

# EUROPEAN COMMISSION'S WORK ON COLLECTIVE REDRESS PUT ON HOLD

Letter sent to Vice-President Reding on 22<sup>nd</sup> September  
Ref.: UPA/2010 177/sca

**Contact:** [grouppaction@beuc.eu](mailto:grouppaction@beuc.eu)  
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BEUC, the European Consumers' Organisation  
80 rue d'Arlon, 1040 Bruxelles - +32 2 743 15 90 - [www.beuc.eu](http://www.beuc.eu)

 EC register for interest representatives: identification number 9505781573-45 

Mrs. Viviane Reding  
Vice-President  
**European Commission**

B - 1049 Brussels

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September 22<sup>nd</sup>, 2010

Dear Vice-President Reding,

We are writing on behalf of the Executive of the European Consumers' Organisation (BEUC) which met today in Brussels and would like to express their regret and deep disappointment with your statement reported in the German press this week that the European Commission's work on collective redress would be put on hold.

These statements disregard the 73% of European consumers who call for the means to defend their rights in court by way of a collective action mechanism. This strikingly clear statistic is recorded in the Commission's own 'Consumer Markets Scoreboard'<sup>1</sup>.

We are particularly perplexed because your announcement occurs only days before the official launch of the public consultation on the common principles for collective redress, the credibility of which is now seriously undermined.

How can the College fulfil its Treaty obligations to consult widely on policy issues and ensure a democratic and transparent process where all stakeholders have the opportunity to present their arguments, if on the other hand, key Commissioners have already made up their mind as to the Commission's decision on the consultation?

As Vice-President of the European Commission, with responsibility for Justice and Fundamental Rights, we cannot understand your statement, which represents a significant setback for European consumers. Consumer organisations have long been calling for the adoption of a legislative proposal for collective redress which would enable victims of illegal actions to have easier access to compensation for damage suffered. Almost ten years after the recognition by the European Court of Justice of the right of victims to receive compensation for damage or loss suffered as a result of such practices, your decision comes as a bad surprise for consumers across the EU.

It seems clear that your stance also contradicts the commitment of President Barroso to put citizens and consumers' needs centre stage during his second term of office. It also runs contrary to the public statements by Commissioners Dalli and Almunia on the same issue. They have both committed to using the public consultation as the basis for further legislative proposals on a European style of collective redress, leaving behind "*the hesitations and resistance on this file with respect to guarding against US type class actions*"<sup>2</sup>.

Furthermore, it ignores the recommendations of Professor Monti in relation to the re-launch of the Single Market. What is the value of a "better" Single Market for EU citizens and what is the worth of EU consumer rights if, in practice, consumers are left without realistic means to enforce them.

<sup>1</sup> Second edition of the Consumer Markets Scoreboard, Commission staff working document  
[http://ec.europa.eu/consumers/strategy/facts\\_en.htm](http://ec.europa.eu/consumers/strategy/facts_en.htm)

<sup>2</sup> Speech by Commissioner Dalli to the IMCO Committee of the European Parliament, 28 April 2010  
[http://ec.europa.eu/commission\\_2010-2014/dalli/docs/ep-imco-committee-28042010\\_en.pdf](http://ec.europa.eu/commission_2010-2014/dalli/docs/ep-imco-committee-28042010_en.pdf)

It is dismaying to read that it was US business representatives who have prompted your decision. Since the publication of the Green Paper on Consumer Collective Redress in 2008, the Barroso I Commission has made it clear that the debate on the introduction of a European collective redress instrument is "not in any way a blue print for an American style system of class actions for damages". Despite wide agreement between European stakeholders including academics, businesses and consumer organisations on the need to avoid the excesses of the US class-action system and put in place the necessary safeguards, your statement brings the whole debate back to a point which was considered to have been overcome.

We urge you to look at the experience from those EU Member States where a judicial collective action has been in place for a couple of decades already. For example, in Portugal and Spain where national legislation provides for collective actions, the fears of increased litigation have proven to be ill-conceived. It has been demonstrated in these Member States that none of the collective redress mechanisms have led to the closing down of a reputable business to date<sup>3</sup>.

Notably, the diligent work over the last five years of different services of the European Commission has succeeded in including a framework of safeguards within the EU debate designed to prevent the abuses of the US class action system from being replicated in Europe.

Each day, consumers see their rights being violated by traders and they are paying the price of competition infringements (higher prices, less choice, less innovation) whilst their right to compensation remains non-existent.

In times of economic crises, it is the confidence of European consumers in the market place which needs to be strengthened, rather than business practices which violate the law and avoid compensating those who have suffered economic losses. The European Commission has itself estimated that the annual direct cost to consumers and other victims of cartels ranges from approximately €25 to €69 billion annually<sup>4</sup>. These figures are sourced from the Impact Assessment on the White Paper for Private Damages Actions. Illegal profit should not stay in the wrong pockets.

The ambitious objective of "building a citizens' agenda which would put people at the heart of European action and ensuring that access to justice should be made easier, particularly in cross-border proceedings"<sup>5</sup> would be seriously jeopardised by a decision to stop and delay even further work on collective redress.

We urge you, as Vice-President responsible for Justice, to publicly explain why you consider the work of the Commission in the field of collective redress should be abandoned a couple of days before the launch of the announced public consultation. If such a decision is already being prepared within the College, then not only European consumers and their organisations, but all citizens in the EU have the right to know this before trying to present their case in a public consultation, which would then be no more than a pretence.

We remain available to discuss this issue at your convenience.

Yours sincerely,

Paolo Martinello  
BEUC President

Monique Goyens  
BEUC Director General

Cc : Mr. Joaquín Almunia, Vice-President of the European Commission  
Mr. John Dalli, Commissioner for Health and Consumer Policy

<sup>3</sup> Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union, Study by Civic Consulting and Oxford Economics, commissioned by DG SANCO Part 1 p.78-80.

<sup>4</sup> Impact Assessment accompanying the White Paper on Damages Actions for Breach of the EC Antitrust Rules, SEC(2008) 405, p. 15

<sup>5</sup> European Commission Work Programme 2010: [http://ec.europa.eu/atwork/programmes/docs/cwp2010\\_en.pdf](http://ec.europa.eu/atwork/programmes/docs/cwp2010_en.pdf)