and sometimes to third parties) and if necessary act on their behalf.

Mention should also be made in this context of such public bodies as the legal aid offices and the social services. These two bodies have a very wide field of action which covers not only problems encountered by consumers but also those connected with social security, divorce, etc.

3.14 Disciplinary tribunals

A large number of professional and trade organizations have "disciplinary" tribunals. These are bodies of professional colleagues, in some cases set up by law, which give rulings on complaints of a collective nature or made by individual consumers.

Examples are the Indemnity Insurance Companies' Supervisory Committee, the Supervisory Chamber of the Dutch Association of Insurance Brokers, the Arbitrage-Instituut Bouwkunst (architects) and the Supervisory Boards of the Dutch Lawyers' Association (set up under the law relating to lawyers).

3.15

FEDERAL REPUBLIC OF GERMANY

A. Arbitration bodies provided for under Article 27(a) of the Law prohibiting unfair competition

Under the powers accorded them in Article 27(a) of the Law prohibiting unfair competition, the Länder Governments have set up arbitration bodies ("Einigungsstellen") within the Chambers of Commerce and Industry in order to bring about an amicable settlement between parties involved in a dispute concerning transactions with a consumer, all civil law disputes falling within the scope of Article 13 of the law may be referred to these bodies, with a view to reaching an agreement, by either party, even without the consent of the opposing party. The arbitration body may make a compromise proposal but cannot make an arbitration award. If a dispute has been referred to a court, the hearing may be adjourned at the request of one of the parties, provided that the parties concerned apply to the arbitration body before the new hearing in order to reach an amicable settlement. The procedures observed by these arbitration bodies are largely laid down by orders published by the Länder. They aim at an amicable settlement where possible. Hearings by arbitration bodies are not normally held in public.

3.16 B. Conciliation bodies of the chambers of industry and commerce

These bodies were set up with the aim of preventing a confrontation between suppliers and consumers by means of self-imposed rules for settlement of consumer disputes, and avoiding the imposition of binding rules by the legislative authorities.

The legal basis is Article 1 of the Law on chambers of industry and commerce (IHK Gesetz). An essentially uniform model procedure was developed by a working party of the Deutscher Industrie- und Handelstag (German Industrial and Trade Association), the umbrella organization of the chambers of industry and commerce. The jurisdiction of the conciliation bodies extends to disputes between private ultimate consumers and firms belonging to the chamber concerning goods and services of a non-craft nature.

At the end of February 1977, 75% of all chambers of commerce and industry (54) had a total of 62 conciliation bodies to deal with complaints and claims made by consumers. Thirty six of these 54 chambers have permanent conciliation bodies, while in the case of the other 18 these bodies have not yet been formalized. Thirteen of the 19 chambers which to date do not yet have a conciliation body attached to them do not intend to set one up in the future, while six of them are at present planning to do so.

Twenty nine chambers of commerce and industry have an arbitration board. These boards consist of a chairman and two assessors (representing respectively manufacturers and traders, and consumers). In three other chambers there are plans to set up such a board. In 25 chambers the conciliation body consists of administrators, advisers and experts from the chamber. In 25 chambers the conciliation body is directed by independent lawyers (mostly judges) and in 19 chambers by competent staff from the chamber itself.

In all, 35 chambers involve consumers' organizations in the conciliation procedure and a further three intend to do so. It is mainly the local branches of the federation of German housewives and the head offices of the consumer organizations in the different Länder that are involved in these procedures. Representatives of consumers' organizations are already invited to act either as assessors or merely as consultants in 35 chambers in all. In general, the chambers of commerce consider that collaboration with consumers' organizations is satisfactory.

The conciliation bodies try to settle most cases by interviews and attempts at mediation and try to avoid going through with formal proceedings. They deal with an average of 20 complaints a month.

The chambers generally accept only written complaints though some do accept verbal complaints, particularly those made by telephone.

3.17 C. Arbitration and conciliation bodies for specific sectors

Apart from the conciliation bodies set up by the chambers of industry and commerce, there are a number of other arbitration and conciliation bodies such as

- the mediation bodies of the Chambers of Crafts
- the arbitration bodies of the motor vehicle repair and maintenance sector
- the arbitration bodies of the used car trade;
- the arbitration bodies for complaints concerning dry cleaning;
- the arbitration bodies for radio and television service engineers,

There has hitherto been no detailed analysis of the scope of these bodies, the number of complaints, the procedures and the percentage of successes.

Their activity can be illustrated in greater detail by the example of the widespread and well known arbitration bodies in the motor vehicle repair and maintenance sector.

The Schlichtungsstelle für das Kraftfahrzeughandwerk Hamburg (Conciliation body of the Hamburg motor vehicle repairers), which consists of an equal number of trade and consumer representatives, provides an interesting example of a conciliation procedure. It was set up in May 1970 by the Allgemeiner Deutscher Automobilclub (ADAC), which represents the interests of motorists, and by the Innung des Kraftfahrzeughandwerks Hamburg (Corporation of Hamburg Motor Vehicle Repairers), which represents the interests of the repair shops. Its objective is to settle, in an impartial, unbureaucratic manner, as inexpensively as possible and at no cost to the parties, disputes between clients and repair shops concerning the need for, or the execution and calculation of, repair work, and at the same time to improve the climate of mutual understanding between clients and repair shops in general and to avoid disputes by providing information.

Between May 1970 and the end of 1974 a total of 7 219 complaints was referred to the relevant body (Technical Division of ADAC Hamburg, which has a staff of two - an engineer and a secretary). The bulk of these complaints were dealt with at the preliminary procedure stage, some by an amicable agreement between the customer and the repair shop. Only in 423 cases was a procedure initiated before the conciliation board, which consists of a lawyer (the judge), who presides, and two representatives, one from the ADAC, the other from the Motor Vehicle Repairers' Corporation. In over 50% of the cases dealt with the board held that the complaint was completely or partly justified.

In most of the cases the sum at issue was below DM 100. The board makes awards with due regard for substantive law and equity. Lawyers are not allowed to appear before the conciliation body. The costs incurred by the conciliation body (currently around DM 1 800 a month) are shared equally by the ADAC and the Motor Vehicle Repairers' Corporation.

The average duration of proceedings was from two to three months. Oral proceedings lasting half an hour on average are generally sufficient to conclude the proceedings. Where the proceedings do not lead to an amicable settlement between the parties, the board's decision is generally announced immediately after the end of the proceedings.

Unlike the award of an arbitration tribunal, decisions of the conciliation body do not have the force of a final judgment between the parties concerned. These decisions are, however, strictly observed by the workshops in question. Under a decision of the Hamburg Motor Vehicle Repairers' Corporation all repair shops affiliated to the Corporation (approximately 80% of all repair shops in Hamburg) are required to comply with decisions of the conciliation body.

So far there have been only two instances of garages being expelled from the Corporation for failing to comply with decisions.

The conciliation body endeavours, by means of a public information service, to prevent as far as possible disputes between customers and repair shops. The body considers the main causes of disputes to be as follows:

1. Failure on the part of the garage to provide the customer with sufficient technical information;
2. Vague instructions from the customer;
3. Excessive workload at the garages;
4. Imprecise estimates of cost by the garage;
5. The customer's inability to judge the need for repairs carried out.

In the meantime, a further 61 towns and cities in the Federal Republic have set up conciliation bodies (often also called arbitration bodies) with equal representation in the motor vehicle repair and maintenance trade on the lines of the Hamburg model. The ADAC considers that the conciliation bodies have proved their worth. The Warentest institute (Berlin) is also positive in its assessment and has recommended that such "remarkably successful" bodies should be set up in other industries, since it would appear that recourse is seldom had to the institute's existing conciliation bodies.

3.18 D. Other arbitration and conciliation bodies

The Medical Councils have conciliation bodies for questions concerning medical ethics and architects have set up conciliation bodies for disputes between architects and their clients. Arbitration bodies have also been established by certain service industry associations, e.g. the Association of Salvage and Break-down Firms. Overall, the trend to set up extra-judicial settlement procedures for consumer disputes in the service sector that started to emerge in 1974 has increased recently.

In addition to the new official arbitration procedures for minor disputes provided for in the county courts, there exists in the United Kingdom an informal system of arbitration for small claims. The schemes in question do not permit legal representation and only private individuals (and not traders) may bring complaints. Also, arbitration systems quite different from these have been promoted by the Office of Fair Trading on the basis of codes of practice.

"Arbitration under codes of practice"

Under Section 124(3) of the Fair Trading Act, 1973, it is incumbent on the Director-General of Fair Trading to encourage representative trade associations to lay down standards of ethics with a view to protecting the interests of consumers. This is a task to which the Director-General attaches the highest importance since there are certain fields in which the protection of the interests of consumers is best assured by self-imposed discipline on the part of members of the trade rather than by official controls.

Since 1973, trade associations have established, in collaboration with the Office of Fair Trading, codes in the following fields:

- Sale of domestic electrical appliances and after-sales service
- Package tours
- Sale and servicing of motor vehicles
- Sale and repair of shoes
- Laundrying
- Furnishing
- Funeral directors
- Photography
- Mail-order selling
- Direct sales and services
- Glass and glazing

The Office has also helped to introduce codes covering the postal and telecommunications services.

Although in certain respects the codes simply repeat the provisions applicable to the sale of goods and services and reaffirm rights which the consumer would enjoy in any case, they confer, in other important areas, additional duties on the trader and additional rights on the consumer.

Thus, according to the code applied by the Association of British Travel Agents (ABTA), travel agencies cannot impose an exchange rate variation surcharge less than 30 days before the departure date, and if the holiday has to be changed considerably the customer must be given an opportunity to cancel his reservation and obtain reimbursement in full of any payments made.

Similarly, the codes concerning the repair of electrical appliances lay down time limits for carrying out on-the-spot repair work and minimum periods during which spare parts must be kept in stock after an appliance has ceased to be manufactured.

- 3.20 One of the fundamental principles of the Office's policy on codes is that they must provide for an effective system of settling disputes, consisting generally of three or four stages. Dissatisfied consumers should first of all approach the trader direct, then, if they do not obtain satisfaction, they should consult a local consumer assistance body such as the Citizens' Advice Bureau or a Trading Standards Department. The third stage consists in an attempt at conciliation by the appropriate trade association. In some cases, the trade association can provide additional services: for example, the Shoe and Allied Trades Research Association (SATRA) administers the Footwear Testing Centre, which can have tests carried out in the event of a dispute between a customer and a retailer in order to determine whether the defect in a shoe is due to faulty manufacture or misuse by the consumer.

As the fourth and last stage, most codes give the consumer who prefers not to institute proceedings before the county court or sheriff court the option of resorting to low-cost, independent arbitration organized by the Chartered Institute of Arbitrators. Disputes which have been submitted to arbitration can no longer be

brought before a court. The amount which the consumer has to pay for arbitration is generally between £10 and £15.

The arbitrator appointed by the Chartered Institute of Arbitrators gives a ruling according to the rules of law, that is to say he has to consider encroachments on rights recognized by the law and not alleged infringements of a provision of the code. He decides on documentary evidence alone so as to limit the trader's costs should he lose. No appeal from the arbitration award is possible unless points of law are raised.

Recently (1981), the Office took stock of the means of redress available to consumers under the codes of conduct and came to the conclusion that, for consumers facing adherents of a code, arbitration remains a useful means of redress in parallel with conventional legal action. The report ends with a few recommendations, the most important of which are as follows: the arbitration machinery provided for under the various codes should be as harmonized as the specific nature of trades allows; arbitration should be based only on documentary evidence in order to limit costs; time limits should be laid down for the conclusion of the conciliation and arbitration states; arbitrators should be able to call on expert opinion without cost to the parties and, lastly, arbitration awards should always state the grounds on which they are based.

ANNEX 4

ADVICE CENTRES

4.01

ADVICE CENTRES

In pursuit of an active policy of preventive protection of the public in legal matters and especially with regard to consumer affairs, all the member countries of the Community have for a number of years encouraged the setting up of advice centres to help all citizens with problems of a legal nature. The British led the way here by setting up a network of law centres and consumer advice centres throughout England, Wales and Scotland.

The Advice Centres vary widely from one country to another and also differ within the same country. Generally speaking, however, they deal with a variety of problems ranging from disputes between tenants and landlords and labour disputes to disputes between producers and consumers.

Broadly speaking, the centres may be divided into two categories:

1. The private centres, run by members of the legal profession, students or trade unionists.

Although private, such centres may receive official assistance. They exist in all the member countries although only to a very limited extent in Italy.

2. The official centres.

These centres may operate under the auspices of certain ministries, be attached to courts under legal aid schemes, be run by the local authorities or operate at Land level in the Federal Republic of Germany.

Apart from in the latter country, such centres also exist in France, Belgium and the Netherlands.

Obviously the advice given by competent lawyers or by official departments provides the public with assistance of a higher quality

in an area where the wrong advice may sometimes have serious consequences. However, as many of the problems dealt with by the "law shops" are minor ones and are often of the same type, those which are run by non-lawyers manage to provide those seeking advice with the information they require to defend their rights, and therefore meet the demands made upon them.

A description is given below of the Advice Centres existing in the various countries of the Community.

4.02

IRELAND

A scheme of Civil Legal Aid and Advice was introduced in December 1979. The scheme aims to provide legal services, including legal advice and legal aid in court proceedings, to persons of limited means who genuinely need them but cannot afford them. The scheme is comprehensive in scope, although a small number of categories of proceedings are excluded. Legal aid is not available under the scheme for proceedings for trivial amounts measured at present by way of a limit of IR 150; legal advice can, however, be given in the case of claims for small amounts.

The Legal Aid Board, the independent body founded by the State which administers the scheme, have established a number of law centres throughout the country where applicants can seek legal aid and advice, and it is hoped that further centres will be established.

The scheme is means-tested and it contains provisions whereby the merits of the case which an applicant wishes to bring before the courts are assessed by the Board before public expenditure is incurred.

The scheme provides legal aid and advice through Law Centres staffed by solicitors in the full time employment of the Legal Aid Board.

4.03

BELGIUM

The legal aid advice and defence centre is competent to give verbal advice, except where legal proceedings are concerned, to people of modest financial means.

In addition, advice is sometimes provided on specific matters by certain authorities, for instance:

- The Ministry of Economic Affairs has a service providing information on the new laws on rents;
- The Trade Unions;
- The "ligue des familles"
- The "télé barreau", a free legal advice service at the Palais de Justice, Brussels, which can be contacted by telephone;
- The "Info-consommateurs" information centre, established in Brussels by the "Test-Achats" consumer association.

"Law shops" have also been set up by lawyers in a number of working class districts in Brussels in order to help foreigners in particular.

4.04

DENMARK

In Denmark legal advice centres provide citizens with advice on many everyday problems - family matters, wills and succession, questions of tortious liability, the purchase of various articles, leases on living accommodation, conditions of employment.

Legal advice is also given to people who need to fill in applications for legal aid or institute proceedings in minor cases.

In the Copenhagen area legal advice is given by a government-subsidized private body; the advice is free and is provided by law students and lawyers. Outside Copenhagen the advice is given by private lawyers. A very modest sum is charged for each consultation (25% of the fee is paid by the client, 75% by the State).

The advice system differs in many respects from legal aid, it reaches a much larger number of citizens (80%) and no prior request is necessary.

The administrative departments of the courts publish annually a list of the lawyers who give legal advice. These departments will send a copy of the list direct to anyone requesting it.

4.05

FRANCE

A number of advice centres are open to the public. Unfortunately, it is not possible to give a complete list. We shall therefore confine ourselves to listing the better-known ones.

1. In most courts reception services run by lawyers provide all kinds of information, in particular on the procedure to be followed in order to bring proceedings and on the various stages of the proceedings.
2. In some town halls, lawyers give free advice anonymously to anyone who needs it. The times and days when they are available for consultation are specified by the town hall authorities. In addition, information sheets on legal matters published by the Ministry of Justice and dealing with the organization of the courts, legal aid, divorce and maintenance are made available to the public.
3. "SOS Lawyers": this advice service operates in Paris from Monday to Friday. In urgent cases a lawyer intervenes anonymously to advise members of the public on problems that are worrying them. Those using the services pay very little.
4. The Paris departmental notaries' association provides free information on matters concerning the activities of notaries.
5. "Law shops".
For some years now lawyers, students and ordinary citizens have been getting together within associations in order to provide legal information free of charge or on payment of a small fee. These "shops" are to be found in the working class districts of Paris and in certain other French towns (Lille, Strasbourg, Grenoble, Rouen, Toulouse). These groups are intended to provide ordinary people with information in simple, comprehensible language, and defend them if need be.

6. The Institut National de la Consommation (National Consumers' Institute) provides an information service on consumer problems for individuals in Paris.
7. The unions régionales d'organisation de consommateurs (UROC - regional unions of consumer organisations) provide information free of charge to consumers who have a specific problem, as does the Chambre de Consommation d'Alsace for the towns of Strasbourg and Mulhouse.
8. The trade unions and political parties always have someone on call to give free advice to their members.
9. The Association d'information juridique des travailleurs (Workers' Legal Information Association) and the Association d'information juridique des salariés (Wage-Earners' Legal Information Association), which under the arrangements of the Law of 1901 are made up of members of the legal profession, have concluded contracts with works committees in order to provide the staff with the information they need as regards both social law (work, social security) and the law relating to housing, the family and consumer matters (insurance, credit).

4.06

ITALY

Italian law makes no provision for legal aid outside the framework of legal proceedings.

In Milan, however, a group of lawyers has recently decided to make itself available to the members of a consumer's association for a few hours a week to provide them with advice on all kinds of matters. The advice will be free of charge.

The principal trade union organizations also provide their members with an advice service in the field of labour law and social security law. As regards social security law proper - retirement pensions, pensions for occupational accidents and diseases - the major Italian trade unions have set up bodies which, from the institutional point of view, provide workers and pensioners with advice and assistance in administrative proceedings instituted against the public institutions which administer social insurance. These bodies - which are known as "enti di patronato" - are officially recognized under Italian law (cf. legislative decree C.P.S. of 29 July 1947, No 804).

4.07

LUXEMBOURG

In the Grand Duchy of Luxembourg, the ministerial regulation of 16 November 1976 established a legal reception and information service under the authority of the Minister for Justice. This service is provided

- on a regular basis by an official of the court who receives visitors and directs them to the appropriate departments, giving them the necessary technical information and means;

- on certain days, by a committee consisting of a lawyer or a third-year trainee lawyer assisted by a second year or first-year trainee lawyer. The task of the committee is to give individuals general advice on the extent of their rights and the ways and means of asserting them, listen to their complaints about difficulties encountered in asserting their rights and suggest ways of getting round them.

NETHERLANDS

There are many services on offer in the Netherlands. Below we shall confine ourselves to mentioning the major ones.

1. The legal aid centres, which might be called "official" centres, may appoint a lawyer on normal terms or give advice themselves. For a long time the latter approach has been the exception but the centres have expanded their activities in this field over the past few years. Special sessions are organized for consultations in various areas of the region. Recently certain centres have started to employ one or more non-practising lawyers to carry out these duties.
2. The trade unions advise their members and pay their lawyers' fees in certain cases. The same applies to the big consumers' and motorists' associations, as well as the largest general consumers' association, the "Consumentenbond", which proceeds in this manner when it expects a court ruling likely to settle a question of principle of importance to consumers.
3. Certain political parties and other organizations (for instance a broadcasting station and a women's association) have a private "mediator" to whom complaints may be addressed. The television programme "Ombudsman" broadcast by one of the radio and television channels has a large staff for this purpose. A number of channels also have special radio and television programmes for consumers.
4. The social workers employed by local authorities and other departments give advice on certain matters and, in other cases, help those concerned to seek the advice of experts. Some big towns have appointed a special "mediator" or "ombudsman" to deal with problems involving the municipality itself.
5. Recently, an institution was created in the Netherlands known as "de nationale Ombudsman". Anyone can address complaints to him

about the public authorities.

6. In all conurbations with more than 100 000 inhabitants and even in certain other communes, there are one or more "law surgeries", either private or run by the universities. These "surgeries" are managed by young lawyers in private practice and/or by the university staff. They employ law students, who each work for periods of approximately eight months. The "surgeries" are open mainly in the evenings and generally confine themselves to giving advice. They normally help anyone seeking assistance. Sometimes, in particular where legal proceedings seem to be necessary, they send their clients to the legal aid office. The public contributes only to the administrative costs (Fl 10 at the most).

7. After a decree of separation or divorce, the court appoints a notary to draw up the act of separation of estates where appropriate. If legal aid has been granted the services of the notary are free. The president of the court may instruct a notary to draw up free of charge wills or other documents (the notary system derived from Roman law is in force in the Netherlands), but such decisions are rare, mainly because the drawing up of wills and marriage settlements is not expensive (around Fl 100). In Amsterdam young notaries' clerks provide an hour's free consultations a week. This idea has been taken up in other towns.

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The "law surgeries" are subsidized either by a university, by the State or the commune, or by both. The students or lawyers involved in these services work on a voluntary basis, as do the notaries in the case of their weekly hour of free consultations.

The trade unions, political parties and social workers, however, pay their legal advisers.

4.09

UNITED KINGDOM

1. Under the "legal aid and advice scheme", people of limited means may obtain, on payment of a small charge or free of charge, the advice of solicitor or counsel and assistance on questions of English or Scots law.

The scheme enables a solicitor to provide the person concerned, as if he were a fee-paying client, with assistance on any matter normally dealt with by a solicitor. This assistance may comprise, for instance, advice, the drafting of letters and documents, and the negotiation of settlements. It does not, however, cover matters in connection with legal proceedings, as these are covered by legal aid. Assistance is given on both criminal and civil matters. Assistance may be granted only up to a set fee; the solicitor may not provide advice or assistance for which the fee will exceed £45 without having obtained the approval of the Regional Committee in whose jurisdiction the matter is raised. With such approval, however, there is no limit to the services that may be rendered, except with regard to the institution of legal proceedings.

Under this scheme, advice and assistance are available to anyone whose weekly income (after deductions for income tax and national insurance contributions and certain allowances for dependants) does not exceed £85 or who is in receipt of social security benefits and (in either case) whose disposable capital (i.e., savings which can be easily realized, after certain deductions for dependants) does not exceed 600. If his net income exceeds £40 per week the client must pay part of the solicitor's fees. The amount of his contribution to the cost is calculated on a sliding scale, starting at £5.00 for a disposable income of between £40 and £50 and rising to £49 for a disposable income of £85.

The same scheme has been in operation in Northern Ireland since November 1979. The legal aid and advice scheme is administered by the Law Society (the controlling body in the case of solicitors),

but the conditions under which advice may be sought are governed by statute.

Thirty-seven offices, each with its own staff, have already been established in those areas of England and Wales where a need for legal services has made itself felt. The solicitors at these law centres specialize in labour law and social security law, fields rarely covered by private sector lawyers, and thus provide aid and legal advice and represent their clients.

2. Alongside this system, there exists an independent network of Legal Advice Centres which provide free advice and are open for a few hours a week. They are generally staffed by lawyers working on a voluntary basis.

It is important to note that they differ from one another to quite a large extent, both in terms of organization and of size.

3. Consumer Advice Centres.

These centres are established in the main shopping streets in major towns and provide consumers with all kinds of information and advice on their purchases. They are also competent to deal with complaints.

Some of the centres consist of mobile units (caravans serving villages). In all there are around 60 consumer advice centres. They are financed by Government grants and by local authorities.

4. Housing Advice Centres.

The purpose of these centres is to deal with the specific problems of those who use them. There are around 150 of these centres and two-thirds of them are run by local authorities. The others are independent and financed by the Catholic Housing Aid Society.

4.10

FEDERAL REPUBLIC OF GERMANY

Under the Beratungshilfegesetz (legal aid law) of 18 June 1980 (BGBI. I, page 689) people in need are entitled to legal aid in matters not involving court proceedings. This aid consists of legal advice and, where necessary, representation. Legal aid is given by a lawyer whom the consumer is free to choose. The consumer may apply direct to the lawyer for this purpose. He pays the lawyer a fee of only DM 20 and even this may be waived in cases of extreme need. The State pays the rest of the lawyer's fee for the legal aid. Before going to a lawyer, the consumer may also consult the district court first. In simple cases the court can also provide legal aid, if the consumer's problem can be resolved by providing information on the spot, referring him to other possibilities of assistance or accepting an application or declaration. Otherwise the district court issues the consumer with a voucher entitling him to consult a lawyer of his choice. The legal aid law contains certain conditions for the granting of legal aid designed to prevent the misuses of legal aid facilities. In Hamburg and Bremen a procedure was introduced some time ago whereby public bodies provide legal advice. This replaces legal aid under the legal aid law in those Länder. In Berlin the consumer has the choice of turning to one of the legal advice bodies that have existed there for some time or using the legal aid facilities under the legal aid law.

Associations established on an occupational or similar basis (such as trade unions, employers' associations, professional bodies) may as part of their work advise and assist their members on legal matters (Article 1, para. 7 of the Rechtsberatungsgesetz - Law on legal advice). The Verbraucherzentralen in the Länder are subsidized from public funds and are also empowered to provide legal assistance to consumers in matters not involving court proceedings (Article 1(3)(8) of the Law on legal advice).