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8 October 2007

BUSINESSEUROPE/BDI DISCUSSION EVENING ON COLLECTIVE REDRESS

**EUROPEAN PARLIAMENT-SALON DES DÉPUTÉS
8 OCTOBER 2007 – 19H10 – 19H20**

“PITFALLS AND OPPORTUNITIES OF PRIVATE ENFORCEMENT”

WELCOME SPEECH BY PHILIPPE DE BUCK, SECRETARY-GENERAL OF BUSINESSEUROPE

Ladies and Gentlemen,

Good evening – It is my pleasure to be here today and to welcome you on behalf of BDI and BUSINESSEUROPE. We are organizing this gathering to have an open debate on a subject that is being increasingly discussed: means of redress for consumers.

Over the last years, the discussion on different mechanisms of redress, in particular on collective actions, is being observed.

The Commission claims that consumers lack confidence in cross-border shopping as redress mechanisms are not effective. Discussions in this regard are taking place predominantly in two areas: competition and consumer policy. I would like to thank to both DG Sanco and DG Competition representatives here tonight and for the input they will provide to our discussion.

BUSINESSEUROPE, representing 39 national employers and business federations from 33 countries, strongly supports an efficient and effective access to justice for EU consumers as it considers key to ensure European stakeholders confidence in the Internal Market.

Indeed, we are keen to ensure that the relevant and efficient redress mechanisms exist and function well. Therefore, we welcome the debate launched by the Commission, on this topic in particular the “reflection period” launched by DG Sanco, as we hope it will give a clearer picture of the current situation in Member States. We believe it will bring further information regarding consumer’s situation and the problems they are facing in terms of redress in a cross-border context, and if action at EU level is effectively necessary.



But let me start by stating that we believe that so far, the alleged problems being currently faced by consumers regarding the enforcement of their rights have not been clearly defined and evidenced. We hear a lot of assertions, but not based on much evidence.

This is why, as a first step we ask for further research to:

- **identify the problems at stake;**
- **provide sufficient evidence of the alleged problems;**
- **and pin point the causes of such problems (if any).**

It is only after this assessment has proved the need for action that we should engage in the discussion of what is the most appropriate type of action.

Indeed, strong evidence should exist that:

- **civil justice systems do not provide appropriate means for consumers;**
- **that collective redress is the best solution to improve the current situation; and**
- **that EU regulatory action will prove more effective than the initiatives taken at national level.**

But, let's not forget that the principle of subsidiarity should play a key role on this debate (Countries such as Sweden, Portugal and the Netherlands already have collective redress mechanisms in force).

At national level, numerous factors influence the setting up of litigation systems such as:

- the organization and effectiveness of ordinary judicial proceedings;
- the way business is structured and consumers organised;
- the effectiveness of market surveillance;
- public administration system; and
- the historic, political and socio-economic contexts

The eventual adoption of collective redress mechanisms at EU level could undermine the above-mentioned aspects of national litigation system.

We therefore believe that it is premature to draw conclusion about "best" mechanisms since in some Member States these mechanisms only entered into force recently, such as in Finland when this system entered into force last week. More time is still needed to assess their efficiency.

- **Moreover it will also be of primary importance to assess the impact of such mechanisms on growth/jobs and Internal Market competitiveness;**

Regulations should create workable and affordable solutions for clearly identified problems which do not harm the competitiveness of Europe. Impact assessments based on a competitiveness test is key. Stakeholders should be consulted throughout the entire process and should be provided with enough time for elaboration of input.



For BUSINESSEUROPE this debate is an issue also of better regulation and subsidiarity.

Let me now turn to another aspect of the debate: collective redress has, very often, limited merits for consumers but adverse impact on business.

Contrary to what is often said, in general, collective actions:

- are complex and lengthy procedures as often judges will have to verify whether the individual complainants have standing based on the merits of the case;
- lead to increasing litigation having a significant impact in costs and workload for the national systems;
- are not consumer friendly, as they are complex and lengthy procedures as above-mentioned ; and
- are rarely beneficial to consumers: generally consumers are conspicuously absent from these procedures that are often "hijacked" by law firms or various interest groups, as proved by the US experience with their system of class actions;

In addition, as it has been observed in the US, companies, whether or not liable, can be pressured into accepting highly expensive settlements, in order to put an end to harmful negative advertising that can damage their business and image.

Although the Commission has already on several occasions pointed out that it is not planning to adopt the American system, in part due to the differences between the EU and US legal systems, there is a risk that many of the economic incentives and drivers featuring in the US will be introduced nonetheless, up-front or step by step.

A balance must be struck between the interests of various players at stake.

Instead of focusing on collective actions, BUSINESSEUROPE would like to offer different means to improve the situation of consumers:

- **better enforcement:** Adequate enforcement of existing legislation should be the priority. Enforcement of legislation on the Internal Market is of paramount importance and plays a central role in the perception of citizens and companies about Europe and their confidence in the single market.

Member States should play a decisive role for efficient enforcement.

- **better consumer information and education:** BUSINESSEUROPE has always promoted more and better dialogue between consumers and companies and has recommended that public authorities should invest more in consumer education in order to help consumers to know their rights and responsibilities better.



- **And last but not least, promotion of non-judicial means of redress:** BUSINESSEUROPE considers that whenever possible, disputes should be settled via out-of-court procedures, in the interest of both consumers and business; more emphasis should be placed on the promotion and reinforcement of Alternative Dispute Resolution mechanisms such as arbitration and mediation. These are non-judicial means of redress, allow reaching a solution acceptable to both parties:
 - - more rapidly;
 - at a lesser cost; and
 - Help to maintain a less confrontational atmosphere between parties.

We believe that promotion of non-judicial means of redress deserve a more throughout attention in this debate.

Ladies and gentleman I am looking forward to our debate tonight and sincerely hope that European companies views on this subject are taken into consideration on further discussions.

Thank you!
