

Feedback on the European Commission's Proposal for a Directive on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC

Berlin, 21 June 2018

1. FENCA

FENCA, the Federation of European National Collection Associations, represents the interests of European credit servicers and credit purchasers, coordinating with the institutions of the European Union, stakeholders in the European financial services industry, consumer groups and the European public.

Founded in 1993, FENCA's members are the 23 national associations representing 75% of all credit management, debt collection and debt purchase companies in the EU and the EEA. Holding 80% of market share within the EU, with well over 80,000 staff providing services for more than five million businesses, the client base includes credit institutions and other European and overseas banks, SMEs, as well as the public sector across the EU.

One of the key activities of FENCA is to set and continuously improve business standards and good practices within the sector across the EU, to which its members subscribe in order to provide the best possible service to creditors, clients and consumers alike. We are also in the process of finalising a Code of Conduct for GDPR in the sector.

European credit servicers and purchasers return between 45 and 55 billion Euros to the European economy each year, thereby securing above all the liquidity of micro, small and medium enterprises across the EU, while helping to keep the cost of credit at a reasonable level for all consumers.

2. Summary feedback

In general terms, FENCA welcomes the intention of the European Commission to establish a more effective system of representative action for the collective interests of consumers within the EU.

Though there are a number of positive aspects in the Commission's proposal, FENCA is concerned that the proposed legislation does not strike the intended balance between facilitating access to justice to safeguard consumers' interests on the one hand and ensuring adequate safeguards from abusive litigation on the other.

In particular FENCA is concerned about the fact that the Commission, against its own *Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law*, seems to have chosen to establish an opt-out mechanism for representative actions rather than an opt-in mechanism (Articles 6 (1) and (3)). As the Commission itself stated in its report the opt-out mechanism is more prone to abuse, and thus makes it easier for frivolous actions on behalf of a not-near defined group of consumers to be brought.

FENCA would therefore call on the Commission to return to its original view of an opt-in mechanism and to change the proposal accordingly.

Furthermore, the proposed criteria for designating a qualified entity in Article 4 (1) are too general and not explicit enough. This may lead to considerable differences between Member States in terms of the quality of criteria and the stringency with which these are applied to designate the eligibility of an entity to be qualified. This is particularly relevant in cases where a qualified entity from one jurisdiction brings forth an action against a business based in another (Article 16). In these situations, the qualified entity should be required to also comply with the explicit criteria set up for qualified entities by the Member State in which the business resides against whom an action is brought.

FENCA would therefore call on the Commission to improve the level of protection of businesses in the EU from potentially malicious and unsubstantiated actions. The prospect of such actions may prevent particularly SMEs from offering their services cross-border.

FENCA would be happy to engage in a conversation with the Commission and to provide further details at request.



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