

One step closer to group actions (collective redress) in the EU

April 2019

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On March 26th 2019, the European Parliament approved in a plenary vote rules allowing groups of consumers harmed by illegal practices to launch collective actions and seek compensation¹.

Background

As part of the “New Deal for Consumers”, launched on April 11th 2018 ² by the European Commission to ensure stronger consumer protection in the EU, the European Commission proposed to repeal the existing Directive 2009/22/EC (the “2009 Injunctions Directive”) and replace it with a new directive on the protection of the collective interests of consumers (the “Draft Directive”).

Eligible representation and safeguards

If adopted, the Draft Directive would considerably extend the 2009 Injunctions Directive. In addition to the main areas of consumer protection, a number of areas of law and regulation that relate to the normal functioning of businesses would also be subject to the new European mechanism, such as data protection, financial services, travel and tourism, energy, telecommunications, environment and health.

Under the new draft rules, representative action can only be brought by “*qualified representative entities*” such as consumer organisations and certain independent bodies designated by member states. These should be non-profit and have no financial agreements with law firms.

In addition, the draft rules adopted by the European Parliament clarifies that the Directive does not allow Member States to establish collective redress actions for punitive damages or other types of overcompensation (*article 6 – paragraph 4b*).

The amended version also introduces an obligation for Member States to ensure that no other ongoing collective redress action has been initiated regarding the same facts and parties (*article 5 – paragraph 1*).

¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2019-0222+0+DOC+XML+V0//EN>

² 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).

Under this amended version Member States should require an explicit opt-in from consumers who are not habitually resident in the Member State where the collective redress action is initiated (*article 6 – paragraph 1 – subparagraph 1 a*).

Finally, the text requires the Commission, within three years, to assess if a European Ombudsman for collective redress should be established.

Next steps

The Draft Directive will then be subject to consultation in the European Parliament and the European Council - being specified that talks cannot start before the latter adopts its position - before being published in the Official Journal. Publication in the Official Journal will be followed by a transposition period for Member States.

The Council has not yet been able to adopt a position on the Directive, meaning that the Directive will most likely be considered again after the European elections in May 2019 by a different European Parliament.

Should the Council and the European Parliament find an agreement on the European Commission's proposal, the Directive will then require Member States to implement collective redress mechanisms for violations of specifically designated parts of EU consumer protection law.

At this stage, the next meetings in Council Working Group are scheduled to take place on 12 and 24 April.

Perspectives

The European Union is closer than ever to having a bloc-wide regime on collective redress.

Under the Draft Directive the *"Directive is without prejudice to other forms of redress mechanisms provided for in national law"* (*article 2 – paragraph 3 a*). Within its preamble, it states that the Directive *"does not prevent Member States from maintaining their existing framework, neither does it oblige Member States to amend it"* (*recital 24 of the Directive's preamble*). The Draft Directive only define the essential aspects necessary to establish a framework for collective action by consumers, so that Member States will have to make a significant effort to reform their procedural rules at national level in order to implement the provisions of the directive.

Currently, only 19 member states provide some form of legal remedy to victims of mass harm and proceedings can often be lengthy and costly, especially if victims go to court individually.

One question remains as to how the Draft Directive will interrelate with the existing collective redress mechanisms within the Members States.

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