



AmCham EU Plenary Consumer Collective Redress

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On-going debate at EU level

- Commission says that:
 - **Consumers lack confidence in cross-border shopping**
 - Due to the ineffectiveness of redress mechanisms

- Discussion mainly in two areas:
 - **Competition :**
 - Green paper on damage actions for breach of EC Treaty anti-trust rules (December 2005);
 - White paper on damage actions for breach of EC Treaty anti-trust rules (April 2008).
 - **Consumer policy**
 - New consumer strategy 2007-2013;
 - Green paper (February 2007) on review of consumer acquis;
 - Discussion launched on collective redress.



BUSINESSEUROPE views:

- keen to engage in a constructive discussion
- consumer satisfaction is key for companies
- effective and easy access to justice for consumers
- companies have to compensate for prejudice caused



Methodology

- **Do not rush to conclusions;**
- **Before taking action at EU level, it is essential to**
 - identify problems and provide sufficient evidence
 - pinpoint their causes
 - assess whether any EU action is needed and justified and if this is the case, assess what is the most appropriate type of action

To date the case for EU action has not been made and it is too early to discuss the legal basis for EU action in this field!



Current legal environment

• At EU level:

- Injunctions directive (transposition by 2001)
- Regulation on small claims (in force as from 1 Jan 2009)
- Regulation on consumer protection cooperation to strengthen effectiveness of consumer protection directives (in force since 29 Dec 2005 and provisions on mutual assistance since 29 Dec 2006)
- Brussels I Regulation (in force since 1 March 2002)
- SOLVIT (European free-of-charge online problem-solving network);
- European Consumers Centres Network (ECC-Net)
- Commission Recommendation on the principles for out-of-court bodies involved in the consensual resolution of consumers disputes (2001)
- Commission Recommendation on the principles applicable to the bodies responsible for out-of court settlement of consumer disputes (1998)
- Directive on mediation in civil and commercial matters (23 Apr 2008)



Current legal environment

- **At EU level** – recent developments:
 - White Paper on Damages Actions (2008)
Standing:
 - from individuals/businesses – direct/indirect purchasers
 - Introducing two complementary mechanisms:
 - representative actions
 - opt-in collective actions



Current legal environment

- **At national level:**
 - Various means of collective redress exist in many EU Member States, adapted to national reality
 - Collective judicial actions have only been very recently adopted in some Member States and more time is needed to verify whether this system proves effective



Diversity of national legal systems

- **Enforcement and redress systems in the Member States are different, respecting national legal traditions;**
- **Various methodologies on collective actions, e.g.:**
 - Sample proceedings-test cases: German Act on Lead Cases of Private Investors (KapMuG);
 - Coordinated by consumer organisations: Portugal;
 - Right of initiation of the ombudsman: Denmark, Finland.
- **Any system better than others?**
- **Is diversity creating a malfunctioning of the internal market?**



Would harmonisation be a good thing?

- **Harmonised system would conflict with various aspects of national litigation system:**
 - organisation and effectiveness of its ordinary judicial proceedings, e.g.:
 - **legal aid system needs to be organised differently depending on the degree to which lawyers fees are regulated;**
 - **role of burden of proof depends on the powers courts have when exploring the facts of a case.**
 - the way in which consumers are organised;
 - the effectiveness of market surveillance, public administration system; and
 - the historical, political and socio-economic contexts, e.g.:
 - **Opt-out is against constitutional principles in some Member States;**
 - **Opt-out is contrary to article 6 ECHR**



US class actions

- A completely different system
 - Different legal background which main features are absent in the EU;
 - **Private enforcement** in the US vs. **Public enforcement** in the EU;
- Main features of the US system
 - **Contingency fees**
 - **Opt-out**
 - **Discovery**
 - **Absence of “loser pays rule”**
 - **Punitive damages**
 - **Decisions by juries**
 - **Ability of lawyers to advertise**
- To be avoided at all cost.



“Consumers and business should first attempt to resolve their disputes directly before seeking recourse through third-party mechanisms”.

OECD recommendation on consumer resolution and redress, 12 July 2007



Options to be further discussed

- Out-of-court redress

- Whenever possible, disputes should be settled via ADR (interest of both consumers and business)
- Different levels of out-of-court procedure (direct negotiation, mediation, arbitration, ombudsman)
- Non-judicial collective means of redress are more effective:
 - make it possible to reach a solution acceptable for both parties more rapidly
 - at a lesser cost
 - help to maintain a less confrontational atmosphere
 - provide case by case solutions; better suited to specific circumstances of each situation



- **IT: Cirio and Parmalat cases**

- the main banking groups undertook conciliation procedures in agreement with the main consumer associations
- out-of-court collective actions that have proved very successful
- volume of claims after conciliation was 1%:
approximately 150 cases for 14,000 examined



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- **Only 17% of European consumers believe in litigation to solve problems**
 - **42% of European citizens consider alternative means of dispute resolution to be more efficient**
 - **more than 90% of consumer-related disputes are settled out of court between the parties involved**

What consumers expect is to obtain satisfaction quickly and at no or minor cost!



Summary

- **BUSINESSEUROPE supports easy and effective access to justice;**
- **Time for reflection and assessment needed;**
- **Await Commission studies;**
- **Keep a open mind about different options;**
- **Only 17% of European consumers believe in litigation to solve problems;**
- **Only 13% consider collective actions as the best system;**
- **What consumers expect is to obtain satisfaction quickly and at no or minor cost;**
- **Assess better whether action at EU level is necessary.**



Thank you for your attention!

**For more information:
www.business europe.eu**

