

Brussels, 28 April 2011

Orgalime position on collective redress as a possible instrument to strengthen the enforcement of EU law

1. INTRODUCTION

Orgalime would like to contribute herewith to the Commission consultation on collective redress (SEC 2011 173 final).

Orgalime is of the opinion that the existing systems of redress at national level offer a sufficiently effective legal framework. We do not see a need for the EU to interfere at national level and we question whether the introduction of supranational legislation is complementary with the subsidiarity principle.

Orgalime calls upon the European Commission to avoid measures that will have a major impact on the legislative frameworks of the 27 Member States and could introduce further uncertainty to enterprises active in the internal market.

2. ORGALIME BELIEVES THAT THE CASE FOR EU INCENTIVES TO INCREASE COLLECTIVE LITIGATION HAS NOT BEEN MADE

The European Engineering Industries have always been in favour of developing and sustaining a competitive environment in the EU and agree with the Commission that effective redress is a matter of fundamental rights and as such, should be constantly enhanced in a continually integrating Europe.

Orgalime is surprised that the Commission apparently assumes that the position of claimants is weak under national procedural rules. As acknowledged by the Commission, collective injunctive relief, as a supplementary means to individual redress, is offered in all Member States, while compensatory relief is introduced in the majority of Member States. Therefore, we think that the current legal framework already serves legitimate claimants. We believe that the European Commission should respect the decision of many Member States which have knowingly refrained from introducing collective redress mechanisms at a horizontal level, and have instead identified very specific and narrow areas in which collective redress could be used.

Orgalime, the European Engineering Industries Association, speaks for 32 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 10.6 million people in the EU and in 2009 accounted for some €1,427 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

3. ORGALIME OPPOSES THE INTRODUCTION OF AMERICAN STRUCTURES INTO THE EUROPEAN LEGAL SYSTEM OF MEMBER STATES

Orgalime fears that any further generalisation of collective redress would possibly lead to abusive litigation and would only provide commercial opportunities to large US law firms that are specialised in litigation procedures. If threatened with class actions, most European companies - and in particular small and middle-sized companies - would not usually have the capacity to cope with such threatening actions and, as a consequence, would probably see themselves forced to agree to a private settlement.

Orgalime is concerned that forms of collective redress inappropriate for the legal systems in the EU might emerge from the consultation and subsequent policy measures. In any case, the excesses of the US class action framework must be avoided. In particular, the Commission should not consider any form of „opt-out“ collective actions. Orgalime also rejects exceptions from the „loser pays“-principle or the introduction of contingency fees for collective redress measures: these features of the US system have boosted the US claims culture and should, in our opinion, therefore not be introduced in the EU.

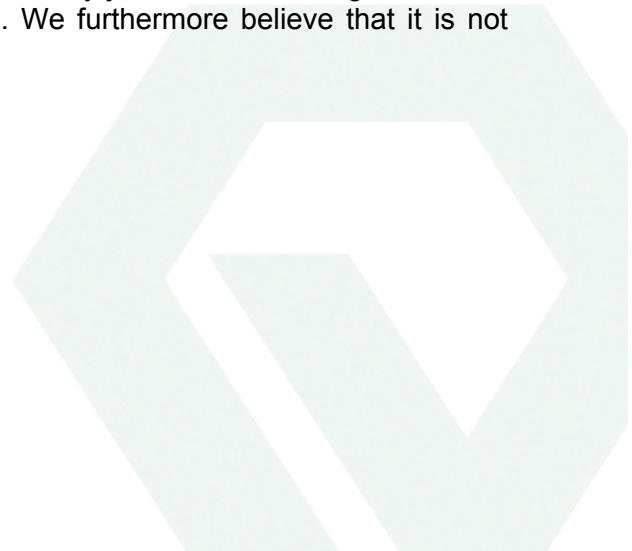
Moreover, the engineering industry does not agree with the shift from a public to a private enforcement system in Europe, as some questions in the consultation paper apparently suggest. In our view, public authorities are primarily responsible for the prosecution of breaches to EU law. Private persons should only be entitled to claim their actual damage; they should not substitute the role of public authorities through redress procedures. We furthermore seriously question whether national courts have the capacity to deal with more litigation, which evidently would emerge if private enforcement were strengthened.

Orgalime believes that Alternative Dispute Resolutions (ADRs), like for example mediation and arbitration, should be further developed. Furthermore, existing litigation systems should be improved before discussing new redress mechanisms at European level.

4. CONCLUSION

Orgalime is of the opinion that the existing systems of redress at national level are robust and offer an effective legal framework. We do not see any added-value, any justification or a legal basis for harmonising the different legal systems of Member States. We furthermore believe that it is not compatible with the principle of subsidiarity.

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