

European Commission
Directorate-General Health and Consumers

CONSULTATION ON THE GREEN PAPER ON CONSUMER COLLECTIVE REDRESS

The European Commission has launched a consultation on the Green Paper on Consumer Collective Redress. The Central Chamber of Commerce of Finland submits the following statement including answers to the questions in the Green Paper.

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.

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 definite need for such measures has not been clearly established.

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.

The Central Chamber of Commerce of Finland stresses the importance of not providing so-called forum-shopping possibilities in consumer redress issues.

We also find it very important that EU level measures do not lead to changes in the present national legislation on compensation and damages. Such measures that aim to skim off profits of companies or over-compensate consumers will be harmful for European companies. We disagree strongly with the idea that compensation could be higher than the actual harm suffered by the consumer. Compensation in excess of the damage suffered is contrary to our legal system. We also refer to the present financial situation and call for caution when planning measures that might harm businesses.

Options

Option 1- No EC action

The Green Paper presents four options concerning collective redress. The Central Chamber 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.

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 during almost fifteen years conducted preparatory work for legislation. 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. During the 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 the 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. The Act on Class Actions was enacted by a political decision.

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.

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

Option 2 – Cooperation between Member States

The Central Chamber of Commerce of Finland agrees with the need of adding the cooperation between Member States. This could include a network of competent authorities to enhance solving problems related to cross-border transactions. An efficient example on this approach is the FIN-NET that operates on the financial sector.

Option 3 – Mix of Policy Instruments

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.

Option 4 – Judicial collective redress procedure

The Central Chamber of Commerce of Finland strongly opposes EC-level measures that require judicial 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.

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

The EU can take a supportive role in enhancing cooperation between the Member States. It can also collect information on the different approaches chosen by the Member States. No further measures should be taken without adequate impact assessments. Even then it is crucial to realize that one solution does not fit all, considering the different existing mechanisms in the Member States.

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

which you would reject?

As explained above, we prefer options 1 and 2. Furthermore, we see option 3 as a possibility when need for EC-level measures has been established. We strongly oppose option 4.

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

We especially agree with the importance of alternative dispute resolution mechanisms. We strongly oppose EC-level binding or non-binding instruments requiring new court-proceeding mechanisms.

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

All collective redress mechanisms have to avoid the possibility of overcompensation of damages.

Q5: In case you prefer a combination of options, which options would you want to combine and what would be its features?

The success of the existing alternative dispute resolution mechanisms must be recognized and taken into account when planning further measures.

Q6: In the case of options 2, 3 or 4, would you see a need for binding instruments or would you prefer non-binding instruments?

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.

Q7: Do you consider that there could be other means of addressing the problem?

The Commission's proposal to give a new directive on consumer rights with a maximum harmonization effect would benefit European consumers especially concerning cross-border transactions. Full harmonization would also prevent companies from getting benefit by choosing a lenient jurisdiction for their operations.

THE CENTRAL CHAMBER OF COMMERCE OF FINLAND

Kari Jalas
Director General