

The Consumer Voice in Europe

PROPOSAL FOR A DIRECTIVE ON REPRESENTATIVE ACTIONS

BEUC response to Commission ex-post consultation



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Why it matters to consumers

Lack of compensation for harm suffered is a major loophole in a legal system and allows for illegal profit to be retained by business. Judicial collective redress for consumers currently operates nationally only in limited number of Member States. Even where it is available, the models and effectiveness of the mechanisms vary significantly. They also do not provide for cross-border solutions. This leads to a significant discrimination in access to justice, to the detriment of consumers.

Summary

1. BEUC strongly supports the Commission proposal for a directive on representative actions for the protection of the collective interests of consumers.
2. The directive needs to be of a minimum harmonization character to not preclude better national rules or force Member States to amend to the disadvantage of consumers their existing collective redress systems.
3. Consumer organisations, when they comply with the set criteria, need to be designated as qualified entities to bring collective actions.
4. It should be possible to introduce claims for injunction and for redress at the same time, without waiting for the finality of the injunction order.
5. The possibility for the Member States to allow the court or the authority to only issue a declaratory decision, instead of a redress order, in the cases where the damage for the individual consumer is complex to quantify will seriously undermine the added value of the proposal. Complex cases are exactly the ones where collective redress is most needed.

BEUC strongly welcomes the Commission proposal on representative actions. It is crucial to strengthen private enforcement of consumer law and to give consumers a realistic chance to obtain redress in case of mass damages.

The new possibilities for collective redress actions by qualified entities will finally plug the huge gap in the enforcement of the EU consumer rights landscape. Once adopted with some improvements as proposed below, they will mean that the EU countries will not be helpless in the face of any eventual *Dieseltgate* or similar scandal.

1. The scope of the proposal

This new instrument could make a real change in areas where mass consumer harm typically occurs. BEUC finds it crucial that the wide scope of the proposal is preserved, including passenger rights. The respective re-evaluation clause in Article 18.2 should be deleted. Otherwise consumers facing mass harm situations in this area, e.g. last-minute mass flight cancellations, would be stripped of a possibility to collectively enforce their rights before the courts.

2. Qualified entities

We strongly support obliging Member States to designate consumer associations as qualified entities (Article 4.3). Experience in the EU countries that provide for functioning national collective redress procedures clearly shows that consumer associations successfully make use of this possibility, getting millions of euros back to consumers. At the same time, the status and recognition our members have in their countries, act as a strong safeguard against any potential abuse.

The national experience in the EU also shows that it is not enough if only public bodies are entitled to bring collective actions, as for various reasons they often do not or cannot act. Although transparency of funding is important, it should not limit the legitimacy of qualified entities, in particular consumer organisations with limited financial resources.

3. The impact on national procedures

We understand it is important to give Member States wide options of how to accord the new provisions with their own procedural laws. The new Directive should allow EU countries to have higher standards for injunctions and collective redress actions and to maintain or introduce other national procedures. In this sense it needs to be clarified, in the proposal, what is meant by the indication, in Article 1.2 that the Directive does not prevent adopting or maintaining in force provisions concerning “other” procedural means to bring actions aimed at the protection of the collective interests of consumers at national level.

It is crucial that this directive has a minimum harmonization character and thus will not preclude better national rules or force Member States to amend to the disadvantage of consumers their existing collective redress systems.

4. The possibility to derogate from collective redress

The possibility for the Member States to derogate from the proposal in the instances of complex quantification of the damage of the individual consumer (Article 6 paragraphs 2 and 3), leaving consumers to have to act individually, might have the effect of seriously undermining the usefulness of the new procedures. Cases with more complex quantification are exactly the types of cases where consumers would not seek redress individually, as it would be economically unreasonable. Even if those consumers could rely on the declaration of the infringement, they would still have to prove both their individual damage and the link between the illegal behaviour and the damage – in complex cases both of those elements are likely to require expensive legal, technical or expert opinions, which will be huge barriers for individuals.

5. The finality of the injunction

Another big risk is only allowing to introduce redress actions once the decision concerning the infringement has become final (Article 5.3). This can take many years and can result in consumers no longer having the product in question or losing the evidence of the damage. It may incentivize the defendants to drag the litigation as long as possible with the hope redress actions will become impractical. We suggest this is solved by allowing to introduce claims for the declaration of the infringement and redress at the same time. Any one of them can anyway be appealed, thus preserving full access to justice for both parties.

6. Information to consumers

We strongly support the provisions in Articles 9 and 15.2 obliging the trader, against whom the injunction was issued, to cover the costs of informing consumers. It is crucial for the effectiveness of actions and the preventive effect of repetitive infringements that the information both about the decisions establishing the infringements and about any further redress measures reach consumers.

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