

## ACTIVE CITIZENS

Learning partnership  
Grundtvig

### DIDACTIC GUIDE

**Module 1:**  
**To learn how to defend oneself**



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## MODULE 1: "To learn how to defend oneself"

Consumer rights (and obligations) and how to exercise them. The resolution of consumer conflicts.

### 1. PRESENTATION

We consumer have rights, but, we may not forget, that we also have obligations. "To learn how to defend oneself" is a multimedia didactic material that pursues the education and information of consumers presenting real cases through which it can be seen how a conflict between consumers and companies can appear, how to act and where to go.

But, attention please! Although the video included in the PowerPoint presentation is based on a real case, things not always happen that way. Therefore, it is helpful to be sure from the beginning that it is not always easy to find a solution to conflicts. Not all companies follow the Consumer Arbitration System and the consumers should not expect too much from Consumer Affairs Department because sometimes the necessary bureaucracy and the obligatory controls do not allow to a correct action with the desired speed.

Furthermore, the consumer should know that, first, it is advisable to try to solve the problem on a friendly way directly at the shop or company. It is always possible to contact the Court of Justice, particularly in case of important problems. The Consumer Arbitration System is one possibility, but not the only one.

Different educational actions can be considered bearing in mind the previous point and with the PowerPoint presentation, didactic proposals and sheets.

### 2. EDUCATIONAL OBJECTIVES

- To know where a consumer can obtain more ample information.
- To learn to detect how a consumer conflict arises.
- To be able to act in a precautionary way.
- To know the consumer rights and to be aware of the obligations.
- To know where and how to enter a complaint.
- To know how the Consumer Arbitration System works (extrajudicial systems).
- To learn to act in a responsible way regarding climate change (positive decisions).

### 3. CONTENTS

#### 3.1.- RESOLUTION OF CONFLICTS

##### Consumer Arbitration System

The Consumer Arbitration System is an instrument offered by the Public Administration to the citizens in order to solve, in an extrajudicial way, conflicts and claims appearing from consumer relations. Through this system, the parties voluntarily entrust to an arbitrary medium, which acts in an impartial, independent and confidential way, the decision about the controversy or conflict arisen between them.

The Consumer Arbitration System may not deal with conflicts related to poisoning, injury, death or in case of circumstantial evidence to crime including liability for damages deriving from them.

The Consumer Arbitration System is organized through the Consumer Arbitration Boards, the Commission of the Consumer Arbitration Boards, the General Tribunal of the Consumer Arbitration System and the arbitrary means.

The Consumer Arbitration is a system which is:

- Voluntary: because it is only possible when both parties (consumer or user and company or retailer) adhere freely to the system.
- Extrajudicial: because it is an alternative system to access the justice. It is not necessary to go through the judicial system but both parties have compulsorily to comply with the decisions. The decisions passed by the Consumer Arbitration Council, the findings, have the effect of a firm sentence.
- Free of charge: because the consumer has not to pay any fee to request the services of the Consumer Arbitration Council and the companies have not to pay any charge because they are adhered to the system. Only in case that an expert's report is needed, the requesting party has to cover the costs.
- Executive: because, once the parties are adhered to the system, they have to respect and accept the Decision.
- Quick: because the Consumer Arbitration follows very simple proceedings without complicated formalities and because the Decision has to be passed within a maximum of 4 months from the choice of the Arbitration Council.
- Objective and impartial: because it is a system through which it is attempted to give a solution with impartiality and independence as the Arbitration Council is made up by three persons: two arbitrators (one representing the consumers and another one representing

the companies) and one president appointed by the Administration to which the Arbitration Board is accountable.

### **Electronic Consumer Arbitration**

The electronic consumer arbitration is entirely carried out by electronic means, starting with the arbitration request until the ending of the proceedings, including the notifications, without prejudice to the fact that some arbitrary action has to be done by traditional means.

### **Collective Consumer Arbitration**

The objective of the collective consumer arbitration is to solve, in only one consumer arbitration process, the conflicts that may have injured the joint interests of consumers and users affecting a certain number of them.

### **Consumer Associations**

The consumer and user associations are organizations whose objective is the defence legitimate rights and interests of the consumers including their information, training and education, either of general nature or with respect to certain goods and services.

Consumer and user associations are also those entities made up by consumers in accordance with the legislation of cooperatives and whose objectives necessarily are the education and training of their members and which are obliged to have a fund for this objective according to its specific legislation.

The national consumer and user associations and those associations, not carrying out their activities mainly in the area of one autonomous region, have to be registered in the State Register of Consumer and User Associations managed by the National Institute of Consumer Affairs.

The consumer and user associations of supra-autonomous level which are legally constituted and registered in the State Register of Consumer and User Associations have the right to:

- Be declared as public service.
- Receive public economic aid and grants.
- Represent, as consumer and user association, their members and execute the corresponding actions in order to defend the members, the association or the general, collective or diffused interests of consumers and users.

- Enjoy the right of free legal assistance as foreseen in the Law of Free Legal Assistance.
- Join the Council of Consumers and Users.

The consumer associations may not:

- Include profit legal persons as members.
- Receive economic aid from companies or business groups that provide goods and services to consumers and users.
- Carry out commercial relations of goods and services.
- Authorize the use of their denominations, images or any other representative signs in the commercial advertising carried out by the market operators, or not do the necessary actions to avoid this use, from the moment on which this conduct is known.
- Carry out other activities than those related to the defence of the consumer and user interests.
- Fail to observe the obligations of transparency foreseen in the legislation.
- Act with clear rashness, legally recognized.

### **OMIC (Municipal Consumer Information Office)**

The Municipal Consumer Information Office is a free municipal service for citizens as consumers and users.

The main objective is to inform, educate, guide and train the consumers as well as to receive claims and complaints.

These offices usually offer, among others, the following services:

- Information, help and guidance for consumers and users.
- Attention and answers to enquiries.
- Reception, registration and procedure of claims and complaints.
- Mediation between parties.
- Edition of informative material and realization of information and training campaigns in the field of consumer affairs.
- Analysis of legislation and technical documentation.

- Collaboration with Consumer Association and the Consumer Arbitration System.

## European Consumer Centres

The European Consumer Centres are public entities at the service of consumers from any Member State of the European Union. All European consumers can contact these centres to obtain information and assistance about different questions related to the purchase of a good or the use of a service in a country different to the own one.

The functions of the European Consumer Centres are as follows: to advise the consumers with respect to their rights in consumer subjects, to inform and carry out an active dissemination of the consumer rights and of the Community politics in consumer affairs, as well as to intercede in cross-border claims and complaints when a national consumer acts against a company situated in another State of the European Union or when a consumer of another State claims against a Spanish company.

## COMPLAINT FORMS

### *What are complaint forms and what are they used for?*

These are the best instruments by which the Administration can become aware of a possible infringement of consumer rights, permitting the necessary action to beset in motion in order to reach a satisfactory solution.

Complaint Sheets are made up of a set of four self-copying forms, the original is white and the copies are pink, green and yellow.

### *How do you fill in complaint forms?*

The complain forms must be in the same place in which the products are sold or services are offered or in the section signalled as client information or customer attention, and they must be handed to the consumer immediately, without their needing to move to another place to obtain them nor to have to wait unnecessarily to be given them by another person not present at that moment in the place of the complaint.

When the consumer fills in the form they must state:

Their information given precisely (name, ID or passport number, etc.) and especially, express clearly the facts that have given rise to the claim and what solution they seek to resolve the problem.

Furthermore, if the establishment fails to do so, then the consumer will write down the information of the establishment.

On the same form the shopkeeper or service provider will write down their version of the facts in the section provided for this.

Having completed the form the consumer will keep the white and green copies and the professional the pink and yellow copies.

***What should the consumer do with their copies?***

The consumer must send the white copy, along with the documents that they consider convenient (receipt, counterfoil, etc) to the Territorial Consumer Service corresponding to their province, or present it in any Official Registry.

It is also possible to go to the nearest Municipal Consumer Information Office.

It is necessary to remember that complaints forms against tourist establishments will be sent, once completed, to the Territorial Tourist Services.

***What should we do if the establishment refuses to provide us with a complaint form or does not have any?***

If an establishment or professional refuses to provide the consumer with the corresponding complaints form, or does not have any, the consumer could seek the presence of the local Police in the place of the dispute in order to bear witness to what had occurred, since this would represent an infringement of consumer rights.

In any case, the fact that the establishment does not have complaints forms at their disposal does not prevent the consumer from placing a complaint, since the use of a simple sheet of paper in any of the places mentioned above would suffice.

**3.2.- BASIC RIGHTS OF CONSUMERS AND USERS**

The basic and inalienable rights of consumers and users are as follows:

- The protection against risks that can affect their health or safety.
  - The goods and services launched on the market have to be safe.
  - Safe are those goods or services that, in normal conditions of use, including the duration, do not present any risk for the health or safety of the persons.
  
- The protection of the legitimate economic and social interests, in particularly, faced with abusive contract clauses.
  - The use of competitions, draws, presents, prize vouchers or others has to be carried out in a transparent

way and always protecting the legitimate economic interests of consumers and users.

- The verification, complaint, guarantee and possibility of rejection and refund stated in the contract has to allow: that the consumer makes sure the nature, characteristics, conditions and utility or purpose of the good or service; can make effective the quality guarantees and obtain the refund of the market price of the good or service, in total or partially, in case of non-fulfilment or defective fulfilment.
  - The customer and information offices and services which the companies put at the disposal of the consumers have to assure the proof of claims and complaints.
- Damages and repair of suffered harm.
  - The correct information about different goods and services and education and dissemination to facilitate the knowledge of the adequate use, consumption and enjoyment.
  - Audience to advice, participation in the elaboration procedure of the general arrangements that affect them directly and representation of their interests through legally set up consumer and user associations, groups, federations or confederations.
  - Protection of their interests through efficient procedures, in particular, faced with situations of inferiority, subordination and defencelessness.

#### 4. DIDACTIC PROPOSALS

The PowerPoint presentation of this multimedia didactic material contains the different resources proposed in this guide. With these materials, it is possible to tackle the different formative actions proposed in the project and carry them out with adults in the thematic subject.

At the beginning of the activity, we recommend to view the video included in the PowerPoint presentation in order to have a discussion about the shown case. The person leading this activity can present or refresh the characteristics of the Consumer Arbitration using the contents of the DVD and the sheet for teachers, No. 1.

On the other hand, other activities can be carried out as additional activities with respect to these subjects.

Please find here below two examples:

##### ***Activity 1: Let us act!***

The objective of this activity is to place the participants in a situation of gestation, development and resolution of conflicts so that they can learn to act in a precautionary way.

The mechanism of the proposed activity is as follows:

- After having seen the video (included in the PowerPoint presentation), the participants are divided in groups and each group receives one of the cases mentioned in the sheet for pupils, No. 1, including the declarations of the consumers and the businessmen.
- After the analysis and search for information to solve the conflict, a dramatization will be prepared with the following acts:
  - The moment in which the conflict is caused.
  - The first contact between consumer and businessman.
  - The moment in which the consumer presents its case to the Consumer Arbitration Board.
  - Courts called by the Arbitration Council in order to get to know the case.
  - The moment in which the arbitrary decision is issued.
- Practical representation of the dramatization.
- Final discussion and conclusions. In this moment, the person leading the activity will present the real reasoning of the Arbitration Board in each case.

### **Activity 2: Problems and solutions**

The objective of this activity is to get closer, in a constructive way, to the problems that may affect the consumers with respect to the rights mentioned in the video in order to find solutions. For carrying out this activity, the following procedure is proposed:

- Divide the participants in groups and give to each group the sheet for pupils, No. 2.
- Each group has to read the existing consumer rights (first column) and try to identify problems that may affect each of them, enumerating them in the second column.
- At this point, the activity can continue in two different ways: each group looks for the solution of the enumerated problems (third column) or, after exchanging the sheets, each group has to find solution for the problems enumerated by another group.
- At the end, an idea-sharing session will be carried out.

### **Activity 3: Complaint Forms**

In order to introduce the activity, we suggest that the following questions are put to the pupils: Have you ever had a problem in a shop? Do you know anyone who has had one? What kind of problem? Do you believe that at any moment you should have complained and you didn't? Why?

From all the answers we select two or three as an introduction to the subject of complaints forms.

Before starting the activity the teacher should have prepared copies of the model of complaints forms used in their Autonomous Community.

Activity process:

The teachers, using the support material, will inform the pupils as to the places where information can be found on this subject, (Internet, informative leaflets, visiting consumer organisms: OMIC, Consumer Associations, etc), places where consumers can be given advice. They will also inform about the ways to place a complaint.

The pupils must look for information on the subject or the product chosen and on the mechanisms of their Autonomous Community in order to present the complaint.

The teachers will give pupils photocopies of a complaints form.

Each pupil must complete their complaint form individually and make a list of the possible proof or evidence to accompany it.

Once each member of the group has completed the complaints form, all knowledge will be pooled to choose which one the group considers as being the best written form and to bring further proofs or evidence. Then, the whole group will be called upon to look at possible mistakes, evaluating the allegations that they have made and checking the accompanying evidence and proof.

## 5. DIDACTIC SHEETS

### SHEET FOR TEACHERS No. 1:

#### Essential characteristics of Consumer Arbitration System

CHARACTERISTIC	MEANING
<b>WILFULNESS</b>	Neither the consumer nor the businessman, who has received the complaint, is obliged to participate in the arbitration system in order to solve the problems. It is a completely voluntary process for both parties. The consumer as well as the businessman embody by writing their decision to participate in the arbitration. The voluntary character of the arbitration is governed in the Article 31 of the General Law for the Defence of Consumers and Users.
<b>FREE OF CHARGE</b>	One of the main advantages of the arbitration system offered to the consumers and businessmen, is that is free of charge. As we will see further on, there is only one exception: when one of the parties (the consumer or the businessman) provides legal means. Only in this case, the party asking for this proof has to pay for it.
<b>SPEED AND Y SIMPLICITY</b>	The arbitration system does not consist of special formalities which make difficult the development of the process and cause unnecessary waste of time.
<b>BINDING AND EXECUTIVE CHARACTER OF THE ARBITRARY DECISION</b>	This characteristic means that the decision of the arbitration (called "laudo arbitral" – arbitrary decision) is of obligatory fulfilment for both involved parties (consumer and businessman) and can be put into effect in any moment. The arbitrary decision has a binding character and produces the same effects as a judgement. That means that the arbitrary decision has the same effect as a judicial sentence, is of obligatory fulfilment and has full effectiveness.

## **SHEET FOR TEACHERS No. 2:**

The reasoning given by the corresponding Arbitration Council in each of the cases mentioned in sheet for pupils No. 1 is as follows:

### **Case 1: THE VAN**

#### *Reasoning of the Arbitration Council*

The Arbitration Council alludes to Royal Decree 1457/86, mentioned before. Article 15.2 of the mentioned regulation governs the right of the car repair shop to charge stay expenses. According to the Arbitration Council, the right of the car repair shop is exceptional. In the case, we are dealing with, one requirement of the mentioned article is not fulfilled because it exists a pronouncement from the consumer about the budget within the specified period, according to the declarations of the respondent. It is true that the user never signs the budget (the signature would be the synonym of acceptance) but the mentioned article does not demand an acceptance but a pronouncement about the acceptance. The pronouncement is declared as proved that is has existed on the part of the consumer so that the Council concludes that the car repair shop has no right to charge the stay expenses. However, and answering to the damages request of the claimant, the Council confirms that the suffered damages are compensated by the non-payment of the budget's elaboration (right of the car repair shop recognized in the regulation mentioned before) and by the free use, during more than five months, of the premises of the respondent as place of care and custody of the vehicle. The Council considers that the amount owed to the claimant as damages corresponds exactly to the amount owed to the respondent for the elaboration of the budget.

The Council concludes that the car repair shop has to allow the claimant to take its car without demanding any amount.

### **Case 2: THE WATCH**

#### *Reasoning of the Arbitration Council*

The Council alludes to article 11.3 of the General Law for the Defence of Consumers and Users which stipulates that, when a product is defective within the period of warranty, the product will proceed into repair. In case the repair is not satisfactory, the purchased product, either, has to be replaced by another product with the identical characteristics, or, the paid price has to be given back. Consequently it is clear that the claimed company has fulfilled the legal requirements related to warranties. If the repair is impossible, the refund of the money is offered fulfilling completely the article mentioned before.

The aim of the consumer is rejected and the refund of the purchase amount is agreed.

### **Case 3: THE OPERATION**

#### *Reasoning of the Arbitration Council*

The Council alludes to article 10 of the Insurance Contract Law which stipulates that the policy holder has the obligation, before the conclusion of the contract, to make a statement to the insurer, according to the questionnaire provided by the insurer, with all circumstances known that can influence the assessment of the risk.

The Council states that it is sufficiently reputable that the claimant has not completed the answers to the questionnaire in own handwriting and the signature is not the own one. Consequently, the conclusion may not be that the policy holder has not fulfilled its obligation to answer truthfully to all questions related to the circumstances that could influence in the assessment of the risk. Furthermore, the insurer has not carried out a rigorous medical examination since the insured capital seemed not to be important, so that the conduct was not as much diligent as it should have been.

In addition, it is proved that the first sign of the illness and the first diagnosis took place one and a half year after having signed the policy as mentioned in the medical reports provided by the claimant.

Because of all this, the Council concludes to consider the complaint of the consumer and orders the insurance company to pay the amount corresponding to the days of sick leave, according to the signed policy.

### **Case 4: THE TURTLE**

#### *Reasoning of the Arbitration Council*

The claimant has not proven that the death of the animal can be attributed to the respondent. However, the respondent provides a document which proves that the animal enter the Spanish territory in perfect health conditions. Consequently, the death of the animal could be caused by any reason, either attributable to the buyer, or as consequence of an accidental case. Furthermore, the seller has acted in good faith offering another turtle to the claimant for a perceptibly lower price than that paid for the dead turtle.

The Council concludes rejecting the complaint of the consumer.

## **SHEET FOR PUPILS No. 1:**

Four cases received by the Arbitration Board are mentioned here below, including the declarations of the consumer and businessman.

### **Case 1: THE VAN**

#### *Declarations of the consumer*

A consumer arrives to the car repair shop with its van in order to carry out a series of repairs. In the car repair shop, the consumer receives a verbal budget whereby the consumer declares not to be in agreement with it. When the consumer tries to take out the van from the car repair shop, the shop's owner demands a daily amount of 10 EUR as stay expenses.

The consumer does not agree to pay this charge, goes to the corresponding Consumer Arbitration Board and asks for damages amounting to 30 EUR caused by each day of keeping the van in the repair shop.

#### *Declarations of the businessman*

The car repair shop says that, after having prepared the budget, the claimant is being informed to come to the shop in order to sign the budget and give its agreement to start the repair. The claimant arrives the same day in the afternoon and totally agrees with the budget. However, and according to the respondent businessman, the consumer does not sign the written budget and therefore, the repair of the car has not been initiated.

According to Royal Decree 1457/86 that governs the activity of car repair shops, the shop has the right to charge stay expenses in case the consumer does not state to agree with the budget or to take back the vehicle within a period of three days as from the day on which the budget is prepared. The claimant has been informed about this circumstance. The respondent shop provides, as proof, the budget for the repair of the vehicle, property of the claimant.

### **Case 2: THE WATCH**

#### *Declarations of the consumer*

A consumer buys a watch in a shop. At home, the consumer sees that the gold-plated watchstrap had two tones. The consumer goes back to the shop to exchange the watch or get back the money. The establishment accepts to clean the watchstrap.

After five days, the consumer phones the establishment that says that it was impossible to clean the watchstrap and, because there was no identical model, they offered the refund of the money. The consumer demands the repair of the watch.

#### *Declarations of the businessman*

The businessman states that neither the consumer nor the businessman have noticed the two tones of the watchstrap in the moment of the purchase. In addition, the consumer first was willing to receive the money back but changed the opinion afterwards. The establishment has accepted the error of the watchstrap the whole time, tried to repair it and finally offered to give back to the client the purchase price because it was impossible to repair the watchstrap and another watch was not available.

### **Case 3: THE OPERATION**

#### *Declarations of the consumer*

A consumer has signed a policy for daily sick leave, according to scale, against risk of temporary disability. One and a half years later, the consumer undergoes an operation in a hospital being in sick leave for a month approximately. The application form from the insurance company has been completed and signed by the insurance agent without the approval of the consumer.

The insurance company repeatedly denied granting the corresponding sickness subsidy to the consumer arguing that the illness pre-existed. The consumer considers this as not proved nor confirmed in the moment of signing the policy and, in any case, states that there was no proof of the seriousness of the illness until the diagnosis two years after signing the policy. Therefore, the consumer demands the insurer to pay the amount corresponding to the sick leave, according to the scale mentioned in the policy, as signed in its day.

The consumer provides the particular conditions of the contract, the questionnaire – application of the policy, certificate from the family doctor, clinical report about the hospitalization, letter sent to the director of the insurance company and report of Consumer and User Organization.

#### *Declarations of the businessman*

The company thinks that it has existed intentionality on the part of the consumer saying that the illness existed already before signing the policy. In the questionnaire previous to the policy, the consumer stated to be a non-smoker and in reality it seems that the consumer is a smoker and the smoking habit is a determinant circumstance of the illness caught by the consumer. Documents are not provided.

## Case 4: THE TURTLE

### *Declarations of the consumer*

A consumer buys a turtle in a pet shop. Next day, the animal is dead and the consumer goes to the shop demanding a solution which finally is not found. The consumer asked for an identical turtle or the refund of the purchase price.

The claimant provides the purchase invoice and the complaint sheet.

### *Declarations of the businessman*

The businessman says that there is no type of warranty regarding the life of a living creature as it is impossible to foresee a precise life, as mentioned on the signs in the shop.

Furthermore, in the moment when the animals leave the shop, they can be subject to a mistaken treatment by the buyer. Finally, the businessman offers the consumer to receive an identical turtle at a lower price. The import certificate of the animal, the sanitary declaration of the veterinary inspector and the import documents are provided.

## SHEET FOR PUPILS No. 2:

Identification of some problems that can affect the consumer rights stating also the possible solutions.

RIGHTS	PROBLEMS	SOLUTIONS
Health and Safety Protection		
Protection of economic and social interests		
Correct information when buying a good, product or service		
Repair because of suffered damages		
Consumer education and information		
Representation, advice and participation (through consumer associations)		
Protection in situations of inferiority, subordination or defencelessness		

Conclusions: