



THE NEW DEAL FOR CONSUMERS

A missed opportunity?

Introduction



On 13 September 2017, European Commission President Jean-Claude Juncker presented the New Deal for Consumers during his State of the Union address.

The Commission presented the regulatory package as a landmark proposal for consumers in Europe, particularly the proposed Directive on collective consumer redress. The Directive wishes to address the obstacles which often deter consumers from going to court - such as excessive cost and legal uncertainty. It aims to enable these citizens to organize themselves in larger groups and seek redress collectively. The current legal framework regarding collective redress in the EU is very fragmented. The recent 'Dieselgate' scandal showed the inability of car purchasers to take collective legal actions in most EU Member States.

The current proposal states that Member States shall designate a limited number of consumer organizations with exclusive rights to take collective representative actions. The Directive will create minimum harmonization, which means that countries with an existing collective redress system that exceeds the one proposed by the Commission, will not be forced to lower their levels of consumer protection to level the playing field.

A missed opportunity?

The European Commission's proposal for Directive 2018/0089/COD could have been great opportunity to address the unequal footing on which national collective action regimes exist. In fact, the only adequate regimes, providing citizens with proper access to collective action, exists in Portugal and Belgium.

The Directive furthermore states that abusive litigation must be prevented, avoiding American-style litigation and underlining the need to limit the number of eligible organizations that can take corporations to court on behalf of a group of citizens or consumers.

Asufin was already concerned that the original Commission proposal closes the door to a wider range of options for civil society to litigate against corporate abuse. The text adopted by the European Parliament however raised stronger concerns, as it pushes an even more restrictive approach, including:

- Unjustified limitation of access to redress for civil society organisations, as well as grassroots and ad-hoc groups
- Limitation of the right of self-association with the aim of collective protection of citizens' rights.

What do consumers want?



Co-existence between traditional consumer associations and ad-hoc consumer/citizen platforms.

Ad-hoc platforms will cease to exist once their purpose is fulfilled, which drastically reduces the possibility of a conflict of interests. They offer a necessary alternative to existing consumer organizations for disgruntled consumers wishing to organize themselves. This model has been pursued by citizens in multiple EU jurisdictions and should be granted to all EU Member States. It is our experience that this often works better than group actions initiated by law firms, which can lead to citizens involved losing control of their rights.



Transnational cooperation

Associations from different Member States need to be able to work together towards collective redress in transnational matters. Therefore, in order to create a truly level playing field, we ultimately should strive for a Regulation, not a Directive.



Preventing the excesses of US legislation

This can be perfectly adequately addressed by establishing settlements on a case-by-case basis and not automatically binding for other victims that were not adherent to the particular action.



Support European Courts

To enable Courts to reach verdicts within a reasonable timeframe, more human and financial resources should be made available to them. Consumers need swift verdicts: slow justice is no justice!



Slow justice is no justice!

- Patricia Suarez, Asufin President





ASUFIN is a Spanish Consumer Association specialised in financial services consumer protection, with a long and successful experience in collective action. ASUFIN is registered in the National Register for Consumer and Users Associations, REACU (<https://www.asufin.com/>)