

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed 2018/0089(COD)
Representative actions for the protection of the collective interests of consumers Repealing Directive 2009/22/EC 2003/0099(COD)	
Subject 4.60.06 Consumers' economic and legal interests 7.40.02 Judicial cooperation in civil and commercial matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Legal Affairs	 DIDIER Geoffroy	24/07/2019
		Shadow rapporteur	
		 WOLTERS Lara  SCHREINEMACHER Liesje  HAUTALA Heidi  LEBRETON Gilles  STANCANELLI Raffaele	
	Former committee responsible		
	 Legal Affairs	 DIDIER Geoffroy	22/05/2018
	Former committee for opinion		
	 Internal Market and Consumer Protection (Associated committee)		
	 Transport and Tourism	 MAYER Georg	23/05/2018
Council of the European Union			

Key events

11/04/2018	Legislative proposal published	COM(2018)0184	Summary
02/05/2018	Committee referral announced in Parliament, 1st reading		
13/09/2018	Referral to associated committees announced in Parliament		
06/12/2018	Vote in committee, 1st reading		
06/12/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
07/12/2018	Committee report tabled for plenary, 1st reading	A8-0447/2018	Summary
10/12/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
12/12/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
25/03/2019	Debate in Parliament		
26/03/2019	Results of vote in Parliament		
26/03/2019	Decision by Parliament, 1st reading	T8-0222/2019	Summary
09/01/2020	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
13/01/2020	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
07/07/2020	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations	PE655.629	
06/11/2020	Council position published	09573/2020	
13/11/2020	Committee referral announced in Parliament, 2nd reading		
16/11/2020	Vote in committee, 2nd reading		
18/11/2020	Committee recommendation tabled for plenary, 2nd reading	A9-0224/2020	
24/11/2020	Debate in Parliament		
24/11/2020	Decision by Parliament, 2nd reading	T9-0316/2020	Summary
25/11/2020	Act approved by Council, 2nd reading		
25/11/2020	Final act signed		
25/11/2020	End of procedure in Parliament		
04/12/2020	Final act published in Official Journal		

Technical information	
Procedure reference	2018/0089(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Repealing Directive 2009/22/EC 2003/0099(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	JURI/9/02015

Documentation gateway					
Legislative proposal		COM(2018)0184	11/04/2018	EC	Summary
Document attached to the procedure		SWD(2018)0096	13/04/2018	EC	
Document attached to the procedure		SWD(2018)0098	13/04/2018	EC	
Economic and Social Committee: opinion, report		CES2126/2018	19/09/2018	ESC	
Document attached to the procedure		N8-0015/2019 OJ C 432 30.11.2018, p. 0017	05/10/2018	EDPS	Summary
Committee of the Regions: opinion		CDR2839/2018	10/10/2018	CofR	
Committee draft report		PE628.647	12/10/2018	EP	
Amendments tabled in committee		PE630.422	08/11/2018	EP	
Amendments tabled in committee		PE630.456	08/11/2018	EP	
Committee opinion	IMCO	PE627.034	23/11/2018	EP	
Committee opinion	TRAN	PE627.831	26/11/2018	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0447/2018	07/12/2018	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0222/2019	26/03/2019	EP	Summary
Commission response to text adopted in plenary		SP(2019)437	30/07/2019	EC	
Council statement on its position		04354/2020	04/11/2020	CSL	
Committee draft report		PE659.054	05/11/2020	EP	
Commission communication on Council's position		COM(2020)0693	05/11/2020	EC	
Council position		09573/1/2020	06/11/2020	CSL	
Committee recommendation tabled for plenary, 2nd reading		A9-0224/2020	18/11/2020	EP	
Text adopted by Parliament, 2nd reading		T9-0316/2020	24/11/2020	EP	Summary

Additional information

Research document

[Briefing](#)

20/01/2020

Final act

[Directive 2020/1828](#)
[OJ L 409 04.12.2020, p. 0001](#)

Representative actions for the protection of the collective interests of consumers

PURPOSE: to improve instruments to put an end to unlawful practices and facilitate remedies when a large number of them are victims of the same infringement of their rights, as part of a mass injury.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the fitness check of EU consumer and marketing law, which also covers [Directive 2009/22/EC](#) of the European Parliament and of the Council on injunctions for the protection of consumers' interests, demonstrated that the risk of infringements of Union law affecting the collective interests of consumers is increasing due to economic globalisation and digitalisation. In view of the increase in cross-border trade, it is increasingly common for such infringements to affect consumers in several Member States.

The absence of an EU-wide collective redress mechanism is of particular practical relevance to consumer protection, as shown by concrete cases, including the diesel emissions case.

In its [resolution of 2 February 2012](#), the European Parliament stressed the need for a horizontal EU approach to collective redress focusing on breaches of consumer rights, based on a common set of principles respecting national legal traditions and providing safeguards against abusive litigation.

In this context, this proposal aims to modernise and replace Directive 2009/22/EC on injunctions. It is presented together with the [proposal](#) on targeted amendments to four EU consumer law Directives as part of the "New Deal for Consumers".

IMPACT ASSESSMENT: the option chosen is to tighten the rules on sanctions, to improve the efficiency of the injunction procedure and to add other measures concerning collective redress for consumers. Stronger mechanisms for collective redress would ensure a higher level of consumer protection in mass harm situations and reduce consumer detriment. As concerns efficiency, all options could lead to initial familiarisation costs, but also to savings for compliant traders.

CONTENT: the new Directive replacing Directive 2009/22/EC would aim to ensure that "qualified entities" - for example consumer organisations - may seek representative actions to protect the collective interests of consumers.

For example, in a Dieselgate-type scenario, victims of unfair commercial practices, such as misleading advertising by car manufacturers, will be able to obtain remedies collectively through a representative action under this proposal. Such collective redress was previously not provided under Union law.

The proposed new Directive:

- covers all infringements by traders of Union law that harm or may harm the collective interests of consumers in a variety of sectors such as financial services, energy, telecommunications, health and the environment;
- enables qualified entities to be able to seek measures aimed at eliminating the continuing effects of the infringement. These measures should take the form of a redress order obligating the trader to provide for, inter alia, compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under national laws. These qualified entities will have to satisfy minimum reputational criteria (they must be properly established, not for profit and have a legitimate interest in ensuring compliance with the relevant EU law). For compensatory collective redress actions, qualified entities would also be required to disclose to the courts or administrative authorities their financial capacity and the origin of their funds supporting the action and to ensure that there are no conflicts of interests or risks of abuse in a given case;
- sets out the rules requiring the infringing trader to adequately inform the consumers concerned about the final injunction orders, final decisions on measures eliminating continuing effects of the infringements. This provision ensures consumers' awareness about the breach of law and their redress opportunities;
- requires Member States to ensure that all representative actions are treated with due diligence and that representative actions seeking an interim injunction order are dealt with under an accelerated procedure, while avoiding that procedural costs become a financial barrier to representative actions;
- favours collective out-of-court settlements, under the control of the courts or administrative authorities. If a decision finding an infringement has become final, it should be irrefutable evidence in any subsequent redress action in the same Member State;
- ensures the application of effective, dissuasive and proportionate sanctions in cases where a defendant does not comply with a final decision of a court or administrative authority in a representative action.

Representative actions for the protection of the collective interests of consumers

OPINION of the European Data Protection Supervisor (EDPS) on the legislative package A new deal for consumers.

This opinion sets out the EDPS's position on the legislative package entitled 'A new deal for consumers', which consists of (i) a [proposal for a Directive](#) as regards better enforcement and modernisation of EU consumer protection rules; (ii) the proposal for a Directive on representative actions for the protection of the collective interests of consumers.

While welcoming the new proposal on collective redress, the EDPS considers that the qualified entities that will be able to bring the representative actions in this field under the Proposal should be subject to the same conditions as set out in Article 80 General Data Protection Regulation (GDPR).

Along the same lines, the Proposal on collective redress should clarify that the representative actions regarding data protection issues can only be brought before administrative authorities that are the data protection supervisory authority within the meaning of Articles 4(21) and 51 GDPR.

The EDPS considers that the application of two different mechanisms on collective redress, to the GDPR and to the future e-Privacy Regulation, alongside other substantive points of interaction between consumer and data protection, requires more systematic cooperation between the consumer protection and data protection authorities that could be done, for instance, within the already existing voluntary network of the enforcement bodies from competition, consumer and data protection areas the Digital Clearinghouse.

In this context, the EDPS considers that it is important to further explore the synergies between the data protection and consumer law. It recommends that the cooperation between the consumer protection and data protection authorities should become more systematic wherever specific issues that are of interest for both side arise, in which consumer welfare and data protection concerns appear to be at stake.

Representative actions for the protection of the collective interests of consumers

The Committee on Legal Affairs adopted the report by Geoffroy DIDIER (EPP, FR) on the 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 repealing Directive 2009/22/EC.

The Committee on Internal Market and Consumer Protection, exercising its prerogative as an associated committee in accordance with [Rule 54 of the Rules of Procedure](#), also gave its opinion on the report.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal.

Subject matter: 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, achieve and enforce 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.

Scope: it shall respect the fundamental rights, and observe the principles, recognised by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights, and in particular the right to a fair and impartial trial and the right to an effective remedy.

Qualified representative entities: Member States or its courts shall designate within their respective territory at least one qualified representative entities 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 updated where necessary.

The Commission shall publish the list 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 consumers concerned full compensation for their loss. In case of unclaimed amount left from the compensation, a court shall decide on the beneficiary of the remaining unclaimed amount. This unclaimed amount shall not go to the qualified representative entity nor to the trader.

In particular, punitive damages, leading to overcompensation in favour of the claimant party of the damage suffered, shall be prohibited. For instance, the compensation awarded to consumers harmed collectively shall not exceed the amount owed by the trader 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 shall 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 the 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 the claimed violation of rights granted under Union law and the intention to seek an injunction or to pursue an action for damages,
- explain to consumers concerned already on beforehand the possibility to join the action in order to ensure that the relevant documents and other information necessary for the action are kept.
- where relevant, inform about subsequent steps and the potential legal consequences.

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

Member States are encouraged to create a database containing all final decisions on 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 could be best addressed at 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.

Representative actions for the protection of the collective interests of consumers

The European Parliament adopted by 579 votes to 33 with 43 abstentions a legislative resolution on the 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 repealing Directive 2009/22/EC.

The position of the European Parliament adopted at first reading under the ordinary legislative procedure has amended the Commission proposal as follows:

Purpose

The proposed directive would set out rules enabling qualified representative entities which represent the collective interest of consumers, to seek remedy and thereby, in particular, to achieve and enforce a high level of protection and access to justice, while at the same time ensuring appropriate safeguards to avoid abusive litigation. The directive would apply to representative actions brought against infringements with a high impact on consumers by professionals. It would be without prejudice to other forms of redress mechanisms provided for in national law.

The directive would respect the fundamental rights, and observe the principles, recognised by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights, and in particular the right to a fair and impartial trial and the right to an effective remedy.

Qualified entities

Member States or their courts would designate within their respective territory at least one qualified representative entity for the purpose of bringing representative actions. Such entities should be non-profit-making, independent of market operators, including financially, have an established procedure to prevent conflicts of interest and should not have financial agreements with law firms.

These entities would 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 updated where necessary.

The Commission shall publish the list of representative entities received from the Member States on a publicly accessible online portal.

Registry of collective redress actions

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

Redress measures

The redress measures aim to grant consumers concerned full compensation for their loss. In case of unclaimed amount left from the compensation, a court shall decide on the beneficiary of the remaining unclaimed amount. This unclaimed amount shall not go to the qualified representative entity nor to the trader.

In particular, punitive damages, leading to overcompensation in favour of the claimant party of the damage suffered, shall be prohibited. For instance, the compensation awarded to consumers harmed collectively shall not exceed the amount owed by the trader 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 would 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 should not award costs to the unsuccessful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

Information on representative actions

Member States should ensure that the representative entities:

- inform consumers about the claimed violation of rights granted under Union law and the intention to seek an injunction or to pursue an action for damages,
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- where relevant, inform about subsequent steps and the potential legal consequences.

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

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

Cross-border representative actions

The amended text clarifies that the Member State in which a collective redress procedure takes place could require a mandate from the consumers who are resident in this Member State and should require a mandate from individual consumers based in another Member State where the action is cross-border.

Public Register

The competent national authorities should set up a public register of unlawful acts which have been the subject of injunction orders in accordance with the provisions of the directive.

Representative actions for the protection of the collective interests of consumers

The European Parliament adopted a legislative resolution approving the Council's position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC.

The proposed Directive modernises and replaces the Injunctions Directive by providing for redress measures as well as injunction measures in case of infringements of Union law affecting a group of consumers.

More specifically, the proposal enables qualified entities, designated by the Member States, to bring representative actions for the purpose of both injunctive and redress measures in case of infringements of Union law affecting a group of consumers.