



EUROPEAN COMMISSION

*Brussels, 11.12.2018
C(2018) 8343 final*

*Mr Milan ŠTĚCH
President of the Senát
Valdštejnské náměstí 17/4
CZ – 118 01 PRAGUE 1*

Dear President,

The Commission would like to thank the Senát for its Opinion on the proposal for a Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC {COM(2018)184 final}.

This initiative is in line with the objectives of the 'New Deal for Consumers' announced by President Juncker in his State of the Union address 2017¹ and included in the Commission Work Programme 2018². It forms part of a broader package of legislative proposals which aim at improving compliance with European Union consumer protection legislation, modernising the Union's consumer legislation in light of market developments, and alleviating burdens on businesses where appropriate.

The Fitness Check carried out by the Commission in 2016-2017 on European Union consumer legislation showed that many consumers are still confronted with, and suffer detriment due to insufficient compliance by traders. Therefore, the Commission proposed to further strengthen the enforcement of consumer protection rules within the Union through more effective individual and collective consumer redress and more deterrent public enforcement powers.

Specifically, the proposal on representative actions introduces collective redress possibilities for duly designated qualified entities to protect the collective interests of consumers and modernises the already existing injunctions procedure enabling such entities to stop consumer law infringements.

¹ https://ec.europa.eu/commission/priorities/state-union-speeches/state-union-2017_en

² https://ec.europa.eu/info/sites/info/files/cwp_2018_en.pdf

The Commission welcomes the Senát's general support for the introduction of an effective remedy for consumers through representative actions and the Senát's acknowledgement that the proposal seeks as far as possible to respect and maintain the various legal orders in the Member States. The Commission would like to confirm that it is indeed not the purpose of the proposal to replace existing or future national mechanisms, but instead to ensure that consumers in all Member States have at their disposal a representative actions mechanism with certain common features.

The Commission takes note of the Senát's hesitations about mixing the mechanisms of private and public law. As explained in the Explanatory Memorandum accompanying the proposal, the Commission views private enforcement as complementary to public enforcement and encourages effective and efficient interplay between the different enforcement mechanisms.

In the case of Article 6(3)(b) of the proposal, which regards cases where consumers have suffered a small loss and where it would be disproportionate to distribute the redress back to them individually, the Commission considers that it would be more effective and efficient for the concerned consumers to benefit from the redress obtained through the representative action by directing the accumulated funds to a public purpose that serves the collective interests of consumers. The Commission takes note of the Senát's concerns in this regard and the Senát's proposal to only direct to a public purpose the part of redress that has not been withdrawn by the concerned consumers by a certain date.

In the case of Article 15 of the proposal, which regards assistance to qualified entities, the Commission considers that it is necessary for the effective functioning of the representative action mechanism that the Member States ensure that the relevant procedural costs do not constitute financial obstacles that would prevent qualified entities from effectively exercising their rights. The proposal leaves it to the Member States to determine which measures to adopt in order to address this issue.

The Commission takes note of the Senát's opinion that a consumer should have the option to step out of ongoing representative actions if the participation was not subject to his or her consent. The Commission would like to point out that the proposal is neutral as to the system of securing the consumer's mandate (opt-in or opt-out), where required, and thus leaves the choice of approach on this issue to the Member States. Also, the procedural details of the specific steps that consumers would have to take, as regards the mandate, are left for the Member States to determine.

The Senát's Opinion has been made available to the Commission's representatives in the ongoing negotiation with the co-legislators, the European Parliament and the Council, and will inform these discussions. The Commission remains hopeful that an agreement will be reached before the next European elections in 2019.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senát and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Věra Jourová
Member of the Commission*