

Press release

The New Deal for Consumers: An Open Door to Abusive Litigation

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French, German and Italian companies fear that the European Commission's proposal on collective redress will end up in abusive litigation. Combining a high level of consumer protection with the proper functioning of the internal market requires following the principles of the Better Regulation Agenda. On the contrary, the creation of a compensation mechanism by means of representative action that does not include appropriate procedural safeguards could considerably harm business, promote forum shopping and create legal uncertainties, with unclear consequences in terms of effective consumer protection.

The European Commission adopted today its New Deal for Consumers, which seeks to introduce a broad collective redress mechanism in EU and national law through the revision of the 2009 Injunction Directive.

The Commission's proposal **does not prescribe sufficient procedural safeguards** to Member States, contrary to its 2013 Recommendation on Collective Redress. Consequently, the standards of remedy will vary significantly across the EU. Without appropriate filters to avoid frivolous actions and adequate safeguards, notably against contingency fees, opt-out and third-party litigation funding, the draft directive may lead both to **abusive litigation and forum shopping**. Qualified entities could be tempted to raise legal actions not where damages occurred but where courts are most favourable for them.

In addition, the Commission has opted in its proposal for rules on **burden of proof** which stand in sharp contrast to the rules of civil proceedings in various Member States of the European Union and should be refrained from. A source of concern is that the final decisions of administrative authorities ascertaining infringements in the area of consumer protection will be binding in redress actions before national courts, with **no possibility to rebut the presumption**. Moreover, the draft directive introduces mechanisms for **extensive disclosure** which, like US discovery proceedings, may entail huge costs and use of resources. Stefano Micossi, Director General of Assonime, the Association of the Italian Joint Stock Companies, observed: *"An uncontrolled or unstructured interaction of European and national rules could lead to a large level of legal uncertainties in the Internal Market, challenging not only the objective of better consumer protection but the aims of the Commission's Better Regulation Agenda as such."*

Another key issue is **the unprecise definition of the 'qualified entities'** that can launch representative actions. It could open the doors to professional litigation practitioners from third countries and third-party financiers. Christine Bortenlänger, Chief Executive of Deutsches Aktieninstitut, explained: *"Such institutions have considerably contributed to the abuse of collective redress in various jurisdictions, most prominently in the United States, by turning legal remedy into a business model. We fear that the criteria for qualified entities as identified by the European Commission will not prove strong enough as to effectively counter these developments and exclude abusive litigation despite the Commission's welcomed plans for Member States to frequently assess the status of a qualified entity and to address the issue of third-party funding."*

Companies consider that the proposal goes **against the Commission objective of restoring long-term growth in Europe**. François Soulmagnon, Director-General of Afep, the French Association of Large Companies, commented: *"Exposing companies in Europe to a massive increase in litigation, including potentially abusive litigation, will not contribute to restoring the competitiveness of Europe as a destination for business or the ability of European-based companies to compete elsewhere. Moreover, because litigation is an inefficient and costly way to resolve disputes, it diverts resources within companies that could better be spent on innovation and expansion."*

Organisations and contacts

AFEP is the French Association of Large Companies. It represents 115 of the largest companies operating in France. It takes part in public discussions by providing pragmatic solutions to foster the development of a competitive French and European economy.

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ASSONIME is the Association of the Italian Joint Stock Companies representing around 450 companies from all sectors, including more than 100 listed companies. Established in 1910, its goal is the creation of a healthy macroeconomic and regulatory environment with a strong commitment to opening markets and promoting European integration.

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Deutsches Aktieninstitut represents the entire German capital market oriented economy. Its approx. 200 members are listed corporations, banks, stock exchanges, investors and other important market participants. Deutsches Aktieninstitut has offices in Frankfurt/Main, Brussels and Berlin.

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