

SPEECH/

Saturday 10 November 2007

Meglana Kuneva

Commissioner for Consumer Protection

**"Healthy markets need effective
redress"**

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

Conference on Collective redress

Lisbon, 10 November 2007

Ladies and Gentlemen,

I am delighted to be here in Lisbon - the city of reform - to conclude this conference. And I am very grateful for the Portuguese Presidency for organising this important milestone in the discussion of collective redress.

To those who have come all the way to Lisbon to hear the words "class action", let me be clear from the start: there will not be any. Not in Europe, not under my watch.

Let me try to sketch what we have in mind instead.

These two days – and also recent activity following a brainstorming workshop at the University of Leuven, in Belgium, in June – confirm how important it is to ensure that consumers can confidently enforce their rights across the European Union.

As you know, redress, together with enforcement, is a key part of the Consumer Policy Strategy for 2007-2013, which the Commission adopted in March this year.

A pan-European market will only work well if consumers have the confidence to shop across borders and if businesses can operate on a level playing field Europe-wide.

To bring this about we need a simple and uniform set of rules to apply to certain key areas. We need to have the tools to enforce those rules. And we need effective mechanisms of redress when things go wrong.

This objective is very much in tune with our Citizens' Agenda, which seeks to deliver an open and fully functioning single market that brings tangible benefits for consumers.

The Commission is intent on creating a single set of consumer rights and obligations throughout the EU.

In the area of marketing, we have accomplished the first step with the adoption of the Unfair Commercial Practices Directive (UCP), which will enter into force in the Member States by the end of this year.

This Directive aims to protect consumers from misleading advertising and other types of unfair commercial practices – before, during and after the conclusion of a contract.

Through the ongoing revision of the existing consumer law, we aim to achieve an equally coherent set of rules regulating consumer contractual rights, such as the right to withdraw from a contract and the right to information prior to the conclusion of a contract.

The ideas put forward in the Green Paper on the *acquis* review – which will be translated into proposals in 2008 – are the logical completion of the process started with UCP.

This will provide consumers and businesses with clear and coherent rules for the contractual stage of the sales process.

But what use are marketing and contractual rights if they cannot be properly enforced?

Clearly, consumers will not be able to enjoy the full benefits of the Single Market unless effective systems are in place to address their complaints and to give them the means for adequate redress.

The discussion on collective redress needs therefore to be situated not only within an overall Single Market perspective, but also in the context of different EU initiatives on redress, both on alternative dispute resolution (ADR) and on individual redress.

All of us – policy-makers, businesses and consumers – can agree that it is the combination and complementarity of the different means of redress, including both individual and collective judicial redress and ADR schemes, that is likely to deliver the most effective results in providing consumers with adequate redress when something goes wrong.

In order to facilitate the resolution of consumer complaints we have encouraged, through two Commission Recommendations, the development of ADR schemes. In addition, we have established the European Consumer Centres Network (ECC-Net).

The conference on ADR in Vienna in February 2006, provided a good opportunity to discuss the effective application of the principles set in the Recommendations and to exchange best practices.

This flexible approach respects the diversity of ADR schemes in Europe. It should lead to the creation in the near future of new national ADR schemes in Cyprus and the Czech Republic.

The ECC-Net provides information and advice to consumers on problems in relation to shopping across borders. It helps consumers to resolve their cross-border disputes through an appropriate ADR scheme.

The network also plays an important role in raising awareness of the existence and added value of ADR.

We are currently in the process of evaluating whether the Directive on Injunctions has, in practice, succeeded in its objective of protecting the collective interests of consumers.

The problems that individual consumers with small claims face in enforcing their rights and in obtaining effective redress (in particular because legal costs are high and proceedings are often lengthy) call for a European solution.

The EU Regulation establishing a European Small Claims Procedure for cross-border disputes will, with effect from 2009, simplify, speed up and reduce the costs of litigation for claims not exceeding €2,000. This should serve to improve the current situation.

It is as one component of this overall picture on redress that I want to examine the specific question of collective redress.

But before I turn to the details of collective redress, let me stress another important objective which stems from the Commission's programme for growth and jobs – better regulation.

This means ensuring that regulation adequately responds to real needs. In pursuit of this, we make extensive use of impact assessment and consult widely with stakeholders before deciding on what, if any, action we should take.

As a precursor, we need to carry out a carefully considered balancing exercise, based on a solid cost-benefit analysis.

In order to do this in relation to redress, we have decided to establish a Consumer Markets Scoreboard to monitor the performance of markets in terms of economic and social outcomes for consumers.

A first outline of the Scoreboard will be prepared for the Spring European Council 2008. The development of new data sources and tools will lead to a better, more comprehensive understanding of the functioning of the Single Market, and consequently to better policy choices and better regulation.

The Scoreboard will be made up of indicators to enable identification of those parts of the Single Market that are malfunctioning, and to identify where further analysis of specific markets and sectors is necessary.

The quality of the means of redress is clearly a very important aspect for consumers. It is also an essential part of the overall system for ensuring that traders comply with consumer protection rules.

So the Scoreboard will develop indicators for monitoring this aspect, looking at individual redress, both through the courts and out-of-court, and also overall levels of complaints.

It will be important to take account of both 'hard' data, such as the number of small claims, and 'soft' data, such as consumer perceptions of the ease of using alternative dispute resolution bodies or the courts.

The Commission plans to develop a mechanism for the EU-wide collection of harmonised, comparable data on complaints.

We also intend to collect national data related to small claims, court cases and alternative dispute resolution cases, and look into the problems consumers face in obtaining redress and the economic consequences.

Having outlined a number of general considerations, I should at this point stress that any future action of the Commission in the area of collective redress will only tackle real problems which amount to a common challenge for the EU as a whole.

We are currently studying whether the differences in national legislations on collective redress constitute obstacles to the internal market or create distortions of competition.

We are also looking into the question whether the absence of collective redress mechanisms in more than half of the Member States causes consumer detriment.

Plus, we will identify the problems, be they of economic or of another nature, which prevent consumers from obtaining adequate redress and will examine their economic consequences for consumers, competitors and the market concerned.

From what we have heard yesterday and today - and throughout the reflection period - from stakeholders, Member States and the European Parliament, it seems rather obvious to me that a number of problems currently exist.

Consider this, for instance: Almost half of the Member States have at present systems of collective redress - the rest do not.

Illegal behaviour by a trader established in one country can cause detriment to multiple consumers in another country – and these consumers cannot join a collective redress scheme in the Member State of the trader or cannot be represented by a public entity such as an ombudsman just because they are coming from another Member State.

This kind of "passport lottery" seems to me to be a clear sign of inequity and inefficiency across the EU.

EU action to address such a situation would not necessarily mean a fully fledged legislative initiative.

Other options exist: these range from a market-led approach to the establishment of an out-of-court collective redress scheme; a convergence process leading to the extension of Member States' collective redress schemes to consumers from other Member States or a EU consumer collective redress scheme.

Most of these options could be implemented either by binding EU law or a non-binding policy recommendation.

The latter could be combined with the announced intention of the Commission to intervene with a legislative solution should such a policy recommendation prove insufficient to remove current difficulties.

In recent months we have identified **benchmarks** that effective and efficient redress systems should respect in order to ensure satisfactory redress for consumers.

We will evaluate whether all EU Member States meet these benchmarks, and if they do not, will consider what EU action would best meet the needs of European consumers.

- The mechanism should enable consumers to obtain satisfactory redress in cases which they could not otherwise adequately pursue on an individual basis.
- It should be possible to finance the actions in a way that allows either the consumers themselves to proceed with a collective action, or to be effectively represented by a third party. The costs related to bringing an action should not be disproportionate to the amount in dispute.
- A possible mechanism should not impose on actors costs which are disproportionate to benefits.
- The economic impact on traders/service providers against whom actions have been successfully brought should be proportionate to the harm caused by the incriminated conduct.

- One outcome should be the reduction of future harm to all consumers. Therefore a preventive effect for potential future wrongful conduct by traders or service providers concerned is desirable – for instance by skimming off the profit gained from the incriminated conduct.
- The introduction of unmeritorious claims should be discouraged.
- Sufficient opportunity for out-of-court settlement should be foreseen.
- The information networking preparing and managing possible collective redress actions should allow for effective "bundling" of individual actions.
- The length of proceedings leading to the solution of the problem in question should be reasonable for the parties.
- The proceeds of collective redress actions should be distributed in an appropriate manner amongst plaintiffs and their representatives.

These benchmarks reflect at present just my personal, initial ideas. Naturally they need to be debated and fine-tuned in discussions with stakeholders.

Redress, including collective redress is **not punitive**. It is to remedy, to set right when something in a transaction has gone wrong. I do not believe reputable companies have a problem with this proposition. Healthy markets need effective remedies. They make markets work better, by rewarding the good operators and helping to weed out the bad ones.

Conclusion:

I intend to create a consultative process with all interested stakeholders and Member States' experts in the first half of next year.

I will launch this process after this conference by placing these draft benchmarks on the Commission's website.

I would invite all of you or the organisations which you represent to provide input. We would expect from all interested stakeholders comments, accompanied by evidence.

Collective redress, both judicial and non-judicial, could be an effective means to strengthen the redress framework that we have already set up for European consumers, through the encouragement of ADR mechanisms and the establishment of a cross-border small claims procedure.

I can already tell you that I plan to set out my ideas on how to deal with these problems in a Communication that should be ready by the end of next year.

I therefore invite you to continue in the coming months to contribute to the discussion on effective redress for consumers by sharing with us your experiences and providing us with relevant and useful information.

This is your opportunity to make your voice heard and to put your views across.

I look forward to continuing this inclusive process – with the ultimate aim of strengthening the confidence of consumers to the benefit of individual citizens and businesses and the European economy overall.