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HOTREC* comments on the Commission consultation paper on the follow-up to the green paper on consumer collective redress (08.05.09)

HOTREC welcomes the Commission consultation paper as a clarification of the policy options available at EU level. As already expressed in the previous consultation organised by the Commission, HOTREC and its member associations deeply believe that collective redress schemes should only be introduced in the EU with the greatest caution and after an in-depth reflexion, in order to avoid the pitfalls inherent to class action systems.

1. HOTREC and its national associations favour option 1.

As already stated in its reply to the Green Paper on consumer collective redress, 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.

Indeed, the study "Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union" clearly outlined that about 60% of the 326 consumer-relevant collective redress cases brought in over the last decade, in the 13 Member States that have introduced so far collective redress mechanisms, were concerning only one Member State (France). Moreover, as clearly outlined by the same study (see page 44), only about 10% of these 326 consumer-relevant collective redress cases involved at least cross-border aspects.

These unambiguous data highlight that there is currently no need for action at EU level on the matter and that the best option would consist in waiting a reasonable period of time, in order to gather more data on concrete cases, before drawing any conclusion.

2. HOTREC and its national association fully reject option 5.

As already stated in its reply to the Green Paper on consumer collective redress, the European hospitality industry considers the introduction of an EU-wide judicial collective redress scheme as a far too rigid option, and questions its compliance with the subsidiarity

* 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.

principle. This option would, in particular, pose great risks for the coherence of national legal systems, which result from 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, as well as risks of legal blackmailing.

Furthermore, one of the major weaknesses of option 5 would be that it could lead to a forum shopping for consumers in terms of jurisdiction. It raises important questions in terms of legal certainty for businesses and consumers in cross-border cases. This option would be particularly detrimental and would involve disproportionate legal costs for SMEs (and particularly small and medium hospitality businesses) which could be confronted with a test case in another country (if the competent jurisdiction is the jurisdiction of the country where the consumer is domiciled), or with follow-up cases in several Member States.

Moreover, this system raises the question of the certification of entities able to represent consumers in the test case procedure. Unless the certification process is fully harmonised, it could potentially lead to abuses in Member States with lax certification criteria or process, thus raising concerns over the fairness of the entire process.

3. HOTREC and its national association also consider that option 4 should be ruled out.

In the absence of important cross-border and internal market implication as demonstrated by the study “Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union” (see above), the EU should avoid adopting binding instruments imposing on Member States to set-up collective ADR schemes and judicial collective redress systems. Thus, only 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.

Furthermore, a binding instrument imposing the setting-up of collective ADR would not in any manner increase the availability of means of redress for consumers. Thus, the success of ADR schemes is entirely dependent on the actual will of both parties to a dispute to seriously engage in ADR. In the absence of such a shared will, the factual existence of a collective ADR in every Member States will simply not increase the availability of means of redress for the consumers. In the same manner, if such a shared will exist, the formal absence of an official collective ADR scheme will not prevent the parties to a dispute to engage in ADR.

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