

**Statement
on**

ERGEG's Consultation on Complaint Handling

„Public consultation on Draft Advice on customer complaint
handling, Reporting and Classification“

Berlin, 30th November 2009

Introductory remark:

Consumer protection and in particular the possibility of out-of-court settlement of disputes between final customers and service providers are already well-established in Germany. In the field of energy supply to final customers, household customers may lodge complaints free of charge with cartel authorities or regulatory authorities.

Under certain circumstances, consumer associations may also be included in proceedings of regulatory authorities. Irrespective of that, consumers can enforce their rights before civil courts.

Basically, consumer rights are guaranteed in numerous German statutory standards (German Civil Code, law governing general terms and conditions of business, cartel law, energy industry law, ordinances governing the provision of basic electricity and gas supply, etc.). On that basis, final consumers can enforce their rights before civil courts. Furthermore, they have the possibility to obtain free advice and support from publicly financed consumer protection organizations to enforce their interests.

German federal and state ministries and their subordinate authorities as well as consumer protection organisations make comprehensive information available about final consumers' rights and possibilities of complaint handling in the energy market.

BDEW supports the EU's endeavours to promote transparent procedures for consumer protection and, in particular, for dispute settlement. Particularly with regard to the implementation of the Third Internal Market Package's Directives it is essential to develop efficient processes for all parties involved. Therefore, requirements to be set up in terms of complaint handling by energy suppliers need to be practice-oriented, efficient and non-bureaucratic.

Moreover, the location of dispute settlement bodies should be determined under neutral and regional aspects with a view to avoiding the risk of a conflict of interests. In addition, regional location enables an optimum citizen-focused approach to be reached because the responsibility of the relevant body can be defined by the consumer's residence; this will ensure close proximity and, if possible, well-known contact persons.

General remarks on ERGEG's recommendations

The recommendations developed by ERGEG have been based on the Directives of the Third Internal Market Package which require the creation of a neutral dispute settlement board or of an ombudsman scheme. The implementation of the Directives of the Third Internal Market Package into national law should take the Member States' particularities and individual legal conditions into consideration. Existing structures and institutions are to be included in the im-

plementation of the required complaints mechanisms. This would enable, inter alia, economic aspects to be taken into account and cost-efficient/cost-neutral solutions to be found.

As a matter of principle, disputes and complaints pertaining to energy prices, in particular to price changes (not to faulty invoices or the like) should be exempted from the procedures as only courts of law can ultimately take legally binding decisions e.g. on the effectiveness of general terms and conditions of business (Article 307 of the German Civil Code) or on the adequacy of unilateral price changes (Article 315 of the German Civil Code).

The procedure underlying the ERGEG draft takes three levels of complaint escalation into account.

1. Service providers must set up a central point of contact for customer complaints.

In Germany, this requirement has been implemented almost over the entire supply area. Complaint handling is an essential element of customer loyalty and competition. Processes are sometimes made more difficult due to the existence of several market roles (which must all maintain a point of contact for complaints). However, in practice complaints or network-specific inquiries are in most cases received by the supplier from where they will be forwarded to the respective body. This steering function will be gaining in importance with the additional market roles of meter operation/metering service.

For the settlement of disputes, sales departments decide already at the present time on out-of-court redress and good will settlements of customer complaints upon the enquiry or proposal of the customer service centre in charge. Solutions are found here which serve both the customer and the company to prevent cost-intensive and potentially negative escalations.

2. A third party body for dispute settlement

Only if the solutions proposed by the central point of contact for customer complaints fail, a neutral dispute settlement body might be additionally consulted. It is important in this context to guarantee impartiality to all parties involved. In Germany, this function has been assumed to date with certain restrictions by regulatory authorities or cartel authorities.

3. An institution taking binding decisions

In Germany, this function has been assumed to date by the courts of law. As it is unlikely that a dispute not even settled at the second level of the procedure will ultimately not be taken to

court, the introduction of a third level (out-of-court settlement) is not considered to be expedient. Settlements can also be achieved through civil courts of law. As far as court and lawyer fees are concerned, it is important to point out that it is possible in Germany to apply for legal services and assistance so that poor sections of the population may also easily take legal action.

As to the recommendations concerning the supplier side

In order not to add too many items to the bills, a sense of proportion is needed in terms of the contact data of the central point of contact for complaints, the contact data of the “independent body” and, where necessary, of the additional information on the possibilities of complaint given on the service provider’s bill. The same applies to contact details of several points of contact in charge of handling complaints.

The provision of a single point of contact for complaints at the service provider may possibly give rise to additional burdens on the suppliers which have to take and forward complaints about network issues or metering services. It is important in this context to arrange for lean and efficient processes.

For the development of complaint handling standards it is essential to make sure not to confine the freedom of companies to position in the market and differ from their competitors. Complaint handling is a competitive element; therefore, relevant provisions should be restricted to necessary standards for consumer protection.

Firm rules and classifications in terms of compensations can help avoid litigations. It is however essential to arrange for fair conditions and clear definitions of compensation cases. The competencies of the neutral dispute settlement body must be defined in a clear-cut manner.

As to the recommendations concerning a neutral dispute settlement body

It is advisable to use existing structures for setting up a central contact point providing relevant information and advisory services. The competence and impartiality of the contact point’s staff members must be ensured.

Furthermore, attention has to be paid to the subsidiarity of the different procedural steps / bodies addressed for customer complaints.

Data collection by regulatory authorities and, if applicable, the publication of these data needs to be carried out with a sense of proportion in terms of the scope and contents and must not lead to distortions of competition.

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