

Joint advertising industry position paper on the

Proposal for a directive on representative actions for the protection of collective interests of consumers

23 September 2019

Our organisations, representing the different actors in the advertising space, support the aim of the New Deal for Consumers, which is ultimately to strengthen the enforcement of EU consumer protection laws – which are the most robust globally. For us, the importance of responsible marketing goes beyond the issue of legal compliance – it is a matter of ensuring trust in ads. Without trust, advertising loses its power to create valuable connections with consumers. Therefore, we support robust self-regulatory advertising standards that go hand in hand with laws and regulations.

We support fair and balanced civil justice systems with effective enforcement of consumers' rights. However, we have genuine concerns regarding the ability of the Commission's original proposal to deliver on these objectives. Given the complexity of the collective redress proposal and the many open questions, we encourage decision-makers to take the time needed to reflect and identify the most effective solutions without challenging existing working systems in the Member States.

The advertising community would like to put forward its key priorities ahead of an agreement in Council:

- 1. Robust safeguards against abuse should be clearly stated out in the directive**, including both **procedural safeguards** (prohibition of contingency fees, liability for third-party funders, prevention of overlapping claims, loser pays principle, ban on punitive damages) and strict requirements for qualified entities (proof of stability, governance that allows for independence; transparency regarding third party funding, prevention of conflicts of interest).
- 2. The opt-out principle conflicts with EU legal principles.** According to European legal principles, consumers cannot be bound by court decisions in which they have not been heard. A class-action lawsuit based on the "opt-out" principle infringes upon these principles and should therefore not be allowed in national or cross-border proceedings.
- 3. Respect national specificities.** Advertising self-regulation has a strong tradition in Europe, and one of its strengths is its ability to adapt to local expectations and fast-changing societies. Private enforcement systems are very common, and civil justice systems vary a great deal. Member States should be able to decide upon the specific implementation of the provisions in this directive, so as to best reconcile them with their existing measures for consumer protection.
- 4. Preserve advertising self-regulation, and well-designed self-regulation in general, by providing space for self-regulatory organisations to operate, including through the provision on Prior Consultation, and when appropriate at national level.** To reduce financial and logistic burdens on Member States' judicial systems, priority should be given to the resolution of cases through out-of-court procedures or Alternative Dispute Resolution mechanisms. Out-of-court resolution systems such as the advertising self-regulatory network have the proven capacity to eliminate thousands of infringing ads every year.
- 5. Remove sector specific Union law from Annex I (GDPR and AVMSD).** Some Union laws have their own specific enforcement system established within the law with references to self-regulation, for example the General Data Protection Regulation (GDPR) and the Audiovisual Media Services Directive (AVMSD). Removing the GDPR and the AVMSD from the scope of this proposal would allow avoiding contradictions between the enforcement systems and double punishment.

