

To: Joint Collective Redress TF
From: Single Market & Social Affairs department
cc: Single Market Committee, General Liability SG, Legal Expenses SG, Public Affairs Group
Date: 7 February 2012 6 February 2012
Reference: SMC-COL-12-002

Subject: Collective redress report adopted in EP plenary

| Summary

On 2 February 2012 the European Parliament adopted in plenary the own-initiative report on "*Towards a Coherent European Approach to Collective Redress*" (see the provisional version of the EP Resolution in attachment ref. SMC-COL-12-003). The report was initially drafted by lead rapporteur Klaus-Heiner Lehne (EPP, DE) in the Legal Affairs (JURI) Committee. The JURI report was adopted unanimously in Committee on 19/20 December 2011.

■ Support for an EU horizontal instrument on collective redress (CR)

First, MEPs have taken a cautious approach with regard to any proposal on CR, providing that "*in the event that it is decided after detailed consideration that a Union scheme of collective redress is needed and desirable ...*" (§15), any proposal on CR should be based on an impact assessment and in full respect of the principle of subsidiarity.

Second, the EP believes that a legally binding horizontal instrument on CR including common principles would be the preferred instrument, possibly completed by specific rules on consumer protection and competition law in separate articles/chapters of the horizontal instrument or in separate legal instruments.

Third, MEPs stress the need to avoid the introduction of a US-style class action in Europe, where legal traditions are different.

■ Need to strengthen existing EU legislation in this area

The EP calls on the Commission to strengthen and improve the effectiveness of existing instruments, ie Directive 98/27/EC on injunctions, Regulation 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws etc.

■ Safeguards needed

In line with CEA's position (see CEA's comments on the amendments to the EP JURI draft report in SMC-COL-11-046), the EP insists on the importance of introducing sufficient safeguards to avoid unmeritorious claims, should an EU instrument on CR be adopted, as follows:

- **Standing of the claimant, including opt-in:** to be declared admissible, any CR action must be brought on behalf of a clearly identified group and the victims must be identified in accordance with the opt-in principle. Member States should be asked to put in place efficient mechanisms to inform victims while avoiding unduly harming the party concerned. In this respect, the EP calls on the Commission to explore ways to ensure consumer awareness and

highlights the role consumer associations and the ECC-Net could play in informing victims of infringements of EU law.

Furthermore, a judge or similar body should be responsible for the preliminary admissibility check, and Member States should designate the representative organisations entitled to bring a CR action, possibly based on EU criteria still to be defined.

- Full compensation: compensation should not exceed actual damage, and punitive damages must be prohibited.
- Access to evidence: collective claimants must not be in a better position than individual claimants in terms of access to evidence, and each claimant must provide his/her own evidence. An obligation to disclose documents to the claimants (“Discovery”) shall not be introduced.
- The Loser pays principle is preserved to avoid the proliferation of unmeritorious claims.
- No third-party funding as it is unknown in most MSs. However, Member States may define conditions or guidelines on the funding of damages claims.

■ **Support for ADR**

The EP supports ADR as it offers a cheap and fast settlement of disputes. It further suggests that the judges empowered with the preliminary admissibility check have the right to order the parties to first seek a consensual settlement before launching the collective procedure, without imposing ADR as a mandatory first step before any judicial proceeding.

■ **Rules on jurisdiction and applicable law**

The Brussels I Regulation should serve as a starting point for determining the rules on jurisdiction of the courts. Regarding applicable law, it is suggested to apply the law of the place where the majority of the victims are domiciled.

| **Next steps**

- **Feb/March 2012**: EC Communication on general principles on collective redress
- **2012**: possible legislative proposal on collective redress
- **2nd quarter 2012**: EC proposal for damages actions for breaches of antitrust law