

Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (Text with EEA relevance)

DIRECTIVE (EU) 2020/1828 OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

of 25 November 2020

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>,

Having regard to the opinion of the Committee of the Regions<sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure<sup>(3)</sup>,

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 can cause consumer detriment. Without effective means to bring unlawful practices to an end and to obtain redress for consumers, consumer confidence in the internal market is reduced.
- (2) The lack of effective means for the enforcement of Union law protecting consumers could also result in the distortion of fair competition between infringing and compliant traders that operate domestically or across borders. Such distortions can hamper the smooth functioning of the internal market.
- (3) According to 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 with regard to goods and services, thereby promoting a high level of consumer protection.
- (4) 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

---

*Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

---

of the European Union (the ‘Charter’) provides that Union policies are to ensure a high level of consumer protection.

- (5) Directive 2009/22/EC of the European Parliament and of the Council<sup>(4)</sup> enabled qualified entities to bring representative actions that are primarily aimed at the cessation or prohibition of infringements of Union law that are harmful to the collective interests of consumers. However, that Directive did not sufficiently address the challenges relating to 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 procedural mechanisms for the protection of the collective interests of consumers to cover injunctive measures as well as redress measures. Given the numerous changes required, it is appropriate to repeal Directive 2009/22/EC and replace it with this Directive.
- (6) Procedural mechanisms for representative actions, both for injunctive measures and for redress measures, vary across the Union and offer different levels of protection for consumers. In addition, some Member States do not at present have any procedural mechanisms for collective actions for redress measures in place. That situation diminishes consumers’ and businesses’ confidence in the internal market and their ability to operate in the internal market. It distorts competition and hampers the effective enforcement of Union law in the field of consumer protection.
- (7) This Directive therefore aims to ensure that at Union and national level at least one effective and efficient procedural mechanism for representative actions for injunctive measures and for redress measures is available to consumers in all Member States. Having at least one such procedural mechanism for representative actions available 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.
- (8) 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 that represent the collective interests of consumers to bring representative actions for both injunctive measures and redress measures against traders that infringe provisions of Union law. Those qualified entities should be able to request that such infringing conduct be ceased or prohibited and to seek redress, as appropriate and available under Union or national law, such as compensation, repair or price reduction.
- (9) 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 that traders comply with relevant provisions of Union law and to overcome the obstacles faced by consumers in individual actions, such as those relating to uncertainty about their rights and about which procedural mechanisms are available, psychological reluctance to take action and the negative balance of the expected costs relative to the benefits of the individual action.
- (10) It is important to ensure the necessary balance between improving consumers’ access to justice and providing appropriate safeguards for traders to avoid abusive litigation that would unjustifiably hinder the ability of businesses to operate in the internal market. To

---

*Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

---

prevent the misuse of representative actions, the awarding of punitive damages should be avoided and rules on certain procedural aspects, such as the designation and funding of qualified entities, should be laid down.

- (11) This Directive should not replace existing national procedural mechanisms for the protection of collective or individual consumer interests. Taking into account their legal traditions, it should leave it to the discretion of the Member States whether to design the procedural mechanism for representative actions required by this Directive as part of an existing or as part of a new procedural mechanism for collective injunctive measures or redress measures, or as a distinct procedural mechanism, provided that at least one national procedural mechanism for representative actions complies with this Directive. For instance, this Directive should not prevent Member States from adopting laws on actions seeking declaratory decisions by a court or administrative authority even though it does not provide for rules on such actions. If there were procedural mechanisms in place at national level in addition to the procedural mechanism required by this Directive, the qualified entity should be able to choose which procedural mechanism to use.
- (12) In line with the principle of procedural autonomy, this Directive should not contain provisions on every aspect of proceedings in representative actions. Accordingly, it is for the Member States to lay down rules, for instance, on admissibility, evidence or the 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 a representative action for redress measures in order for the case to be admitted to be heard as a representative action. Such national rules should not hamper the effective functioning of the procedural mechanism for representative actions required by this Directive. In accordance with the principle of non-discrimination, the admissibility requirements applicable to specific cross-border representative actions should not differ from those applied to specific domestic representative actions. A decision to declare a representative action inadmissible should not affect the rights of the consumers concerned by the action.
- (13) The scope of this Directive should reflect recent developments in the field of consumer protection. Since consumers now operate in a wider and increasingly digitalised marketplace, achieving a high level of consumer protection requires that areas such as data protection, financial services, travel and tourism, energy, and telecommunications be 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 those areas. The consumer market has also evolved in the area of digital services, and there is an increased need for more efficient enforcement of consumer law, including as regards data protection.
- (14) This Directive should cover infringements of the provisions of Union law referred to in Annex I to the extent that those provisions protect the interests of consumers, regardless of whether those consumers are referred to as consumers, travellers, users, customers, retail investors, retail clients, data subjects or something else. However, this Directive should only protect the interests of natural persons who have been harmed

---

*Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

---

or may be harmed by those infringements if those persons are consumers under this Directive. Infringements that harm natural persons qualifying as traders under this Directive should not be covered by it.

- (15) This Directive should be without prejudice to the legal acts listed in Annex I and therefore it should not change or extend the definitions laid down in those legal acts or replace any enforcement mechanism that those legal acts might contain. For example, the enforcement mechanisms provided for in or based on Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>(5)</sup> could, where applicable, still be used for the protection of the collective interests of consumers.
- (16) For the avoidance of doubt, the scope of this Directive should be set out as precisely as possible in Annex I. Where the legal acts listed in Annex I contain provisions that do not relate to consumer protection, Annex I should refer to the specific provisions that protect consumers' interests. However, such references are not always feasible due to the structure of certain legal acts, in particular in the area of financial services, including the area of investment services.
- (17) To ensure an adequate response to infringements of Union law, the form and scale of which quickly evolve, each time that a new Union act that is relevant to the protection of the collective interests of consumers is adopted, the legislator should consider whether Annex I should be amended in order to place the new Union act under the scope of this Directive.
- (18) Member States should remain competent to make provisions of this Directive applicable to areas additional to those falling within its scope. For example, Member States should be able to retain or introduce national legislation that corresponds to provisions of this Directive in relation to disputes that fall outside the scope of Annex I.
- (19) Since both judicial proceedings and administrative proceedings could effectively and efficiently serve to protect the collective interests of consumers, it is left to the discretion of the Member States whether a representative action can be brought in judicial proceedings, administrative proceedings, or both, depending on the relevant area of law or the relevant economic sector. This should be without prejudice to the right to an effective remedy under Article 47 of the Charter, whereby Member States are to 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 measures transposing this Directive. This should include the possibility for a party in an action to obtain a decision ordering the suspension of the enforcement of the disputed decision, in accordance with national law.
- (20) Building on Directive 2009/22/EC, this Directive should cover both domestic and cross-border infringements, in particular where consumers affected by an infringement live in Member States other than the Member State in which the infringing trader is established. It should also cover infringements that have ceased before the representative action is brought or concluded, since it might still be necessary to prevent the repetition of the practice by prohibiting it, to establish that a given practice constituted an infringement or to facilitate consumer redress.

---

*Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

---

- (21) This Directive should not affect the application of rules of private international law regarding jurisdiction, the recognition and enforcement of judgments or applicable law, nor should it establish such rules. Existing instruments of Union law should apply to the procedural mechanism for representative actions required by this Directive. In particular, Regulation (EC) No 864/2007<sup>(6)</sup>, Regulation (EC) No 593/2008<sup>(7)</sup> and Regulation (EU) No 1215/2012<sup>(8)</sup> of the European Parliament and of the Council should apply to the procedural mechanism for representative actions required by this Directive.
- (22) It should be noted that Regulation (EU) No 1215/2012 does not cover the competence of administrative authorities or the recognition or enforcement of decisions by such authorities. Such questions should be a matter for national law.
- (23) Where appropriate, it could be possible, in accordance with rules of 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 those two types of representative actions. Where a qualified entity brings a representative action in a Member State other than that in which it is designated, that representative action should be considered a cross-border representative action. Where a qualified entity brings a representative action in the Member State in which it is designated, that representative action should be considered a domestic representative action, even if that representative action is brought against a trader domiciled in another Member State and even if consumers from several Member States are represented within that representative action. The Member State in which the representative action is brought should be the deciding criterion for determining the type of representative action that is brought. For this reason, it should not be possible for a domestic representative action to become a cross-border representative action during the course of the proceedings, or vice versa.
- (24) Consumer organisations in particular should play an active role in ensuring that relevant provisions of Union law are complied with. They should all be considered well placed to apply for the status of qualified entity in accordance with national law. Depending on national legal traditions, public bodies could also play an active role in ensuring that relevant provisions of Union law are complied with by bringing representative actions as provided for in this Directive.
- (25) For the purposes of cross-border representative actions, qualified entities should be subject to the same criteria for designation across the Union. In particular, they should be legal persons that are properly constituted in accordance with national law of the Member State of designation, have a certain degree of permanence and level of public activity, have a non-profit-making character and have a legitimate interest, given their statutory purpose, in protecting the interests of consumers as provided for by Union law. Qualified entities should not be the subject of insolvency proceedings or be declared to be insolvent. They should be independent and should not be influenced by persons other than consumers who have an economic interest in the bringing of a representative action, in particular by traders or hedge funds, including in the event of funding by third parties. Qualified entities should have established procedures to prevent such influence as well as to prevent conflicts of interest between themselves, their funding