



## JOINT STATEMENT

### Directive on Representative Actions

#### The European Commission's proposal risks undermining civil justice systems to the detriment of consumers across Europe

The associations AIRE, Airlines 4 Europe, AmCham EU, Bitkom, CER, DIGITALEUROPE, EDiMA, EFPIA, European Banking Federation, European Justice Forum, IATA, MedTech Europe and U.S. Chamber Institute for Legal Reform, support fair and balanced civil justice systems with effective enforcement of consumers' rights. Nevertheless, we have genuine concerns over the European Commission's Proposal for a Directive on Representative Actions included in the Package "A New Deal for Consumers". We believe that the Commission's Proposal could not only fall short of its ambition but will also undermine national justice systems to the detriment of consumers. Hereby, we would like to outline crucial points that should be considered by EU policy-makers:

#### Risk of incoherence and confusion

The mechanism introduced by the Proposal would **sit in parallel to** Member States' existing collective litigation mechanisms, increasing complexity and confusion in regard to the distinct roles of Qualified Entities and the new roles for public bodies under the CPC<sup>1</sup>. There will be uncontrolled **national and cross-border competition** between private and public enforcement bodies. A number of **technical issues regarding jurisdiction and enforcement** will be triggered, inevitably leading to complicated scenarios for courts, consumers and businesses. There is also a genuine concern over mixing injunction claims with damage claims, which is perceived as an interference with national substantive and procedural law. The Proposal would risk lengthening proceedings to the detriment of consumers, with many years of unproductive litigation and conflicts among courts of different Member States about court jurisdiction and other preliminary issues. The proposed litigation model **will disrupt already existing, effective systems implemented in many Member States**, with the effect of diminishing the effectiveness of consumer protection in those Member States which already have strong consumer protection systems.

#### Absent safeguards risk creating a US-style litigation culture

The 2013 Commission Recommendation on Collective Redress generally recognized the potential for abuse of collective litigation and set out **necessary safeguards** that balance the interests of harmed consumers seeking redress with the rights of defendant traders. The Proposal only keeps three of these safeguards while **twenty of them are missing**<sup>2</sup>. This leaves defendants, including SMEs, **even more exposed to risks of misuse than under the US Class Action system**. Leaving choice of safeguards to Member States will produce a maelstrom of inconsistency, provoking a **"race to the bottom"** in terms of

<sup>1</sup> CPC Regulation (EU) 2017/2394 on consumer protection cooperation established a cooperation network between national authorities (the CPC network)

<sup>2</sup> For instance, it lacks safeguards on legal/administrative fees and third-party funding arrangements. Click [here](#) for further details.

safeguards and consequently leading to **forum shopping**. This, in turn, will diminish instead of improve consumers' ability to enforce their rights due to the possible lowering of some national standards.

### **The way forward: modern dispute resolution techniques offer simpler and more effective alternatives**

Collective in-court litigation has been demonstrated to be an old technique with limited positive impact on market behaviour, carrying further costs and opportunities for misuse. On the other hand, alternative dispute resolution (ADR) mechanisms such as ombudsman entities and the use of public supervisory bodies are **effective modern techniques**, which offer satisfactory and speedy outcomes for consumers and traders. The right approach should build on proven mechanisms that work in the 21<sup>st</sup> century, such as the **Nordic Ombudsman Entity public enforcement systems** which have worked effectively in Denmark, Finland, Norway and Sweden.

### **Conclusion**

The signing associations are committed to engage in a dialogue on detailed suggestions, on the already existing CPC-Net and the 2013 Recommendations for action at EU level.