

EU Consumer Law Acquis Compendium

Legislation

Ireland (IE) Nr. 10



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Full name and/or number of the statute (in original language):

European Communities (Court Orders for the Protection of Consumer Interests) Regulations 2010

Translation of the name:

European Communities (Court Orders for the Protection of Consumer Interests) Regulations 2010

Reference in Official Journal (if appropriate):

Date of coming into force:

23.11.10

Subsequent amendments:

23.11.10 (date of coming into force)

Text:

S.I. No. 555/2010 — EUROPEAN COMMUNITIES (COURT ORDERS FOR THE PROTECTION OF CONSUMER INTERESTS) REGULATIONS 2010.

Notice of the making of this Statutory Instrument was published in

“Iris Oifigiúil” of 26th November, 2010.

I, BATT O'KEEFFE, Minister for Enterprise, Trade and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009¹, hereby make the following regulations:

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Citation.

1. These Regulations may be cited as the European Communities (Court Orders for the Protection of Consumer Interests) Regulations 2010.

Interpretation.

2. (1) In these Regulations—

“consumer Directive” means each of the Directives set out in the Schedule;

“Court” means the Circuit Court;

“Injunctions Directive” means Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers’ interests¹;

“Minister” means the Minister for Enterprise, Trade and Innovation.

(2) A word or expression that is used in these Regulations and in the Injunctions Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in that Directive.

Applications for certain orders.

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3. (1) Where a qualified entity is of the opinion that a person is acting in a manner that constitutes an infringement, the qualified entity may, for the purpose of protecting the collective interests of consumers and subject to paragraphs (4), (5) and (6), apply to the Court for an order requiring that person—

(a) to cease acting in that manner, or

(b) not to act in that manner.

(2) An application under paragraph (1) may be made in a summary manner.

(3) A qualified entity from another Member State that protects interests in that Member State affected by an infringement may, subject to paragraphs (4) and (5), make an application to the Court under paragraph (1) if—

(a) the qualified entity is specified in the list published, in accordance with Article 4.3 of the Injunctions Directive, by the European Commission in the Official Journal of the European Union, and

(b) the qualified entity provides the Court with a copy of the Official Journal containing the most recent publication of the list referred to in subparagraph (a).

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(4) Before a qualified entity makes an application under paragraph (1) against a person, the qualified entity—

(a) shall make reasonable efforts to consult with the person for the purposes of achieving the cessation of the infringement concerned, and

(b) without prejudice to the generality of subparagraph (a), shall request the person not to infringe those interests.

(5) If, after consultation or reasonable efforts at consultation, the qualified entity is of the opinion that the person has continued to act, or is likely again to act, in a manner that constitutes an infringement, the qualified entity may, 2 weeks after the commencement of such consultation, for the purposes of protecting the collective interests of consumers, make an application under paragraph (1).

(6) When making an application under paragraph (1), a qualified entity (other than a qualified entity referred to in paragraph (3)) shall satisfy the Court that it has a statutory function in relation to the protection of consumer interests which are the subject of the infringement concerned.

Court's powers in relation to applications.

4. (1) The Court may grant or refuse to grant the order sought in an application under Regulation 3.

(2) Where the Court grants such an order—

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(a) it shall specify in the order—

(i) a day by which the person against whom the order is made is required to comply with the order, and

(ii) a sum that is to be paid into the Central Fund by that person for each day on which the non-compliance continues after the day referred to in sub-subparagraph (i),

and

(b) it may provide for any other matter which appears to it to be appropriate having regard to the circumstances of the infringement and the protection of the collective interests of consumers including, if appropriate, the publication of the order.

(3) The Court shall endeavour to deal with an application under Regulation 3 as speedily as possible.

(4) Where it is satisfied that it is appropriate to do so the Court may make an interim order.

(5) Nothing in these Regulations affects the Court's power to make an order as to costs.



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Recovery of sums due under orders.

5. In the event that a person against whom an order under Regulation 3 is made does not cease, or commits, the infringement concerned, and does not pay into the Central Fund any sum referred to in Regulation 4(2)(a)(ii) required by the order, the Minister may recover any such sum not paid as a simple contract debt in any court of competent jurisdiction.

Request to Minister to inform Commission of qualified entity.

6. A qualified entity that has a statutory function in relation to a class of consumers' interests, which are the subject of the consumer Directives, may request the Minister to communicate to the Commission that it is a qualified entity for the purposes of Article 4 of the Injunctions Directive.

Regulations not to affect other consumer rights.

7. These Regulations are without prejudice to the rights of consumers to rely on any law giving effect to a consumer Directive.

Revocation and transitional.

8. (1) The European Communities (Protection of Consumers' Collective Interests) Regulations 2001 (S.I. No. 449 of 2001) (in this Regulation referred to as the "revoked Regulations") are revoked.

(2) An application for an injunction brought under the revoked Regulations may be continued under these Regulations for all purposes as if it had been brought under these Regulations. Any step taken for the purposes of such

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an application has effect as if the application had been brought and the step taken under these Regulations.

(3) Consultation undertaken pursuant to Regulation 3(2) of the revoked Regulations is effective for all the purposes of these Regulations as if undertaken under Regulation 3(4) of these Regulations.

(4) An order made under the revoked Regulations may be enforced under these Regulations as if made under these Regulations.

SCHEDULE

Consumer Directives

1. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises²

2. 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 credit³.

3. 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 21⁴

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4. Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours⁵

5. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts⁶

6. 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 contracts⁷

7. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees⁸

8. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects on information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce)⁹

9. Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use: Articles 86 to 100¹⁰

10. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services¹¹

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11. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market¹²

12. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market¹³

13. Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts¹⁴

GIVEN under my Official Seal,

23 November 2010.

BATT O'KEEFFE,

Minister for Enterprise, Trade and Innovation.

EXPLANATORY NOTE

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(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These regulations transpose Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (Codified version) and revoke S.I. No. 449 of 2001 — European Communities (Protection of Consumers Collective Interests) Regulations, which transposed the original Directive 98/27/EC.

This Directive was amended several times with new Directives added to the Annex of the original, including Article 42 of Directive 2006/123/EC of 12 December 2006 on Services in the Internal Market. Since the adoption of the Services Directive, the Injunctions Directive has been codified into Directive 2009/22/EC, which repeals Directive 98/27/EC.

- 1 OJ No. L 110, 1.5.2009, p. 30.
- 2 OJ No. L 372, 31.12.1985, p. 31
- 3 OJ No. L 42, 12.2.1987, p. 48
- 4 OJ No. L 298, 17.10.1989, p. 23
- 5 OJ No. L 158, 23.6.1990, p. 59
- 6 OJ No. L 95, 21.4.1993, p. 29
- 7 OJ No. L 144, 4.6.1997, p. 19
- 8 OJ No. L 171, 7.7.1999, p. 12
- 9 OJ No. L 178, 17.7.2000, p. 1
- 10 OJ No. L 311, 28.11.2001, p. 67
- 11 OJ No. L 271, 9.10.2002, p. 16
- 12 OJ No. L 149, 11.6.2005, p. 22
- 13 OJ No. L 376, 27.12.2006, p. 36
- 14 OJ No. L 33, 3.2.2009, p. 10

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