Representative actions for the protection of the collective interests of consumers

2018/0089(COD) - 11/04/2018 - Legislative proposal

PURPOSE: to improve instruments to put an end to unlawful practices and facilitate remedies when a large number of them are victims of the same infringement of their rights, as part of a mass injury.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the fitness check of EU consumer and marketing law, which also covers Directive 2009/22/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests, demonstrated that the risk of infringements of Union law affecting the **collective interests of consumers is increasing** due to economic globalisation and digitalisation. In view of the increase in cross-border trade, it is increasingly common for such infringements to affect consumers in several Member States.

The absence of an EU-wide collective redress mechanism is of particular practical relevance to consumer protection, as shown by concrete cases, including the diesel emissions case.

In its resolution of 2 February 2012, the European Parliament stressed the need for a horizontal EU approach to collective redress focusing on breaches of consumer rights, based on a common set of principles respecting national legal traditions and providing safeguards against abusive litigation.

In this context, this proposal aims to **modernise and replace Directive 2009/22/EC on injunctions**. It is presented together with the proposal on targeted amendments to four EU consumer law Directives as part of the "New Deal for Consumers".

IMPACT ASSESSMENT: the option chosen is to tighten the rules on sanctions, to improve the efficiency of the injunction procedure and to add other measures concerning collective redress for consumers. Stronger mechanisms for collective redress would ensure a higher level of consumer protection in mass harm situations and reduce consumer detriment. As concerns efficiency, all options could lead to initial familiarisation costs, but also to savings for compliant traders.

CONTENT: the new Directive replacing Directive 2009/22/EC would aim to ensure that **"qualified entities" - for example consumer organisations – may seek representative actions to protect the collective interests of consumers**.

For example, in a Dieselgate-type scenario, victims of unfair commercial practices, such as misleading advertising by car manufacturers, will be able to obtain remedies collectively through a representative action under this proposal. Such collective redress was previously not provided under Union law.

The proposed new Directive:

- **covers all infringements by traders of Union law** that harm or may harm the collective interests of consumers in a variety of sectors such as financial services, energy, telecommunications, health and the environment;
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- enables qualified entities to be able to seek measures aimed at eliminating the continuing effects of the infringement. These measures should take the form of a redress order obligating the trader to provide for, *inter alia*, compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under national laws. These qualified entities will have to satisfy **minimum reputational criteria** (they must be properly established, not for profit and have a legitimate interest in ensuring compliance with the relevant EU law). For compensatory collective redress actions, qualified entities would also be required to disclose to the courts or administrative authorities their financial capacity and the origin of their funds supporting the action and to ensure that there are no conflicts of interests or risks of abuse in a given case;
- sets out the rules **requiring the infringing trader to adequately inform the consumers** concerned about the final injunction orders, final decisions on measures eliminating continuing effects of the infringements. This provision ensures consumers' awareness about the breach of law and their redress opportunities;
- requires Member States to ensure that all representative actions are **treated with due diligence** and that representative actions seeking an interim injunction order are dealt with under an accelerated procedure, while avoiding that procedural costs become a financial barrier to representative actions;
- favours collective out-of-court settlements, under the control of the courts or administrative authorities. If a decision finding an infringement has become final, it should be irrefutable evidence in any subsequent redress action in the same Member State;
- ensures the application of effective, dissuasive and proportionate **sanctions** in cases where a defendant does not comply with a final decision of a court or administrative authority in a representative action.