



Council of the
European Union

Brussels, 27 October 2020
(OR. en)

11846/20
ADD 1

Interinstitutional File:
2018/0089(COD)

CODEC 988
CONSOM 168
MI 399
ENT 117
JUSTCIV 108
DENLEG 65

'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Draft 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 (first reading) - Decision to use the written procedure for the adoption of the Council's position at first reading and of the statement of the Council's reasons = Statement

Statement by Ireland

Ireland has two main areas of concern with the text of the Directive.

Firstly, in relation to article 10.1 of the text which deals with funding of representative actions for redress by 3rd parties who are not necessarily associated with the request to launch a representative action. Funding of civil litigation by 3rd parties is not permitted in the Irish legal system and the introduction of this principle for representative actions presents us with significant legal challenges. We flagged our concerns with this issue during the discussions on the file both at the attaché working party meetings and at COREPER 1 on 17 June last. We indicated that we would have considerable difficulties with accepting this wording due to the nature of our common law system.

We now have to deal with these implications in applying this article as part of the transposition process. However, we would like this Committee to take note that the domestic challenges which we will face will require extensive analysis, consultation and making changes to our legal system in due course. These changes will not be completed quickly or easily, and it may well take longer than the transposition period allowed for in the text of the Directive. On a wider point, we believe that we are being placed at a disadvantage at EU level in the context of negotiations on legal instruments such as this Directive where we operate on a common law system rather than a codified judicial system. Such issues will arise again, and we would like to believe that our concerns with making fundamental changes to our common law system would be listened to by this Committee in the future.

Secondly, regarding article 20 of the Directive which deals with assistance for qualified entities. Ireland has difficulty accepting any proposal that obliges the Member State to provide certain types of assistance to 3rd party organisations, in this instance to qualified entities. Ireland has been consistent in registering its opposition to being legally obliged to apply such a provision thereby placing a burden on the public finances and creating a new precedent for funding organisations engaged in civil litigation. However, while the provisions in the current text of article 20.1 refers to ‘costs of the proceedings’ not preventing qualified entities seeking to exercise their rights under article 7, the text at article 20.2 further leverages this obligation on Member States. The text adds that this assistance may take the form of (1) public funding including structural support for the qualified entities, (2) the limitation of applicable court or administrative fees or (3) access to legal aid. These are significant structural interventions that are required of the Member State, and one which Ireland will find difficult to meet, particularly now with added pressures on our public finances. Ireland asks the Committee to take note of our opposition to the text at article 20.2 and our significant concerns that this will place pressures on our public finances that have not been accurately modelled, costed or assessed.

In relation to article 20.3, we believe that this is a regressive step. The legislative provision here provides for the Member State to allow qualified entities to require modest entry fees or similar participation charges from those consumers who have expressed their willingness to be represented by a qualified entity within a particular representative action. Ireland has indicated on several occasions that it does not support putting financial obligations on consumers who wish to participate in a representative action. The matter of accessing a representative action should be made as straightforward as possible for our consumers and the current text serves as a disincentive to that aim. We believe that consumers should be encouraged to get involved in representative actions where an infringement of their consumer rights has taken place and that no financial barriers should be put in the way. This will, we believe, make it more difficult to encourage consumers to exercise their new rights under this Directive and become involved in representative actions.

Throughout this process, we voiced real concerns about certain legislative provisions in this text, which were clearly not heard. This is not a conducive environment in which to encourage Member States and their officials to fully participate in the drafting of legislation which is designed to protect European consumers and ensure that all businesses are required to operate to the same standards of consumer protection.
