

## DENMARK

### Annual Report on Consumer Policy Developments 2001

#### **The Danish Marketing Practices Act § 6a**

On the 1<sup>st</sup> July a new provision (§ 6a) was entered in the Marketing Practices Act concerning unsolicited calls to certain customers. In accordance with § 6a it is now prohibited to call consumers by electronic mail or telefax unless the customer has made a prior request for such calls. There has been many questions as to the delimitation of § 6a, also in relation to the rules of the personal data registration act. Two information letters have been issued about the Consumer Ombudsman's practice in relation to § 6a. Moreover, the Consumer Ombudsman has brought a couple of cases before the Maritime and Commercial Court about the delimitation of the provision.

#### **Follow-up on the Nordic Consumer Ombudsmen's common position towards trading and marketing on the Internet**

In the beginning of 2000 the Consumer Ombudsman initiated a project for following-up on the Nordic Consumer Ombudsmen's common position towards trading and marketing on the Internet and in similar communication systems.

A number of Danish businesses' homepages was contacted, and subsequently an investigation was made on basis of a predefined checklist in order to ascertain whether the homepages observed the requirements set by the Danish legislation and the guidelines set by the Nordic Consumer Ombudsmen. On basis of the results of this investigation a report was prepared. The report was published in the middle of October 2000.

The conclusion was that all the investigated home-pages at a number of points did not comply with the legislation and the mutual attitude of the Consumer Ombudsmen. The conclusion and the summary can be found in English at the following address: <http://www.fs.dk/uk/acts/internetrapport.htm>.

#### **Consumer protection within the banking sector**

In January 2001, on the request of the Consumer Ombudsman, a "Statement concerning better protection of private clients within the bank sector" was published. The purpose of the statement was to make an evaluation of the need for better protection of private clients within the banking sector. The statement therefore contained some suggestions where in the authors' opinion there was a reason to take or to consider initiatives with regard to an improvement of the private clients' legal rights by using the tools available for the Consumer Ombudsman on basis of the Marketing Practices Act and/or new legislation. Some of the areas where the need for intervention was considered most required were the banks' considerable use of guaranty/surety, the banks' description of the clients, and the banks' counselling of clients. It was suggested that the clients should be more free, and that they should be provided with a more versatile and satisfactory basis for making their decisions and that this area should be made more transparent.

Consequently, in August 2001 the Consumer Ombudsman informed the banks about his view upon good marketing practices in relation to the consumers.

As the banks did not wish to participate in negotiations about guidelines in this field; the Consumer Ombudsman has on his own drawn up minimum standards in a number of primary areas in the

relationship between banks and customers. Among other things it relates to the right to open an account, conditions about altering interests and fees, and limitations in the access to set-off in certain cases.

Moreover, the Consumer Ombudsman has pointed out to the Minister of Trade and Industry, that rules for bank agreements are urgently needed, and that a number of problems in this relation can only be solved by means of legislation.

### **Implementation of the EU injunctions directive in Danish Law – co-operation between the Nordic Consumer ombudsmen**

On the 1<sup>st</sup> of January 2001 the Act on Actions for Injunctions, which implements the EU-directive on actions for injunctions (98/27/EF of 19<sup>th</sup> May 1998) came into force.

The Act on actions for Injunctions for the Protection of consumers' interests gives authorities and organisations in the EU the possibility of conducting lawsuits and protecting consumer interests across national borders. For instance the Danish Consumer Ombudsman may, on basis of this Act conduct a lawsuit against a Swedish firm for infringement of a number of consumer regulations in Denmark.

As conducting a lawsuit in a foreign country may involve linguistic as well as procedural problems the Nordic Consumer Ombudsmen, subsequently to the passing of the Act, have entered into an agreement on co-operation in connection with conducting lawsuits in relation to the Act on Actions for Injunctions. The agreement obliges the Consumer Ombudsmen to conduct lawsuits on behalf of each other and to exchange information about marketing across the national borders. The Nordic agreement is the first attempt of a practical implementation of the Act on Actions for Injunctions. If the project turns out to be a success the Nordic agreement may become a model for similar agreements within the EU. The Consumer Ombudsmen in Denmark, Sweden and Finland have already signed the agreement. Norway, who also participates in the co-operation, is not able to sign before the Norwegian counterpart to the EU Act on actions for injunctions has been passed.

### **International sweep-day OECD guidelines for consumer protection in the context of electronic commerce**

The IMSN member countries in February 2001 carried out a joint investigation of the marketing of the Internet firms. On the annual so-called Sweep-day, where many of the IMSN member organizations investigate specific consumer areas, the compliance with the OECD guidelines for consumer protection in the context of electronic commerce was tested. The result showed that only a few percent of the investigated 3383 homepages complied with the rules.

### **Insurances**

In spring 2001 "Insurance and Pension" launched a portal on the Internet, where the consumers electronically can find information about insurance matters, and where they are able to compare what insurances cover and their prices. The Consumer Ombudsman participated together with the Danish Competition Authority and the Danish Consumer Council in developing the homepage. The purpose is to create a better transparency for the consumer, thus obtaining an increased competition on the insurance market. The homepage address is [www.forsikringsluppen.dk](http://www.forsikringsluppen.dk) (only in Danish).

In May 2001 a report, requested by the Consumer Ombudsman, on better consumer protection in relation to private insurance was published. The report deals with a number of problems relating to the taking out of policies, the insurance premium, amendments and denunciations of insurance, advice of claims, and the case proceedings of the insurance companies. The report points out that there are a number of

problems, which up till now either has not been dealt at all in the existing legislation, or has not been sufficiently dealt with. Therefore, the report suggests new legislation and also suggests that the Consumer Ombudsman initiates negotiations with the insurance trade with a view to drawing up guidelines.

### **Econsumer.gov**

Together with 12 other countries Denmark in April 2001 established a co-operation regarding non-serious marketing on the Internet. On the 23rd of April 2001 the homepage [www.econsumer.gov](http://www.econsumer.gov) was introduced at a conference for The International Marketing Supervision Network (IMSN) in New York. The project is divided into two parts. A page with a.o. a form accessible to the public, where consumers all over the world may complain online, if they have dealt with an Internet dealer who did not comply with the rules of the consumer legislation. Moreover, they can find general consumer information and addresses of the national organizations who take care of consumer interests. The homepage is in four languages: Spanish, German, English and French. The other part of the project - a password protected site - is only accessible to the participating authorities. Here it is possible for the IMSN-organisations to collect and find trends in the cross-border complaints.

The Danish Consumer Ombudsman considers the database an important tool for securing a safe and confidence-inspiring Internet market for the consumers.

The econsumer-database is a welcomed follow-up on the report about Internet trade, which the Consumer Ombudsman published in October 2000 (mentioned above).

### **Regulation of Reminder Fees**

On the 1<sup>st</sup> of July 2001 new rules in the Danish Act on Interests about Reminder Fees came into force. The rules entail a comparatively detailed regulation of when and how it is allowed to use reminder fees. Thus, in the future a business may only send three reminders for the same obligation, and the reminder fees may only amount to 100 DKr. each. Apart from this only 100 DKr. may be charged for sending the matter for collection, but only if another company carries out the collection. The law is based on a report from the Consumer Ombudsman to the Minister of Justice about the size of the reminder fees.

### **EEJ-Net**

In May 2000 a council resolution was made in the EU concerning the establishment of a network (EEJ-Net - European Extrajudicial Network) between the European authorities being responsible for extrajudicial settling of consumer disputes and establishment of national contact points - Clearing Houses. Since autumn 2001 the Consumer Agency of Denmark has functioned as a national Clearing House.

The purpose of establishing national Clearing Houses is to simplify the consumers' access to the relevant extrajudicial organs in the other member states. The Danish Clearing House shall make it possible for the consumers to contact one single contact point in order to obtain information about national rules, and in cross-border cases to obtain an easier og faster access to extrajudicial settlement of conflicts (in the country of the supplier). Also, the contact point shall distribute complaints from consumers, about goods and services rendered in the other member states, to the relevant national complaint institutions.

### **Focus on the internet - project Net-Tjek**

In November 2001 the Consumer Ombudsman initiated a new project by the name Net-Tjek. The purpose of the project is to strengthen the consumer protection level on the Danish part of the internet. This is done by means of information and guidance to consumers as well as to trade and business about their rights and duties, and by instructing enterprises in case they violate the consumer legislation. As a part of the project a large number of homepages are checked, and the project will have a special homepage where the results of the investigations are published, and where the consumers as well as the enterprises can find information about rights and duties in connection with electronic trade.

## **Safety investigation and market surveillance of market places on the Internet**

The consultant firm, Ernst & Young, has been asked by the Consumer Ombudsman to make an investigation about the security of two market places, which are established by two big Danish banks, Danske Banks Netshop and Nordeas Solotorv, and, moreover, the investigation comprised selected netshops on the two market places. The other investigation is made by NetSearch Aalund A/S and is an analysis of the same two market places in view of marketing legislation,

As far as the payment systems are concerned the two investigations conclude that the part, which is operated by the two banks, function satisfactorily, and the information about the payment is protected by encryption.

However, the security in connection with communication between the bank, the netshop and the consumer's pc is not always satisfactory. In particular it is considered a problem that not all information, which the consumer exchanges with the netshop, is secured against being read or altered by unauthorized persons.

Besides, the investigations show that the net shops still have difficulties in complying with ordinary security claims as well as with ordinary consumer legislation. For instance there are still difficulties in connection with information about the right to cancel, and also in connection with the use of information about the consumers.

The investigation about the compliance with market legislation carried out by the NetSearch Aalund will be followed later on by "status reports".

## **Act on Prohibition of Tobacco Advertisements**

Recently, the Danish Parliament has passed an Act on Prohibition of Tobacco Advertisements. The Act, which came into force on the 1<sup>st</sup> January 2002, prohibits, with a very few exceptions, any kind of tobacco advertising. Contravention of the Act can be punished by fine and the Consumer Ombudsman supervises that the Act is obeyed.

## **Renewal and effectiveness in the field of consumer complaints**

The Minister of Economy and Business Affairs has initiated a reform of the field of consumer complaints, which will result in a Bill to be introduced in the autumn of 2002.

The consumers' access to an easy and effective treatment of complaints is an important element of a well functioning market. It gives the consumers confidence in the businesses and the market, and it protects the businesses against unfair competition. The basis of the reform is that public authorities shall not be involved in conflicts which the parties may solve in a better and cheaper way. At the same time the reform shall contribute to solve some current problems in the field of consumer complaints. Among other things non-compliance of the decisions of the Consumer Complaints Board, an increasing number of complaints and a much too long duration of case treatment. The long-term effect of the reform will moreover result in a reduction of the public expenses in connection with treatment of complaints. The reform contains a number of elements which shall contribute to creating more responsibility in relation to own complaints for the businesses as well as for the consumers, and shall contribute to a more fair competition by making it cost neutral for the businesses and their organisations to establish private complaint boards. Moreover, it shall contribute to a better, faster and more effective treatment of complaints, and to strengthen the efforts for preventing claims.