

Leena Linnainmaa

STATEMENT
1 July, 2009

1 (6)

European Commission
Directorate-General Health and Consumers

CONSULTATION ON THE FOLLOW UP TO THE GREEN PAPER ON CONSUMER COLLECTIVE REDRESS

The European Commission has launched a consultation on the follow up to the Green Paper on Consumer Collective Redress. The Central Chamber of Commerce of Finland submits the following statement for the consultation.

General remarks

The Central Chamber of Commerce of Finland stresses that court proceedings are very seldom a suitable approach for dealing with consumers' claims. According to our experience, out-of-court proceedings should be the primary consumer redress mechanism.

In Finland, we have a wide experience of dealing with consumer claims in the Consumer Disputes Board, an organ set up by the government according to our laws. In 2006, a collective redress mechanism was added to the Board's competence. For the financial sector there are specialised efficient ADR mechanisms that have proved to be very popular.

It is often said that a significant amount of consumer claims remains without compensation due to the lack of collective redress mechanisms. This assumption has been proven wrong by the total lack of group complaint cases despite their admissibility since 2007 in Finland. If there were a large number of cases requiring collective redress measures, by now at least some of them would have led to procedures and this has not been the case. Based on this experience we find it important not to take hasty measures that add to the costs of businesses in the Member States if a need for such measures has not been clearly established.

We also find it very important that EU level measures do not lead to changes in the existing national legislation on compensation and damages. Measures aiming to skim off profits of companies or over-compensate consumers will be harmful for European companies.

The Central Chamber of Commerce of Finland

Aleksanterinkatu 17, P.O. Box 1000, FI-00101 Helsinki, Finland, Tel. +358 9 4242 6200, Fax +358 9 650 303, Business ID: 0201469-2

According to point 16 of the consultation document, it should be observed that the cases known so far are only the tip of the iceberg. The Central Chamber of Commerce of Finland points out that this statement is without any basis.

Already in 2005 it became evident that Finland would have a group complaint law enabling the Finnish Consumer Ombudsman to make a complaint at the Consumer Dispute Board on behalf of a group of consumers. After preparatory work the group complaint law was enacted and entered into force on 1st of March 2007.

In the summer of 2006 the political decision was made that Finland will enact class action legislation and the decision became public knowledge. The Act on Class Actions entered into force on 1st of October 2007. So far no group complaints or class actions have been brought to the competent bodies and according to our knowledge, even now none is under preparation despite that three years have passed since it was known that there will be a law on class actions.

This all shows that if there were any hidden problems, those cases would have arisen by now. Thus, in Finland the new mechanisms fulfilled a political need, not a need based on existing problems. Based on our experience, there cannot be “an iceberg of cases”.

There is no evidence for the statement in point 5 of the consultation document that the effect of malpractice may be so widespread as to distort markets. This is quite a serious accusation and should be based on evidence.

According to point 17 of the consultation document, it has been estimated that 100 million consumers in the EU each year have a problem with a trader. This estimate is totally irrelevant when considering the need of collective redress mechanisms. It is very natural that annually there are many consumers who have claims. But it is a very different thing how many of these claims have any collective nature. No serious estimate on the number of mass claims is even attempted to be given in the consultation document.

The need for new collective redress mechanisms has often been explained by the large number of customer's claims in the financial sector. The Central Chamber of Commerce of Finland does not agree with the relevance of this reasoning. The financial sector is very heavily regulated and under financial authorities' supervision. For example, in Finland all standard contracts are submitted to the Financial Supervision before they are used and their contents are thoroughly inspected and negotiated. Some standard contracts are additionally negotiated with the Consumer Ombudsman before they are used in customer relations. Also, if an irregularity occurs in a bank or insurance company, the Financial Supervision Authority will take measures. If the Financial Supervision Authority in some Member State does function adequately, the correct measure should be to address this issue rather than giving legislation causing costs and burdens to companies in Member States with efficient financial supervision.

Cross-border collective redress

Before taking any further measures concerning cross-border collective redress mechanisms, several issues should be carefully considered. These include the forum of

the case and applicable law. As consumer legislation is not harmonised in the EU, it will be very demanding to handle a case if several national laws are to be applied. It is questionable if this will lead to a successful result considering not only the outcome but also the costs of the case.

Option 1- No EC (baseline scenario)

The Central Chamber of Commerce of Finland agrees with Option 1 – No EC action until there is evidence of the need of EC action. Until now, this is not the case. As mentioned above, the consultation paper does not provide an estimate of the amount of collective claims in Europe.

The Finnish situation has been thoroughly researched in the preparation of the Finnish Act on Class Actions and the legislation on group complaints. The Act on Class Actions was enacted after four different working groups at the Ministry of Justice had conducted preparatory work for legislation during almost fifteen years. In addition, one study had been conducted in the Ministry of Justice. This extensive work included studying the cases where multiple consumers would have claims against the same seller/provider.

Working group report 2006:4 of the Ministry of Justice mentions hypothetical areas where situations for mass claims could arise but provides hardly any concrete examples of cases. During the legislative work it was essential to look for concrete examples for the cases. Hardly any substantive information about potential concrete cases was found despite intensive work during fifteen years. It should be noted that the consumer authorities and consumer associations were represented in this work. Thus, all available knowledge of problems was present in the preparations with very meagre results. Concrete cases where consumers lacked redress mechanisms were not found. The Act on Class Actions was enacted by a political decision, not based on an established need.

Already in 2005 it became evident that Finland would have a group complaint law enabling the Finnish Consumer Ombudsman to make a complaint at the Consumer Dispute Board on behalf of a group of consumers. After preparatory work the group complaint law was enacted and entered into force on 1st of March 2007.

In the summer of 2006 the political decision was made and it became public knowledge that Finland will enact class action legislation. The Act on Class Actions entered into force on 1st of October 2007. So far no group complaints or class actions have been brought to the competent bodies despite that in practise the Consumer Ombudsman has had three years to prepare cases.

This all shows that if there were any hidden problems, those cases would have arisen by now. Thus, in Finland the new mechanisms fulfilled a political need, not a need based on existing problems.

Option 2 – Developing self-regulation

While emphasising the importance of all alternative dispute resolution mechanisms, we would especially like to refer to the very popular and efficient self-regulatory bodies funded and organized by the business sector that cooperate with the consumer authorities and provide expert redress mechanisms for consumers. These popular and efficient bodies are the Insurance Complaints Board, the Banking Complaints Board and the Securities Complaints Board. The recommendations given by these boards are complied with by businesses in 99-100 per cent of the cases. These alternative mechanisms in addition to the Consumer Disputes Board are the primary ways for consumer redress in Finland. In our opinion, any EU-level instrument should concentrate on cost- and time-efficient alternative mechanisms instead on focusing on expensive and time-consuming court proceedings.

According to point 47 of the consultation document, the Commission would develop with stakeholders a standard model of collective ADR. The Central Chamber of Commerce of Finland stresses the importance of respecting the existing well-functioning ADR mechanisms.

Option 3 – Nonbinding setting up of collective ADR schemes and judicial collective redress schemes

If evidence shows that EC-level measures are needed, the Central Chamber of Commerce of Finland suggests that the European Commission give a recommendation, not a binding instrument. The recommendation should take into account the different existing legislations, alternative dispute resolution mechanisms and legal traditions. Thus, the recommendation should not be built on any one existing system but outline minimum requirements for consumer redress mechanisms. As some Member States have efficient Consumer Ombudsmen while others don't, it would not be suitable either to require all Member States to establish an ombudsman system or to ignore the importance and efficiency of these systems where they exist. Accordingly, if a Member State has a Consumer Ombudsman with adequate powers, there is no need to make further requirements or recommendations on EC level concerning who should have the authority to start proceedings.

Furthermore, it is important to acknowledge the importance of effective alternative dispute resolution mechanisms where they exist. The instruments covered by a possible EC-level recommendation should not be limited to court procedures. Proceedings in court tend to be lengthy and expensive compared to effective ADR proceedings where they exist.

The Central Chamber of Commerce of Finland stresses the importance of a flexible approach, allowing different solutions to consumer redress mechanisms. There is no need to act costs in those Member States that already provide adequate mechanisms for consumer redress.

In point 49 the Commission calls for a skimming-off power. We would like to emphasise that according to our legal system only real concrete damages can be compensated. We urge the Commission not to propose foreign elements to European legislation. It is essential not to promote sanctions reminiscent of the American punitive damages.

In point 50 the Commission takes it for granted that Member States should adjust their present systems. We find this odd considering the functioning mechanisms in Finland. The existing mechanisms should be respected unless there is a real need for amendments.

According to point 52, national consumer organisations should be able to represent consumers located in another member state. When collective redress mechanisms were adopted in the Finnish legislation, the essential goal was to avoid unmeritorious claims. This target was reached by giving the power to start proceedings to the Consumer Ombudsman. This solution is a safeguard against the American-style class action industry where proceedings with no real basis for damages are started only to receive a settlement from a company unwilling to engage into a law suit for many years and huge litigation costs. The Central Chamber of Commerce of Finland considers it necessary to maintain the safeguards against unmeritorious claims. Any EC-level measure should not open the market for frivolous litigation.

Option 4 – Binding setting up of collective ADR schemes and judicial collective redress schemes

The Central Chamber of Commerce of Finland strongly opposes EC-level measures that require collective redress mechanisms in the Member States. Consumer protection mechanisms vary considerably in the Member States. It is not possible and reasonable to require all Member States to build new systems on existing ones.

We don't see benefits in a binding instrument as it may be difficult if not impossible to give a binding instrument suitable for all the Member States considering their different consumer protection systems. A binding instrument would necessarily be of a very general nature. If a binding instrument were more detailed, it might in fact lessen the efficiency of some existing successful mechanisms that would not fulfill the requirements of a binding instrument. A binding instrument on court proceeding is not feasible due to the different rules on due process, damages and costs.

In point 56 the Commission takes it for granted that Member States should adjust their existing schemes systems. We find this odd considering the functioning mechanisms in Finland. The existing mechanisms should be respected unless there is a real need for amendments.

According to point 57, national consumer organisations should be able to represent consumers located in another member state. When collective redress mechanisms were added to the Finnish legislation, the essential goal was to avoid unmeritorious claims. This target was reached by giving the power to start proceedings to the Consumer Ombudsman. This solution is a safeguard against the American-style class action industry where proceedings with no real basis for damages are started only to receive a settlement from a company unwilling to engage into a law suit for many years and huge litigation costs. The Central Chamber of Commerce of Finland considers it necessary to maintain the safeguards against unmeritorious claims. Any EC-level measure should not open the market for frivolous litigation.

Option 5: An EU-wide judicial collective redress mechanism including collective ADR

We strongly oppose EC-level binding instruments requiring new court-proceeding mechanisms. We also refer to the above-mentioned especially under option 4.

According to point 62 of the consultation paper, the threshold for the number of litigants to launch such a procedure should be low (e.g 10). It is very important that the threshold for collective redress is not too low because of the risk of unmeritorious claims. The European Commission should make sure that it does not promote frivolous litigation. In order to start a collective claim procedure, there must be sufficient objective reason for starting the procedure.

Analysis of impact

According to Table 1, point 2, all existing CR schemes have some elements that work and some that do not. We do not agree with this. We are not aware of problems concerning the Finnish CR schemes and would like to express our surprise that this criticism is given without providing grounds for it.

According to Table 11, point 1, CR schemes should limit the increase of litigation costs for reputable businesses. This seems to be a mere assumption without any evidence.

According to Table 13, point 3, efficient compensation is likely to increase significantly due to the development of new instruments. There is no evidence for this assumption. First of all, there would have to be mass claims to be compensated. This is not a case. Very few consumer claims have a collective nature. This is easily seen in Finland. The Consumer Ombudsman has had three years to prepare consumer redress cases but no suitable cases have been found. Thus, there can be no significant increase of compensation.

Table 14, point 1, makes the same wrong assumption as Table 13, point 3, when it refers to the likely increase of the amount of mass claims pursued. If the collective redress mechanism does not allow unmeritorious claims and has sufficient safeguards, there will not be a large number of mass claims. This is clearly seen in the Finnish experience.

THE CENTRAL CHAMBER OF COMMERCE OF FINLAND

Leena Linnainmaa
Director

Mika Heikkilä
Director