

Position Paper

UEAPME¹ answer to the consultation on consumer collective redress

UEAPME confirms the statements made in its previous position paper of February 2009, in which we stressed our opposition to the creation of a redress mechanism for consumers. It is surprising that the European Commission has decided to start a new consultation only two months after the first one, and on exactly the same subject. The new consultation is based on a document that is available only in English and does not present any novelty compared to the Green Paper. In our opinion this approach is not conducive to a culture of consultation and dialogue.

As a matter of fact, the first consultation has received 28 responses from consumers and 87 responses from business side with an overwhelming support for Option 1, i.e. no action in the matter. Therefore we do not understand the need for this second consultation, as the results of the first one were very clear. For this reason, UEAPME can only repeat what was said in our first position paper, adding some more remarks.

First of all, UEAPME would like to point out that according to the European Commission's Green Paper only 15 of the 27 EU member states have a collective redress mechanism in place. Furthermore, the existing systems differ considerably; as it has been laid down in the studies commissioned by the European commission. On the other hand, we have never had any evidence of their efficiency and whether they might be transferable to other legal orders. On the contrary, in the majority of cases, these mechanisms do not work satisfactorily and have been applied in relatively few cases.

Therefore UEAPME wonders why an action should be taken to promote a mechanism that has proved to be not efficient.

Moreover, the Green Paper states that in order to make this mechanism efficient there should not be fees for consumers, there should be flexible solutions regarding lawyers' fees, and the formalities of normal civil procedures should be bypassed. Put briefly, the Green Paper envisages a non-democratic system consisting in a juridical procedure out of the members states' juridical systems, with no risks for one of the parties and many for the other.

This contrasts the goal to avoid abusive use of collective redress mechanisms. While it is true that excessive costs for access to judicial protection systems might be a hindrance in some cases, it should also be borne in mind that any action against entrepreneurs, which – until the contrary is proven – are presumed to be law-abiding, might have significant negative impact on their business as regards to costs and time, mainly due to the importance for craft and SMEs of their faithful relationships with clients/consumers. Therefore, any mechanism that might one day be established at European level must contain a financial risk on the part of the consumer. Furthermore, full indemnification of companies has to be insured, against which legal action has been taken without merit. This, inter alia, has to cover loss of reputation and destruction of commercial basis due to ungrounded accusations.

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](https://ec.europa.eu/transparency/regexp1/index.cfm?do=grouping.grouping&id=55820581197-35).

UEAPME rejects the creation of a collective redress mechanism for consumers. Even if the recourse to a US-style model is excluded by the Commission, UEAPME wonders which other kinds of action could possibly be introduced.

Moreover, before taking an initiative such as to establish a collective redress system, the Commission, referring to the "Think Small First" principle, should analyse the real financial and organisational impact on SMEs. The European Commission has to take into consideration that the introduction of a collective redress system would be more than dangerous for SMEs. SMEs live on the reputation they have with their clients: be subjected to collective redress could mean the end for a Small business. SMEs are often in the same position as consumers and are facing the same difficulties. A fight against a group of consumers would put them in a weaker position without mentioning the fact that an SME would never have the kind of financial and legal support what a group of consumers could bring up in the case of collective redress.

The Commission should also take in mind the principle of proportionality and analyse the feasibility, opportunity and impact of the creation of such a system on Member States' judicial systems.

Naturally, consumers should be encouraged to exploit the advantages of the internal market and, to do so, their confidence should be raised by UE initiatives. There are, however, more efficient ways to strengthen consumers' confidence, such as rules and regulations on unfair commercial practices, information activities and improved possibilities for safe e-commerce. Until no need for action on European level is clearly demonstrated, following the subsidiarity principle, there is no legal basis to establish a collective redress mechanism at European level. The current legal protection on national level seems sufficient to us. Therefore UEAPME does not find it recommendable to go ahead with a thorough reform at this stage.

Concerning the option proposed by the commission in its Green Paper, UEAPME is of the opinion that the European Commission should be very prudent and apply the precautionary principle in this work. UEAPME is in favour of option 1, i.e. no EC action, and asks the Commission not to take any actions in this matter. At the same time option 4 is to be categorically rejected.

Generally, UEAPME supports very strongly the use of alternative dispute resolution instruments, such as mediation, as a simple and not expensive instrument to settle disputes. Due to their voluntary nature, based on a flexible and informal mechanism, those instruments are difficult to organise for collective disputes and should therefore be reserved to individual disputes.

Therefore, UEAPME believes that, in the long term and after thorough analysis of redress mechanisms in place in the Member States, a reinforcement of individual ADR instruments on a voluntary basis could be taken into account. UEAPME disagrees with the conclusion mentioned in the Green Paper that consumer protection is unsatisfying. Moreover, the vast majority of enterprises are not in breach of consumer rights. Contrary conclusions are unreal and have to be dismissed.

Furthermore we expressly disagree with:

- the invention of a public authority proceeding with binding character for non participants as well as every kind of opt-out procedure as shown in nr. 54 ff of the green paper,
- any prosecution by public authorities of claims under private law as shown in nr. 44 and 45 of the green paper,
- a one way abolition of court fees and a reduction, cap or any other abolition of litigation fees, as brought up in nr. 13 and 50 of the green paper (the so called loser pays principle has to be maintained),
- legal blackmailing through unjustified high media coverage, as shown in nr.13 of the green paper.

In conclusion, option 1 should be chosen in combination with a reinforcement of ADR instruments on a voluntary and individual basis.

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