



Slovak Insurance Association, Drieňová 34, 820 09 Bratislava 29
contact: michaela.barcajova@slaspo.sk, +421 3210 1846

27 February 2009

SLASPO's responses and comments on Green Paper

1. SLASPO and their members consider, that European Union should monitor stage and development of ways and means of collective redress system in Member states more detailed and longer, because of the facts stated hereinafter.

We would like to point out that:

- a) Slovakia has a system of collective redress, so that there is a mistake in two studies, which regards to Slovakia as non-CR system,
- b) Slovak Act on insurance orders an insurance companies to deal with complaints,
- c) Slovakia is going continuous improvement within ADR schemes – prepared Act about consumer protection in financial services establishes financial ombudsman for all the financial services,
- d) There are a lot of free legal aid center in Slovakia that are also designed for consumer protection.

After collecting a relevant information, data and also evidences that such a system is needed, it is necessary to approach not only by favouring consumers (because it could lead to unilateral protection of consumers, vexatious claims, fostering a culture of litigation, associations' focus on financial profit from consumers' representation rather than consumer protection), but just by maintaining the equality of rights and obligations of both parties.

2. Current CR-systems in the Member States are significantly different and their legislation is still very fragmented. European Union harmonises our single market via directives and regulations, but many of them have been adopted into the national systems only recently. And this is the right time to evaluate the effectivity of adopted measures. Only after this necessary step it could be considered if some possibilities presented by Green Paper will be useful and needed.
In present situation we prefer the first one possibility, because of the reasons mentioned above. So that, we disagree with possibilities No. three and four, because they mean a strong interference into our legal environment with potential negative impact to consumer protection with regards to some institutes, which our legal system does not contain (opt-out system, test cases, etc.)

3. SLASPO and their members agree with:
 - Point 19 – to have effective mechanism for both

- Point 24 – possibility of representative actions - the competent national body will represent consumers from other Member States („MS“)
- Point 40 - extension of ADR also to the CR- systems with the appropriate flexibility, thus a decision about establishing collective alternative dispute resolution schemes is up to MS
- Point 45 - setting a minimum number of affected consumers
- Point 46 – companies without any internal system for dealing with complaints should establish such a system - Slovak Act on insurance orders an insurance companies to deal with complaints, so that each insurance company already has got this system
- Point 47 - promotion of information activities at a level that did not activate massive concernment of victims and affected consumers
- Point 48 - avoiding element promoting a litigation culture - but the introduction of opt-out, or exemption from court fees rather promotes a litigation culture
- Point 50 - the maximum amount of fees
- Point 52 – „loser pays principle“
- Point 54 - the introduction of the opt-in system – it is the only way that can determine the number of consumers who are active and actively searching for indemnity

SLASPO and their members disagree with following points:

- Point 24 – test case mechanism - a trial should apply to the particular parties and the court should consider each claim individually
- Point 30 – in our opinion more important is promoting the existing nets in order to become more consumer awareness than establishing another special net – e.g. in Slovakia there are a lot of free legal aid center which are also designed for consumers
- Point 45 – we strongly disagree with granting powers to skim-off the profit from traders – this possibility means only the repressive function, which is not a priority - at the same time it is contra continental law
- Point 48 - we disagree with any measure establishing collective redress system at court – simultaneously we can't agree with any binding measure, because of differences in legal systems in MS
- Point 50 - exemption from court fees – as it is stated above it could activate the opposite effect as meant: promoting a litigation culture
- Point 56 – opt-out principle
- Point 59 – there's a contradiction with the principle of legal certainty, when one court judicares a dispute between persons from various MS while the contract would be judged by a different law that was concluded

Moreover we would like to highlight the potential threats resulting from establishing the CR system:

- a) The tendency towards punitive/ repressive, not restorative function important for consumer,
- b) Applicable law and jurisdiction as a problematic area,
- c) Inequality of rights and obligations of the parties,
- d) Legally binding instrument with strong interference in the legal environment of a particular Member State.

4. Other element that should form part of our preferred opinion is Member States' obligation to monitor the situation within its own legal environment and to report on

the status and developments of collective redress mechanism to the relevant EU bodies.

European Union should realize more detailed researches of these systems, because Slovakia is incorrectly mentioned as a country with non-CR system.

5. Within response No. three, there are elements/ points convenient for us, which could be combine, but we don't prefer a combination of options and we prefer only the first possibility. Reasons for this preference are mentioned above.
6. In our opinion, non-binding instrument with a higher degree of flexibility is enough, because it offers individual access to the law of particular Member States.
7. After accessing effectiveness of recently adopted measures and detailed research of CR systems in MS we will wait, if these activities will disclose other possibilities that are presented by Green Paper.

