

Representative actions for the protection of the collective interests of consumers

2018/0089(COD) - 07/12/2018 - Committee report tabled for plenary, 1st reading/single reading

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.