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## **CEEP RESPONSE TO THE EUROPEAN COMMISSION'S QUESTIONS RELATING TO THE GREEN PAPER ON CONSUMER COLLECTIVE REDRESS**

### **Question 1: What are your views on the role of the EU in relation to consumer collective redress?**

Several roles:

The European Union should first of all ensure that the rules for cross-border redress are harmonised.

It should also guarantee to consumers and enterprises the respect of all the existing Community rules, especially in national transposition measures.

Finally the European Union should stand back with respect to collective redress introduced in the States, in particular in recent months, in order to assess the advantages and disadvantages of these actions. The same applies to the effects of the still very recent Community texts, for which the Commission has no perspective as to their beneficial impact.

### **Question 2: Which of the four options set out do you prefer? Is there an option you would reject?**

It is difficult to comment on any of them when the options exposed have not been completed and each contains opposing avenues for reflection. Thus each option opens up lines of thinking some of which could be interesting but the impact of which remains to be measured. It is therefore difficult to stick to an option taken in its entirety.

### **Question 3: Are there specific elements of these options with which you agree/disagree?**

On solution 2:

We disagree with the importance given to the media aspect. It is vital to limit this aspect so that the damage to enterprises does not become irreversible if the action is finally rejected. The publicity given to a collective redress should therefore only occur after a preliminary detailed examination or at least after a full and comprehensive appreciation of the serious chances of real success. Furthermore one should not, through such mechanisms, encourage the shopping forum.

Lastly, such a mechanism should not lead to difficult questions of conflicts of laws and territorial competence which are dispensed from common law.

On solution 3:

We do not understand why the Green Paper on collective redress contains a reference to the regulation on cooperation with regard to consumer protection (point 44 ff). One cannot put on the same level the search for a better judicial system for repairing the prejudice of each consumer, and a tightening of sanctions which would be applied by administrative authorities. This latter aspect does not pursue the same objective of reparation, but rather that of repression. The Green Paper goes much too far by stating, for example, that the power to “skim-off the profit from traders who have committed an intra-Community infringement” can be given to these authorities.

On solution 4:

The opt-out must be removed for several reasons:

- This mechanism poses problems as to the imperfect representation of consumers and the freedom, that these consumers must conserve, of not to act.
- The opt-out always boils down in the end to compensating consumers who have not suffered a prejudice and are not excluded from the group. In this case the damages paid do not repair a prejudice suffered and therefore have the character of punitive damages, which is not however what the Green Paper intends to adopt. The same applies to the opt-in when the compensation foreseen consists of a flat rate indemnification. As the latter does not consist of compensation for a prejudice suffered, it certainly takes on the character of punitive damages.
- The opt-out does not allow rights of defence to be respected, as the defendant does not know all the members of the group. He therefore cannot make use of the procedural or substantive means which are proper to each consumer.
- The opt-out is incompatible with an amicable handling of claims by the customer service department of the enterprise. In effect, when the consumer is compensated amicably, he can still become involved in a collective redress unless he excludes himself from it, which will be rather rare in practice. To avoid this risk of having to pay twice, it will be in the trader’s interest to refrain definitively from an amicable handling of disputes, which goes against one of the directions favoured in solution 3. Or else the trader who has chosen to continue to compensate his clients amicably will have no choice but to bring an action against the consumer or his representative for fraud against the judgement. In effect, the consumer or his representative will have led the judge to believe that his prejudice had not been repaired and this with the intent of obtaining a second compensation. Both consequences are extremely serious for the consumer.

**Question 4: Are there other elements which should form part of your preferred option?**

There is no better solution in the Green Paper as it stands, given the structure it adopts. See response to question 2.

**Question 5: In case you prefer a combination of options, which options would you combine and what would be its features?**

Solutions 1 and 3, with the drawbacks mentioned in the response to question 3.

**Question 6: In the case of options 2, 3 or 4, would you see a need for binding instruments or would you prefer non-binding instruments?**

To reply more easily to this question, it would have been interesting to know the legal bases in the Treaty which the Commission intends to invoke to create binding instruments in this area of justice and of judicial procedures in general.

**Question 7: Do you consider that there could be other means of addressing the problem?**

It is to be hoped that the system of full harmonisation as well as that of the “unfair practices” directive or the future adoption of the directive on consumer rights will go some way to removing an approach which has the effect of harming the image of all traders and affecting consumer confidence, especially in the cross-border area.

The Green Paper is a means of raising everyone’s awareness, and it must enable a middle way to be found between systems of alternative regulation whose effects are acknowledged and the risks of excessive legalising of the consumer/trader relationship through collective redress procedures which are ill-defined. While enterprises have to be responsible for their behaviour and repair any prejudice resulting from it, it is just as important for the consumer to be attentive and responsible in his purchasing.

We see no other means than those mentioned in the previous question.