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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: 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
- Outcome of the European Parliament's first reading,
(Strasbourg, 25 to 28 March 2019)

I. INTRODUCTION

The rapporteur, Geoffroy DIDIER (EPP, FR), presented a report on the proposal for a Directive on behalf of the Committee on Legal Affairs. The report contained 108 amendments (amendments number 1-108) to the proposal.

In addition, the ENF political group tabled 31 amendments (amendments number 109-140).

II. VOTE

When it voted on 26 March 2019, the plenary adopted amendments 1-108 to the proposal for a Directive. No other amendments were adopted.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto¹.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Representative actions for the protection of the collective interests of consumers
*****I**

European Parliament legislative resolution of 26 March 2019 on the proposal for a directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC (COM(2018)0184 – C8-0149/2018 – 2018/0089(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0184),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0149/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Austrian Federal Council and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee²,
 - having regard to the opinion of the Committee of the Regions³,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and also the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Transport and Tourism (A8-0447/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

² OJ C 440, 6.12.2018, p. 66.

³ OJ C 461, 21.12.2018, p. 232.

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The purpose of this Directive is to enable qualified entities, which represent the collective interest of consumers, to seek remedy through representative actions against infringements of provisions of Union law. The qualified entities should be able to ask for stopping or prohibiting an infringement, for confirming that an infringement took place and to seek redress, such as compensation, repair *or* price reduction as available under national laws.

Amendment

(1) The purpose of this Directive is to enable qualified **representative** entities, which represent the collective interest of consumers, to seek remedy through representative actions against infringements of provisions of Union law. The qualified **representative** entities should be able to ask for stopping or prohibiting an infringement, for confirming that an infringement took place and to seek redress, such as compensation, **reimbursement of the price paid**, repair, **replacement, removal or contract termination** as available under national laws.

Amendment 2

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Directive 2009/22/EC of the European Parliament and of the Council²⁹ 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, it is necessary to strengthen the mechanism for protection of collective interests of consumers. Given the numerous changes, for the sake of

Amendment

(2) Directive 2009/22/EC of the European Parliament and of the Council²⁹ enabled qualified **representative** 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, **to encourage good and responsible business practices**, and to reduce consumer detriment, it is necessary to strengthen the mechanism for protection of collective

clarity it is appropriate to replace Directive 2009/22/EC.

interests of consumers. Given the numerous changes, for the sake of clarity it is appropriate to replace Directive 2009/22/EC. ***There is a strong need for Union intervention, on the basis of Article 114 TFEU, in order to ensure both access to justice and sound administration of justice as it will reduce the costs and burden entailed by individual actions.***

²⁹ OJ L 110/30, 1.5.2009.

²⁹ OJ L 110/30, 1.5.2009.

Amendment 3

Proposal for a directive Recital 3

Text proposed by the Commission

(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.

Amendment

(3) A representative action should offer an effective and efficient way of protecting the collective interests of all consumers ***against both internal and cross-border infringements.*** It should allow qualified ***representative*** 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, ***previous experience of unsuccessful claims, excessively lengthy proceedings,*** psychological reluctance to take action and the negative balance of the expected costs and benefits of the individual action, ***thereby increasing legal certainty for both claimants and defendants, as well as for the legal system.***

Amendment 4

Proposal for a directive Recital 4

Text proposed by the Commission

(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 Single Market. To prevent the misuse of representative actions, elements such as punitive damages and the absence of limitations as regards the entitlement to bring an action on behalf of the harmed consumers should be avoided and clear rules on various procedural aspects, such as the designation of qualified entities, the origin of their funds and nature of the information required to support the representative action, should be laid down. ***This Directive should not affect national rules concerning the allocation of procedural costs.***

Amendment

(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 Single Market. To prevent the misuse of representative actions, elements such as punitive damages and the absence of limitations as regards the entitlement to bring an action on behalf of the harmed consumers should be avoided and clear rules on various procedural aspects, such as the designation of qualified ***representative*** entities, the origin of their funds and nature of the information required to support the representative action, should be laid down. ***The unsuccessful party should bear the costs of the proceedings. However, the court or tribunal should not award costs to the unsuccessful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.***

Amendment 5

Proposal for a directive Recital 6

Text proposed by the Commission

(6) This Directive should cover a variety of areas such as data protection, financial services, travel and tourism, energy, telecommunications ***and*** environment. It should cover infringements of provisions of Union law which protect the interests of consumers, regardless of whether they are referred to as consumers or as ***travellers***, users, customers, retail investors, retail clients or other in the relevant Union law. To ensure adequate response to

Amendment

(6) This Directive should cover a variety of areas such as data protection, financial services, travel and tourism, energy, telecommunications, environment ***and health***. It should cover infringements of provisions of Union law which protect the ***collective*** interests of consumers, regardless of whether they are referred to as consumers or as travellers, users, customers, retail investors, retail clients or other in the relevant Union law, ***as well as***

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 the Annex to the present Directive in order to place it under its scope.

the collective interests of data subjects within the meaning of the GDP Regulation. 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 the Annex to the present Directive in order to place it under its scope.

Amendment 6

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6 a) This Directive applies to representative actions brought against infringements with a broad consumer impact related to the provisions covered by the Union law listed in Annex I. The broad impact starts when two consumers are affected.

Amendment 7

Proposal for a directive Recital 9

Text proposed by the Commission

Amendment

(9) This Directive should not establish rules of 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.

(9) This Directive should not establish rules of 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 ***preventing any increase in forum shopping.***

Amendment 8

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9 a) This Directive should not affect the application of EU rules on private international law in cross-border cases. 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 (recast - Brussels I), 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) apply to the representative actions set out by this Directive.

Amendment 9

Proposal for a directive Recital 10

Text proposed by the Commission

Amendment

(10) As only qualified entities can bring the representative actions, to ensure that the collective interests of consumers are adequately represented the qualified entities should comply with the criteria established by this Directive. In particular,

(10) As only qualified ***representative*** entities can bring the representative actions, to ensure that the collective interests of consumers are adequately represented the qualified ***representative*** entities should comply with the criteria

they would need to be properly constituted according to the law of a Member State, which *could* include for example **requirements regarding the number of members, the degree of permanence, or** transparency requirements on relevant aspects of their structure such as their constitutive statutes, management structure, objectives and working methods. They should also be not for profit and have a legitimate interest in ensuring compliance with the relevant Union law. **These criteria should apply to both** qualified *entities designated in advance and to ad hoc* qualified *entities that are constituted for the purpose of a specific action*.

established by this Directive. In particular, they would need to be properly constituted according to the law of a Member State, which *should* include for example transparency requirements on relevant aspects of their structure such as their constitutive statutes, management structure, objectives and working methods. They should also be not for profit and have a legitimate interest in ensuring compliance with the relevant Union law. **Furthermore, the qualified representative entities must be independent from market operators, including financially. The qualified representative entities must also have an established procedure to prevent conflict of interests. Member States shall not impose criteria that go beyond those established in this Directive.**

Amendment 10

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) The qualified entity initiating the representative action under this Directive should be a party to the proceedings. Consumers concerned by the infringement should have adequate **opportunities to benefit from** the relevant outcomes of the representative action. Injunction orders issued under this Directive should be without prejudice to individual actions brought by consumers harmed by the practice subject to the injunction order.

Amendment

(15) The qualified entity initiating the representative action under this Directive should be a party to the proceedings. Consumers concerned by the infringement should have adequate **information regarding** the relevant outcomes of the representative action **and how they can benefit from them**. Injunction orders issued under this Directive should be without prejudice to individual actions brought by consumers harmed by the practice subject to the injunction order.

Amendment 11

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) Qualified entities should be able to seek measures aimed at eliminating the continuing effects of the infringement. These measures should take the form of a redress order obligating the trader to provide for, inter alia, compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under national laws.

Amendment

(16) Qualified **representative** entities should be able to seek measures aimed at eliminating the continuing effects of the infringement. These measures should take the form of a redress order obligating the trader to provide for, inter alia, compensation, repair, replacement, **removal**, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under national laws.

Amendment 12

Proposal for a directive Recital 18

Text proposed by the Commission

(18) Member States **may** require qualified entities to provide sufficient information to support a representative action for redress, including a description of the group of consumers concerned 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 an infringement in order to initiate the action. 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 consumers concerned.

Amendment

(18) Member States **should** require qualified **representative** entities to provide sufficient information to support a representative action for redress, including a description of the group of consumers concerned 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 an infringement in order to initiate the action. 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 consumers concerned. ***In particular, the claims should be ascertainable and uniform and there should be a commonality in the measures sought, third-party funding arrangement of the qualified entity should be***

transparent and without any conflict of interest. Member States should also ensure that the court or administrative authority has the authority to dismiss manifestly unfounded cases at the earliest possible stage of proceedings.

Amendment 13

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

(19) Member States should be allowed to decide whether their court or national authority seized of a representative action for redress may exceptionally issue, instead of a redress order, a declaratory decision regarding the liability of the trader towards the consumers harmed by an infringement which could be directly relied upon in subsequent redress actions by individual consumers. This possibility should be reserved to duly justified cases where the quantification of the individual redress to be attributed to each of the consumer concerned by the representative action is complex and it would be inefficient to carry it out within the representative action. Declaratory decisions should not be issued in situations which are not complex and in particular where consumers concerned are identifiable and where the consumers have suffered a comparable harm in relation to a period of time or a purchase. Similarly, declaratory decisions should not be issued where the amount of loss suffered by each of the individual consumers is so small that individual consumers are unlikely to claim for individual redress. The court or the national authority should duly motivate its recourse to a declaratory decision instead

deleted

of a redress order in a particular case.

Amendment 14

Proposal for a directive Recital 20

Text proposed by the Commission

Amendment

(20) Where consumers concerned by the same practice are identifiable and they suffered comparable harm in relation to a period of time or a purchase, such as in the case of long-term consumer contracts, the court or administrative authority may clearly define the group of consumers concerned by the infringement in the course of the representative action. In particular, the court or administrative authority could ask the infringing trader to provide relevant information, such as the identity of the consumers concerned and the duration of the practice. For expediency and efficiency reasons, in these cases Member States in accordance with their national laws could consider to provide consumers with the possibility to directly benefit from a redress order after it was issued without being required to give their individual mandate before the redress order is issued.

deleted

Amendment 15

Proposal for a directive Recital 21

Text proposed by the Commission

Amendment

(21) In low-value cases most consumers are unlikely to take action in order to enforce their rights because the efforts would outweigh the individual benefits. However, if the same practice concerns a number of consumers, the aggregated loss may be significant. In such cases, a court or authority may consider that it is disproportionate to distribute the funds back to the consumers concerned, for example because it is too onerous or impracticable. Therefore the funds received as redress through representative actions would better serve the purposes of the protection of collective interests of consumers and should be directed to a relevant public purpose, such as a consumer legal aid fund, awareness campaigns or consumer movements.

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Amendment 16

Proposal for a directive Recital 23

Text proposed by the Commission

Amendment

(23) 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. A representative action seeking redress under this Directive can only be brought where Union or national law provides for such substantive rights.

(23) 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, **removal**, repair or price reduction. A representative action seeking redress under this Directive can only be brought where Union or national law provides for such substantive rights.

Amendment 17

Proposal for a directive Recital 24

Text proposed by the Commission

(24) This Directive does not replace existing national collective redress mechanisms. Taking into account their legal traditions, it leaves it 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 redress mechanism or as an alternative to these mechanisms, insofar as the national mechanism complies with the modalities set by this Directive.

Amendment

(24) This Directive ***aims at a minimum harmonisation and*** does not replace existing national collective redress mechanisms. Taking into account their legal traditions, it leaves it 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 redress mechanism or as an alternative to these mechanisms, insofar as the national mechanism complies with the modalities set by this Directive. ***It does not prevent Member States from maintaining their existing framework, neither does it oblige Member States to amend it. Member States will have the possibility to implement the rules provided for this Directive into their own system of collective redress or to implement them in a separate procedure.***

Amendment 18

Proposal for a directive Recital 25

Text proposed by the Commission

(25) Qualified entities should be fully transparent 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 there may be a conflict of interest

Amendment

(25) Qualified ***representative*** entities should be fully transparent 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 there may be

between *the* third party funder and the qualified entity and to avoid risks of abusive litigation as well as to assess whether the *funding third party* has sufficient resources in order to *meet its financial commitments to the qualified entity*. The information provided by the qualified entity to the court or administrative authority overseeing the representative action should enable it to assess whether the third party may influence procedural decisions of the qualified entity in the context of the representative action, including on settlements 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. If any of these circumstances is confirmed, the court or administrative authority *should* be empowered to require the qualified entity to refuse the relevant funding and, if necessary, reject standing of the qualified entity in a specific case.

a conflict of interest between third party funder and the qualified entity and to avoid risks of abusive litigation as well as to assess whether the *qualified entity* has sufficient resources in order to *represent the best interests of consumers concerned and to support all necessary legal costs should the action fail*. The information provided by the qualified entity *at the earliest stage of proceedings* to the court or administrative authority overseeing the representative action should enable it to assess whether the third party may influence procedural decisions of the qualified entity *in general and* in the context of the representative action, including on settlements 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. If any of these circumstances is confirmed, the court or administrative authority *must* be empowered to require the qualified entity to refuse the relevant funding and, if necessary, reject standing of the qualified entity in a specific case. *Member States should prevent law firms from establishing qualified representative entities. Indirect financing of the action through donations, including traders donations in the framework of a corporate social responsibility initiatives, shall be eligible for third party financing provided that it complies with the requirements on transparency, independence and absence of conflict of interest listed in Article 4 and Article 7.*

Amendment 19

Proposal for a directive Recital 26

Text proposed by the Commission

(26) Collective out-of-court settlements

Amendment

(26) Collective out-of-court settlements,

aimed at providing redress to harmed consumers should be encouraged both before the representative action is brought and at any stage of the representative action.

such as mediation, aimed at providing redress to harmed consumers should be encouraged both before the representative action is brought and at any stage of the representative action.

Amendment 20

Proposal for a directive Recital 27

Text proposed by the Commission

(27) Member States may provide that a qualified entity and a trader who have reached a settlement regarding redress for consumers affected by an allegedly illegal practice of that trader can jointly request a court or administrative authority to approve it. Such request should be admitted by the court or administrative authority only if there is no other ongoing representative action regarding the same practice. A competent court or administrative authority approving such collective settlement must take into consideration the interests and rights of all parties concerned, including individual consumers. ***Individual consumers concerned shall be given the possibility to accept or to refuse to be bound by such a settlement.***

Amendment

(27) Member States may provide that a qualified entity and a trader who have reached a settlement regarding redress for consumers affected by an allegedly illegal practice of that trader can jointly request a court or administrative authority to approve it. Such request should be admitted by the court or administrative authority only if there is no other ongoing representative action regarding the same practice. A competent court or administrative authority approving such collective settlement must take into consideration the interests and rights of all parties concerned, including individual consumers. ***Settlements should be final and binding upon all parties.***

Amendment 21

Proposal for a directive Recital 29

Text proposed by the Commission

(29) In order to facilitate redress for individual consumers sought on the basis of final declaratory decisions regarding the liability of the trader towards the

Amendment

deleted

consumers harmed by an infringement issued within representative actions, the court or administrative authority that issued the decision should be empowered to request the qualified entity and the trader to reach a collective settlement.

Amendment 22

Proposal for a directive Recital 30

Text proposed by the Commission

(30) Any out-of-court settlement reached within the context of a representative action **or based on a final declaratory decision** should be approved by the relevant court or the administrative authority to ensure its legality and fairness, taking into consideration the interests and rights of all parties concerned. **Individual consumers concerned shall be given the possibility to accept or to refuse to be bound by such a settlement.**

Amendment

(30) Any out-of-court settlement reached within the context of a representative action should be approved by the relevant court or the administrative authority to ensure its legality and fairness, taking into consideration the interests and rights of all parties concerned. **The settlement are binding upon all parties without prejudice to any additional rights to redress that the consumers concerned may have under Union or national law.**

Amendment 23

Proposal for a directive Recital 32

Text proposed by the Commission

(32) To be effective, the information should be adequate and proportional to the circumstances of the case. **The infringing trader** should adequately inform all consumers concerned of a final injunction and redress **orders** issued within the representative action **as well as** of a

Amendment

(32) To be effective, the information should be adequate and proportional to the circumstances of the case. **Member States** should **ensure that the court or the administrative authority may require the defeated party to** adequately inform all consumers concerned of a final **decision**

settlement approved by a court or administrative authority. Such information may be provided for instance on the *trader's* website, social media, online market places, or in popular newspapers, including those distributed exclusively by electronic means of communication. ***If possible, consumers should be informed individually through electronic or paper letters.*** This information should be provided in accessible formats for persons with disabilities upon request.

concerning injunction and redress issued within the representative action, ***and both parties in cases*** of a settlement approved by a court or administrative authority. Such information may be provided for instance on the website, social media, online market places, or in popular newspapers, including those distributed exclusively by electronic means of communication. This information should be provided in accessible formats for persons with disabilities upon request. ***The defeated party shall bear the costs of consumer information.***

Amendment 24

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) Member States should be encouraged to set up a national register for representative actions free of charge, which could further enhance the transparency obligations.

Amendment 25

Proposal for a directive Recital 33

Text proposed by the Commission

Amendment

(33) To enhance legal certainty, avoid inconsistency in the application of Union law and to increase the effectiveness and procedural efficiency of representative actions and of possible follow-on actions for redress, the finding of an infringement established in a final decision, including a final injunction order under this Directive, issued by an administrative authority or a

(33) To enhance legal certainty, avoid inconsistency in the application of Union law and to increase the effectiveness and procedural efficiency of representative actions and of possible follow-on actions for redress, the finding of an infringement ***or a non-infringement*** established in a final decision, including a final injunction order under this Directive, issued by an

court should *not be relitigated in subsequent legal actions related to the same infringement by the same trader as regards the nature of the infringement and its material, personal, temporal and territorial scope as determined by that final decision*. Where an action seeking measures eliminating the continuing effects of the infringement, including for redress, is brought in a Member State other than the Member State where a final decision establishing this infringement was issued, the decision should constitute *a rebuttable presumption* that the infringement has occurred.

administrative authority or a court should *be binding upon all parties, which participated in the representative action. The final decision should be without prejudice to any additional rights to redress that the consumers concerned may have under Union or national law. The redress obtained through the settlement should also be binding upon cases involving the same practice, the same trader and the same consumer*. Where an action seeking measures eliminating the continuing effects of the infringement, including for redress, is brought in a Member State other than the Member State where a final decision establishing this infringement *or a non-infringement* was issued, the decision should constitute *an evidence* that the infringement has *or has not* occurred *in related cases*. *Member States shall ensure that a final decision of a court of one Member State establishing the existence or non-existence of the infringement for the purposes of any other actions seeking redress before their national courts in another Member State against the same trader for the same infringement shall be considered as a rebuttable presumption*.

Amendment 26

Proposal for a directive Recital 35

Text proposed by the Commission

(35) Actions for redress based on the establishment of an infringement by a final injunction order *or by a final declaratory decision* regarding the liability of the trader towards the harmed consumers under this Directive should not be hindered by national rules on limitation periods. The submission of a representative action shall

Amendment

(35) Actions for redress based on the establishment of an infringement by a final injunction order regarding the liability of the trader towards the harmed consumers under this Directive should not be hindered by national rules on limitation periods. The submission of a representative action shall have the effect of suspending or

have the effect of suspending or interrupting the limitation periods for any redress actions for the consumers concerned by this action.

interrupting the limitation periods for any redress actions for the consumers concerned by this action.

Amendment 27

Proposal for a directive Recital 39

Text proposed by the Commission

(39) Having regard to the fact that representative actions pursue a public interest by protecting the collective interests of consumers, Member States should ensure that qualified entities are not prevented from bringing representative actions under this Directive because of the costs involved with the procedures.

Amendment

(39) Having regard to the fact that representative actions pursue a public interest by protecting the collective interests of consumers, Member States should ensure that qualified **representative** entities are not prevented from bringing representative actions under this Directive because of the costs involved with the procedures. ***However, subject to the relevant conditions under national law, this should be without prejudice to the fact that the party that loses a representative action reimburses necessary legal costs borne by the winning party ('loser pays principle'). However, the court or administrative authority should not award costs to the unsuccessful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.***

Amendment 28

Proposal for a directive Recital 39 a (new)

Text proposed by the Commission

Amendment

(39a) Member States should ensure that contingency fees are avoided and lawyers' remuneration and the method by which it

is calculated do no create any incentive to litigation that is unnecessary from the point of view of the interest of consumers or any of the parties concerned and could prevent consumers from fully benefiting from the representative action. The Member States that allow for contingency fees should ensure that such fees do not prevent obtaining full compensation by consumers.

Amendment 29

Proposal for a directive Recital 40

Text proposed by the Commission

(40) Cooperation and exchange of information between qualified entities from different Member States have proven to be useful in addressing 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.

Amendment

(40) Cooperation and exchange of information, ***good practices and experience*** between qualified ***representative*** entities from different Member States have proven to be useful in addressing cross-border infringements. There is a need for continuing and expanding the capacity-building and cooperation measures to a larger number of qualified ***representative*** entities across the Union in order to increase the use of representative actions with cross-border implications.

Amendment 30

Proposal for a directive Recital 41 a (new)

Text proposed by the Commission

Amendment

(41a) In order to explore the possibility of having a procedure at Union level for cross-border representative actions, the Commission should assess the possibility of establishing a European Ombudsman for collective redress.

Amendment 31

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive sets out rules enabling qualified entities to seek representative actions aimed at the protection of the collective interests of consumers, while ensuring appropriate safeguards to avoid abusive litigation.

Amendment

1. This Directive sets out rules enabling qualified **representative** entities to seek representative actions aimed at the protection of the collective interests of consumers **and thereby, in particular, achieve and enforce a high level of protection and access to justice**, while **at the same time** ensuring appropriate safeguards to avoid abusive litigation.

Amendment 32

Proposal for a directive Article 1 – paragraph 2

Text proposed by the Commission

2. This Directive shall not prevent Member States from adopting or maintaining in force provisions designed to grant qualified entities or any **other persons concerned** other procedural means to bring actions aimed at the protection of the collective interests of consumers at national level.

Amendment

2. This Directive shall not prevent Member States from adopting or maintaining in force provisions designed to grant qualified **representative** entities or any **public body** other procedural means to bring actions aimed at the protection of the collective interests of consumers at national level. **The implementation of this Directive shall under no circumstances constitute grounds for the reduction of consumer protection in fields covered by**

Amendment 33

Proposal for a directive Article 2 – paragraph 1

Text proposed by the Commission

1. This Directive shall apply to representative actions brought against infringements by traders of provisions of the Union law listed in Annex I that harm or may harm the collective interests of consumers. 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.

Amendment

1. This Directive shall apply to representative actions brought against infringements ***with a broad consumer impact*** by traders of provisions of the Union law listed in Annex I ***that protect*** the collective interests of consumers. 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.

Amendment 34

Proposal for a directive Article 2 – paragraph 3

Text proposed by the Commission

3. This Directive is without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction ***and*** applicable ***law***.

Amendment

3. This Directive is without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction, ***to the recognition and enforcement of judgements in civil and commercial matters and rules on the law***

applicable to contractual and non-contractual obligations, which apply to the representative actions set out by this Directive.

Amendment 35

Proposal for a directive Article 2 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. This Directive is without prejudice to other forms of redress mechanisms provided for in national law.

Amendment 36

Proposal for a directive Article 2 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3 b. This Directive respects the fundamental rights, and observes the principles, recognised by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights, and in particular the right to a fair and impartial trial and the right to an effective remedy.

Amendment 37

Proposal for a directive Article 3 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

(1 a) ‘consumer organisation’ means any group that seeks to protect consumers’ interests from illegal acts or omissions committed by traders.

Amendment 38

Proposal for a directive Article 3 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

(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 their name or on their behalf, for purposes relating to their 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 ***in a civil capacity under the rules of civil law***, including through any other person acting in their name or on their behalf, for purposes relating to their trade, business, craft or profession;

Amendment 39

Proposal for a directive Article 3 – paragraph 1 – point 3

Text proposed by the Commission

(3) ‘collective interests of consumers’ means the interests of a number of consumers;

Amendment

(3) ‘collective interests of consumers’ means the interests of a number of consumers *or of data subjects as defined in Regulation (EU) 2016/679 (General Data Protection Regulation)*;

Amendment 40

Proposal for a directive Article 3 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

Amendment

(6 a) "consumer law" means Union and national law adopted to protect consumers;

Amendment 41

Proposal for a directive Article 4 – title

Text proposed by the Commission

Qualified entities

Amendment

Qualified *representative* entities

Amendment 42

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Member States shall designate an entity as qualified entity if it complies with the following criteria:

Member States or its courts shall designate within their respective territory at least one qualified representative entity for the purpose of bringing representative actions within the meaning of Article 3(4).

Member States shall designate an entity as qualified ***representative*** entity if it complies with ***all of*** the following criteria:

Amendment 43

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) ***it has a*** legitimate interest in ensuring that provisions of Union law covered by this Directive are complied with;

(b) ***its statutes or another governance document and its continued activity involving the defence and protection of consumers interests demonstrate its*** legitimate interest in ensuring that provisions of Union law covered by this Directive are complied with;

Amendment 44

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(c a) it acts in a way that is independent from other entities and from persons other than consumers who might have an economic interest in the outcome of the representative actions, in particular from market operators;

Amendment 45

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(c b) it does not have financial agreements with plaintiff law firms beyond a normal service contract;

Amendment 46

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2 – point c c (new)

Text proposed by the Commission

Amendment

(c c) it has established internal procedures to prevent a conflict of interest between itself and its funders;

Amendment 47

Proposal for a directive Article 4 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Member States shall assess on a regular basis whether a qualified entity continues to comply with these criteria. Member States shall ensure that the qualified entity loses its status under this Directive if it no longer complies with one or more of the criteria listed in the first subparagraph.

Amendment

Members States shall provide that the qualified representative entities disclose publicly, by appropriate means, such as on its website, in plain and intelligible language, how it is financed, its organisational and management structure, its objective and its working methods as well as its activities.

Member States shall assess on a regular basis whether a qualified ***representative*** entity continues to comply with these criteria. Member States shall ensure that the qualified ***representative*** entity loses its status under this Directive if it no longer complies with one or more of the criteria listed in the first subparagraph.

Member States shall establish a list of representative entities complying with the criteria listed in paragraph 1 and make it publicly available. They shall communicate the list to the Commission updated where necessary.

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

Amendment 48

Proposal for a directive Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Member States may provide that public bodies already designated before the entry into force of this Directive in accordance with national law shall remain eligible for the status of representative entity within the meaning of this Article.

Amendment 49

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States may designate a qualified entity on an ad hoc basis for a particular representative action, at its request, if it complies with the criteria referred to in paragraph 1.

deleted

Amendment 50

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that in particular consumer organisations and independent public bodies are eligible for

3. Member States shall ensure that consumer organisations meeting the criteria listed in paragraph 1 and public

the status of qualified entity. Member States may designate as qualified entities consumer organisations that represent members from more than one Member State.

bodies are eligible for the status of qualified **representative** entity. Member States may designate as qualified **representative** entities consumer organisations that represent members from more than one Member State.

Amendment 51

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

4. *Member States may set out rules specifying which qualified entities may seek all of the measures referred to in Articles 5 and 6, and which qualified entities may seek only one or more of these measures.*

Amendment

deleted

Amendment 52

Proposal for a directive Article 4 – paragraph 5

Text proposed by the Commission

5. The compliance by a qualified entity with the criteria referred to in paragraph 1 is without prejudice to the **right** of the court or administrative authority to examine whether the purpose of the qualified entity justifies its taking action in a specific case in accordance with Article

Amendment

5. The compliance by a qualified entity with the criteria referred to in paragraph 1 is without prejudice to the **duty** of the court or administrative authority to examine whether the purpose of the qualified entity justifies its taking action in a specific case in accordance with **Article 4 and** Article

5(1).

5(1).

Amendment 53

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that representative actions can be brought before national courts or administrative authorities by qualified entities provided that there is a direct relationship between the main objectives of the entity and the rights granted under Union law that are claimed to have been violated in respect of which the action is brought.

Amendment

1. Member States shall ensure that representative actions can be brought before national courts or administrative authorities **only** by qualified **representative** entities **designated in accordance with Article 4(1) and** provided that there is a direct relationship between the main objectives of the entity and the rights granted under Union law that are claimed to have been violated in respect of which the action is brought.

The qualified representative entities are free to choose any procedure available under national or Union law ensuring the higher level of protection of the collective consumer interest.

Member States shall ensure that no other ongoing action has been brought before a court or an administrative authority of a Member State regarding the same practice, the same trader and the same consumers.

Amendment 54

Proposal for a directive Article 5 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States shall ensure that qualified entities are entitled to bring representative actions seeking the following measures:

Amendment

Member States shall ensure that qualified **representative** entities, **including public bodies that have been designated in advance**, are entitled to bring representative actions seeking the following measures:

Amendment 55

Proposal for a directive
Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

In order to seek injunction orders, qualified entities shall not have to obtain the mandate of the individual consumers concerned **or** provide proof of actual loss or damage on the part of the consumers concerned or of intention or negligence on the part of the trader.

Amendment

In order to seek injunction orders, qualified **representative** entities shall not have to obtain the mandate of the individual consumers concerned **and** provide proof of actual loss or damage on the part of the consumers concerned or of intention or negligence on the part of the trader.

Amendment 56

Proposal for a directive
Article 5 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) an injunction order as an interim measure for stopping the practice or, if the

Amendment

(a) an injunction order as an interim measure for stopping the **illegal** practice or,

practice has not yet been carried out but is imminent, prohibiting the practices;

if the practice has not yet been carried out but is imminent, prohibiting the *illegal* practices;

Amendment 57

Proposal for a directive Article 5 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that qualified entities are entitled to bring representative actions seeking measures eliminating the continuing effects of the infringement. ***These measures shall be sought on the basis of any final decision establishing that a practice constitutes an infringement of Union law listed in Annex I harming collective interests of consumers, including a final injunction order referred to in paragraph (2)(b).***

Amendment

3. Member States shall ensure that qualified ***representative*** entities are entitled to bring representative actions seeking measures eliminating the continuing effects of the infringement.

Amendment 58

Proposal for a directive Article 5 – paragraph 4

Text proposed by the Commission

4. ***Without prejudice to Article 4(4), Member States shall ensure that qualified entities are able to seek the measures eliminating the continuing effects of the infringement together with measures***

Amendment

deleted

referred to in paragraph 2 within a single representative action.

Amendment 59

Proposal for a directive Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Registry of collective redress actions

- 1. Member States may set up a national register for representative actions, which shall be available free of charge to any interested person through electronic means and/or otherwise.*
- 2. Websites publishing the registries shall provide access to comprehensive and objective information on the available methods of obtaining compensation, including out of court methods as well as the pending representative actions.*
- 3. The national registries shall be interlinked. Article 35 of Regulation (EU) 2017/2394 shall apply.*

Amendment 60

Proposal for a directive Article 6 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. For the purposes of Article 5(3), Member States shall ensure that qualified entities are entitled to bring representative actions seeking a redress order, which obligates the trader to provide for, inter

1. For the purposes of Article 5(3), Member States shall ensure that qualified **representative** entities are entitled to bring representative actions seeking a redress order, which obligates the trader to provide

alia, compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate. A Member State may require the mandate of the individual consumers concerned before a ***declaratory decision is made or a*** redress order is issued.

for, inter alia, compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate. A Member State may ***or may not*** require the mandate of the individual consumers concerned before a redress order is issued.

Amendment 61

Proposal for a directive

Article 6 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

1a. If a Member State does not require a mandate of the individual consumer to join the representative action, this Member State shall nevertheless allow those individuals who are not habitually resident in the Member State where the action occurs, to participate in the representative action, in the event they gave their explicit mandate to join the representative action within the applicable time limit.

Amendment 62

Proposal for a directive

Article 6 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The qualified entity shall provide ***sufficient***

The qualified ***representative*** entity shall

information as required under national law to support the action, including a description of the consumers concerned by the action and the questions of fact and law to be resolved.

provide *all the necessary* information as required under national law to support the action, including a description of the consumers concerned by the action and the questions of fact and law to be resolved.

Amendment 63

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. By derogation to paragraph 1, Member States may empower a court or administrative authority to issue, instead of a redress order, a declaratory decision regarding the liability of the trader towards the consumers harmed by an infringement of Union law listed in Annex I, in duly justified cases where, due to the characteristics of the individual harm to the consumers concerned the quantification of individual redress is complex.

deleted

Amendment 64

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. Paragraph 2 shall not apply in the cases where:

deleted

(a) consumers concerned by the infringement are identifiable and suffered comparable harm caused by the same practice in relation to a period of time or a purchase. In such cases the requirement of the mandate of the individual consumers concerned shall not constitute a condition to initiate the action. The redress shall be directed to the consumers concerned;

(b) consumers have suffered a small amount of loss and it would be disproportionate to distribute the redress to them. In such cases, Member States shall ensure that the mandate of the individual consumers concerned is not required. The redress shall be directed to a public purpose serving the collective interests of consumers.

Amendment 65

Proposal for a directive Article 6 – paragraph 4

Text proposed by the Commission

4. The redress obtained through a final decision in accordance with paragraphs 1, **2 and 3** shall be without prejudice to any additional rights to redress that the consumers concerned may have under Union or national law.

Amendment

4. The redress obtained through a final decision in accordance with paragraph 1 shall be without prejudice to any additional rights to redress that the consumers concerned may have under Union or national law. ***The res judicata principle shall be respected in the application of this provision.***

Amendment 66

Proposal for a directive
Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Amendment 67

Proposal for a directive
Article 6 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4 b. In particular, punitive damages, leading to overcompensation in favour of the claimant party of the damage suffered, shall be prohibited. For instance, the compensation awarded to consumers harmed collectively shall not exceed the amount owed by the trader in accordance with the applicable national or Union law in order to cover the actual harm suffered by them individually.

Amendment 68

Proposal for a directive
Article 7 – title

Text proposed by the Commission

Funding

Amendment

Admissibility of a representative action

Amendment 69

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

1. The qualified entity seeking a redress order as referred in Article 6(1) shall **declare at an early** stage of the action **the source of the** funds used for its activity in general and the funds that it uses to support the action. It shall demonstrate that it has sufficient financial resources to represent the best interests of the consumers concerned and to meet any adverse costs should the action fail.

Amendment

1. The qualified **representative** entity seeking a redress order as referred in Article 6(1) shall **submit to the court or administrative authority at the earliest** stage of the action **a complete financial overview, listing all sources of** funds used for its activity in general and the funds that it uses to support the action **in order to demonstrate the absence of conflict of interest**. It shall demonstrate that it has sufficient financial resources to represent the best interests of the consumers concerned and to meet any adverse costs should the action fail.

Amendment 70

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that in cases where a representative action for redress is funded by a third party, it is prohibited for the third party:

Amendment

2. ***The representative action may be declared inadmissible by the national court if it establishes that the funding by the third party would:***

Amendment 71

**Proposal for a directive
Article 7 – paragraph 2 – point a**

Text proposed by the Commission

(a) ***to*** influence decisions of the qualified entity in the context of a representative action, including on settlements;

Amendment

(a) influence decisions of the qualified ***representative*** entity in the context of a representative action, including ***the initiation of representative actions and decisions*** on settlements;

Amendment 72

**Proposal for a directive
Article 7 – paragraph 3**

Text proposed by the Commission

3. Member States shall ensure that courts and administrative authorities ***are empowered to*** assess the circumstances referred to in paragraph 2 ***and accordingly require the qualified entity to refuse the relevant funding and, if necessary, reject***

Amendment

3. Member States shall ensure that courts and administrative authorities assess ***the absence of conflict of interest referred to in paragraph 1 and*** the circumstances referred to in paragraph 2 ***at the stage of admissibility*** of the ***representative action***

the standing of the qualified entity in a specific case.

and at a later stage during the court proceedings if the circumstances only yield then.

Amendment 73

Proposal for a directive Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. *Member States shall ensure that the court or administrative authority have the authority to dismiss manifestly unfounded cases at the earliest possible stage of proceedings.*

Amendment 74

Proposal for a directive Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7 a

Loser pays principle

Member States shall ensure that the party that loses a collective redress action reimburses the legal costs borne by the winning party, subject to the conditions provided for in national law. However, the court or administrative authority shall not award costs to the unsuccessful party to the extent that they were unnecessarily

incurred or are disproportionate to the claim.

Amendment 75

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

1. Member States may provide that a qualified entity and a trader who have reached a settlement regarding redress for consumers affected by an allegedly illegal practice of that trader can jointly request a court or administrative authority to approve it. ***Such a request should be admitted by the court or administrative authority only if there is no other ongoing representative action in front of the court or administrative authority of the same Member State regarding the same trader and regarding the same practice.***

Amendment

1. Member States may provide that a qualified ***representative*** entity and a trader who have reached a settlement regarding redress for consumers affected by an allegedly illegal practice of that trader can jointly request a court or administrative authority to approve it.

Amendment 76

Proposal for a directive Article 8 – paragraph 6

Text proposed by the Commission

6. ***Individual consumers concerned shall be given the possibility to accept or to refuse to be bound by settlements referred to in paragraphs 1, 2 and 3.*** The

Amendment

6. The redress obtained through an approved settlement in accordance with paragraph 4 shall be ***binding upon all parties*** without prejudice to any additional

redress obtained through an approved settlement in accordance with paragraph 4 shall be without prejudice to any additional rights to redress that the consumers concerned may have under Union or national law.

rights to redress that the consumers concerned may have under Union or national law.

Amendment 77

Proposal for a directive Article 9 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1 Member States shall ensure that the representative entities:

(a) inform consumers about the claimed violation of rights granted under Union law and the intention to seek an injunction or to pursue an action for damages,

(b) explain to consumers concerned already beforehand the possibility of joining the action in order to ensure that the relevant documents and other information necessary for the action are kept.

(c) where relevant, inform about subsequent steps and the potential legal consequences.

Amendment 78

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the court or administrative authority shall require the ***infringing trader*** to inform affected consumers at its expense about the final decisions providing for measures referred to in Articles 5 and 6, and the approved settlements referred to in Article 8, by means appropriate to the circumstance of the case and within specified time limits, ***including, where appropriate, through notifying all consumers concerned individually.***

Amendment

1. ***Where a settlement or final decision benefits consumers who may be unaware of it,*** Member States shall ensure that the court or administrative authority shall require the ***defeated party or both parties*** to inform affected consumers at its expense about the final decisions providing for measures referred to in Articles 5 and 6, and the approved settlements referred to in Article 8, by means appropriate to the circumstance of the case and within specified time limits. ***Members States may provide that the information obligation can be complied with through publically available and easily accessible website.***

Amendment 79

**Proposal for a directive
Article 9 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1 a. The defeated party shall bear the costs of consumer information in accordance with the principle laid down in Article 7.

Amendment 80

**Proposal for a directive
Article 9 – paragraph 2**

Text proposed by the Commission

2. The information referred to in paragraph 1 shall include in intelligible language an explanation of the subject-matter of the representative action, its legal consequences and, if relevant, the subsequent steps to be taken by the consumers concerned.

Amendment

2. The information referred to in paragraph 1 shall include in intelligible language an explanation of the subject-matter of the representative action, its legal consequences and, if relevant, the subsequent steps to be taken by the consumers concerned. ***The modalities and timeframe of the information shall be designed in agreement with the court or administrative authority.***

Amendment 81

**Proposal for a directive
Article 9 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2 a. Member States shall ensure that information is made available to the public in an accessible way, on upcoming, ongoing and closed collective actions, including via media and online through a public website when a court has decided that the case is admissible.

Amendment 82

**Proposal for a directive
Article 9 – paragraph 2 b (new)**

2 b. Member States shall ensure that public communications by qualified entities about claims are factual and take into account both the right for consumers to receive information and defendants' reputational rights and rights to business secrecy.

Amendment 83

Proposal for a directive Article 10 – paragraph 1

1. Member States shall ensure that ***an infringement harming collective interests of consumers established in*** a final decision of an administrative authority or a court, including a final injunction order referred to in Article 5(2)(b), ***is deemed as irrefutably*** establishing the existence of that infringement for the purposes of any other actions seeking redress before their national courts against the same trader for the same ***infringement***.

1. Member States shall ensure that a final decision of an administrative authority or a court, including a final injunction order referred to in Article 5(2)(b), ***considered as evidence*** establishing the existence ***or non-existence*** of that infringement for the purposes of any other actions seeking redress before their national courts against the same trader for the same ***facts providing that the same damage cannot be compensated twice to the same consumers concerned***.

Amendment 84

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that a final decision referred to in paragraph 1, taken in another Member State is considered by their national courts or administrative authorities as ***a rebuttable presumption*** that an infringement has occurred

Amendment

2. Member States shall ensure that a final decision referred to in paragraph 1, taken in another Member State is considered by their national courts or administrative authorities ***at least as evidence*** that an infringement has occurred

Amendment 85

**Proposal for a directive
Article 10 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

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

Amendment 86

**Proposal for a directive
Article 10 – paragraph 3**

Text proposed by the Commission

3. Member States ***shall ensure that a final declaratory decision referred to in Article 6(2) is deemed as irrefutably establishing the liability of the trader towards the harmed consumers by an infringement for the purposes of any actions seeking redress before their national courts against the same trader for that infringement. Member States shall ensure that such actions for redress brought individually by consumers are available through expedient and simplified procedures.***

Amendment

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

Amendment 87

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

Member States shall ensure that the submission of a representative action as referred to in Articles 5 and 6 shall have the effect of suspending or interrupting limitation periods applicable to any redress actions for the ***consumers*** concerned, if the relevant rights are subject to a limitation period under Union or national law.

Amendment

In accordance with national law, Member States shall ensure that the submission of a representative action as referred to in Articles 5 and 6 shall have the effect of suspending or interrupting limitation periods applicable to any redress actions for the ***individuals*** concerned, if the relevant rights are subject to a limitation period under Union or national law.

Amendment 88

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

Member States shall ensure that, at the request of ***one of the parties*** that has presented reasonably available facts and sufficient ***evidence and a substantive explanation*** to support ***its views***, and has indicated further ***specific and clear defined*** evidence which lies in the control of the ***other party***, the court or administrative authority may order, in accordance with national procedural rules, that such evidence be presented by ***this party, as narrowly as possible on the basis of reasonably available facts***, subject to the applicable Union and national rules on confidentiality. ***The order must be adequate and proportionate in the respective case and must not create an imbalance between the two parties involved.***

Amendment 89

Proposal for a directive
Article 13 – paragraph 1 a (new)

Text proposed by the Commission

1a. Member States shall ensure that the courts limit the disclosure of evidence to what is proportionate. To determine whether any disclosure requested by a representative entity is proportionate, the court shall consider the legitimate interest of all parties concerned, namely to which extent the request for disclosure of evidence is supported by available facts and evidence and whether the evidence the disclosure of which is requested

Amendment

contains confidential information.

Amendment 90

Proposal for a directive Article 13 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Member States shall ensure that national courts have the power to order the disclosure of evidence containing information where they consider it relevant to the action for damages.

Amendment 91

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that penalties may take the form of fines.

2. Member States shall ensure that penalties may take, ***inter alia***, the form of fines.

Amendment 92

Proposal for a directive Article 14 – paragraph 3

Text proposed by the Commission

Amendment

3. When deciding about the allocation of revenues from fines Member States shall take into account the collective interests ***of consumers***.

3. When deciding about the allocation of revenues from fines Member States shall take into account the collective interests. ***Member States may decide for such revenues to be allocated to a fund created***

*for the purpose of financing
representative actions.*

Amendment 93

Proposal for a directive Article 15 – title

Text proposed by the Commission

Assistance for qualified entities

Amendment

Assistance for qualified **representative**
entities

Amendment 94

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that procedural costs related to representative actions do not constitute financial obstacles for qualified entities to effectively exercise the right to seek the measures referred to in Articles 5 and 6, such as limiting applicable court or administrative fees, granting them access to legal aid where necessary, or by providing them with public funding for this purpose.

Amendment

1. Member States **shall be encouraged, in line with Article 7, to ensure that qualified representative entities have sufficient funds available for representative actions.** They shall take the necessary measures **to facilitate access to justice and shall** ensure that procedural costs related to representative actions do not constitute financial obstacles for qualified entities to effectively exercise the right to seek the measures referred to in Articles 5 and 6, such as limiting applicable court or administrative fees **or** granting them access to legal aid where necessary, or by providing them with

public funding for this purpose.

Amendment 95

Proposal for a directive Article 15 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Member States shall provide structural support to entities acting as qualified entities within the scope of this Directive.

Amendment 96

Proposal for a directive Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Legal representation and fees

Member States shall ensure that the lawyers' remuneration and the method by which it is calculated do not create any incentive to litigation, unnecessary from the point of view of the interest of any of the parties. In particular, Member States shall prohibit contingency fees.

Amendment 97

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

1. Member States shall take the measures necessary to ensure that any qualified entity designated in advance in one Member State in accordance with Article 4(1) may apply to the courts or administrative authorities of another Member State upon the presentation of the publicly available list referred to in that Article. The courts or administrative authorities ***shall accept this list as proof of*** the legal standing of the qualified entity without prejudice to their right to examine whether the purpose of the qualified entity justifies its taking action in a specific case.

Amendment

1. Member States shall take the measures necessary to ensure that any qualified ***representative*** entity designated in advance in one Member State in accordance with Article 4(1) may apply to the courts or administrative authorities of another Member State upon the presentation of the publicly available list referred to in that Article. The courts or administrative authorities ***may review*** the legal standing of the qualified ***representative*** entity without prejudice to their right to examine whether the purpose of the qualified ***representative*** entity justifies its taking action in a specific case.

Amendment 98

Proposal for a directive Article 16 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Member State where a collective redress takes place may require a mandate from the consumers who are resident in this Member State and shall require a mandate from individual consumers based in another Member State when the action is cross-border. In such circumstances, a consolidated list of all consumers from other Member States who have given such a mandate will be provided to the court or administrative authority and the defendant at the beginning of an action.

Amendment 99

Proposal for a directive Article 16 – paragraph 4

Text proposed by the Commission

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(1), 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.

Amendment

4. If a Member State, the Commission *or the trader* raises concerns regarding the compliance by a qualified *representative* entity with the criteria laid down in Article 4(1), 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.

Amendment 100

Proposal for a directive Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Public Register

Member States shall ensure that the relevant national competent authorities set up a publicly accessible register of unlawful acts that have been subject to injunction orders in accordance with the provisions of this Directive.

Amendment 101

Proposal for a directive
Article 18 – paragraph 2

Text proposed by the Commission

Amendment

2. No later than one year after the entry into force of this Directive, the Commission shall assess whether the rules on air and rail passenger rights offer a level of protection of the rights of consumers comparable to that provided for under this Directive. Where that is the case, the Commission intends to make appropriate proposals, which may consist in particular in removing the acts referred to in points 10 and 15 of Annex I from the scope of application of this Directive as defined in Article 2.

deleted

Amendment 102

Proposal for a directive
Article 18 a (new)

Text proposed by the Commission

Amendment

Article 18a

Review clause

Without prejudice to Article 16, the Commission shall assess whether cross-border representative actions could be best addressed at Union level by establishing a European Ombudsman for collective redress. No later than three years after the entry into force of this Directive, the Commission shall draw up a report in this regard and submit it to the European Parliament and the Council, accompanied, if appropriate, by a relevant proposal.

Amendment 103

Proposal for a directive Annex I – point 59 a (new)

Text proposed by the Commission

Amendment

(59a) 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).

Amendment 104

Proposal for a directive Annex I – point 59 b (new)

Text proposed by the Commission

Amendment

(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).

Amendment 105

Proposal for a directive Annex I – point 59 c (new)

Text proposed by the Commission

Amendment

(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.

Amendment 106

Proposal for a directive Annex I – point 59 d (new)

Text proposed by the Commission

Amendment

(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).

Amendment 107

Proposal for a directive Annex I – point 59 e (new)

Text proposed by the Commission

Amendment

(59e) Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products.

Amendment 108

Proposal for a directive Annex I – point 59 f (new)

Text proposed by the Commission

Amendment

(59f) Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.
