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HOTREC
Hotels, Restaurants & Cafés in Europe

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HOTREC* reply to the Commission consultation on consumer collective redress – Green paper on Consumer Collective Redress (COM(2008) 794final)

1. What are your views on the role of the EU in relation to consumer collective redress?

HOTREC and its national associations welcome the Commission Green Paper on Consumer Collective Redress as an interesting contribution to the debate on the possible use of such tools to tackle problems faced by consumers when the cost of taking legal action is likely to outweigh the amount of compensation claimed.

HOTREC and its national associations are critical of businesses which undermine consumer confidence by failing to comply with consumers' reasonable expectations and/or with their legal obligations. This position led the European hospitality industry to reflect on the need for pan-european collective redress mechanisms; an interest demonstrated by HOTREC's participation in the previous consultation and workshop organised by DG SANCO on the matter.

In this context, HOTREC and its national associations recall that any EU initiative on the matter should respect the principle of subsidiarity enshrined in the treaties. Judicial redresses available for consumers in the Member States are the result of strong and ancient legal cultures that all have their specificities and added value. The EU's role should therefore be limited to supporting more coherent practises between Member States, rather than imposing new judicial redresses.

Furthermore, EU institutions should pay attention not to favour indirectly the use of judicial collective redress over the use of Alternative Dispute Resolution (ADR) mechanisms, especially in countries or sectors where such ADR are commonly used.

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* HOTREC represents the hotel, restaurant and café industry at European level. It counts 1.6 million businesses, with 92% of them being micro enterprises employing less than 10 people. The micro and small enterprises (having less than 50 employees) in the hospitality industry representing 99% of businesses make up some 62% of value added. The industry provides some 9 million jobs in the EU alone. HOTREC brings together 40 National Associations representing the interest of the industry in 25 different European countries.

2. **Which of the four options set out above do you prefer? Is there an option which you would reject?**

HOTREC and its national associations favour option 1. The European hospitality industry is of the strong opinion that more data is needed on the functioning of existing collective redress systems, especially on the actual impact of existing schemes. In most Member States where such systems already exist, too few cases are available to assess properly their functioning and to identify their strength and weaknesses. The best option would therefore consist in waiting a reasonable period of time, in order to gather more data on concrete cases, before drawing any conclusion.

In case the EU institutions would not consider option 1 as a viable choice, **HOTREC considers option 2 as a second best possibility**. This option contains few advantages. In particular it would respect the subsidiarity principle, as it implies taking into account the different legal cultures and systems in the EU. Under this option a Recommendation listing minimum benchmarks for collective redress mechanisms would be sufficient to ensure a certain consistency at EU level. Moreover, this option would not increase red-tape and burdens for enterprises. However, as already mentioned (see above), more time is needed to assess the functioning of existing collective redress schemes.

HOTREC and its national association consider that option 4 should be rejected. The European hospitality industry considers this option as far too rigid, and questions its compliance with the subsidiarity principle. This option would, in particular, pose great risks on the coherence of national legal systems, which are the results of different legal traditions. Moreover, imposing a form of pan-European judicial collective redress would increase the risks to favour judicial remedies over ADR, a situation which would be detrimental to both consumers and businesses, notably by increasing the complexity and length of procedures and increasing the risks of legal blackmailing.

HOTREC also consider that option 3 would not be satisfying, as its implementation would be over-complicated. Each of the components of this option would only be implemented after lengthy procedures and endless debates. It would raise legal uncertainty for both consumers and businesses. The final picture would also probably lack coherence, while implying important additional red-tape for entrepreneurs.

3. **Are there specific elements of the options with which you agree/disagree?**

As explained by the Green Paper, collective action outside the European legal tradition leads to abuses. Therefore it is vital that any proposal of the Commission on collective actions ensures that abuses do not occur. This can be solved by only allowing collective actions that are brought before the courts by a public authority. An alternative could be that only organisations certified by Member States could bring collective actions. Under this scenario, the admissibility of the claim would anyway need to be assessed by a public authority. Then the reasonableness of the action can be censored.

Under option 2, HOTREC agrees that the Member States with collective redress mechanisms might be hesitant to grant resources to their entities for bringing collective redress actions on behalf of or assisting consumers from other Member States before their courts when entities in Member States without collective redress mechanisms do not have such an obligation. This is a shortcoming that would need to be addressed.

HOTREC and its member associations also disagree with the following points:

- The one-sided omission of court costs and a reduction, or omission, of other process costs (the loser-pays principle should be kept);
- Any form of an opt-out approach to collective redress.

4. Are there other elements which should form part of your preferred option?

HOTREC and its national associations consider that the following elements should constitute a core part of the option retained:

- The action's aim should only be the actual, provable damage. Punishing of companies, skimming of profits or indirect sanctions should be sternly separated from damages;
- The claimed damage has to reach the actual damaged consumer.
- There should be no disproportional process costs at the expense of the defendant.
- The procedures may not be instruments to press arrangements to abusive claims (risk of legal blackmailing);
- The injured person may only take part in a collective claim by a conscious and wanted decision (opt-in approach);
- There should be equal terms between the parties;
- By raising collective redress, neither the standards of data and privacy protection nor the standards of protection of business and trade secrets should be cancelled;
- The implementation of collective redress in the EU may not lead to a "forum-shopping";
- New EU regulations may only be applicable to cross-border cases in the EU.

5. In case you prefer a combination of options, which options would you want to combine and what would be its features?

HOTREC and its member associations do not favour a combination of options.

6. In the case of options 2, 3 or 4, would you see a need for binding instruments or would you prefer non-binding instruments?

HOTREC is of the strong opinion that non-binding instruments would better achieve the aim pursued. Non-binding instruments would ensure that differences among legal cultures and systems would be fairly and adequately taken into consideration, while fully complying with the subsidiarity principle. Therefore a Recommendation would constitute an ideal instrument.

If binding instruments were, nonetheless, to be considered, HOTREC and its national associations would favour the use of a general Directive which would incorporate broad flexibilities for Member States. This second-best scenario would also respect the subsidiarity principle, notably by allowing Member States to retain their own legal culture and systems on the matter, and therefore to maintain their domestic coherence.

7. Do you consider that there could be other means of addressing the problem?

The European hospitality industry does not consider that other means could be used to address the problem.

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