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## European Commission's Plans on Collective Redress

Dear Vice President,  
Dear Mr. Timmermans,

Deutsches Aktieninstitut, the organization of German listed and capital market-oriented companies, follows the European developments on collective redress with close interest. Whilst we consider a high level of consumer protection and facilitation of access to justice as tremendously important, we are concerned as regards the Commission's plans due for publication on 11 April.

An extension of the scope of application of the European Directive on Injunctions including the creation of a compensation-mechanism by means of representative action could considerably harm business and create legal uncertainties, which will also run counter the intended objective of enhancing consumer protection.

Our key concerns summarize as follows:

1. An unprecise or too vague definition of a qualified entity eligible to raise legal claims on behalf of a group, which suffered damage or loss, could potentially open the doors to professional litigators from third countries and third party financiers. Such institutions have considerably contributed to the abuse of collective redress or mass dispute resolution mechanisms in various jurisdictions, most prominently in the United States, by turning legal remedy into a business model. We fear that the criteria for qualified entities as identified by the European Commission will not prove as strong enough as to effectively counter these developments and exclude abusive litigation.
2. The Draft Directive on Representative Actions, that the Commission proposes, leaves the Member States room for manoeuvre when transposing it into national law and will - at least partly - be overlapped by national rules on civil law, civil proceedings and - if existent - national rules on collective redress. Consequently, the standards of remedy will vary from Member State to Member State. This situation enhances forum shopping. Qualified entities could be tempted to raise legal actions not where damages occurred but where the jurisdiction is most favourable for them in both a

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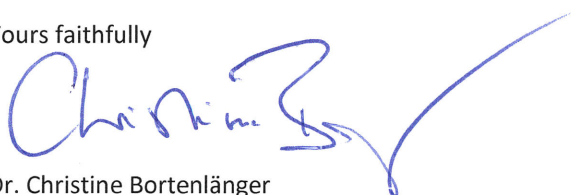
legal and an economic sense. This situation threatens to create incentives for unjustified and improper litigation. Moreover, an uncontrolled or unstructured interaction of European and national rules could lead to a large level legal uncertainties, challenging not only the objective of better consumer protection but the aims of the Commission's Better Regulation Agenda as such.

3. Even though the Commission frequently states that it is not in favour of implementing legal instruments known for their abusive use - especially in connection with US class action law - it nevertheless has opted in its draft for rules on evidence/burden of proof, which resemble US discovery proceedings to a large degree. Such rules stand in sharp contrast to the rules of civil proceedings in Germany as well as in other Member States of the European Union and should be refrained from.
4. The idea to direct the redress in minor cases to a public purpose serving consumers' interests contradicts the idea and the rationale of restitution. We doubt that such a rule would be aligned with the legal and constitutional traditions in numerous EU Member States.

Europe should be warned by the comprehensive negative experiences with collective redress mechanisms in third country jurisdictions. In the United States, imbalanced class action rules have seriously harmed many industries and thereby caused severe macroeconomic consequences. Such developments have to be forestalled in Europe. The Commission's key objectives of growth, jobs and investments are just too important for overcoming the still enduring consequences of the past crisis as to unintentionally challenge them. I kindly ask you and your fellow Commissioners to take these thoughts into consideration ahead of the proposal's adoption.

With best personal wishes for the forthcoming Easter-break,

Yours faithfully



Dr. Christine Bortenlänger  
Executive Member of the Board