

# **EJF Key Pillars of Messages**

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**National transposition  
of the Directive on Representative Actions**

### Overarching message

We want **fair, balanced and effective civil justice systems in Europe to be built and preserved**. The goal is to assure that consumers who have a legitimate grievance are compensated. At the same time, there are **concerns that the new RA Directive does not adequately protect consumers**, bringing new risks. Practical experience in different countries shows that poorly designed collective redress systems result in delays and sometimes create barriers to actually accessing justice. These **problems** can adversely impact consumers, including:

- (i) Claims can be driven by claimant law firms where **consumers have no control over the conduct of the claims**;
- (ii) **Excessive sums** that should form part of damages awards or settlements are **diverted to intermediaries** (e.g., law firms/litigation funders) to the detriment of consumers, thus blunting any compensatory impact;
- (iii) If there is not enough harmonization between national jurisdictions, this may lead to qualified representative entity 'forum shopping', where client **law firms and funders may choose the environment that in their view is more advantageous or beneficial** for the "joint" success of claiming by qualified entities, law firms and/or litigation funders.

As **tools against** these **dangers**, **transparency of funding** and **independent control** as well as **harmonization at EU level** need to be increased **to safeguard consumers from the effects of abusive litigation**. We are open to deepening the dialogue to best support Member State efforts during this decisive period.

## Pillar messages

**Message #1:** Member States should adopt stringent rules on certification of a representative action.

**Message #2:** Member States should require clear Opt-in by all consumers to join any representative action for redress measures in their country.

**Message #3:** Reinforce criteria for Qualified Entities for domestic actions to:

- a) be harmonized to at least the level foreseen for cross-border actions by the RA Directive;
- b) explicitly exclude, and prohibit creation of, *ad hoc* entities for domestic actions

**Message #4:** More effective and efficient regulation of litigation funding is needed, both on Member State and EU levels, plus limitation of other harmful incentives at domestic level (like contingency fees, punitive damages, loser pays-rule with caps on the claims value).

**Message #5:** Member States to *not* accept any domestic effects of foreign court procedures in *representative actions for redress measures* in line with the RA Directive's intention to protect MSs' judicial autonomy.

**Message #6:** Payout of compensation to be closely aligned with claims verified and actually vindicated by identified recipients; to the extent the procedure generates nevertheless undistributed proceeds, channel them towards neutral institutions but not to partial consumer organisations and back to the defendant only if this does not appear as unacceptable for looking like an act of bad faith.