

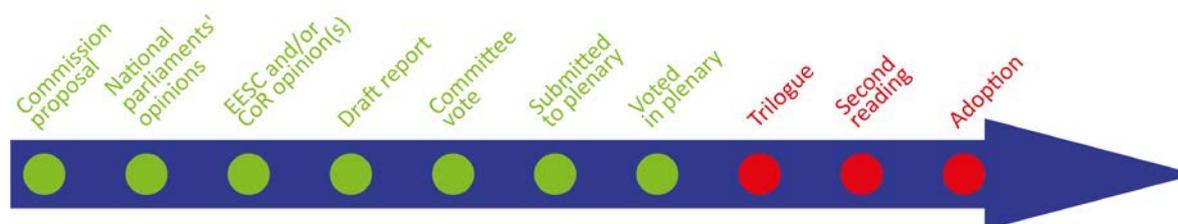
# Representative actions to protect the collective interests of consumers

## A new deal for consumers

### OVERVIEW

On 11 April 2018, the European Commission published a proposal for a new directive on representative actions for the protection of the collective interests of consumers. Currently, consumer organisations or independent public bodies can bring actions in the name of consumers in courts or before administrative authorities to stop infringements of consumer legislation. According to the proposal, they would be able to demand compensation for consumers as well. While work on the proposal is ongoing in the Council, the European Parliament adopted its first-reading position on 26 March 2019. It added safeguards to protect companies against abusive litigation, and deleted a precondition that consumers should wait for a final injunction order establishing the existence of an infringement before being allowed to demand compensation.

<b>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</b>		
<i>Committee responsible:</i>	Legal Affairs (JURI)	COM(2018) 184 11.4.2018
<i>Rapporteur:</i>	Geoffroy Didier (EPP, France)	2018/0089(COD)
<i>Shadow rapporteurs:</i>	Mady Delvaux (S&D, Luxembourg) Angel Dzhambazki (ECR, Bulgaria) Jens Rohde (ALDE, Denmark) Kostas Chrysogonos (GUE/NGL, Greece) Heidi Hautala (Greens/EFA, Finland) Laura Ferrara (EFDD, Italy)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Launch of trilogue negotiations	



## Introduction

On 11 April 2018, the Commission published a [proposal](#) for a new directive on representative actions for the protection of the collective interests of consumers. Presented as part of the '[New Deal for Consumers](#)' package, the proposal would enable consumers across the EU to use representative actions to collectively demand compensation from companies that infringe their rights. Together with the proposed [directive](#) on the modernisation of EU consumer protection rules, which is also part of the package, the proposed directive aims to improve compliance with consumer protection rules and serve as an effective deterrent against infringements.

The proposal is a follow-up to the Commission's 2017 [fitness check](#) of EU consumer and marketing law, which showed that, due to globalisation, the rise of cross-border trading and e-commerce, the risk of infringements affecting large numbers of consumers is increasing. It came in the wake of the 2015 Volkswagen emissions scandal ([Dieselgate](#)) and the 2017 mass cancellation of Ryanair flights, which showed that even when faced with mass harm situations, EU consumers were having difficulties accessing remedies such as repair or compensation.<sup>1</sup>

## Existing situation

When faced with infringements of consumer law, EU consumers can get redress<sup>2</sup> in a number of ways, which vary between Member States. **Individual consumers** can ask the seller directly to remedy the situation, use official alternative dispute resolution ([ADR](#)) mechanisms (including mediation, consumer ombudsmen, online dispute resolution ([ODR](#)) platforms), or seek help from European consumer centres ([ECC](#)). They can also file a lawsuit in court (although judicial redress can be very costly) or use the [European small claims procedure](#).

Collectively, consumers benefit from **public enforcement** of consumer law: public authorities can stop or prohibit an infringing practice, and in some cases, after their investigations have shown a breach of law, order compensation for affected consumers. Once the new Consumer Protection Cooperation ([CPC](#)) Regulation becomes applicable in 2020, consumer protection authorities in all Member States should have the power to obtain commitments from traders that they will cease the infringements they are responsible for and offer adequate remedies to the consumers that have been affected by such infringements. With regard to **private enforcement**, consumers can in some Member States request redress by taking companies infringing consumer rights to court (or start proceedings before an administrative authority).

When consumers who are affected by an infringement bring a lawsuit themselves as a group of individuals, the [Commission](#) calls this a '**group action**' and distinguishes it from a '**representative action**', where the lawsuit or the administrative procedure is initiated *in the name* of the affected consumers, but not by the consumers themselves. Representative actions can be brought in the name of all affected consumers, with a possibility that individuals **opt out** of the action, or in the name of only those consumers that decide to **opt in**, or join the action. With regard to representative actions, Member States are required currently to have procedures only for stopping or prohibiting infringing practices, but not for obtaining consumer redress.

## Injunctions Directive

The principal EU-level legislation on collective legal actions for consumers is the 2009 [Injunctions Directive](#), which requires Member States to put in place procedures for stopping infringements of EU consumer rights. The directive applies only to infringements of the 16 directives and regulations listed in Annex I,<sup>3</sup> including the Unfair Commercial Practices Directive, the Consumer Sales and Guarantees Directive, the Unfair Contract Terms Directive and the Consumer Rights Directive. Proceedings aimed at protecting the collective interest of consumers can be initiated before the competent courts or administrative authorities.<sup>4</sup> Such proceedings can have as their aim:

- an order to stop or prohibit an infringement;

- measures, such as the publication of the injunctions orders and corrective statements (as a deterrent to traders who fear for their reputation);
- fines in situations where non-compliance persists despite there being an injunctions order, either as a fixed amount or an amount for each day's non-compliance or any other amount (but only in so far as the legal system of the Member State permits this).

Only 'qualified entities' that have a legitimate interest in the protection of the collective interest of consumers can initiate injunctions proceedings. Member States can decide that these qualified entities can either be independent public bodies (such as consumer ombudsmen), or organisations whose purpose it is to protect the collective interest of consumers (such as consumer associations), or a combination of the two. Qualified entities can file for an injunction to protect consumers in their Member State before the competent courts or administrative authorities in another Member State (if an infringement originates there). Such courts and administrative authorities in the other Member State are required to accept the legal standing of the qualified entity, but still have a right to examine whether the purpose of the qualified entity justifies it to take action in a specific case. Every six months, the Commission is required to publish an official list of all qualified entities in the EU in the Official Journal of the EU.<sup>5</sup>

Member States are allowed to require that the party that intends to seek an injunction can do so only after prior consultation with the defendant, in order to give the defendant an opportunity to bring the infringement to an end. If this does not happen within two weeks of the request for consultation, the action can go ahead. Member States can require that the independent public body tasked with protection of the collective interest of consumers take part in the consultation.

## Commission recommendation

In 2013, the Commission issued a [recommendation](#) on common principles for injunctive and compensatory collective redress mechanisms in the Member States. The non-binding document goes beyond infringements purely of consumer law, to cover violations of all rights granted to both natural and legal persons under EU law. Notably, it suggests that all Member States should have collective redress mechanisms in mass harm situations for injunctive relief (which provides a possibility to demand an end to illegal behaviour), and for compensatory relief (which provides a possibility to claim compensation).

The recommendation suggests that Member States should put in place strict rules regarding the funding of collective redress actions. It also suggests a number of safeguards against abusive litigation, such as prohibition of punitive damages; loser-pays principle, ensuring that the party that loses a collective redress action reimburses the necessary legal costs of the winning party; and ensuring that the lawyers' remuneration does not create an incentive to litigation, especially by prohibiting contingency fees (the sum that is paid to the lawyers only if they win the case). It also recommends that the claimant party should be formed on the basis of the 'opt-in' principle, requiring the express consent of the natural or legal persons claiming to have been harmed. At any time before the final judgment or settlement, persons who have suffered harm should be able to join a claimant party and leave it. Furthermore, it was recommended that Member States implement these principles by 26 July 2015. However, a 2017 [report](#) showed that Member States had implemented the recommendation only to a limited extent. It warned of vast differences in the way representative actions work across the EU, including the fact that only 19 EU Member States had compensatory collective redress in place.

## Parliament's starting position

The European Parliament has long been advocating that EU consumers should have an effective system for collective redress at their disposal, not necessarily limited to infringements of consumer law. Even before the adoption of the Injunctions Directive, in its [resolution](#) of 25 April 2007 on the Green Paper – Damages actions for breach of the EC antitrust rules, Parliament expressed the

opinion that consumers should be able to bring collective actions in the area of competition law 'either directly or via organisations'.

Several Parliament resolutions – of [2 February 2012](#) on 'Towards a Coherent European Approach to Collective Redress'; of [2 February 2012](#) on the Annual report on EU competition policy; and of [11 June 2013](#) on A new agenda for European consumer policy – called for an EU-level system that would allow consumers to seek compensation on the basis of the opt-in principle. They furthermore called for stricter rules for qualified entities, prohibition of punitive damages and contingency fees, and a restriction or ban on third-party financing.

More recently, in its [recommendation](#) of 4 April 2017 to the Council and the Commission following the inquiry into emission measurements in the automotive sector, Parliament called on the Commission to put forward a legislative proposal for the 'establishment of a collective redress system in order to create a harmonised system for EU consumers, thus eliminating the current situation in which consumers lack protection in most Member States'. In its [resolution](#) of 26 October 2017 on the application of the Environmental Liability Directive, it asked the Commission to assess the possibility of introducing collective redress mechanisms for breaches of EU environmental law.

## Preparation of the proposal

The Commission's above-mentioned 2017 [fitness check](#) of EU consumer and marketing law covered six consumer directives, including the Injunctions Directive. In the context of the fitness check, between 2016 and 2017 the Commission organised [public consultations](#) with stakeholders, a [call for evidence](#) on collective redress and targeted consultations with the relevant networks of Member State authorities, legal practitioners, consumer and business organisations.

The fitness check concluded that, while the Injunctions Directive had contributed to enforcing EU consumer law at national level, its use to stop cross-border infringements had been minimal. It argued that the injunctions procedure should be made more uniform and more effective across the EU and that a number of shortcomings need to be addressed, including the directive's limited scope, the limited effects of injunction decisions on redress for harmed consumers and the cost and length of proceedings. In 2018, the Commission also published a [report](#) on the implementation of its recommendation on collective redress mechanisms. It concluded that the willingness of the Member States to turn the 2013 recommendation into legislation had been rather limited and that the availability of collective mechanisms enabling consumers to seek compensation and the implementation of such a mechanism was still very uneven across the EU.

The Commission published an [impact assessment](#) (see [executive summary](#))<sup>6</sup> that covered both legislative proposals under the 'new deal for consumers'. The impact assessment suggested that the risk of harm to the collective interest of consumers was increasing because of globalisation and digitalisation; it furthermore identified ineffective mechanisms for consumer redress in mass harm situations as being among the drivers of consumer legislation infringements.

It considered three options for improving compliance with EU consumer law: 1) improving enforcement to stop and deter infringements; 2) providing individual remedies for victims of unfair commercial practices in addition to measures in option 1; and 3) applying the measures under options 1 and 2, and, in addition, improving mechanisms for collective redress in mass harm situations. Option 3 was selected as the preferred option, as it was estimated that it would reduce consumer detriment and increase consumer trust, while promoting fairer competition to the benefit of compliant traders.

In April 2018, EPRS published an [implementation appraisal](#) of the consumer law directives, including injunctions. In July 2018, it also published an [initial appraisal](#) of the Commission's impact assessment, citing the narrow range of options and issues with the presentation of data as its main methodological weaknesses.

## The changes the proposal would bring

On 11 April 2018, the Commission published a proposal for a directive on representative actions for the protection of the collective interests of consumers, that would repeal the Injunctions Directive. It takes into account some elements of the 2013 recommendation, but not all of them.

The proposal has the following aims:

- **Scope:** While the Injunctions Directive is applicable to infringements of 16 directives and regulations, the scope of the new directive would be greatly expanded. It would now include 59 legislative acts (listed in Annex I), among which horizontal and sector-specific EU instruments relevant to the protection of collective interests of consumers in different economic sectors such as financial services, energy, telecommunications, health and the environment. The proposal does not, however, follow the 2013 recommendation to allow representative actions for infringements of the rights under all EU law, but only under consumer law.
- **Qualified entities:** The proposal keeps the approach of the current Injunctions Directive, according to which only 'qualified entities' would be able to bring representative actions on behalf of consumers. However, it would require Member States to ensure that 'in particular, consumer organisations and independent public bodies' are eligible for such status. Currently, Member States can decide that qualified entities can be consumer organisations, independent public bodies, or both. Member States would be able to designate qualified entities on an ad hoc basis and would be required to place qualified entities on a publicly available list, assess on a regular basis whether they continue to meet the requirements and strip those that do not of their status. The proposal also adds a requirement that the qualified entities need to have a non-profit-making character.
- **Cross-border representative actions:** Any qualified entity would be allowed to bring actions in any other Member State. Several qualified entities from different Member States would be allowed to jointly bring a single representative action in one Member State.
- **Financing of qualified entities:** At an early stage in a representative action, qualified entities would have to declare the source of their funding in general, as well as the funds that support a particular representative action. Third parties funding representative actions for redress would be prohibited from influencing decisions of the qualified entity or from providing financing for collective actions against competitors. Member States would be required to ensure that procedural costs related to representative actions do not present financial obstacles for qualified entities. To ensure this, Member States would be required to take measures such as limiting applicable court or administrative fees, granting qualified entities access to legal aid or public funding.
- **Injunctive redress measures:** Qualified entities would be able to request interim injunction orders or injunction orders establishing that the practice constitutes an infringement of the law. Both could be used to stop an existing practice or prohibit an imminent practice.
- **Compensatory redress measures:** The proposal would introduce a requirement for Member States to put in place procedures for obtaining a redress order, which could include compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid. However, qualified entities would be allowed to seek redress order only after an injunction order establishing that the practice infringes the law has been issued (article 5(3)). In cases where the quantification of individual redress is complex, Member States would be able to allow courts or administrative authorities to issue a [declaratory decision](#) instead of a redress order.

However, declaratory decisions would not be allowed when consumers concerned are easily identifiable or when they have suffered an amount of loss that is so small that distributing it to the consumers would be disproportionate. In such cases, the mandate of individual consumers would not be required, and the redress would be directed to a public purpose serving the collective interests of consumers.

- **Opt-in and opt-out:** For injunction orders, an opt-out system would be introduced, whereby qualified entities would not be required to obtain the mandate of the individual consumers concerned (article 5(2)).<sup>7</sup> However, in case of redress measures, Member States would be able to choose between an opt-out or an opt-in system (article 6(1)).
- **Settlements:** The proposal promotes collective out-of-court settlement, subject to court or administrative authority scrutiny. Member States would have to ensure that the court or administrative authority can at any moment during the representative action invite the qualified entity and the trader to reach a settlement within a set time limit. They could also allow for the qualified entity and the trader to reach a settlement on their own and have it approved by the court or administrative authority. Scrutiny of the court or administrative authority would be required to assess the legality and fairness of the settlement, taking into consideration the rights and interests of all parties.
- **Penalties:** Non-compliance with final decisions within the representative action would result in penalties, including in the form of fines.
- **Evidence and procedures:** Member States would have to ensure 'due expediency' of procedures and treat actions seeking interim injunction measures by way of an accelerated procedure. Courts and administrative authorities would be able to order that evidence to support a representative action be presented by the defendant, subject to the applicable EU and national rules on confidentiality. A final court or administrative authority decision establishing an infringement harming collective interests of consumers would be considered as irrefutably establishing the existence of the infringement for the purposes of seeking redress for the same infringement. A final court or administrative authority decision establishing an infringement harming collective interests of consumers in another Member State would be considered a rebuttable presumption of the existence of the infringement. The submission of a representative action would suspend or interrupt limitation periods applicable to any redress actions.
- **Informing consumers:** An infringing trader would be required to inform affected consumers at its own expense about the final decisions regarding injunctions, redress actions and approved settlements, including, if appropriate, by notifying concerned consumers individually.
- **Reporting:** After the directive has been in application for five years, the Commission would be required to evaluate it, especially its scope, and report the findings to the Parliament, the Council and the European Economic and Social Committee (EESC). One year after the directive's entry into force, the Commission would be required to evaluate whether the rules on air and rail passenger rights should be covered by the directive, with a possibility to propose their deletion.
- **Transposition:** Member States would have 18 months from the date of the directive's entry into force for transposing it into their national legislation, and would be required to start applying its provisions six months after the transposition deadline.

## Advisory committees

In its [opinion](#) on the proposal, adopted on 20 September 2018, the EESC pointed out that consumer or civil society organisations should be able to receive adequate funding and legal advice to claim redress, and that Member States should support the creation of specific funds that would help

qualified entities to pay for legal counsel. It also suggested that the directive should allow consumers to freely decide if they wish to opt in or opt out from a representative action.

The Committee of the Regions (CoR) adopted its [opinion](#) on the proposal on 10 October 2018. The CoR called for extending the scope of the directive to cases of mass harm of any rights granted under EU law, not just consumer rights. The scope would therefore include, for instance, mass environmental damage, harm done to common goods and violations of employment rights. It also opposed the possibility for the Member States to derogate in the case of complex quantification of the damage.

## National parliaments

The [deadline](#) for the national parliaments' submission of reasoned opinions on the grounds of subsidiarity was 10 July 2018. Two reasoned opinions were submitted. The Austrian Bundesrat took issue with the definition of 'qualified entities', and with what it perceived as the introduction of an opt-out system. It also considered that that the scope of the directive should be limited to cross-border cases. The Swedish Riksdag had objections regarding the instructions given on how Member States should allocate revenues from fines or equivalent financial penalties, as it considered that they go beyond what is necessary to achieve the set objectives.

## Stakeholders' views<sup>8</sup>

The European Consumer Organisation ([BEUC](#)) strongly supported the Commission's proposal because it would 'plug a huge gap in the enforcement of EU consumer rights'. However, it suggested that the scope of the directive should be further extended to protect consumer interests against violations of all EU law, and especially infringements of competition law. It also called for a clear indication that the directive requires minimum-level harmonisation and that it allows Member States to have a higher level of consumer protection. BEUC also argued, among other things, that it should be possible to introduce claims for redress measures before the injunction order is final; Member States should be required to ensure that, in particular, consumer organisations are eligible for the status of qualified entity and public body where applicable; provisions on third-party financing should be deleted; requests for redress measures should be allowed for both economic and non-economic damages; and the possibility to derogate from collective redress by issuing declaratory decisions should be removed.

The proposal triggered a large number of reactions from the business community, with their associations warning of insufficient safeguards against abusive litigation. A [joint statement](#) by associations, including Business Europe, EuroCommerce, EuroChambres and AmCham EU, expressed concerns regarding the ability of the proposal to create a fair and balanced civil justice system with effective enforcement of consumer rights. It said that the proposal would lead to 'unnecessary and wasteful litigation in Europe' and called, among other things, for prohibiting contingency fees and punitive damages, strengthening the loser-pays rule, preventing overlapping claims and introducing the opt-in principle. A [joint statement](#) by associations, including the Airlines International Representation in Europe (AIRE), Airlines for Europe, Community of European Railway and Infrastructure Companies (CER) and Digital Europe, warned that the proposal 'risks undermining civil justice systems to the detriment of consumers across Europe'. It said that the proposal would lead to 'uncontrolled national and cross-border competition between private and public enforcement bodies' and would disrupt the effective systems that have already been implemented in many Member States. It criticised the absence of the safeguards that featured in the 2013 recommendation. [ECommerce Europe](#) criticised the proposal because it 'focuses too much on the collective litigation model and creates conflicts with existing and functioning national collective redress systems'. It also noted that the proposal provides for 'counterproductive and undesired' rules on settlements; that the final redress order is not fit for mass compensation for loss or damages; that there is no proven need for fines in a collective redress system; and that it is not clear whether consumers can opt-in or opt-out of a representative action. The European Savings and Retail

Banking Group ([ESBG](#)) also expressed a concern that the proposal would allow for abusive litigation. Among the numerous proposals it made was to define a minimum number of consumers required for a representative action; introduce a minimum period of existence for the qualified entities and require them to disclose the shareholder or member structure; prohibit lawyers and litigation funders from being direct or indirect members of such entities; remove the possibility of interim injunctions; and introduce a mandatory opt-in system for obtaining the mandate of the individual consumer.

The Council of Bars and Law Societies of Europe ([CBBE](#)) suggested that the restriction of collective actions in favour of qualified entities is 'likely to impede access to justice'. It argued in favour of a wider pool of potential representatives. It further said that an 'opt-in' procedure for getting a mandate from consumers would be appropriate.

## Legislative process

Within the European Parliament, the proposal was referred to the Committee on Legal Affairs (JURI). On 22 May 2018, the JURI committee appointed Geoffroy Didier (EPP, France) rapporteur for the file. The Committee on the Internal Market and Consumer Protection (IMCO) was designated as associated committee under Rule 54 of the European Parliament's Rules of Procedure (rapporteur: Dennis De Jong, GUE/NGL, the Netherlands).

The rapporteur presented his draft report to the JURI committee on 12 October 2018 and the committee adopted the [report](#) on 7 December. Although the committee's mandate to enter into interinstitutional negotiations with the Council was confirmed in plenary on 12 December 2018, the Council has not yet reached a general approach, and Parliament therefore adopted the report as a [legislative resolution](#) at first reading on 26 March 2019.

The legislative resolution proposes the following:

- **Scope:** The definition of the collective interests of consumers in article 3 would be extended to include data subjects as defined by the General Data Protection Regulation (GDPR). The directive would apply to cases of non-compliance with six additional directives and regulations, including the [General Product Safety Directive](#) (annex I);
- **Qualified entities:** Member States or their courts would be required to name at least one qualified representative entity that can bring representative actions. The criteria for the designation of qualified representative entities would be further specified to require from them, among other things, not to have financial agreements with plaintiff law firms beyond a normal service contract and to disclose publicly how they are financed, organised and managed. Member States would be required to maintain a public list of qualified representative entities and to communicate it to the Commission, which would publish the list of qualified entities from all Member States on a publicly accessible online portal. Member States would not be allowed to designate qualified entities on an ad hoc basis (article 4);
- **Procedure:** A final injunction order would not be required before seeking a redress order (article 5(3));
- **National register:** Member States would have a possibility to set up a national register for representative actions, which would be interlinked with other national registries (article 5a). Their national competent authorities would also be required to keep a publicly accessible register of unlawful acts that have been subject to injunction orders in accordance with the directive;
- **Opt-in for redress order:** Member States that do not introduce an opt-in system for representative actions seeking a redress order would still be required to introduce an opt-in system for consumers who do not usually reside in the Member State where

the action occurs (article 6(1)(1a)). Member States would have a possibility to require an individual mandate from residents too (article 16(2a));

- **Declaratory decisions:** The provision allowing Member States to allow courts to issue a declaratory decision instead of a redress order would be deleted (articles 6(2) and 6(3));
- **Unclaimed amounts:** In case there is an unclaimed amount left from the compensation, the courts would be required to decide on the beneficiary, which cannot be the qualified entity or the trader (article 6(4a));
- **Safeguards:** The resolution suggests an explicit prohibition of punitive damages, (article 6(4b)) and contingency fees (article 15a). It would also require Member States to introduce the loser-pays principle (article 7a);
- **Financing:** At the beginning of a representative action seeking redress, qualified entities would be required to disclose to the court all details of their financing to demonstrate that they are not in a conflict of interest. Courts would be allowed to declare a representative action inadmissible if it is funded by a third party and if that funding would influence decisions of the qualified representative entity, including its decision to initiate a representative action, and if the defendant is a competitor of the fund provider (article 7(2)).
- **Double compensation:** The resolution would explicitly prohibit a possibility for consumers to be compensated more than once for the same damage (article 10(1)).
- **Revenue from fines:** Member States would be allowed to allocate the revenues from fines for non-compliance with the final decisions on representative actions to a fund for financing representative actions (article 14(3));
- **Assistance for qualified entities:** Member States would be encouraged to ensure that qualified entities have sufficient funds available for representative actions;
- **Reporting:** The Commission would be required to assess, within three years, if there is a need to establish a European ombudsman for collective redress. The Commission would not have a possibility to remove rules on air and rail passenger rights from the scope of the directive.

The Council has yet to agree a position. The Commission presented the proposal to the Council on 22-24 April 2018, and consideration of its provisions is ongoing within the working party on consumer protection and information.

## EP SUPPORTING ANALYSIS

EPRS implementation appraisal: [Revision of consumer law directives \(including injunctions\): the 'New Deal for Consumers'](#), April 2018.

EPRS initial appraisal of the Commission impact assessment: [EU consumer protection rules](#), July 2018.

European Parliament's Department for Citizens' Rights and Constitutional Affairs study on [Collective redress in the Member States of the European Union](#), October 2018.

## OTHER SOURCES

[Representative actions for the protection of the collective interests of consumers](#), European Parliament, Legislative Observatory (OeIL).

Biard A., [Collective redress in the EU: a rainbow behind the clouds?](#), ERA Forum, June 2018, Volume 19, Issue 2, pp. 189–204.

Cortes P., [The Law of Consumer Redress in an Evolving Digital Market](#), Cambridge University Press, 2018.

Hodges C., [Collective redress: The need for new technologies](#), Journal of Consumer Policy, March 2019, Volume 42, Issue 1, pp. 59–90.

## ENDNOTES

- <sup>1</sup> For instance, according to the European consumer organisation BEUC, Dieselgate affected over 8 million EU consumers, yet in only four Member States were [consumer organisations](#) able to demand compensation on a collective basis, because the remaining Member States lacked functioning collective redress tools.
- <sup>2</sup> Redress refers to various types of remedies, including compensation, repair, replacement, price reduction, reimbursement.
- <sup>3</sup> For the list, see Annex I of the [consolidated version](#) of the directive.
- <sup>4</sup> According to the [fitness check](#), the injunction procedure involves the courts in Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Finland, Germany, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Portugal, Slovenia, Spain, Sweden and the UK; an administrative procedure in Latvia, Malta, Poland and Romania; and both types of procedure in Estonia, France, Hungary and Slovakia.
- <sup>5</sup> According to the article on [Collective redress: The need for new technologies](#) (author C. Hodges cited above), this does not necessarily happen.
- <sup>6</sup> The [Regulatory Scrutiny Board](#) (RSB) gave a negative opinion to the impact assessment in December 2017, largely as a result of insufficient analysis of the implementation and policy options related to collective redress. In January 2018, the impact assessment received a positive opinion, but it included a recommendation to better explain the need for EU-level legislative action on collective redress.
- <sup>7</sup> In addition, they would not be required to provide proof of actual loss or damage on the part of the consumers or of intention or negligence on the part of the trader.
- <sup>8</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

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