

OECD - Annual Report 2002

AUSTRIA

1) Institutional Developments

NEW ADDRESS: www.bmsg.gv.at

Due to a new government the ministries have been reorganized in May: The Consumer Protection Directorate General is now belonging to the Federal Ministry for Social Security, Generations and Consumer Protection.

2) Protection of the Consumers' Legal Rights and/or Economic Interests

LEGAL TEXTS ARE AVAILABLE ON www.ris.bka.gv.at (only in German)!

The European Directive on **e-Commerce (2000/31)** has been transposed by the law called E-commerce Gesetz (ECG, BGBl. I Nr. 152/2001) which has come into force in January 2002. The authorities of the Länder are responsible for enforcement, administrative fines may reach the amount of 3000 EURO.

The European Directive on the **Sale of Goods and Associated Guarantees (Directive 1999/44)** has been transposed by an amendment of the Law on Guarantees which has entered into force on January 2002.

The **Competition Law** has been amended due to the European developments introducing among other things a new institutional framework (the Competition Authority may investigate while the Cartel Counsel takes decisions) and new sanctions in form of penalties.

An **Austrian Agency for Health and Food Safety** has been installed and has started its work in June. It goes along the spirit of the European Union to monitor the food chain from the stable to the table.

The **EC-Directive on default of payment** has been transposed into national law and is in force since August. The Austrian law additionally regulates B2C transactions as far as the refund of costs incurred in making request for payment and collection costs are concerned.

A major reform of **the Industrial Code** has been achieved which brings about further liberalization. It has also resulted in some changes in the **Consumer Protection Law**.

A draft amending **the Telecommunication Law** is being negotiated in the follow-up of the relevant European Directives; it concerns regulations on keeping a mobile phone number despite changing the operator, requirements to the operator to inform about the costs (when ringing the phone of another operator), a codex for added value phone operators and dispute settlement procedures.

The **Consumer Protection Law** will be amended thus including more uniform regulations on contracts between **elderly people and homes** and on contracts concluded with **travel agencies** in order to be able to sue for (non-material) damages when holidays may not have been enjoyed (in the follow-up of a decision of the European Court saying that it shall be made clearer how to deal with claims for considerable damages for which the travel agency is responsible)

Since October 1st, 2002 the **gas market** has been totally liberalized (in the follow-up of European Directives). At the same time an out-of-court dispute settlement body has been introduced for gas and electricity matters.

A **Regulation on Piercing and Tattooing** has been adopted in order to clarify the conditions for this activity (who may carry out piercing and tattooing on which body parts to whom – no tattoos for minors, piercing only with information of the person entitled to bring up a child - and under which conditions – hygiene and equipment etc.).

3) Consumer Information and Education

Brochures on **security for kids, property and renting** as well as folders on **guarantees, leasing, buying property, contracts with young people** and **prize draws** have been published.

A **forum on guarantees** has been organised by our office on March 6 (so called Wilhelminenberggespräche).

A **technical seminar** has been held in September on **Competition Law** from the perspective of consumer protection and in connection with the European initiative on fair trade.

4) Redress and Complaint procedures

According to its new competence since January 2002 the Consumer Protection Association VKI has issued a whole range of first warnings and actions for misleading advertising.

5) Case Law

Decision of the European Court of Justice (C 168/00) on damages for holidays which have not been enjoyed: Travellers who fell ill during their all inclusive holidays due to unsafe food shall get damages according to the European Directive on package travel.

Decision of the European Court of Justice (C 96/00) on misleading profit games
A test case initiated by the Consumer Protection Association VKI concerning jurisdiction in the case of claims connected with cross-border misleading profit games linked with product order has been decided: Austrian law (according to §5j of the Consumer Protection Law winnings may be claimed since 1.10.99) is

applicable and Austrian courts are competent although the seat of the company is in Germany. Therefore the seat of the consumer is relevant and it will not help companies to operate from other Member States.

Case pending before the European Court of Justice (C-167/00) on where to start an injunction

The Consumer Protection Association VKI has seized the court to clarify in which country the consumer associations may bring an injunction before the court when trying to stop a company outside the consumer's country to use misleading contract terms (the company concerned has its seat in Germany and organizes marketing trips) .

VKI taking action against miracle (slimming) products

The Consumer Association takes action against misleading practices on the basis of the Law Against Unfair Competition also as follow up of the Sweep Day 2002 (health claims).

Banking Sector

The Supreme Court has ruled that the credit adaptation rate of a bank and that a whole range of bank conditions do not comply with the laws.

Misleading Prize Draws

The court procedures are based on different laws (and have not gone through all instances yet):

Civil Law:

According to the Austrian Consumer Protection Law a prize promised must be handed out to the consumer which may otherwise seize the court. Mostly the company concerned promises a prize asking more recently to contribute by paying an administration fee or by requiring the prize by using a value-added phone number (which may cost about 3,5 EURO per minute). The consumer never gets his prize as the conditions for participating and dividing the prize are printed in very small letters on the back of the envelope or down the page. The highest amount promised is 100.000.- EURO.

At the same time the company may have act against the Telecommunication Law and the Law on Distant Selling by phoning the consumer - without prior consent and without giving name, address or commercial seat of the company - to tell him through a phone machine to phone back to request his prize.

In addition the same company is being sued because of selling slimming products using misleading claims.

Criminal Law:

As the consumer is economically harmed by phoning an added-value number or by paying an administration fee a criminal law procedure has been started.

Cases:

- The Advocates' Association has achieved a declaration by the company concerned to stop using an advocates name without indicating the seat of the advocate (when abroad).
- The Consumer Protection Association has started a court procedure to stop the use of an automatic calling machine announcing the consumers they have won at a profit game without their prior consent and omitting information on price as required by law.

Law on Distance Selling

According to this Law the provider of a service or product is obliged to give a whole range of information including the price: Therefore according to the ruling of a civil court (2nd instance) the consumer must be told when phoning the operator how much the phone call (above normal rate) costs.

Health Claims

There have been two rulings of the European Court of Justice saying that Austria must no longer oblige a company

- 1) to ask for authorization for health claims on food (C-221/00 under www.curia.eu.int) and
- 2) to give a more detailed information on the expert opinion on the package of cosmetics before using the claim “dermatologically tested”

6) Relation between Consumer Policy and other aspects of governmental policy

No comment

7) Other Matters of Interest

A study has been carried out in the follow-up of the implementation of the European Regulation on Cross-Border Payments (which may not cost more than national payments) looking at the development of **costs for banking services** confirming their progressive trend.

The new law on **consumer goods guarantees** and its consequences in practice has been looked at in a study.