

EU Council Revises and Approves Proposal for Directive on Collective Representative Actions



On 28 November 2019, the Council of the European Union (the *Council*) [revised and approved the proposal](#) for a Directive (the *Draft Directive*) on collective representation actions for the protection of collective interests of consumers.

[The Draft Directive was initially proposed by the European Commission in April 2018](#) and was then [examined, in first reading, by the European Parliament \(the EP\)](#).

The Draft Directive aims to empower qualified entities, such as consumer organisations, to seek, in addition to injunctions, redress measures, including compensation or replacement, on behalf of a group of consumers that has been harmed by a trader in areas such as data protection, financial services, travel and tourism, energy or telecommunications.

In its assessment, the Council amended the Draft Directive in order to distinguish between qualified entities entitled to bring domestic representative actions and those entitled to

bring cross-border representative actions. The former will have to fulfil the criteria set out in the law of the Member State of designation, whereas the latter will have to fulfil the harmonised criteria set out in the Draft Directive itself. Those criteria include (among others):

- Being a legal person properly constituted according to the law of the Member State of designation 18 months prior to the designation request and demonstrating 12 months of actual public activity in the protection of consumers' interests;
- Having a legitimate interest in protecting consumer interests;
- Having a non-profit making character;
- Being in a sound and stable financial situation;
- Not being influenced by persons, other than consumers, who have an economic interest in the bringing of any representative action.

According to the amendments brought by the Council, the Draft Directive should also require EU Member States to choose between an opt-in and an opt-out system. In an opt-in system, consumers will be required to express their wish to be represented by the qualified entity for the purpose of a particular representative action. In an opt-out system, consumers who do not wish to be represented by the qualified entity for the purpose of a particular representative action will be required to make a statement to that effect.

The revised version of the Draft Directive will now be discussed, ~~in second reading~~, in the EP.

Following the decision taken by the Council, the *European Consumer Organisation (BEUC)* published [a press release](#) in which it noted that “[o]n the positive side, [the Council]

expanded the scope of the EU system for collective redress to also cover damages for unsafe products or medical devices". However, BEUC also emphasized that it was worrisome that "Member States want to limit the possibilities for associations representing consumers to get financing for undertaking a collective redress action".

[UPDATE added on 11 February 2020]: The blog post was updated to remove the reference to the fact that the revised version of the Draft Directive would now be discussed in second reading in the EP. Technically, it appears that the Draft Directive is still at the first reading stage. On 9 January 2020, the Legal Affairs Committee of the EP decided to open interinstitutional negotiations with representatives of the Council of the European Union and of the European Commission with a view to reconcile their positions in order to adopt the Directive Proposal without having to enter into a second reading process (see [here](#)).

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