



UEAPME answer to the consultation on consumer collective redress

As already stated in previous position papers, UEAPME is against the creation of a redress mechanism for consumers.

As a first comment, 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. In the majority of cases, these mechanisms do not work satisfactorily and they 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.

In our opinion this system would be very dangerous as it would create a highly unbalanced situation between the two parties of a process. If such a mechanism is introduced, consumers would be able to introduce actions against enterprises, without any basis. But a small business obliged to face a process will very often lose its business and disappear.

Q1: What are your views on the role of the EU in relation to consumer collective redress?

UEAPME is against 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.

Even if the 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 information activities and improved possibilities for safe e-commerce.

¹ UEAPME Position concerning the European Commission's plans to introduce a collective redress mechanism for consumers

Moreover, before taking an initiative such as this one, the EU should test the real financial and organisational impact on SMEs and on Member states' judicial systems. This cannot be forecast at this time. At least these two aspects need to be further investigated.

In addition, following the subsidiarity principle, there is no need to establish a collective redress mechanism at European level. The current legal protection on national level is sufficient.

Therefore UEAPME does not find it recommendable to go ahead with a thorough reform at this stage.

Q2: Which of the four options set out above do you prefer? Is there an option which you would reject?

UEAPME is of the opinion that the European Commission should be very prudent and apply the precautionary principle in this work.

At this stage we are in favour of Option 1 presented by the Commission, i.e. no EC action.

At the same time option 4 is to be categorically rejected.

Q3: Are there specific elements of the options with which you agree/disagree?

UEAPME is in favour of option 1 and asks to the Commission not to take action in this matter.

On the other hand, 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, those instruments are difficult to organise for collective disputes and should therefore be reserved to individual disputes.

Therefore, UEAPME believes that a reinforcement of ADR instruments on a voluntary basis should be taken into account. UEAPME also disagrees with the conclusion mentioned in the Green Paper that consumer protection is unsatisfying and that enterprises are in breach of consumer rights. Those 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 trough unjustified high media coverage**, as shown in nr.13 of the green paper.

Q4: Are there other elements which should form part of your preferred option?

Option 1 should be chosen in combination with a reinforcement of ADR instruments on a voluntary basis.

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