



# Position Paper

## EMOTA position on the European Commission Consultation “Towards a Coherent European Approach to Collective Redress”, SEC (2011) 173 final

EMOTA<sup>1</sup>'s main goal is to assist policy makers in removing any barriers to cross-border trade. EMOTA's commitment to a barrier free EU Single Market is long standing and can be traced across all our positions and actions. We are making the following comments with the aim to constructively contribute to the debate over the future of the EU Digital Single Market for products and services by reflecting the views of online sellers across 17 markets, including the largest.

EMOTA, the **European E-commerce and Mail Order Trade Association**, welcomes the European Commission's invitation to comment on possible instruments for a consistent approach regarding the enforcement of consumer and competition law and would like to address the issues set out below.

- **EMOTA does not see any added value in the introduction of collective redress mechanisms for the enforcement of “EU law”**

As the organisation which represents a sector particularly suited for cross-border business, we are having a careful look at initiatives intended, amongst others, to encourage transactions across national frontiers, such as the proposed Consumer Rights Directive<sup>2</sup>, the European Contract Law project and, last but not least, the ongoing analysis of EU wide collective redress.

Likewise, we are aware of the various data and studies usually cited in this context. By way of example, the recent *Eurobarometer* survey<sup>3</sup>, requested by Directorate-General Health and Consumers states that “in all Member States, except for Hungary, a majority of respondents still agreed that they would be more willing to defend their rights if they could join with other consumers who were complaining about the same thing”.

These survey results do however not provide for the required evidence that Community action is needed in this field. **They are rather pointing at a general lack of awareness of the mechanisms which are already in place at European level.**

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<sup>1</sup> EMOTA, the European eCommerce and Omni Channel Trade Association, is the European level umbrella federation representing online and distance sellers across Europe. The main mission of EMOTA is to promote eCommerce and Distance Selling and help policy makers remove any barriers to cross-border selling. Transparency register N° 11251212351-96

<sup>2</sup> COM(2008)614 final

<sup>3</sup> Flash Eurobarometer 299 „Consumer attitudes towards cross-border trade and consumer protection”



As a general comment, EMOTA should therefore repeat its view expressed already on previous occasions which is that **no initiative aiming at introducing collective redress mechanisms at European level must be taken as long as the need for action is not proven**. The Commission does not bring the evidence needed to confirm that the existing instruments that already allow for pan-European action have failed (Small Claims Regulation; Injunctions Directive; Mediation Directive), or that access to justice in the Member States is not functioning, and thus a EU level initiative would be justified.

In the 5th edition of its Consumer Conditions Scoreboard, the European Commission reminds of:

- the **Consumer Protection Cooperation (CPC) Network that brings together national authorities and provides support to detect, investigate and stop cross-border collective infringements** and
- the **European Consumer Centres (ECC) Network** that provides information and advice directly to consumers on cross-border shopping and possible complaints and disputes.

Adopting new initiatives on the basis of hypothetical issues is an approach that should be avoided. Instead, there may be room to address the aforesaid ignorance of existing means.

- The notion of “EU law” needs clarification

We should further express our doubts with regards to the notion of “EU law” in the present context of breaches.

By way of example, regarding consumer protection rules, there is still high fragmentation across Europe and this is likely to remain so even after the adoption of the proposed Consumer Rights Directive. How can an EU wide collective redress mechanism with 27 different consumer protection rules function? Obviously, there is a need to ensure that first of all, the level of legal fragmentation is kept to a minimum in the Single Market.

In addition, it should be considered that even though rules on consumer contracts might be agreed at EU level in some specific areas, they are not identically transposed at national level.

Finally, we should stress that in our view, the case for a European level collective redress system must be tested, if it wasn't already, against the legal context created by the “Rome I<sup>4</sup>” and “Brussels I<sup>5</sup>” regulations referring to cross-border transactions. Distance sellers (and also their customers) are faced with a high degree of legal uncertainty deriving from these regulations.

- Alternative Dispute Resolution (ADR) is an appropriate alternative option

Like many other stakeholders, EMOTA gives preference to the encouragement of Alternative Dispute Resolution.

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<sup>4</sup> Regulation (EC) No 593/2008 on the law applicable to contractual obligations

<sup>5</sup> Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters



As set out in our position submitted on 15 March 2011 in the context of the European Commission's consultation on ADR<sup>6</sup>, **EMOTA and its members are supportive of the use of out-of-court settlement systems as more flexible and faster tools able to ensure satisfactory solutions in case of disputes.**

We believe that a solid ADR system complementing the public law enforcement mechanisms and EU instruments would be far more beneficial to successful distance selling. Court proceedings tend, indeed, to be expensive, lengthy and complex. Understandably, consumers will find it therefore more attractive to have a solution in a fast and inexpensive way. The same applies to distance sellers. ADR tools are better equipped to deal with potential problems, allowing for flexibility and speed. A Commission shift of focus from supporting an ADR solution to promoting collective compensation mechanisms via courts would not encourage distance sellers to engage in cross-border trade.

Finally, we should remind the European Commission, also in this context, that a vast majority of distance sellers are able to continue their activities and grow because they have the support of their customers. This would not happen if distance sellers did not satisfy the needs of their clients, also when it comes to find amicable solutions to problems.

Regarding eCommerce which is becoming the most important distance sales channel in Europe, Eurostat data reveal that only 4% of individuals (average EU27) reported to have encountered problems when making purchases over the internet in 2009. Only 1% reported difficulties with complaints and redress. This favorable result demonstrates the great professionalism of distance sellers.

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<sup>6</sup> EC Consultation Paper on the use of Alternative Dispute Resolution as a means to resolve disputes related to commercial transactions and practices in the European Union



## ANNEX: EMOTA Members

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| <p><b>Austria</b><br/>HANDELSVERBAND (Retail Association Austria)</p>  | <p><b>Belgium</b><br/>BECOMMERCE</p>  |
| <p><b>Czech Republic</b><br/>ASOCIACE DIREKT MARKETINGU A ZÁSILKOVÉHO OBCHODU (ADMAZ)<br/>(The Direct Marketing and Mail Order Business Association)</p>               | <p><b>Finland</b><br/>SUOMEN ASIAKKIISMARKKINOINTILIITTO RY<br/>(The Finish Direct Marketing Association)</p>   |
| <p><b>France</b><br/>FÉDÉRATION DU E-COMMERCE ET DE LA VENTE À DISTANCE (FEVAD)<br/>(E-Commerce and Distance Selling Federation)</p>                                   | <p><b>Germany</b><br/>BUNDESVERBAND DES DEUTSCHEN VERSANDHANDELS e.V. (bvh)<br/>(German E-Commerce and Distance Selling Trade Association)</p>                          |
| <p><b>Germany</b><br/>BUNDESVERBAND DER DEUTSCHEN VERSANDBUCHHÄNDLER e.V<br/>(Association of German Mail Order Booksellers)</p>  | <p><b>Greece</b><br/>Ενωση Επιχειρήσεων Πωλήσεων Από Απόσταση Και Αμέσου Marketing (ΕΠΑΜ)<br/>(Union of Hellenic Distance Selling and Direct Marketing Enterprises)</p> |
| <p><b>Hungary</b><br/>MAGYAR ÁRUKÜLDÖK EGYESÜLETE<br/>(Hungarian Distance Selling Trade Association)</p>   | <p><b>Italy</b><br/>ASSOCIAZIONE NAZIONALE VENDITA A DISTANZA (ANVED)<br/>(National Distance Selling Association)</p>   |
| <p><b>Portugal</b><br/>ASSOCIAÇÃO DE COMÉRCIO ELECTRÓNICO e PUBLICIDADE INTERACTIVA (ACEPI)<br/>(Portuguese Association of E-commerce and Interactive Advertising)</p> | <p><b>Norway</b><br/>DISTANSEHANDEL NORGE (DN)<br/>(Norwegian Distance Sellers )</p>  |
| <p><b>Russia</b><br/>Национальная Ассоциация Дистанционной Торговли (НАДТ)<br/>(National Association of Mail Order and Distance Selling –NAMO)</p>                     | <p><b>Romania</b><br/>ASOCIATIA ROMANA DE MARKETING DIRECT (ARMAD)<br/>(Romanian Direct Marketing Association)</p>  |
| <p><b>Slovenia</b><br/>ZDRUŽENJE ZA DIREKTNI MARKETING SLOVENIJE (ZDM)<br/>(Slovenian Direct Marketing Association)</p>  | <p><b>Slovakia</b><br/>ASOCIÁCIA ZÁSILKOVÉHO a INTERNETOVÉHO OBCHODU (AZIO)<br/>(Slovak Mail Order and Internet Association)</p>  |
| <p><b>Sweden</b><br/>SVENSK DISTANSHANDEL (SDh)<br/>(Swedish Distance Sellers)</p>   | <p><b>Spain</b><br/>ASOCIACIÓN ESPAÑOLA DE LA ECONOMÍA DIGITAL<br/>(Spanish Association of the Digital Economy)</p>   |
| <p><b>Ukraine</b><br/>Ukrainian Direct Marketing Association (UDMA)</p>  | <p><b>Switzerland</b><br/>VERBAND DES SCHWEIZERISCHEN VERSANDHANDELS (VSV)<br/>(Association of the Swiss Mail Order)</p>  |