

Representative actions for the protection of the collective interests of consumers

2018/0089(COD) - 26/03/2019 - Text adopted by Parliament, 1st reading/single reading

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,
- 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 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.