



# Effective redress in distance selling

## Key messages

- EMOTA considers that alternative dispute resolution mechanisms are more efficient, faster and less expensive than court actions
- EMOTA does not consider that sufficient evidence has been presented regarding the benefits of a court based collective redress mechanism at the EU level
- The concerns of many stakeholders and policy makers about impartiality, real redress beneficiaries, forum shopping and high costs remain unaddressed and constitute important risks
- Punitive actions and redress actions are two different concepts and should be kept separate. Punitive actions can create incentives for abusive or disproportionate court actions
- There are many diverse legal concepts that should be addressed beforehand (compensation, damages, etc.). Experience showed that in past attempts this has been nearly impossible due to challenges raised by subsidiarity, different legal cultures, existing redress mechanisms, etc.

## Context

EMOTA welcomes and strongly supports the EU Commission's focus on ensuring effective enforcement mechanisms, providing both sellers and consumers with effective, cost efficient and trustful solutions to resolving disputes and helping maintain a level playing field in the market.

EMOTA understands that this latest EU Commission fact finding<sup>1</sup> is a follow-up to the 2013 Communication and as a contributor to the EC consultations in 2008<sup>2</sup> and 2011<sup>3</sup> takes the opportunity to provide input in this phase of the debate around collective redress mechanisms across the EU.

## Is the existing framework for redress sufficient?

- Most EU Member States have some form of collective action available to consumers as previously researched by the EU Commission<sup>4</sup>. These solutions are built-in the national redress mechanism, be it in the judicial or alternative dispute resolution mechanisms and ombudsman bodies<sup>5</sup>.
- The evidence collected by the EU Commission across numerous studies (footnote 4), indicates that consumers (and businesses alike) prefer the faster and simpler redress solutions, avoiding lengthy and costly court actions.
- Alternative Dispute and Online Dispute Resolution mechanisms are faster, more efficient and inexpensive.
- ADR or ODR should be given the opportunity to develop and grow into real alternatives to court action. Legitimate traders have an important interest to settle in an efficient and timely manner any potential harm resulting from a lack of compliance and to continue doing business.

<sup>1</sup> [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=59539](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59539)

<sup>2</sup> [http://ec.europa.eu/competition/antitrust/actionsdamages/white\\_paper\\_comments/emota\\_en.pdf](http://ec.europa.eu/competition/antitrust/actionsdamages/white_paper_comments/emota_en.pdf)

<sup>3</sup> [http://ec.europa.eu/competition/consultations/2011\\_collective\\_redress/emota\\_en.pdf](http://ec.europa.eu/competition/consultations/2011_collective_redress/emota_en.pdf)

<sup>4</sup> [http://ec.europa.eu/consumers/solving\\_consumer\\_disputes/judicial\\_redress/index\\_en.htm](http://ec.europa.eu/consumers/solving_consumer_disputes/judicial_redress/index_en.htm)

<sup>5</sup> The Growth of Collective Redress in the EU, U.S. Chamber Institute for Legal Reform, March 2017



- In the case of cross-border actions, consumers have access to injunction mechanisms and procedures for small claims. In addition, the upcoming revised Consumer Protection Cooperation Regulation will further enhance the possibilities for enforcement and cooperation.
- Proposing a court based collective redress mechanism at the EU-level would be premature and would limit the potential of out of court dispute mechanisms by creating incentives for professional litigators to invest in launching collective court actions.

### Simple and efficient mechanisms for consumers and businesses

EMOTA fears that an EU-wide collective redress mechanism would lead to significant losses in consumer and business confidence due to the lack of legal certainty that such a system would generate.

Based on other national experiences, it is very difficult to implement the necessary safeguards to limit abusive claims. Furthermore, many aspects in distance selling remain national, thus potentially increasing even more the complexity in such cases.

### Awareness raising

As mentioned above, legitimate traders have a strong interest to solve any claims at the earliest stage and avoid negative perceptions where possible. On the other hand, rogue traders would continue the fraudulent behaviour regardless of what claims are logged against them.

The EU Commission, consumer bodies and industry representatives have a strong interest to cooperate to ensure that all relevant stakeholders are aware of the various redress mechanisms and benefit from access to the necessary information in order to protect their rights.

### Challenges to consider before launching an initiative on collective redress

- Lack of a harmonized set of judicial systems and a great diversity in legal cultures
- Lack of real safeguards against forum shopping and commercial/abusive claims/actions (e.g. prevent access to the damages to the representatives, actions could be launched by public officials or recognised consumer and enforcement bodies)
- Possibility for third parties to finance court actions, via opt-out mechanisms
- Decrease in confidence for businesses due to possible punitive actions, especially in smaller traders

-END-

#### Contact

Razvan Antemir  
[razantemir@emota.eu](mailto:razantemir@emota.eu)