



Mr Jean-Claude Juncker
President of the European Commission
European Commission
200 Rue de la Loi
1049 Brussels
BELGIUM

30 March 2018

Dear President,

Upcoming EU Collective redress measure

I am writing to you to express BusinessEurope's strong concerns about upcoming EU measures on collective redress (Injunctions+) as part of the *New Deal for Consumers* expected which is expected to be adopted soon. If not carefully calibrated, this initiative could have important negative consequences on European businesses of all sizes and sectors.

We understand that the measure will cover a broad scope, extending beyond classical consumer legislation (e.g. health, environment, data protection, etc.), and will give ample freedom for so-called "qualified entities" to file cross-border damages claims in national courts, without the need for a specific mandate of the affected consumer. Moreover, it seems that procedural guarantees (such as the loser pays principle, involvement of a judge in certifying the class of consumers and legitimacy of their representative, etc.) will not be included. The business community considers these procedural guarantees are fundamental to any judicial instrument for compensation.

The US experience with class actions is a constant reminder of the economic costs for society of a judicial system which fosters mass litigation. In such a system, lawyers are the main beneficiaries, with an average lawyer earning 1 million US dollars per claim whilst consumers receive around 32 US dollars (if anything).

By not requiring a specific mandate from consumers to file a damages' claim, it seems the EU is going on the same direction as the US which applies an *opt-out* system. This approach contradicts the Commission's own 2013 Recommendation on collective redress which proposes the principle of *opt-in* claims.

The lack of procedural guarantees is a major concern as they are one of the cornerstones of European and national law to prevent abusive and unmerited litigation. The guarantees foreseen in the 2013 recommendation above should therefore be made a minimum standard.



The underlying idea of the initiative seems to be to step up private enforcement in the EU consumer area when the legal tradition is mainly one of public enforcement. Shifting the responsibility of enforcement to private stakeholders is not the right approach. On the contrary, improving public enforcement in Europe should remain the goal, for example, by applying the recently revised Consumer Protection Cooperation Regulation, which BusinessEurope supported.

We have expressed these important concerns on numerous occasions throughout the consultation process and trust that you can take them into account ahead of the publication of the New Deal for Consumers. As an active contributor to EU Consumer Policy, BusinessEurope insists that the right balance needs to be reached between consumer protection and business interest in the EU single market to able to foster growth and jobs.

Yours sincerely,



Emma Marcegaglia