

歐洲議會暨理事會準則 98/27/EC

「關於保護消費者利益之強制執行」

文件編號一九九八年五月十九日

**DIRECTIVE 98/27/EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

on injunctions for the protection of consumers' interests

of 19 May 1998

歐洲議會及歐洲聯盟理事會，

基於建立歐洲共同體條約，特別是第 100a 條，

基於執委會的提案^①，

基於經濟暨社會委員會的意見^②，

依條約第 189b 條^③所規定之程序，

- (1) 鑒於此準則附件所列之某些準則規範涉及消費者利益之保護；
- (2) 鑒於國家與共同體雙方層級中為遵行準則而施行之機制並無法即時終止損害集體利益之違反規範行為；鑒於集體利益之定義未包含受到違反規範損害之多位個人利益的集結；鑒於不違背受違反規範損害之多位個人其個體行動之原則；
- (3) 鑒於為終止因適用國家法規所產生之違法行為，轉換上述準則所執行之國家措施，包括超越準則要求標準，然在內國法與歐體條約相容並受那些準則所准許條件下所形成之保護措施，其效力除了在產生違反行為之國家，同時在受違反行為影響之國家中可能受到阻礙；

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission^①,

Having regard to the opinion of the Economic and Social Committee^②,

Acting in accordance with the procedure laid down in Article 189b of the Treaty^③,

- (1) Whereas certain Directives, listed in the schedule annexed to this Directive, lay down rules with regard to the protection of consumers' interests;
- (2) Whereas current mechanisms available both at national and at Community level for ensuring compliance with those Directives do not always allow infringements harmful to the collective interests of consumers to be terminated in good time; whereas collective interests mean interests which do not include the cumulation of interests of individuals who have been harmed by an infringement; whereas this is without prejudice to individual actions brought by individuals who have been harmed by an infringement;
- (3) Whereas, as far as the purpose of bringing about the cessation of practices that are unlawful under the national provisions applicable is concerned, the effectiveness of national measures transposing the above Directives including protective measures that go beyond the level required by those Directives, provided they are compatible with the Treaty and allowed by those Directives, may be thwarted

- (4) 鑒於那些爭端可能阻礙內部市場之順利運作，將形成充分理由來移除對另一國家形成不合法行為之根源，為將此根源排除在所有執行方式外；鑒於此舉形成競爭之扭曲行為；
- (5) 鑒於損害共同體法行為所形成之不利影響，那些爭端可能降低消費者對內部市場之信心，以及可能限制代表消費者集體利益之組織或是負責保護消費者集體利益獨立團體之行動範圍；
- (6) 鑒於那些行為時常具跨國界之性質；鑒於調和國家規範具有某種程度之急迫性，無論不合法行為是否已於某一國產生效力，仍必須下令終止上述之不合法行為；鑒於司法觀點，在遵循條約所生之會員國一般義務時，特別是有關推動內部市場順利運作之義務上，此舉並無違背國際司法規範以及會員國間簽署之公約；
- (7) 鑒於僅能由共同體達成行動所擬之目的；鑒於共同體因此而被賦予執行之職責；
- (8) 鑒於共同體條約第 3b 條 3 項規定共同體之任何行動不

- where those practices produce effects in a Member State other than that in which they originate;
- (4) Whereas those difficulties can disrupt the smooth functioning of the internal market, their consequence being that it is sufficient to move the source of an unlawful practice to another country in order to place it out of reach of all forms of enforcement; whereas this constitutes a distortion of competition;
- (5) Whereas those difficulties are likely to diminish consumer confidence in the internal market and may limit the scope for action by organisations representing the collective interests of consumers or independent public bodies responsible for protecting the collective interests of consumers, adversely affected by practices that infringe Community law;
- (6) Whereas those practices often extend beyond the frontiers between the Member States; whereas there is an urgent need for some degree of approximation of national provisions designed to enjoin the cessation of the abovementioned unlawful practices irrespective of the country in which the unlawful practice has produced its effects; whereas, with regard to jurisdiction, this is without prejudice to the rules of private international law and the Conventions in force between Member States, while respecting the general obligations of the Member States deriving from the Treaty, in particular those related to the smooth functioning of the internal market;
- (7) Whereas the objective of the action envisaged can only be attained by the Community; whereas it is therefore incumbent on the Community to act;
- (8) Whereas the third paragraph of Article 3b of the Treaty makes it in-

得踰越為實現本條約目標所需之行為；鑒於依同條規定，在考量各會員國立法體系之特質，應儘可能地讓會員國保有自由選擇其執行之方式，達成準則所賦予之目標；鑒於參照此準則第 2 條所訂，有權對訴訟作出裁決的法院或行政當局應擁有檢視先前決定效力之權；

(9) 鑒於選項一需要一個或多個專責保護消費者集體利益之獨立公共團體，執行此準則訂定之行動權力；鑒於另一選項應依據內國法訂定之標準，賦予保護消費者集體利益之組織其執行之權力；

(10) 鑒於為達成此準則之目標，會員國應擇一選項或結合這兩種選項，在國家層級指派合格團體或組織；

(11) 鑒於共同體內部違反條約之規範，相互承認原則應適用於這些團體及（或）組織；鑒於國家各單位之要求，會員國需遞交一份合格單位名單與成立宗旨給執委會，而此類單位得依此準則規範在其國家境內採取行動；

(12) 鑒於執委會應將此類合格單位之名單公告在歐洲共同體之官方公報中；鑒於名單公佈時，名單所列之合格

cumbent on the Community not to go beyond what is necessary to achieve the objectives of the Treaty; whereas, in accordance with that Article, the specific features of national legal systems must be taken into account to every extent possible by leaving Member States free to choose between different options having equivalent effect; whereas the courts or administrative authorities competent to rule on the proceedings referred to in Article 2 of this Directive should have the right to examine the effects of previous decisions;

(9) Whereas one option should consist in requiring one or more independent public bodies, specifically responsible for the protection of the collective interests of consumers, to exercise the rights of action set out in this Directive; whereas another option should provide for the exercise of those rights by organisations whose purpose is to protect the collective interests of consumers, in accordance with criteria laid down by national law;

(10) Whereas Member States should be able to choose between or combine these two options in designating at national level the bodies and/or organisations qualified for the purposes of this Directive;

(11) Whereas for the purposes of intra-Community infringements the principle of mutual recognition should apply to these bodies and/or organisations; whereas the Member States should, at the request of their national entities, communicate to the Commission the name and purpose of their national entities which are qualified to bring an action in their own country according to the provisions of this Directive;

(12) Whereas it is the business of the Commission to ensure the publication of a list of these qualified entities in the Official Journal of the

團體將擁有法律行為能力；

(13) 鑒於會員國得要求提出強制執行之當事者進行事先諮詢程序，以提供被告一個終止爭議性違反行為之機會；鑒於會員國得要求其一委任之獨立法人共同參與此項事項諮詢程序；

(14) 鑒於會員國設置事先諮詢程序，若無法在獲得諮詢後的兩週期限內終止違反規範行為，相關當事者得立即採取強制執行措施；

(15) 鑒於宜由執委會針對此準則之運作、特別是其涵蓋範圍與事先諮詢程序部份提出報告；

(16) 鑒於此準則之適用，不應違反共同體競爭規則之適用；

發布以下準則：

第一條 範圍

1. 此項準則目的在於調和有關第二條提及強制執行之法律、規則和會員國的行政條款。為確保內部市場順利

European Communities; whereas, until a statement to the contrary is published, a qualified entity is assumed to have legal capacity if its name is included in that list;

(13) Whereas Member States should be able to require that a prior consultation be undertaken by the party that intends to bring an action for an injunction, in order to give the defendant an opportunity to bring the contested infringement to an end; whereas Member States should be able to require that this prior consultation take place jointly with an independent public body designated by those Member States;

(14) Whereas, where the Member States have established that there should be prior consultation, a deadline of two weeks after the request for consultation is received should be set after which, should the cessation of the infringement not be achieved, the applicant shall be entitled to bring an action before the competent court or administrative authority without any further delay;

(15) Whereas it is appropriate that the Commission report on the functioning of this Directive and in particular on its scope and the operation of prior consultation;

(16) Whereas the application of this Directive should not prejudice the application of Community competition rules,

HAVE ADOPTED THIS DIRECTIVE:

Article 1 Scope

1. The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to

運作，第二條旨在保護此準則附件所列消費者集體之利益。

2. 依據此項準則，違反規定之行為應指，準則轉換為會員國內部法律規範時，違反附件所列準則之任何行為規範，且有損本條 1 項所提之消費者集體利益。

第二條 強制執行行為指：

1. 會員國應授權法院或行政當局對於相關訴訟作出裁決，此類訴訟由合格之單位依第三條規範而得以要求：
 - (a) 考量所有權宜之計後作出命令，藉由適當之即時程序，停止或禁止任何違反規定之行為；
 - (b) 為排除違反規定的持續性影響，應採行適當措施，諸如全面或部份地公佈被視為適當之決定或發表修正之聲明；
 - (c) 一旦無法在法院或行政當局規範之特定期限內遵循其所作之決定時，為確保決定被遵循之原則，在會員國法律體系之許可範圍內，依每延遲一天之固定金額或是會員國法律規範之其他金額，下令敗訴之被告支付罰款作為公共財源或是給予國家法律所指定之受益人。

actions for an injunction referred to in Article 2 aimed at the protection of the collective interests of consumers included in the Directives listed in the Annex, with a view to ensuring the smooth functioning of the internal market.

2. For the purpose of this Directive, an infringement shall mean any act contrary to the Directives listed in the Annex as transposed into the internal legal order of the Member States which harms the collective interests referred to in paragraph 1.

Article 2 Actions for an injunction

1. Member States shall designate the courts or administrative authorities competent to rule on proceedings commenced by qualified entities within the meaning of Article 3 seeking:
 - (a) an order with all due expediency, where appropriate by way of summary procedure, requiring the cessation or prohibition of any infringement;
 - (b) where appropriate, measures such as the publication of the decision, in full or in part, in such form as deemed adequate and/or the publication of a corrective statement with a view to eliminating the continuing effects of the infringement;
 - (c) insofar as the legal system of the Member State concerned so permits, an order against the losing defendant for payments into the public purse or to any beneficiary designated in or under national legislation, in the event of failure to comply with the decision within a time-limit specified by the courts or administrative authorities, of a fixed amount for each day's delay or any other amount provided for in national legislation, with a view to

2. 此準則在不違反國際司法規範下，應遵循適用之法律，進而讓會員國引發違反規範之法律或受違反規範影響之法律得以正常地適用。

第三條 合格單位得以採取行動

依據此項準則，合格單位應指任何依會員國法律所創設之團體或組織，為確保遵循第一條所指稱之條款，而提出其正當利益。合格單位特別指的是：

- (a) 會員國境內特定負責保護第一條指稱利益之一個或多個獨立公共團體，或是
- (b) 依會員國內國法所訂標準，以保護第一條指稱利益為目的之組織。

第四條 共同體內部之違反規定行為

1. 每一會員國應採行必要之措施，以確保產生違反規定之會員國中任何來自於其他會員國之合格單位，其受保護之權力一旦受到違反規定之影響時，得要求參照第二條法院或行政當局提出之名單，作為本條 3 項之依據。法院或行政當局應採行此一名單作為合格單位正當性之檢驗依據，並在不違反自身權力下，檢視合格單位在特殊案件中採取行動目的之合法性。

ensuring compliance with the decisions.

2. This Directive shall be without prejudice to the rules of private international law, with respect to the applicable law, thus leading normally to the application of either the law of the Member State where the infringement originated or the law of the Member State where the infringement has its effects.

Article 3 Entities qualified to bring an action

For the purposes of this Directive, a 'qualified entity' means any body or organisation which, being properly constituted according to the law of a Member State, has a legitimate interest in ensuring that the provisions referred to in Article 1 are complied with, in particular:

- (a) one or more independent public bodies, specifically responsible for protecting the interests referred to in Article 1, in Member States in which such bodies exist and/or
- (b) organisations whose purpose is to protect the interests referred to in Article 1, in accordance with the criteria laid down by their national law.

Article 4 Intra-Community infringements

1. Each Member State shall take the measures necessary to ensure that, in the event of an infringement originating in that Member State, any qualified entity from another Member State where the interests protected by that qualified entity are affected by the infringement, may seize the court or administrative authority referred to in Article 2, on presentation of the list provided for in paragraph 3. The courts or administrative authorities shall accept this list as proof of

2. 基於共同體內部之違反規定行為，會員國在不違反國家法律賦予其他單位之權力原則，應合格單位之要求下，需知會執委會此類單位得依準則第二條規範而採取行動。會員國應遞交執委會此類合格單位之名單及其設立宗旨。
3. 基於合格單位目的之特殊性，執委會應參照本條 2 項草擬合格單位之名單。此份名單應公告在歐洲共同體之官方公報中，名單中之變動應立即公告之，並於每六個月公告最新之名單。

第五條 事先諮詢

1. 會員國得以採行或維持當事者想藉以尋求強制執行之現行條款。依尋求強制執行會員國的第 3(a)條之意義範圍內，在當事者已嘗試諮詢被告或被告與合格單位兩者並已嘗試達成終止違反規範行為後，當事者才得以啟動事先諮詢程序。會員國必須決定尋求強制執行之當事者是否必須諮詢合格單位之意見。若無法在獲得諮詢後的兩週內終止違反規範行為，相關當事者得立即採取強制執行措施。

- the legal capacity of the qualified entity without prejudice to their right to examine whether the purpose of the qualified entity justifies its taking action in a specific case.
2. For the purposes of intra-Community infringements, and without prejudice to the rights granted to other entities under national legislation, the Member States shall, at the request of their qualified entities, communicate to the Commission that these entities are qualified to bring an action under Article 2. The Member States shall inform the Commission of the name and purpose of these qualified entities.
 3. The Commission shall draw up a list of the qualified entities referred to in paragraph 2, with the specification of their purpose. This list shall be published in the Official Journal of the European Communities; changes to this list shall be published without delay, the updated list shall be published every six months.

Article 5 Prior consultation

1. Member States may introduce or maintain in force provisions whereby the party that intends to seek an injunction can only start this procedure after it has tried to achieve the cessation of the infringement in consultation with either the defendant or with both the defendant and a qualified entity within the meaning of Article 3(a) of the Member State in which the injunction is sought. It shall be for the Member State to decide whether the party seeking the injunction must consult the qualified entity. If the cessation of the infringement is not achieved within two weeks after the request for consultation is received, the party concerned may bring an action for an injunc-

2. 會員國所採行的事先諮詢規範原則，需告知執委會並應公告於歐洲共同體官方公報中。

第六條 報告

1. 此準則生效後每三年，執委會應向歐洲議會及理事會提出一份此項準則之執行狀況報告，首次報告之提出不得超過生效日之五年後。
2. 執委會首次報告中應特別檢視：
 - 此準則涉及行使商業、工業、手工業或專業活動者集體利益之保護範圍；
 - 附件所列準則對於此項準則之規定範圍；
 - 第 5 條之事先諮詢是否得以有效保護消費者利益。

在適當情況下，此份報告得以附帶提出修改此準則之相關提案。

第七條 較廣泛行動之條款

此準則不應阻礙會員國採行或維持現行條款，賦予合格單位或是任何其他個人在國家層級採取有關較廣泛行動之權力。

tion without any further delay.

2. The rules governing prior consultation adopted by Member States shall be notified to the Commission and shall be published in the Official Journal of the European Communities.

Article 6 Reports

1. Every three years and for the first time no later than five years after the entry into force of this Directive the Commission shall submit to the European Parliament and the Council a report on the application of this Directive.
2. In its first report the Commission shall examine in particular:
 - the scope of this Directive in relation to the protection of the collective interests of persons exercising a commercial, industrial, craft or professional activity;
 - the scope of this Directive as determined by the Directives listed in the Annex;
 - whether the prior consultation in Article 5 has contributed to the effective protection of consumers.

Where appropriate, this report shall be accompanied by proposals with a view to amending this Directive.

Article 7 Provisions for wider action

This Directive shall not prevent Member States from adopting or maintaining in force provisions designed to grant qualified entities and any other person concerned more extensive rights to bring action at national level.

第八條 執行

1. 為遵行此準則，會員國應於準則生效後之三十個月內採行必要之法律、規則以及行政規定。

會員國應立即知會執委會其相關內容。當會員國採行此類措施時應參照此一準則，或在官方公告時附上參照。各會員國應採用此一參照程序。

2. 各會員國應將其就此準則所涵蓋領域所訂定之國家法律條款遞交予執委會。

第九條 生效

此準則應自公告於歐洲共同體官方公報後的第二十天起生效。

第十條 適用者

此準則適用於各會員國。

一九九八年五月十九日於布魯塞爾。

此致歐洲議會

主席

J.M. GIL-ROBLES

此致理事會

主席

G. BROWN

Article 8 Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 30 months after its entry into force. They shall immediately inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 9 Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 10 Addressees

This Directive is addressed to the Member States.

Done at Brussels, 19 May 1998.

For the European Parliament

The President

J.M. GIL-ROBLES

For the Council

The President

G. BROWN

NOTE

- ① OJ C 107, 13. 4. 1996, p. 3 and OJ C 80, 13. 3. 1997, p. 10.
- ② OJ C 30, 30. 1. 1997, p. 112.
- ③ 一九九六年十一月十四日歐洲議會之意見（OJ C 362, 2. 12. 1996, p. 236）。一九九七年十月三十日理事會之共同立場（OJ C 389, 22. 12. 1997, p. 51），以及一九九八年三月十二日歐洲議會之決定（OJ C 104, 6. 4. 1998）。一九九八年四月二十三日理事會之決定。

註釋

- ① OJ C 107, 13. 4. 1996, p. 3 and OJ C 80, 13. 3. 1997, p. 10.
- ② OJ C 30, 30. 1. 1997, p. 112.
- ③ Opinion of the European Parliament of 14 November 1996 (OJ C 362, 2. 12. 1996, p. 236). Council common position of 30 October 1997 (OJ C 389, 22. 12. 1997, p. 51) and Decision of the European Parliament of 12 March 1998 (OJ C 104, 6. 4. 1998). Council Decision of 23 April 1998.

附件

此準則第一條所涵蓋之準則清單 (1*)

1. Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ L 250, 19.9.1984, p. 17).
2. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372, 31.12.1985, p. 31).
3. Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42, 12.2.1987, p. 48), as last amended by Directive 98/7/EC (OJ L 101, 1.4.1998, p. 17).
4. Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities: Articles 10 to 21 (OJ L 298, 17.10.1989, p. 23 as amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60)).
5. Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).
6. Council Directive 92/28/EEC of 31 March 1992 on the advertising

ANNEX

LIST OF DIRECTIVES COVERED BY ARTICLE(I)

1. Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ L 250, 19.9.1984, p. 17).
2. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372, 31.12.1985, p. 31).
3. Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42, 12.2.1987, p. 48), as last amended by Directive 98/7/EC (OJ L 101, 1.4.1998, p. 17).
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5. Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).
6. Council Directive 92/28/EEC of 31 March 1992 on the advertising

- of medicinal products for human use (OJ L 113, 30.4.1992, p. 13).
7. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).
 8. Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (OJ L 280, 29.10.1994, p. 83).
 9. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p. 19).

（許琇媛譯，蔡宗珍校正）

(1*) 上述 1, 6, 7, 9 項所列之準則涵蓋強制執行之特殊條款。

- of medicinal products for human use (OJ L 113, 30.4.1992, p. 13).
7. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).
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 9. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p. 19).

(1*) Directive Nos 1, 6, 7 and 9 contain specific provisions on injunctive actions.