Towards a coherent European approach to collective redress

2011/2089(INI) - 02/02/2012 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution entitled ‘Towards a Coherent European Approach to Collective Redress’.

The resolution recalls that according to the Flash Eurobarometer on ‘Consumer attitudes towards cross-border trade and consumer protection’ published in March 2011, **79% of European consumers** agree that they would be more willing to defend their rights in court if they could join other consumers complaining about the same issue. The integration of European markets and the consequent increase in cross-border activities highlight the need for a coherent EU-wide approach to address cases where consumers are left empty-handed as the procedures for the collective claim of compensatory relief which have been introduced in a number of Member States do not provide for cross-border solutions.

EU level action needed: Parliament welcomes the Commission's work towards a **coherent European approach to collective redress** and the horizontal consultation launched in February 2011 (SEC(2011) 0173). It states that **action is needed at EU level** in order to improve the current EU regulatory framework so as to allow victims of infringements of EU law to be compensated for the damage they sustain. It underlines the possible benefits of collective judicial actions in terms of lower costs and greater legal certainty for claimants, defendants and the judicial system alike by avoiding parallel litigation of similar claims.

Members welcome the efforts of Member States to strengthen the rights of victims of unlawful behaviour by introducing or planning to **introduce legislation aimed at facilitating redress while avoiding an abusive litigation culture**, but also recognise that national collective redress mechanisms are widely divergent, in particular in terms of scope and procedural characteristics, which may undermine the enjoyment of rights by citizens.

The resolution includes the following recommendations:

Existing EU legislation and injunctive relief: Regulation No 861/2007 establishing a European Small Claims Procedure provides access to justice by simplifying cross-border litigation and reducing costs in cases involving claims for a sum of less than EUR 2 000. The resolution notes however that this legislation is not designed to provide effective access to justice in cases where a large number of victims suffer similar damage.

Members consider that the mechanisms introduced under Regulation (EC) No 2006/2004 on consumer protection cooperation, as well as Directive 2009/22/EC on injunctions for the protection of consumer interests can be **significantly improved** so as to foster cooperation and injunctive relief in cross-border situations. They consider that the need to improve injunctive relief remedies is particularly great in the environmental sector. The Commission is called upon to **strengthen and increase the effectiveness of existing instruments**.

The resolution also considers that injunctive relief should focus on the protection of both the individual interest and the public interest. It calls for caution to be exercised when widening access to justice for organisations, since organisations should not enjoy easier access to justice than individuals.

Legally binding horizontal framework and safeguards: Parliament suggests that any proposal in the field of collective redress should take the form of a horizontal framework including a common set of principles providing **uniform access to justice** via collective redress within the EU and specifically but not exclusively dealing with the infringement of consumers' rights. Members reiterate that safeguards must be put in place within the horizontal instrument in order to avoid unmeritorious claims and misuse of collective redress, so as to guarantee fair court proceedings, and stress that such safeguards must cover, inter alia, the following points

- ***Standing***: for a representative action to be admissible there must be a clearly identified group, and identification of the group members must have taken place before the claim is brought. Victims shall be clearly identified and take part in the procedure only if they have expressly indicated their wish to do so, in order to avoid potential abuses. Member States should ensure that a judge or similar body continues to have discretionary powers taking the form of a preliminary admissibility check of any potential collective action in order to confirm that the qualifying criteria have been met and that the action is fit to proceed. They should also designate organisations qualified to bring representative actions, and European criteria would be useful in order to clearly define these qualified entities.
- ***Full compensation for actual damage***: the horizontal framework should cover compensation only for the actual damage caused, and punitive damages must be prohibited; by virtue of the concept of compensation the damages awarded must be distributed to individual victims in proportion to the harm they sustained individually.
- ***Access to evidence***: collective claimants must not be in a better position than individual claimants with regard to access to evidence from the defendant, and each claimant must provide evidence for his claim.
- ***Loser pays principle***: Member States are to determine their own rules on the allocation of costs, under which the unsuccessful party must bear the costs of the other party in order to avoid the proliferation of unmeritorious claims in an EU-wide collective redress mechanism.
- ***No third-party funding***: the Commission must not set out any conditions or guidelines on the funding of damages claims, as recourse to third-party funding is unknown in most Member States' legal systems, for instance, by offering a share of the damages awarded; this does not preclude Member States setting out conditions or guidelines on the funding of damages claims.

The Commission is called upon to **explore ways of raising consumer awareness** of the availability of collective redress mechanisms and facilitating cooperation between the entities qualified to bring collective actions. Members ask the Commission to identify the EU legislation in respect of which it is difficult to obtain compensatory redress. They consider that this should be done in order to pinpoint the areas where the horizontal framework could provide for collective compensatory redress for breach of such legislation, as well as for breach of EU antitrust law and call for the relevant EU legislation to be listed in an annex to the **horizontal instrument**.

Alternative dispute resolution (ADR): Parliament encourages the setting-up of ADR schemes at European level so as to allow fast and cheap settlement of disputes as a more attractive option than court proceedings, and suggests that judges performing the preliminary admissibility check for a collective action should also have the power to order the parties involved to first seek a collective consensual resolution of the claim before launching collective court proceedings.

Jurisdiction and applicable law: a horizontal framework should itself lay down rules to prevent a rush to the courts ('forum shopping') whilst not jeopardising access to justice. Brussels I should be taken as a starting point for determining which courts have jurisdiction. The resolution calls for further examination of how the conflict-of-law rules might be amended: one solution could be to apply the law of the place where the majority of the victims are domiciled, bearing in mind that individual victims should remain free not to pursue the opt-in collective action but instead to seek redress individually.

The resolution insists that the European Parliament must be involved, within the framework of the **ordinary legislative procedure**, in any legislative initiative in the field of collective redress and that any proposal must be based on a detailed impact assessment.