
Joint Business Statement on the Proposal
on Representative Actions

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The European business community is following with interest and concern the progress of the **Proposal for a Directive on Representative Actions** before the Council.

The members of our organisations support simple, balanced and efficient civil justice systems. This Proposal presents an opportunity to achieve an EU framework which offers consumers appropriate redress while facilitating trade between Member States by reducing the divergences between Member State's private enforcement systems. It also presents an opportunity to minimize the risk of abuse, especially the risk that consumers harmed by a breach of consumer protection laws may be re-victimized by unscrupulous actors while trying to enforce their rights.

The current negotiations in Council represent a **considerable shift from the original proposal** whereby the main intent is to keep the already existing national systems largely unaffected. The Presidency's current approach incorporates a distinction between so-called "domestic" and "cross-border" collective actions. While cross-border actions would be subject to harmonised EU safeguards, no such safeguards (e.g. on funding, on conflicts of interest prevention, resources) would apply to domestic actions. A 'domestic' action is one initiated by an entity suing in the same country as its registration, even if the action relates to a 'foreign' dispute, and even if the consumers and defendants are mainly in other Member States. Quite simply **this means that essential EU safeguards will not apply in practice because they are built into the criteria for qualified entities** for "cross border" collective actions. To avoid all EU safeguards, claims can simply be designed artificially as 'domestic' cases.

Ensuring common minimum standards whether for domestic or cross-border representative entities is fundamental to the effectiveness and trust in a collective redress system.

We understand the need for a swift agreement and the desire for Member States to maintain a degree of autonomy. However, without some minimum and unavoidable safeguards, the promise of the Directive will not be met, and the Member State with the lowest safeguards will de facto set the levels of protection for all EU consumers.

There can be no doubt that the proposed Presidency's amendments constitute a substantial change from the original Commission proposal, and **at a minimum the impact of this radically altered approach should be fully assessed** using the available means within the better regulation agenda.

We stand ready to work constructively with Council and all stakeholders towards a balanced, fair and harmonised EU system.
