

REASONED OPINION

of the European Affairs Committee of the Federal Council

pursuant to Article 23g (1) of the Austrian Constitution in conjunction with Article 6 of Protocol No.2 on the application of the principles of subsidiarity and proportionality

27 June 2018

COM (2018) 184 final

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

A. Reasoned Opinion

The project under consideration is incompatible with the principle of subsidiarity.

B. Grounds for Reasoned Opinion

The proposal under consideration is based on a so-called “fitness check” which certain directives have been subjected to. The Federal Council strongly emphasizes the relevance of such checks, as conditions in Member States may change and fitness checks facilitate the identification of practical and meaningful solutions. Moreover, the Federal Council underlines that the protection of consumer rights is taken seriously at national and international level.

The proposal now on the table aims to modernize EU consumer protection law within the framework of a “New Deal for Consumers” and, for instance, provides for the possibility of filing injunction procedures. The scope of the new directive is to be extended, above all, to allow representative actions to be brought by associations. After a final decision by a court or authority establishing that a trader has infringed the law, so-called “qualified entities” will have the possibility of bringing representative actions. The Federal Council expects a fundamental clarification regarding the definition of the term “qualified entity”, as used in the proposal. Moreover, such representative actions would cover all consumers, regardless of whether they wish to be included in the representative action or not. A system of this type, similar to an opt-out system, would be in violation of Article 6 of the European Convention on Human Rights as well as Article 47 of the EU

Charter of Fundamental Rights. The Federal Council therefore wishes to express its concerns regarding the proportionality of the proposal.

The Federal Council also notes that, from the viewpoint of subsidiarity, the scope of the directive should be limited to cross-border cases, as the principle of subsidiarity applies at national level.