

INFORMATIVE NOTE

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February 2011

EU AND COMPETITION LAW

PUBLIC CONSULTATION ON COLLECTIVE REDRESS IN THE EUROPEAN UNION

On 4 February 2011, the European Commission launched a public consultation on the use of collective redress mechanisms as a means to improve the enforcement of European Union law. The Commission intends to identify common legal principles among EU countries that may underpin a coherent EU system of rules on collective redress. The framework and scope of this public discussion are set out in a consultation document issued by the Commission¹. Contributions to the debate shall be submitted until 30 April 2011 by post or via e-mail, preferably in one of the Commission's working languages (English, French or German).

COLLECTIVE REDRESS

Collective redress is a concept that includes different mechanisms through which individual claimants may jointly take action in order to stop illegal behaviour or to seek damages for the harm caused by past illegal behaviour. Collective redress procedures do not necessarily entail actions in Court. Out-of-Court settlements or alternative dispute resolution mechanisms, as well as the entrusting of representatives with the enforcement of legal claims, are all different courses of action that the Commission intends to consider within this public discussion.

The main virtue of collective redress schemes is to facilitate private enforcement against unlawful practices which result in individual losses

that, when considered jointly, are significant. Through these mechanisms, businesses and individuals are given the option of acting jointly against such illegal practices without incurring, individually, significant costs of litigation.

The main risk arising from collective actions is abusive litigation.

There are already precedents for collective redress procedures established by EU law in the form of injunctive relief (aiming at preventing and stopping unlawful conducts), notably in the fields of consumer and environmental law. Furthermore, compensatory relief mechanisms (aiming at seeking compensation for illegal past behaviours) can be widely found across EU countries. Nevertheless, the existing mechanisms vary significantly throughout the EU, which may undermine the effective exercise of rights by individuals and businesses, from a supranational perspective.

BACKGROUND

This is not the first initiative by the Commission on the subject of collective redress. It is worth mentioning, in this

"Portuguese Law Firm of the Year"
Chambers Europe Excellence 2009, IFLR Awards 2006 & Who's Who legal Awards 2006, 2008, 2009

"Corporate Law Firm of the Year - Southern Europe"
ACQ Finance Magazine, 2009

"Best Portuguese Law Firm for Client Service"
Clients Choice Award - International Law Office, 2008, 2010

"Best Portuguese Tax Firm of the Year"
International Tax Review - Tax Awards 2006, 2008

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¹Towards a Coherent European Approach to Collective Redress, disponível em: http://ec.europa.eu/justice/news/consulting_public/0054/ConsultationpaperCollectiveredress4February2011.pdf

Furthermore, the Commission underlines that any system to be implemented must avert the negative consequences of a US-style “class actions” system, notably the incentives for abusive litigation.

regard, the continuous effort towards the implementation of compensatory collective redress in the field of consumer and competition law. However, up until now, and with the exception of the rules on collective actions for injunctions in consumer and environmental law, these initiatives have not achieved the stage of actual legislation. Other fields of EU law, such as competition law, are still deprived of a legal framework for collective redress.

THE COMMISSION’S CONSULTATION AND THE POSSIBILITY OF FUTURE LEGISLATIVE INITIATIVES

The ultimate purpose of the public consultation is to help the Commission deciding on whether, and to what extent, it is appropriate to establish a general legal framework for collective actions in EU law.

According to the consultation document, the Commission, in its analysis, will take into consideration the principles of subsidiarity, proportionality and effectiveness, so as to understand the extent to which it is actually necessary to implement such a system at EU level, instead of keeping it at a national level.

Furthermore, the Commission underlines that any system to be implemented must avert the negative consequences of a US-style “class actions” system, notably the incentives for abusive litigation.

It is far from certain that this public consultation will result in legislative initiatives on the part of the Commission. Notwithstanding, this effort should be welcomed as yet another starting point in a complex discussion, and this time with a breadth and ambition as regards the scope of the public discussion that were absent in previous similar initiatives.

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