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#### **OUTCOME OF PROCEEDINGS**

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From: General Secretariat of the Council  
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To: Delegations

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Subject: 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

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Delegations will find in annex the text endorsed by Coreper on June 30th on above proposal.

2018/0089 (COD)

**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**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C [...], [...], p. [...].

Whereas:

- (-1) Globalisation and digitalisation have increased the risk of a large number of consumers being harmed by the same unlawful practice. Infringements of Union law cause consumer detriment. Without effective means to obtain the cessation of unlawful practices and redress losses of consumers, consumer confidence in the internal market is hindered.
- (-1a) Lack of effective means of enforcement of Union law protecting consumers could also give rise to distortion of fair competition between infringing traders and compliant traders that operate either domestically or cross-border. This could hamper the smooth functioning of the internal market.
- (-1b) In accordance with Article 26(2) of the Treaty on the Functioning of the European Union (TFEU), the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. The internal market should provide consumers with added value in the form of better quality, greater variety, reasonable prices and high safety standards for goods and services, which should promote a high level of consumer protection.
- (-1c) Article 169(1) and point (a) of Article 169(2) TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies are to ensure a high level of consumer protection.
- (2) Directive 2009/22/EC of the European Parliament and of the Council enabled qualified entities to bring representative actions primarily aimed at stopping and prohibiting infringements of Union law harmful to the collective interests of consumers. However, that Directive did not sufficiently address the challenges for the enforcement of consumer law. To improve the deterrence of unlawful practices and to reduce consumer detriment in an increasingly globalised and digitalised marketplace, it is necessary to strengthen the mechanism for protection of collective interests of consumers to cover redress measures as well as injunction measures. Given the numerous changes required, it is appropriate to replace Directive 2009/22/EC.

- (2a) Representative action procedures, both for injunction and redress measures, vary across the Union and offer different level of protection for consumers. There are also Member States that at present do not have any collective redress procedure in place. This diminishes consumers' and businesses' confidence and ability to operate in the internal market, distorts competition and hampers the effective enforcement of Union law in the field of consumer protection.
- (2b) This Directive should therefore be aimed at ensuring that at least one representative action procedure for injunction and redress measures is available to consumers in all Member States, which allows for effective and efficient representative actions available at national and the Union level. This would boost consumer confidence, empower consumers to exercise their rights, contribute to fairer competition and create a level playing field for traders operating in the internal market.
- (2c) This Directive aims to contribute to the functioning of the internal market and the achievement of a high level of consumer protection by enabling qualified entities, which represent the collective interests of consumers, to bring representative actions for the purpose of both injunction and redress measures against traders infringing provisions of Union law. The qualified entities should be able to ask to stop or prohibit an infringement and to seek redress, such as compensation, repair or price reduction as appropriate and available under Union and national laws.

- (3) A representative action should offer an effective and efficient way of protecting the collective interests of consumers. It should allow qualified entities to act with the aim of ensuring compliance with relevant provisions of Union law and to overcome the obstacles faced by consumers within individual actions, such as the uncertainty about their rights and available procedural mechanisms, psychological reluctance to take action and the negative balance of the expected costs and benefits of the individual action.
- (4) It is important to ensure the necessary balance between access to justice and procedural safeguards against abusive litigation which could unjustifiably hinder the ability of businesses to operate in the internal market. To prevent the misuse of representative actions, elements such as punitive damages should be avoided and rules on certain procedural aspects, such as the designation and funding of qualified entities, should be laid down.

- (4a) This Directive should not replace existing national procedural mechanisms aiming at the protection of collective or individual consumer interests. Taking into account their legal traditions, it leaves to the discretion of the Member States whether to design the representative action set out by this Directive as a part of an existing or future collective injunction or redress mechanism or as a separate mechanism, insofar as at least one national procedural mechanism in the form of representative action complies with the modalities set by this Directive. For instance, this Directive should not prevent Member States from enacting legislation on actions for a declaratory decision even though this Directive does not provide for rules on such actions. If there are mechanisms in place at national level in addition to the mechanism required by this Directive, the qualified entity could choose which mechanism to use.
- (4b) In line with the principle of procedural autonomy, this Directive should not contain provisions on all aspects of proceedings in representative actions. Consequently, it is for the Member States to set down rules, for instance, on admissibility, evidence or means of appeal applicable to representative actions. For example, it should be for Member States to decide on the required degree of similarity of individual claims or the minimum number of consumers concerned by an action for redress for the purpose of a case being admitted to be heard as a representative action. Such national rules should not hamper the effective functioning of representative actions as set out by this Directive. In accordance with the principle of non-discrimination, the admissibility requirements applied to specific crossborder representative actions should not differ from those applied to specific domestic representative actions. A dismissal of the action should not affect the rights of the consumers concerned by the action.

- (6) The scope of this Directive should reflect the recent developments in the field of consumer protection. Since consumers now operate in a wider and increasingly digitalised market, achieving a high level of consumer protection requires that areas such as data protection, financial services, travel and tourism, energy and telecommunications are covered by the Directive, in addition to general consumer law. In particular, as there is increased consumer demand for financial and investment services, it is important to improve the enforcement of consumer law in these fields. Also in the field of digital services, the consumer market has evolved and there is an increased need for a more efficient enforcement of consumer law, including data protection.
- (6a) The Directive should cover infringements of provisions of Union law listed in Annex I to this Directive to the extent that these provisions protect the interests of consumers, regardless of whether they are referred to as consumers or as travellers, users, customers, retail investors, retail clients, data subjects or other. However, it should protect the interests of natural persons that may be harmed or have been harmed by those infringements only if they qualify as consumers according to this Directive. Infringements harming natural persons qualifying as traders should not be covered.
- (6b) This Directive should be without prejudice to the legal acts listed in Annex I and therefore it should not change or extend the definitions provided therein or replace any enforcement mechanisms that those legal acts may contain. For example, the enforcement mechanisms provided for or based on Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation) could, if applicable, still be used for the protection of the collective interests of consumers.

- (6c) For the sake of clarity, the scope of this Directive should be set out as precisely as possible in Annex I. If the legal acts listed in Annex I contain provisions that do not relate to consumer protection, reference should be made to the specific provisions that protect consumers' interests. However, such references are not always feasible or possible due to the structure of certain legal acts, in particular in the field of financial services, including investment services.
- (6d) To ensure adequate response to infringement to Union law, the form and scale of which is quickly evolving, it should be considered, each time where a new Union act relevant for the protection of the collective interests of consumers is adopted, whether to amend Annex I to this Directive in order to place the new act under the scope of this Directive.
- (6e) Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may for instance maintain or introduce national legislation corresponding to the provisions of this Directive, or certain of its provisions, in relation to disputes that fall outside the scope of Annex I.



- (7a) Since both judicial and administrative procedures may effectively and efficiently serve the protection of the collective interests of consumers, it is left to the discretion of the Member States whether the representative action can be brought in judicial or administrative proceedings, or both, depending on the relevant area of law or relevant economic sector. This shall be without prejudice to the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union, whereby Member States shall ensure that consumers and traders have the right to an effective remedy before a court or tribunal, against any administrative decision taken pursuant to national provisions implementing this Directive. This shall include the possibility for the parties to obtain a decision granting suspension of enforcement of the disputed decision, in accordance with national law.
- (8) Building on Directive 2009/22/EC, this Directive should cover both domestic and cross-border infringements, in particular when consumers affected by an infringement live in one or several Member States other than the Member State where the infringing trader is established. It should also cover infringements which have ceased before the representative action has been started or concluded, since it may still be necessary to prevent the repetition of the practice by prohibiting it, to establish that a given practice constituted an infringement and to facilitate consumer redress.

- (9) This Directive should not affect the application of nor establish rules on private international law regarding jurisdiction, the recognition and enforcement of judgments or applicable law. The existing Union law instruments apply to the representative actions set out by this Directive. In particular, Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Ia), Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) should apply to the representative actions set out by this Directive.
- (9-a) It should be noted that Brussels Ia does not cover competence of administrative authorities nor recognition or enforcement of decisions by such authorities. These questions should be left to national law.

- (9a) As the case may be, it could be possible, in accordance with rules on private international law, for a qualified entity to bring a representative action in the Member State where it has been designated as well as in another Member State. Building on Directive 2009/22/EC, this Directive should make a distinction between these two types of representative actions. When a qualified entity brings a representative action in another Member State than the one of its designation, that action should be considered a cross-border action. When a qualified entity brings a representative action in the Member State where it is designated, it should be considered a domestic representative action even if that action is brought against a trader domiciled in another Member State or even if consumers from several Member States are represented within that action. Decisive for determining the type of the representative action should be the Member State in which the action is brought. For this reason, a domestic representative action could not become a cross-border one during the course of proceedings, or vice versa.
- (9b) Consumer organisations in particular should play an active role in ensuring compliance with relevant provisions of Union law and are all well placed to apply for the status of qualified entity in accordance with national law. According to national legal traditions, public bodies could also play an active role in ensuring compliance with relevant provisions of Union law by bringing the representative actions set out by this Directive.

- (10) For the purpose of cross-border representative actions, qualified entities should comply with the same criteria across the Union. In particular, they would need to be legal persons properly constituted according to the law of a Member State, have a certain degree of permanence and public activity, have a non-profit making character and have a legitimate interest, in light of their statutory purpose, in protecting consumer interests as provided by relevant Union law. Qualified entities should not be subject to insolvency procedure or declared insolvent. They should be independent and not influenced by persons, other than consumers, who have an economic interest in the bringing of any representative action, in particular by traders or hedge funds, including in case of funding by third parties, and should have established procedures preventing such influence as well as conflict of interest between itself, its funders and consumer interest. They should disclose publicly by any appropriate means, in particular on its website, in plain and intelligible language, information demonstrating compliance with the designation criteria and general information about the sources of its funding in general, its organisational, management and membership structure, objectives and activities.
- (10a) Regarding qualified entities designated for the purpose of domestic representative actions, the Member States should be able to establish the criteria for such entities freely in accordance with their national legislation. However, Member States should be able to apply the criteria set out by this Directive for qualified entities designated for the purpose of cross-border actions also in respect of qualified entities acting only for the purpose of domestic actions.
- (10b) Any criteria applied to qualified entities in cross-border or domestic representative actions should not hamper the effective functioning of representative actions as set out by this Directive.

- (11a) Member States should be able to designate qualified entities in advance. This Directive does not encourage Member States to introduce the possibility to designate qualified entities on an ad hoc basis. However, for the purpose of domestic representative actions, Member States could also or alternatively designate qualified entities on an ad hoc basis for a specific action. Such designation could be made by the court or administrative authority seized, including by way of acceptance, where applicable. However, for the purpose of cross-border representative actions, common safeguards are needed. Therefore, qualified entities designated on an ad hoc basis should not be allowed to bring cross-border representative actions.
- (11b) It should be for the designating Member State to ensure that the qualified entity designated for the purpose of cross-border representative actions fulfils the criteria, to assess whether it continues to comply with them and, if necessary, to revoke the designation of the qualified entity. Member States should assess the compliance by qualified entities with the criteria at least every five years.
- (11c) If concerns appear regarding the compliance with the criteria by a qualified entity, the Member State that designated that entity should investigate the concerns and, where appropriate, revoke the designation. Member States should designate national contact points for the purpose of transmitting and receiving requests for investigations.

- (11d) Member States should ensure that cross-border representative actions can be brought in their courts or administrative authorities by qualified entities designated for the purpose of such representative actions in another Member State. Furthermore, qualified entities from different Member States should be able to join forces within a single representative action in front of a single forum, subject to relevant rules on competent jurisdiction. This should be without prejudice to the right of the court or administrative authority seized to examine whether the action is suitable to be heard as a single representative action.
- (11e) The mutual recognition of the legal standing of qualified entities designated for the purpose of cross-border representative actions should be ensured. The identity of these organisations and public bodies should be communicated to the Commission and the Commission should make that list publicly available. Inclusion on the list should serve as proof of the legal standing of the organisation or public body bringing the action. This should be without prejudice to the right to examine whether the purpose of the qualified entity justifies its taking action in a specific case.
- (12a) Injunction measures aim at the protection of the collective interests of consumers independently of any actual loss or damage suffered by individual consumers. Injunction measures may require traders to take specific action, such as providing consumers with the information previously omitted in violation of legal obligations. A decision on an injunction measure should not depend on whether the practice was committed intentionally or by negligence.

- (12b) When bringing a representative action, the qualified entity should provide sufficient information on the consumers concerned by the action to the court or the administrative authority. The information should allow the court or the administrative authority to establish its jurisdiction and the applicable law. In a case related to tort this would require informing the court or the administrative authority of the place where the harmful event affecting the consumers occurred or may occur. The detail of the required information could differ depending on which measure the qualified entity is seeking and whether an opt-in or an opt-out mechanism is applied. Furthermore, when bringing a representative action for injunction measures, the possible suspension or interruption of limitation periods applicable to subsequent claims for redress would require the qualified entity to provide sufficient information on the group of consumers concerned by the action.
- (13) Member States should ensure that qualified entities are able to seek injunction measures and redress measures. With the objective of the procedural effectiveness of representative actions, Member States should be able to decide that qualified entities have the possibility to seek injunction and redress measures within a single representative action or within separate representative actions. If sought within a single action, qualified entities should be able to seek all relevant measures at the moment of bringing the action or first seek relevant injunction measures and subsequently and if appropriate redress measures.

(13a) The qualified entity bringing the representative action under this Directive should be seeking the relevant measures, including redress measures, in the interests and on behalf of the consumers affected by an infringement. The qualified entity should have the procedural rights and obligations of the claimant party to the proceedings. Member States could provide individual consumers concerned by the action with certain rights within the representative action, but they should not be claimant party to the proceedings. In any case, individual consumers should not be able to interfere with the procedural decisions undertaken by the qualified entities, individually request evidence within the proceedings or individually appeal the procedural decisions of the court or the administrative authority overseeing the representative action. Neither should the individual consumers have procedural obligations within the representative action nor bear the costs of the proceedings, except in exceptional circumstances.

(13b) However, the consumers concerned should be entitled to benefit from the representative action. In representative actions for redress measures, these benefits would come in form of remedies, such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid. In representative actions for injunction measures, the benefit would be the cessation or prohibition of a practice that constitutes an infringement.



(13c) In representative actions for redress the defeated party should pay the costs of the proceedings borne by the successful party, in accordance with the conditions and exceptions provided for in national law. However, the court or administrative authority should not order the defeated party to pay the costs to the extent they were unnecessarily incurred. Individual consumers concerned by an action should not pay the costs of the proceedings. However, in exceptional circumstances, individual consumers concerned by a representative action for redress may be ordered to pay the costs of the proceedings that were deliberately or negligently caused by that individual consumer by, for example, prolonging the proceedings by unlawful conduct. The costs of the proceedings should include, for example, any costs resulting from the fact that either party was represented by a lawyer or another legal professional, or any costs arising from the service or translation of documents.

(13ca) In order to avoid risks of abusive litigation and in accordance with national law, Member States should set out or maintain rules so that the court or administrative authority may decide to dismiss manifestly unfounded cases as soon as the court or administrative authority has received the necessary information in order to motivate such decision. Member States should not be obliged to introduce special rules applicable to representative actions and may apply the general rules of proceedings meeting this objective.

- (14a) Injunction measures should include definitive and provisional measures. The latter could cover interim, precautionary and preventive measures for stopping an ongoing practice or prohibiting a practice in case the practice has not been carried out but there is a risk that it would cause serious or irreversible harm to consumers. Injunction measures could also include measures establishing that a given practice constitutes an infringement of law, in cases where that practice ceased before the representative actions has been brought, when there is still a need for establishing that such a practice constituted an infringement of law, for instance to facilitate follow-up actions for redress measures. They could, moreover, include an obligation for the infringing trader to publish the decision on the measure in full or in part, in such form as deemed adequate, or to publish a corrective statement.
- (14b) Building on directive 2009/22/EC, Member States should be able to require that a prior consultation be undertaken by the party that intends to bring an action for an injunction, in order to give the defendant an opportunity to bring the contested infringement to an end. Member States should be able to require that this prior consultation takes place jointly with an independent public body designated by those Member States. Where the Member States have established that there should be prior consultation, a deadline of two weeks after the request for consultation is received should be set after which, should the cessation of the infringement not be achieved, the applicant should be entitled to bring an action, without any further delay, before the competent court or administrative authority. These requirements could, in accordance with national law, be applied also to actions for redress measures.

- (15a) This Directive provides for a procedural mechanism, which does not affect the rules establishing substantive rights of consumers to contractual and non-contractual remedies in case their interests have been harmed by an infringement, such as the right to compensation for damages, contract termination, reimbursement, replacement, repair or price reduction as appropriate and as available under Union or national law. This Directive should not enable punitive damages being imposed on the infringing trader, in accordance with national law. A representative action seeking redress under this Directive can only be brought where Union or national law provides for such substantive rights.
- (15b) Consumers concerned by a representative action for redress should have adequate opportunities, after the action has been brought, to express their will on whether or not to be represented by the qualified entity in that specific representative action and whether or not to benefit from the relevant outcomes of that representative action. To best respond to their legal traditions, Member States should provide for an opt-in or opt-out mechanism, or a combination of both. In an opt-in mechanism, consumers should be required to explicitly express their will to be represented by the qualified entity within a representative action for redress. In an opt-out mechanism, consumers should be required to explicitly express their will not to be represented by the qualified entity within a representative action for redress. Member States should be able to decide at which stage of the representative action the individual consumers could exercise their right to opt in or opt out from the proceedings.
- (15ba) Member States providing for an opt-in mechanism should be able to require that some consumers opt in to the action for a redress measure before the action has been brought as long as other consumers have an opportunity to opt in also after the action has been brought.

- (15c) However, in order to ensure sound administration of justice and to avoid irreconcilable judgments, an opt-in mechanism should be required regarding a representative action for redress when the consumers affected by an infringement do not habitually reside in the Member State of the court or administrative authority before which the representative action is brought. In such a situation, consumers should have to explicitly express their will to be represented in that representative action in order to be bound by the outcome of the action.
- (15d) When consumers explicitly or tacitly express their will to be represented by a qualified entity within a representative action for redress, whether that action is brought within an opt-in or an opt-out mechanism, they should no longer be able to be represented in other representative actions nor bring individual actions with the same cause of action and against the same trader. However, this should not apply if a consumer, after having explicitly or tacitly expressed his or her will to be represented within a representative action for redress, later opts out from that action in accordance with national law, for example when a consumer later refuses to be bound by a settlement.
- (15e) For expediency and efficiency reasons, the Member States in accordance with their national laws could also provide consumers with the possibility to directly benefit from a redress measure after it was issued without other requirements on prior participation in the action.

- (15f) Member States should lay down rules for the coordination between representative actions, individual actions initiated by individual consumers and any other actions aimed at the protection of individual and collective interests of consumers as provided under Union and national law. Injunction measures issued under this Directive should be without prejudice to individual redress actions brought by consumers harmed by the practice subject to the injunction measures.
- (18) Member States should require qualified entities to provide sufficient information to support a representative action for redress, including a description of the group of consumers affected by an infringement and the questions of fact and law to be resolved within the representative action. The qualified entity should not be required to individually identify all consumers concerned by the action in order to initiate it. In representative actions for redress the court or administrative authority should verify at the earliest possible stage of the proceedings whether the case is suitable for being brought as a representative action, given the nature of the infringement and characteristics of the damages suffered by the consumers affected.
- (19a) The redress measure should identify the individual consumers or at least describe the group of consumers entitled to remedies provided by that measure, and if applicable state the method of quantification and the relevant steps to be taken by consumers and traders for the implementation of the remedies. Consumers entitled to remedies should be able to recover these remedies without having to initiate separate proceedings. For example, a requirement for separate proceedings implies the obligation for the consumer to bring an individual action to a court or an administrative authority for the quantification of harm. Conversely, in order to obtain individual redress, consumers may be required to take certain steps, such as addressing themselves to an entity in charge of the enforcement of the redress measure.

(19b) Member States should lay down or maintain rules on time limits, such as limitation periods or other time limits for exercising their right to redress, for individual consumers to benefit from the redress measures. Member States may lay down rules on the destination of any outstanding redress funds that were not recovered within the established time limits.

(25) Qualified entities should be fully transparent to the court or administrative authority about the source of funding of their activity in general and regarding the funds supporting a specific representative action for redress in order to enable courts or administrative authorities to assess whether the third party funding, insofar as allowed in accordance with national law, complies with the conditions provided in this Directive and, whether there may be a conflict of interest between the third party funder and the qualified entity and to avoid risks of abusive litigation or whether the funding by a third party having an economic interest in the bringing or the outcome of the representative action for redress should not divert the action from the protection of the collective interests of consumers. The information provided by the qualified entity to the court or administrative authority should enable it to assess whether the third party may unduly influence procedural decisions of the qualified entity in the context of the representative action, including on settlements in a way that would be detrimental to the collective interest of consumers concerned and whether it provides financing for a representative action for redress against a defendant who is a competitor of the fund provider or against a defendant on whom the fund provider is dependant. Direct funding of a specific representative action provided by a trader operating in the same market as the defendant should be considered as implying a conflict of interest since the competitor may have an economic interest in the outcome of the representative action, which is not the same as the consumers' interest. Indirect funding of the action by organizations funded through equal contributions by its members or through donations, including traders' donations in the framework of corporate social responsibility initiatives or crowdfunding, should be eligible for third party funding provided that it complies with the requirements on transparency, independence and absence of conflict of interests. If any conflicts of interests are confirmed, the court or administrative authority should be empowered to take appropriate measures, such as requiring the qualified entity to refuse or change the relevant funding and, if necessary, rejecting the legal standing of the qualified entity or dismissing a specific action. Such a rejection or dismissal should not affect the rights of the consumers concerned by the action.

- (26) Collective settlements aimed at providing redress to harmed consumers should be encouraged within a representative action for redress measures.
- (28) The court and administrative authority should be able to invite the trader and the qualified entity which brought the representative action for redress to enter into negotiations aimed at reaching a settlement on redress to be provided to consumers concerned by the action.
- (30) Any settlement reached within the context of a representative action for redress should be approved by the relevant court or administrative authority unless the conditions of the settlement cannot be enforced or the settlement is contrary to mandatory national law, applicable to the cause of the action, which by way of contract cannot be departed from to the detriment of consumers. For example, a settlement which would explicitly leave unchanged a term of contract giving the trader an exclusive right to interpret any other term of that contract could be against mandatory national law.
- (30a) Member States should be able to set out rules allowing the court or administrative authority to refuse to approve a settlement also when the court or administrative authority considers the settlement unfair.



- (30b) Approved settlements should be binding upon the qualified entity, the trader and the individual consumers concerned. However, Member States could set out rules according to which the individual consumers concerned are given the possibility to accept or to refuse to be bound by a settlement.
- (31) Ensuring that consumers are informed about a representative action is crucial for its success. Consumers should be informed by qualified entities on their websites about the representative actions they have decided to bring to the court or administrative authority, the state of play of actions they have already brought and the outcomes of such actions, to be enabled to take an informed decision on whether they wish to benefit from an action and to take the relevant steps in a timely manner. In particular, the information should include, as relevant and appropriate, an explanation in intelligible language of the subject matter and of the possible or actual legal consequences of the representative action, the qualified entity's intention to bring the action, the description of the group of consumers concerned by the action as well as the necessary steps to be taken by the consumers concerned, including safeguarding the necessary evidence, in order to benefit, as relevant, from the injunctions or redress measures or the approved settlements as foreseen by this Directive. The information should be adequate and proportional to the circumstances of the case.
- (31-a) Without prejudice to the information provided by the qualified entities, the consumers concerned should be informed about the ongoing representative action for redress in order to be able to explicitly or tacitly express their will to be represented in such an action. Member States should enable that by setting out appropriate rules on dissemination of information of actions to consumers. It should be for Member States to decide who should be responsible for disseminating the information.

- (31a) Consumers should equally be informed of final decisions providing for injunction measures, redress measures or approved settlements, their rights following the establishment of an infringement and any subsequent steps to be taken by consumers concerned, particularly for obtaining redress. The reputational risks associated with spreading information about the infringement are also important for deterring traders infringing consumer rights.
- (32) To be effective, the information about the ongoing and concluded representative actions should be adequate and proportional to the circumstances of the case. Such information may be provided for instance on the qualified entity's or the trader's website, in national electronic databases, on social media, on online market places, or in popular newspapers, including those distributed exclusively by electronic means of communication. If possible and appropriate, consumers should be informed individually through electronic or paper letters. This information should be provided in accessible formats for persons with disabilities upon request.
- (32a) It should be for the infringing trader to inform, at its own expense, all consumers concerned of final injunction and redress measures. The trader should also inform the consumers of a settlement approved by a court or administrative authority. Member States could set out rules according to which such an obligation depends on the request by the qualified entity. If, according to national law, information of final decisions and approved settlements is provided to the consumers concerned by the action by the court or administrative authority or by the qualified entity, the trader should not need to provide the information a second time. It should be for the qualified entity to inform the consumers concerned about the final decisions on the rejection or dismissal of representative action for redress measures.

- (32b) Member States could set up a publicly available national electronic database in the form of a website providing for the information on the qualified entities designated in advance for the purpose of bringing domestic and cross-border actions and general information on ongoing and concluded representative actions.
- (33) Member States should ensure that a final decision of a court or an administrative authority of any Member State on the existence of an infringement harming collective interests of consumers can be used by both parties as evidence in the context of any other actions seeking redress before their national courts or administrative authorities against the same trader for the same infringement. In line with the independence of the judiciary and the free evaluation of evidence, this should be without prejudice to national law on evaluation of evidence.

(35) Limitation periods are usually suspended when the action is brought. However, actions for injunction measures do not necessarily have this effect in relation to subsequent redress measures that may arise from the same infringement. Member States should therefore ensure that a pending representative action for an injunction measure has the effect of suspending or interrupting applicable limitation periods in respect of consumers concerned by the action so that those consumers, individually or represented by a qualified entity, are not prevented from subsequently bringing a redress action concerning the alleged infringement due to the expiry of limitation periods during the representative actions for those injunction measures. When bringing a representative action for injunctions, the qualified entity should sufficiently define the group of consumers whose interests are affected by the alleged infringement, and who could possibly have a claim arising from that infringement and could be affected by the expiry of limitation periods during the action for injunctions. For the sake of clarity, it should be stated that also a pending representative action for a redress measure should have the effect of suspending or interrupting applicable limitation periods in respect of consumers concerned by that action.

(35a) In order to ensure legal certainty, suspension or interruption of limitation periods imposed in accordance with this Directive should apply only to redress claims based on infringements that occurred on or after [date of application of this Directive]. This should not preclude the application of national provisions on suspension or interruption of limitation periods which were already applicable prior to [date of application of the Directive] to redress claims based on infringements that occurred before that date.

- (36) Representative actions for injunction measures should be treated with due procedural expediency. If an infringement is ongoing, the need for expediency could be accentuated. Actions for injunction measures with provisional effect should, as appropriate, be treated by way of a summary procedure in order to prevent any or further harm caused by the infringement.
- (37) Evidence is an important element for establishing whether a representative action for injunctions or redress is well founded. However, business-to-consumer relationships are often characterised by information asymmetry and the necessary evidence may be held exclusively by the trader, making it inaccessible to the qualified entity. Qualified entities should therefore have the right to request the competent court or administrative authority to order the disclosure by the trader of evidence relevant to their claim. On the other hand, taking into account the principle of equality of arms, the trader should have a similar right to request evidence that is in control of the qualified entity. The need, scope and proportionality of the disclosure of evidence should in accordance with national procedural law be carefully assessed by the court or administrative authority overseeing the representative action having regard to the protection of legitimate interests of third parties and subject to the applicable Union and national rules on confidentiality.

- (38) In order to ensure the effectiveness of the representative actions, infringing traders should face effective, dissuasive and proportionate penalties for failure or refusal to comply with an injunction measure. Member States should ensure that those penalties could take the form of fines, for example conditional fines, periodical payments or penalty payments. There should also be penalties for failure or refusal to comply with an order to provide information to consumers concerned on final decisions or settlements or to disclose evidence. Also other types of penalties, such as procedural measures, should be able to be applied to a refusal to comply with an order to disclose evidence.
- (39) Having regard to the fact that representative actions pursue a public interest by protecting the collective interests of consumers, Member States should maintain or aim to find means for the purpose of ensuring that qualified entities are not prevented from bringing representative actions under this Directive due to the costs involved with the procedures. These means could include limiting applicable court or administrative fees, granting the qualified entities access to legal aid where necessary or providing them with public funding for bringing representative actions, including structural support or other means of support. However, Member States should not be required to finance representative actions.

- (40) Cooperation and exchange of information between qualified entities from different Member States have proven to be useful in addressing in particular cross-border infringements. There is a need for continuing and expanding the capacity-building and cooperation measures to a larger number of qualified entities across the Union in order to increase the use of representative actions with cross-border implications.
- (40a) For the purposes of the evaluation of this Directive, Member States should provide the Commission with data on representative actions brought under this Directive. Member States should provide information on the number and type of representative actions that have been concluded by any of their courts or administrative authorities. Information on the outcomes of representative actions, such as whether or not they have been admissible and whether or not they have been successful or resulted in an approved settlement, should also be provided. In order to ease Member States' administrative burden in fulfilling these obligations, it should, in particular concerning injunction measures, suffice to provide the Commission with general information on the type of infringements and the parties. As regards parties, for example, it should be enough to inform the Commission on whether the qualified entity has been a public body or a consumer organisation, and on the trader's field of business, for example financial services. Alternatively, Member States could provide the Commission with copies of relevant decisions or settlements. Information on the identities of the consumers concerned by the representative actions should not be provided.
- (41a) The Commission should draw up a report, accompanied if appropriate by a relevant proposal, assessing whether cross-border representative actions could be best addressed at Union level by establishing an European Ombudsman for collective redress.

- (42) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles, including those related to the right to an effective remedy and to a fair trial, as well as the right of defence.
- (43) With regard to environmental law, this Directive takes account of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ('the Aarhus Convention').
- (44) The objectives of this Directive, namely ensuring that a representative action mechanism for the purpose of both injunction and redress measures is established in all Member States for the protection of the collective interests of consumers in order to ensure a high level of consumer protection across the Union and the functioning of the internal market, cannot be sufficiently achieved by actions taken exclusively by Member States, but can rather, due to cross-border implications of infringements, be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (45) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (46) It is appropriate to provide rules for the temporal application of this Directive.
- (47) Directive 2009/22/EC should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:



# Chapter 1

## Subject matter, scope and definitions

### *Article 1*

#### *Subject matter*

1. This Directive sets out rules ensuring that representative actions aimed at the protection of the collective interests of consumers are available in all Member States, while providing appropriate safeguards to avoid abusive litigation. The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning representative actions. To this end, this Directive also aims to improve consumers access to justice.
  
2. This Directive shall not prevent Member States from adopting or maintaining in force procedural means aimed at the protection of the collective interests of consumers at national level. However, Member States shall ensure that at least one representative action mechanism, which allows qualified entities to bring representative actions for the purpose of both injunction and redress measures, complies with this Directive. The implementation of this Directive shall not constitute grounds for the reduction of consumer protection in fields covered by the scope of Union law listed in Annex I.
  - 2a. The qualified entities shall be free to choose any procedural means available to them under national or Union law ensuring the protection of the collective interests of consumers.

## *Article 2*

### *Scope*

1. This Directive shall apply to representative actions brought against infringements by traders of provisions of the Union law listed in Annex I, also as transposed into national law, that harm or may harm the collective interests of consumers. This Directive is without prejudice to the Union law listed in Annex I. It shall apply to domestic and cross-border infringements, including where those infringements have ceased before the representative action has started or before the representative action has been concluded.
2. This Directive shall not affect rules establishing contractual and non-contractual remedies available to consumers for such infringements under Union or national law.
3. This Directive is without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and rules on the law applicable to contractual and non-contractual obligations.

## *Article 3*

### *Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (1) ‘consumer’ means any natural person who is acting for purposes which are outside that person's trade, business, craft or profession;
- (2) ‘trader’ means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in that person's name or on that person's behalf, for purposes relating to that person's trade, business, craft or profession;

- (3) ‘collective interests of consumers’ means the general interest of consumers and, in particular for the purpose of redress measures, the interests of a group of consumers;
- (3a) ‘qualified entity’ means any organisation or public body representing consumers’ interests which has been designated by a Member State as qualified in accordance with this Directive to bring representative actions;
- (4) ‘representative action’ means an action for the protection of the collective interests of consumers that is brought by a qualified entity as a claimant party on behalf of consumers aiming at an injunction measure or a redress measure, or both;
- (4a) ‘domestic representative action’ means a representative action brought by a qualified entity in the Member State in which the qualified entity is designated;
- (4b) ‘cross-border representative action’ means a representative action brought by a qualified entity in a Member State other than that in which the qualified entity is designated;
- (5) ‘practice’ means any act or omission by a trader;
- (6) ‘final decision’ means a decision by a Member State's court or administrative authority that cannot or can no longer be reviewed by ordinary means of appeal.

## Chapter 2

### Representative actions

#### *Article 4*

#### *Qualified entities*

1. Member States shall ensure that representative actions can be brought by qualified entities designated by the Member States for this purpose.
2. Member States shall ensure that entities, in particular consumer organisations, including those representing members from more than one Member State, are eligible to be designated for the status of qualified entity for the purpose of bringing domestic representative actions or cross-border representative actions, or both.
3. Member States shall designate an entity, at its request, as a qualified entity for the purpose of bringing cross-border representative actions, if it complies with all of the following criteria:
  - (a) it is a legal person properly constituted according to the law of the Member State of its designation and can demonstrate 12 months of actual public activity in the protection of consumer interests prior to its designation request;
  - (b) its statutory purpose demonstrates that it has a legitimate interest in protecting consumer interests as provided by Union law covered by this Directive;
  - (c) it has a non-profit making character;
  - (d) it is not subject to insolvency procedure or declared insolvent;

- (e) it is independent and not influenced by persons, other than consumers, who have an economic interest in the bringing of any representative action, in particular by traders, including in case of funding by third parties, and, to that end, has established procedures preventing such influence as well as conflict of interest between itself, its funders and consumer interest;
  - (f) it discloses publicly by any appropriate means, in particular on its website, in plain and intelligible language, information demonstrating compliance with the above listed criteria and information about the sources of its funding in general, its organizational, management and membership structure, objectives and activities.
4. Member States shall ensure that the criteria they use to designate an entity as a qualified entity for the purpose of bringing domestic representative actions are consistent with the objectives of this Directive to make effective and efficient functioning of such actions.
  5. Member States may decide that the criteria set out in paragraph 3 apply also to the designation of qualified entities for the purpose of bringing domestic representative actions.
  6. Member States may designate a qualified entity, at its own request, on an ad hoc basis for the purpose of bringing a particular domestic representative action, if it complies with the criteria for qualified entities as provided for in national law.
  7. Notwithstanding paragraphs 3 and 4, Member States may designate public bodies as qualified entities for the purpose of bringing representative actions. Member States may provide that public bodies already designated as qualified entities in the meaning of Directive 2009/22/EC shall remain eligible as qualified entities.

*Article 4-a*

*Information and monitoring of qualified entities*

1. Member States shall communicate to the Commission a list of the qualified entities designated in advance for the purpose of bringing cross-border representative actions, including the name and purpose of those qualified entities no later than on... [one year after the date of transposition] and whenever there are changes to that list. Member States shall make that list publicly available.

The Commission shall make a compiled list of these qualified entities publicly available. The list shall be updated whenever changes are communicated to the Commission.

2. Member States shall ensure that information on qualified entities designated in advance for the purpose of bringing domestic representative actions is made available to the public.
3. Member States shall assess at least every five years whether qualified entities continue to comply with the criteria referred to in Article 4(3). Member States shall ensure that the qualified entity loses its status if it no longer complies with one or more of the criteria.
4. If a Member State or the Commission raises concerns regarding the compliance by a qualified entity with the criteria laid down in Article 4(3), the Member State that designated that entity shall investigate the concerns and, where appropriate, revoke the designation if one or more of the criteria are not complied with. The defendant trader shall have the possibility within a representative action to raise concerns to the court or administrative authority regarding the compliance by a qualified entity with the criteria laid down in Article 4(3), if justified doubts arise.
5. Member States shall designate national contact points for the purpose of paragraph 4 and communicate the name and contact details of those contact points to the Commission. The Commission shall compile a list of designated contact points and make that list available to the Member States.

*Article 4b*

*Bringing of cross-border representative actions*

1. Member States shall ensure that cross-border representative actions can be brought in their courts or administrative authorities by qualified entities designated in advance for the purpose of such representative actions in another Member State.
2. Member States shall ensure that where the alleged infringement affects or is likely to affect consumers from different Member States, the representative action may be brought to the competent court or administrative authority of a Member State by several qualified entities from different Member States for the protection of the collective interest of consumers from different Member States.
3. The courts or administrative authorities shall accept the list referred to in Article 4-a(1) as proof of the legal standing of the qualified entity to bring a cross-border representative action, without prejudice to their right to examine whether the statutory purpose of the qualified entity justifies its taking action in a specific case.

*Article 5*

*Representative actions*

1. Member States shall ensure that representative actions in accordance with Article 2 can be brought before national courts or administrative authorities by qualified entities designated in accordance with Article 4.
  - 1b. When bringing a representative action, the qualified entity shall provide to the court or to the administrative authority sufficient information on the consumers concerned by the action.
  - 1c. The courts or administrative authorities shall assess the admissibility requirements of a specific representative action in accordance with national law and the provisions laid down in this Directive.

2. Member States shall ensure that qualified entities are entitled to seek, as appropriate, at least the following measures:
  - (a) injunction measures;
  - (ba) redress measures.
4. Member States may enable qualified entities to seek, as appropriate the measures referred to in paragraph 2 within a single representative action. Member States may provide that these measures are issued within a single decision.
- 4a. Member States shall ensure that, within representative actions, consumers' interests are represented by qualified entities and that the entities have the rights and obligations of a party to the proceedings. The consumers concerned by the action shall be entitled to benefit from the measures referred to in paragraph 2.
6. Member States shall ensure that the court or administrative authority may decide to dismiss manifestly unfounded cases at the earliest possible stage of the proceedings in accordance with national law.

*Article 5a*

*Injunction measures*

1. The injunction measures referred to in Article 5(2)(a) are:
  - (a) a provisional measure to cease or, where appropriate, to prohibit a practice deemed to constitute an infringement;
  - (b) a definitive measure to cease or, where appropriate, to prohibit a practice that constitutes an infringement.



- 1a. A measure referred to in paragraph 1(b) may include, in accordance with national law:
  - (a) a measure to establish that the practice constitutes an infringement;
  - (b) an obligation to publish the decision on the measure in full or in part, in such form as deemed adequate, or to publish a corrective statement.
2. In order to seek an injunction measure, individual consumers concerned shall not be required to express their will to be represented by the qualified entity. The qualified entity shall not have to prove the actual loss or damage on the part of individual consumers affected by an infringement nor the intention or negligence on the part of the trader.
3. Member States may introduce or maintain provisions of national law whereby a qualified entity is only able to seek the injunction measures provided in paragraph 1(b) after it has attempted to achieve the cessation of the infringement in consultation with the trader. If the trader, after receiving the request for consultation, does not cease the infringement within two weeks, the qualified entity may bring a representative action for such an injunction measure without any further delay. Member States shall notify to the Commission the relevant provisions of national law. The Commission shall ensure that this information is publicly accessible.

*Article 5b*

*Redress measures*

1. A redress measure shall oblige the trader to provide consumers concerned with remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under Union or national law.

2. Member States shall establish rules on how and at which stage of the representative action for redress measures the individual consumers concerned by the action may explicitly or tacitly express their will within the appropriate time limits, after that action has been brought, to be or not to be represented by the qualified entity within the representative action for redress measures and to be bound by the outcome of the action.
3. Notwithstanding paragraph 2, Member States shall ensure that individual consumers, who are not habitually resident in the Member State of the court or administrative authority before which the representative action has been brought, have to explicitly express their will to be represented in that action in order to be bound by the outcome of the action.
- 3a. Member States shall lay down rules to ensure that consumers who have explicitly or tacitly expressed their will to be represented in a representative action can neither be represented in other such actions with the same cause of action and against the same trader, nor be able to bring an individual action with the same cause of action and against the same trader. Member States shall also lay down rules to ensure that consumers do not receive compensation more than once for the same cause of action against the same trader.
4. If the redress measure does not specify individual consumers entitled to benefit from remedies provided by the measure, it shall at least describe the group of consumers entitled to benefit from those remedies.
5. Member States shall ensure that the redress measure entitles the consumers to seek recovery of the damages without the need to bring a separate action.
6. Member States shall lay down or maintain rules on time limits for individual consumers to benefit from the redress measures. Member States may lay down rules on the destination of any outstanding redress funds that were not recovered within the established time limits.

8. Member States shall ensure that qualified entities are able to bring representative actions for a redress measure without the condition of the prior establishment of an infringement by a court or an administrative authority through separate proceedings.
10. The remedies provided by redress measures within a representative action shall be without prejudice to any additional remedies available to consumers under Union or national law, which were not subject to that representative action.

#### *Article 7*

#### *Funding of representative actions for redress*

1. Member States shall ensure that, where a representative action for redress is funded by a third party, insofar as allowed in accordance with national law, conflicts of interests are prevented and that the funding by a third party having an economic interest in the bringing or the outcome of the representative action for redress does not divert the action from the protection of the collective interests of consumers.
2. To that end, Member States shall in particular ensure that:
  - (a) the decisions of qualified entities in the context of a representative action, including on settlements, are not unduly influenced by a third party in a way that would be detrimental to the collective interests of consumers concerned by the action;
  - (b) the representative action is not brought against a defendant who is a competitor of the fund provider or against a defendant on whom the fund provider is dependent.

3. Member States shall ensure that courts or administrative authorities are empowered to assess compliance with paragraphs 1 and 2 within a representative action for redress in case any justified doubts arise in that regard. To that end, qualified entities shall disclose to the court or administrative authority a financial overview listing sources of funds used to support the action.
4. Member States shall ensure that, when acting in accordance with paragraphs 1 and 2, courts or administrative authorities are empowered to take appropriate measures, such as requiring the qualified entity to refuse or change the relevant funding and, if necessary, rejecting the legal standing of the qualified entity in a specific action. If the legal standing of the qualified entity is rejected in a specific action, such a rejection shall not affect the rights of the consumers concerned by the action.

#### *Article 8*

#### *Settlements on redress*

2. In view of an approval of a settlement, Member States shall ensure that within a representative action for redress measures:
  - (a) the qualified entity and the trader may jointly propose to the court or administrative authority a settlement regarding redress for consumers; or
  - (b) the court or administrative authority may invite the qualified entity and the trader, after having consulted them, to reach a settlement regarding redress within a reasonable set time-limit.

4. The settlements referred to in paragraph 2 shall be subject to the scrutiny of the court or administrative authority. The court or administrative authority shall assess whether it must refuse to approve a settlement that is contrary to mandatory national law, or includes conditions which cannot be enforced, taking into consideration the rights and interests of all parties, and in particular those of the consumers concerned. Member States may set out rules allowing the court or administrative authority to refuse approval of a settlement on the basis of a settlement being unfair.
5. If the settlement is not approved, the court or administrative authority shall continue to hear the representative action.
6. Approved settlements shall be binding upon the qualified entity, the trader and the individual consumers concerned.

Member States may set out rules according to which individual consumers concerned by the action and by the subsequent settlement are given the possibility to accept or to refuse to be bound by settlements referred to in paragraph 2.

7. The redress obtained through an approved settlement in accordance with paragraph 4 shall be without prejudice to any additional remedies available under Union or national law, which were not subject to that settlement.

#### *Article 8a*

##### *Allocation of costs of the representative action for redress*

1. Member States shall ensure that the defeated party in a representative action for redress pays the costs of the proceedings borne by the successful party, in accordance with the conditions and exceptions provided for in national law applicable to court proceedings in general.

2. Individual consumers concerned by a representative action for redress shall not pay the costs of the proceedings.
3. Notwithstanding paragraph 2, in exceptional circumstances, individual consumers concerned by a representative action for redress may be ordered to pay the costs of the proceedings that were deliberately or negligently caused by that individual consumer to the extent related to that consumer's conduct.

*Article 9*

*Information on representative actions*

- 0b. Member States shall set out rules ensuring that the qualified entities provide, in particular on their website, information on the representative actions they have decided to bring to the court or administrative authority, the state of play of the representative actions they already brought to the court or administrative authority and the outcomes of the actions.
0. Member States shall set out rules ensuring that the consumers concerned by a ongoing representative action for a redress measure are provided with information about the action in a timely manner and by appropriate means in order to enable them to explicitly or tacitly express their will to be represented in the action pursuant to Article 5b(2).

1. Without prejudice to the information referred to in paragraphs -0b and 0 of this Article, the court or administrative authority shall require the trader to inform, at its expense, the consumers concerned by the representative action about the final decisions providing for measures referred to in Article 5 or the approved settlements referred to in Article 8, by means appropriate to the circumstances of the case and within specified time limits, including, where appropriate, by notifying all consumers concerned individually. This does not apply if the consumers concerned are informed of the final decision or approved settlement in another manner. Member States may set out rules according to which such an obligation depends on the request of the qualified entity.
- 1a. The information requirements referred to in paragraph 1 shall apply mutatis mutandis to the qualified entity concerning the final decisions on the rejection or dismissal of the representative action for redress measure.
- 1a. Member States shall ensure that the successful party can recover the costs related to providing the information to consumers in the context of the representative action, in accordance with Article 8(1).

#### *Article 9a*

#### *Electronic databases*

1. Member States may set up publicly available national electronic databases in the form of websites providing for information on qualified entities designated in advance for the purpose of bringing domestic and cross-border actions and general information on ongoing and concluded representative actions.
2. If Member States establishes the electronic database referred to in paragraph 1, it shall notify to the Commission the internet address at which the database is available.

3. The Commission shall establish and maintain an electronic database for the purposes of:
  - (a) all communications between the Member States and the Commission referred to in Articles 4-a(1), 4-a(4), 4-a(5) and 18(3);
  - (b) cooperation between the qualified entities referred to in Article 15(3).
  
5. The electronic database referred to in paragraph 3 of this Article shall be directly accessible, as relevant, to the national contact points, competent courts and administrative authorities if necessary under national law, qualified entities designated by the Member States for cross-border and domestic actions and the Commission.

The information shared by the Member States within the electronic database referred to in paragraph 3 of this Article regarding qualified entities designated to bring cross-border representative actions referred to Article 4-a(1) shall be publicly available.

#### *Article 10*

#### *Effects of final decisions*

Member States shall ensure that a final decision of a court or an administrative authority of any Member State on the existence of an infringement harming collective interests of consumers can be used by both parties as evidence in the context of any other actions seeking redress before their national courts or administrative authorities against the same trader for the same infringement, in accordance with national law on evaluation of evidence.



*Article 11*  
*Limitation periods*

In accordance with national law, Member States shall ensure that a pending representative action for an injunction measure as referred to in Article 5a has the effect of suspending or interrupting applicable limitation periods in respect of consumers concerned by the action so that those consumers are not prevented from subsequently bringing a redress action concerning the alleged infringement due to the expiry of limitation periods during the representative actions for those injunction measures. Member States shall also ensure that a pending representative action for a redress measure as referred to in Article 5b(1) has the effect of suspending or interrupting applicable limitation periods in respect of consumers concerned by that action.

*Article 12*  
*Procedural expediency*

1. Member States shall ensure that representative actions for injunction measures referred to in Article 5a are treated with due expediency.
2. Representative actions for provisional measures to cease or, where appropriate, to prohibit a practice deemed to constitute an infringement referred to in Article 5a(1)(a) shall, if appropriate, be treated by way of a summary procedure.

*Article 13*  
*Disclosure of evidence*

Member States shall ensure that, at the request of a qualified entity that has presented reasonably available evidence sufficient to support the representative action, and has indicated further evidence which lies in the control of the defendant or a third party, the court or administrative authority may order, in accordance with national procedural rules, that such evidence be presented by the defendant or the third party, subject to the applicable Union and national rules on confidentiality and proportionality. Member States shall ensure that a court or an administrative authority is able, upon request of the defendant, to equally order the qualified entity or a third party to disclose relevant evidence, in accordance with national procedural rules.

*Article 14*  
*Penalties*

1. Member States shall lay down rules ensuring that penalties may be imposed for failure or refusal to comply with an injunction measure referred to in Article 5a(1) or in point (b) of Article 5a(1a) or obligations referred to in Articles 9(1) and 13. Member States shall take all necessary measures to ensure that those rules are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall ensure that penalties may take, inter alia, the form of fines.

*Article 15*  
*Assistance for qualified entities*

1. Member States shall take measures aiming to ensure that procedural costs related to representative actions do not prevent qualified entities from effectively exercising their right to seek the measures referred to in Article 5.

- 1a. The measures referred to in paragraph 1 may take, for example, the form of public funding, including the structural support for the qualified entities, the limitation of applicable court or administrative fees, or access to legal aid.
- 1b. Member States shall be able to set up rules that allow qualified entities to require modest entry fees or similar participation charges from those consumers who have expressed their will to be represented by a qualified entity within a particular representative action for redress measures.
3. Member States and the Commission shall support and facilitate the cooperation of qualified entities and the exchange and dissemination of their best practices and experiences as regards the resolution of cross-border and domestic infringements.

### **Chapter 3**

#### **Final provisions**

##### *Article 17*

##### *Repeal*

Directive 2009/22/EU is repealed as of [date of application of this Directive] without prejudice to Article 20(2).

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex II.

## *Article 18*

### *Monitoring and evaluation*

1. No sooner than 5 years after the date of application of this Directive, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation guidelines. In the report, the Commission shall in particular assess the scope of application of this Directive defined in Article 2 and Annex I and the functioning and effectiveness of this Directive in cross-border situations, including in terms of legal certainty.
  
3. Member States shall provide the Commission on annual basis, for the first time at the latest 4 years after the date of application of this Directive, with the following information necessary for the preparation of the report referred to in paragraph 1:
  - (a) the number and type of representative actions that have been concluded by any of their courts or administrative authorities;
  
  - (c) the type of infringements and parties to the representative actions;
  
  - (e) the outcomes of the representative actions.

## *Article 18a*

### *Review clause*

No later than 5 years after the date of the application of this Directive, the Commission shall carry out evaluation whether cross-border representative actions could be best addressed at Union level by establishing an European Ombudsman for collective redress and present a report on main findings to the European Parliament, the Council and the European Economic and Social Committee, accompanied, if appropriate, by a relevant proposal.

*Article 19*  
*Transposition*

1. Member States shall adopt and publish, by [24 months from the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Member States shall apply those provisions from [6 months after the transposition deadline].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

*Article 20*  
*Transitional provisions*

1. Member States shall apply the laws, regulations and administrative provisions transposing this Directive to actions that are brought on or after [date of application of this Directive].
2. Member States shall apply the laws, regulations and administrative provisions transposing Directive 2009/22/EC to actions that are brought before [date of application of this Directive].
- 2a. Member States shall ensure that national laws, regulations or administrative provisions on suspension or interruption of limitation periods transposing Article 11 only apply to redress claims based on infringements that occurred on or after [date of application of this Directive]. This shall not preclude the application of national provisions on suspension or interruption of limitation periods which were already applicable prior to [date of application of this Directive] to redress claims based on infringements that occurred before that date.

*Article 21*  
*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 22*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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## LIST OF PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 2(1)

- (1) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210 , 07.08.1985, p. 29 –33).
- (2) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).
- (4) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).
- (4a) Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1–27).
- (4b) Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 28–50).
- (4c) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4–17): Articles 3 and 5.
- (11) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (OJ L 149, 11.6.2005, p. 22).
- (13) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21).

- (14) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36): Articles 20 and 22.
- (35) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).
- (59) Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60, 02.03.2018, p. 1): Articles 3 - 5.
- (59b) Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (OJ L 96, 29.3.2014, p. 357).
- (59c) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).
- (59d) Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments (OJ L 96, 29.3.2014, p. 107).



- (3) Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27).
- (18) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1–1355): Articles 1 - 35.
- (26) Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters (OJ L 342, 22.12.2009, p. 46–58): Articles 4 - 6.
- (30) Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1–19): Articles 9 - 10.
- (36) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18–63).
- (58) Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1–23): Articles 3 - 6.

- (10-a) Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ L 285 , 17.10.1997, p. 1 –3).
- (10) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).
- (12) Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1).
- (15) Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).
- (17) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3): Article 23.
- (17a) Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131, 28.5.2009, p. 24–46).
- (31) Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).
- (32) Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

- (19) Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33, 3.2.2009, p. 10).
- (47) Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).
- (6) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67): Articles 86–90, 98 and 100.
- (6a) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (recast) (OJ L 342, 22.12.2009, p. 59–209): Articles 3–8 and 19–21.
- (33a) Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC: Chapter II.
- (33b) Regulation 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU: Chapter II.

- (5) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects on information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1): Articles 5–7, 10 and 11.
- (28) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1): Articles 9–11, 19–26 and 28b.
- (55) Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (OJ L 168, 30.6.2017, p. 1).
- (7) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51–77): Article 10 and Chapter IV.
- (7a) Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (OJ L 321, 17.12.2018, p. 36–214): Articles 88, 98 – 116 and Annexes VI and VIII.
- (38) Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10–35).

- (51) Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012 (OJ L 310, 26.11.2015, p. 1–18).
- (8) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37): Articles 4–8 and 13.
- (53) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).
- (20) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55–93): Article 3 and Annex I.
- (21) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94–136): Article 3 and Annex I.
- (25) Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10–35): Article 14 and Annex I.
- (39) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1–56): Articles 9–11a.

- (40) Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (OJ L 165, 18.6.2013, p. 63): Article 13.
- (41) Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1): Article 14.
- (9) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services (OJ L 271, 9.10.2002, p. 16).
- (16) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).
- (23) Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11–18).
- (24) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7–17).
- (37) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22–37).

- (44) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).
- (46) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).
- (50) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35–127).
- (22) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32–96).
- (34) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1–73).
- (45) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349–496): Articles 23–29.
- (48) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1–23).

- (49) Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98–121).
- (56) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12–82).
- (57) Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8–45).
- (27) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1–155): Articles 183–186.
- (52) Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19–59): Articles 17–24 and 28–30.



CORRELATION TABLE

*[Will be updated during the legal linguistic revision]*

