

European Parliament Adopts Collective Redress Directive For Consumers



On 24 November 2020, the European Parliament (the **EP**) adopted a Directive on representative actions for the protection of the collective interests of consumers (the Collective Redress Directive or CRD).

The proposed CRD was initially [published by the European Commission \(the **Commission**\) in April 2018](#). The proposal [was then examined by the EP and by the Council of the European Union \(the **Council**\)](#), which entered into [interinstitutional negotiations in January 2020](#). The EP and the Council [reached a political agreement on the final text of the Directive on 22 June 2020](#). On 4 November 2020, the Council adopted its position at first reading, which has now been formally approved by the EP and has since also been published in the Official Journal (Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, O.J. (2020) L 409/1).

The CRD establishes an EU-wide “class action” or

“representative action”. It covers infringements of EU law which are harmful to the collective interests of natural persons in their capacity as consumers, regardless of whether those consumers are referred to in the relevant instruments as “consumers”, “travellers”, “users”, “customers”, “retail investors”, “data subjects” or otherwise. Accordingly, representative actions may be brought not only for infringements of general EU consumer law, but also of EU rules pertaining to the protection of personal data, geo-blocking, financial services, energy and telecommunications.

The CRD provides for safeguards against the abusive litigation historically associated with class actions in other jurisdictions. First, it does not allow courts to impose punitive damages on the infringing trader. Second, it opts for the “loser pays principle”, which ensures that the unsuccessful party pays the procedural costs of the successful party. Third, EU Member States should ensure that the court or the administrative authority can dismiss manifestly unfounded cases as soon as it has received the necessary information to justify such a decision. Fourth, a further safeguard against abusive litigation is the eligibility for specific entities to represent groups of consumers harmed by relevant infringements of EU law. This is limited to so-called “Qualified Entities”, such as consumer organisations and public bodies.

In order to be eligible to bring cross-border actions, Qualified Entities will have to satisfy a set of criteria that are identical across the EU. Qualified Entities will thus have to (i) demonstrate 12 months of prior activity in protecting consumer interests; (ii) show a legitimate interest in protecting consumers; (iii) present a non-profit making character; (iv) demonstrate not being subject to insolvency proceedings; and (v) demonstrate not collaborating with parties that have economic interests opposed to those of consumers. By contrast, in order to be eligible to bring purely domestic representative actions, Qualified Entities

will have to comply with criteria defined by national law. Generally, EU Member States are not expected to enact special rules but should instead apply to the general rules for representative actions as long as these do not encourage abusive litigation.

Representative actions may seek injunctive measures and/or redress measures. Injunctive measures are described as measures aiming to protect the collective interests of consumers, irrespective of whether any actual loss or damage is suffered by individual consumers and irrespective of whether the practice was committed intentionally or as a result of negligence. Such measures can require a practice to be ceased or require traders to take specific action (e.g., providing consumers with information that was previously missing). Redress measures, in contrast, are defined as measures requiring a trader to provide consumers actually affected by a violation of a relevant provision of EU law with remedies, such as compensation, repair, replacement, a price reduction, contract termination or reimbursement of the price paid, as appropriate and available under EU or national law.

In order to be able to respect their legal traditions, each Member State has the choice between an opt-in mechanism, an opt-out mechanism, or a combination of the two for redress measures. It will also be for the Member State to decide at which stage of the proceedings consumers should exercise this right. Under an opt-in mechanism, consumers are required to make an express wish to be represented by the Qualified Entity in the representative action for redress measures. In an opt-out mechanism, consumers are required to express their wish not to be represented by the Qualified Entity.

EU Member States will have until 25 December 2022 to implement the provisions of the CRD and will have to apply them from 25 June 2023.

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