

Decisive step toward a European collective redress mechanism such as group or class actions

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On 7 December 2018, the European Parliament's Legal Affairs Committee passed a legislative proposal to allow collective redress, such as group or class actions, moving the European Union closer to having a bloc-wide regime.¹

The European Commission has been considering the introduction of a collective redress mechanism for many years² in order to allow European class actions.³ Following the 11 April 2018 publication by the European Commission of proposals on the "New Deal for Consumers",⁴ which aims to introduce new measures supporting collective redress for consumers through revision of the Injunctions Directive (2009/22/EC) (the "New Deal for Consumers"), the Committee on Legal Affairs adopted a report on a proposal for a directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and a repeal of Directive 2009/22/EC (the "Report").

The proposed Directive sets out rules enabling qualified representative entities to seek representative actions aimed at the protection of the collective interests of consumers and thereby, in particular, achieving and enforcing a high level of protection and access to justice, while at the same time ensuring appropriate safeguards to avoid abusive litigation. It shall be without prejudice to other forms of redress mechanisms provided for in national law. It shall respect the fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union and

¹ <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A8-2018-0447&language=EN>; <http://www.europarl.europa.eu/news/en/press-room/20181205IPR21088/first-eu-collective-redress-mechanism-to-protect-consumers>

² See EU Commission, *Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law*, 2013/396/EU, 11 June 2013, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2013_201_R_NS0013.

EU Commission, *Report on the implementation of the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law*, COM (2018) 40 final, 25 January 2018, available at www.ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=49502.

³ Collective redress is a legal term used within the European Union to define a procedural mechanism that, for reasons of procedural economy and/or efficiency of enforcement, allows many similar legal claims to be bundled into a single court action. Hence, it refers to group proceedings such as group or class actions.

⁴ The New Deal comprises two proposals for Directives: a new Directive governing "representative actions for the protection of the collective interests of consumers" to replace the existing Injunctions Directive 2009/22/EC; and a broader Directive amending and 'modernizing' four existing consumer protection directives (the Unfair Commercial Practices Directive 2005/29/EC, the Consumer Rights Directive 2011/83/EU, the Unfair Contract Terms Directive 93/13/EEC, and the Price Indication Directive 98/6/EC).

the European Convention on Human Rights, and particularly the right to a fair and impartial trial and the right to an effective remedy.⁵

Qualified representative entities

Member States or their courts shall designate, within their respective territories, at least **one qualified representative entity** for the purpose of bringing representative actions. They shall provide that the qualified representative entities **disclose publicly**, by appropriate means, such as on its website, in plain and intelligible language, how it is **financed**, its organisational and management structure, its objective and its working methods as well as its activities. Member States shall also establish a **list of representative entities** complying with the criteria and make it publicly available.

They shall communicate the list to the Commission and update it as necessary. The Commission shall publish the lists of representative entities received from the Member States on a **publicly accessible** online portal.

Registry of collective redress actions

Members proposed that Member States may set up a national register for representative actions, which shall be available free of charge to any interested person through electronic means and/or otherwise.

Redress measures

The redress measures aim to grant full compensation to consumers concerned for their loss. In the event of any unclaimed amount left over from the compensation, a court shall decide as to the beneficiary of the remaining unclaimed amount. This unclaimed amount shall not go to the qualified representative entity or to the trader.

In particular, punitive damages, leading to overcompensation in favour of the claimant party of any damage suffered, shall be prohibited. For instance, the compensation awarded to consumers harmed collectively shall not exceed the amount owed by the professional in accordance with the applicable national or Union law in order to cover the actual harm suffered by them individually.

Loser pay principle

The amended text proposed that Member States ensure that the party that loses a collective redress action **reimburses the legal costs** borne by the winning party, subject to the conditions provided for in national law. However, the court or administrative authority shall not award costs to an unsuccessful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

Information on representative actions

Member States shall ensure that the representative entities:

- Inform consumers about any claimed violations of rights granted under Union law and the intention to seek an injunction or to pursue an action for damages.
- Explain at the outset to the consumers concerned of the possibility of joining the action in order to ensure that the relevant documents and other information necessary for the action are kept.
- Where relevant, inform on any subsequent steps and potential legal consequences.

⁵ http://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/JURI/PR/2018/12-06/1165452EN.pdf.

Effects of a final decision

Member States shall ensure that the final decision of a court of any Member State establishing the existence or non-existence of any infringement shall be considered as a rebuttable presumption for the purposes of any other actions seeking redress before their national courts in another Member State against the same professional for the same infringement.

Member States are encouraged to create a **database containing all final decisions on any redress actions** that could facilitate other redress measures and to share their best practices in this field.

Review clause

The Commission shall assess whether cross-border representative actions would be best addressed at the Union level by establishing a **European Ombudsman for collective redress**. No later than three years after the entry into force of this Directive, the Commission shall draw up a report in this regard and submit it to the European Parliament and the Council, accompanied, if appropriate, by a relevant proposal.

The proposal is now awaiting its first reading after being tabled for the plenary.

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