



12.10.2018

**\*\*\*I**

## **DRAFT REPORT**

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))

Committee on Legal Affairs

Rapporteur: Geoffroy Didier

Rapporteur for the opinion (\*):  
Dennis de Jong, Committee on Internal Market and Consumer Protection

(\* ) Associated committee – Rule 54 of the Rules of Procedure

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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 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 (A8-0000/2018),
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.

### **Amendment 1**

#### **Proposal for a directive**

#### **Recital 10**

*Text proposed by the Commission*

(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,

*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,

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.***

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.

Or. en

## Amendment 2

### Proposal for a directive Recital 19

#### *Text proposed by the Commission*

(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

#### *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. 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

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 of a redress order in a particular case.

for individual redress. The court or the national authority should duly motivate its recourse to a declaratory decision instead of a redress order in a particular case.

Or. en

### Amendment 3

#### Proposal for a directive Recital 21

##### *Text proposed by the Commission*

(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.*

##### *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 *should decide on the use of* the funds received as redress through representative *action, taking into consideration that the funds should* serve the purposes of the protection of *the* collective *interest* of consumers.

Or. en

## Amendment 4

### 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 ***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.

#### *Amendment*

(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 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 the consumers concerned and to support all necessary legal costs should it lose the redress action. Any individual contribution supporting an action should be limited to a reasonable amount, in such a way that the financing of collective redress litigation against a trader by one of its competitors through individual contribution is avoided.*** The information provided by the qualified entity to the court or administrative authority overseeing the representative action should enable it to assess whether ***a*** 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.

Or. en



## Amendment 5

### 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 entities or any other persons concerned ***comparable*** procedural means to bring actions aimed at the protection of the collective interests of consumers at national level.

Or. en

## Amendment 6

### 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 public impact*** 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.

Or. en

## Amendment 7

### 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, **the recognition and enforcement of judgements in civil and commercial matters and to the law applicable to contractual and non-contractual obligations, which apply to the representative actions set out by this Directive**.

Or. en

### **Amendment 8**

#### **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 **interest** of consumers’ means the interests of a **minimum of 50** consumers;

Or. en

### **Amendment 9**

#### **Proposal for a directive**

#### **Article 4 – paragraph 1 – subparagraph 2 – point c**

*Text proposed by the Commission*

(c) it has a non-profit making character.

*Amendment*

(c) it has a non-profit making **and independent** character.

Or. en

## Amendment 10

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

***(c a) it has been in existence for at least two years since its establishment;***

Or. en

## Amendment 11

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

***(c b) it has a minimum number of members, namely five associations or at least 250 natural persons at national level. For the qualified entities on a local level or those representing small countries, the minimum number of individual members shall be adjusted according to the size of the territory considered;***

Or. en

## Amendment 12

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

***(c c) it has been engaged for at least 1 year in actual public activity involving the defence and promotion of consumers' interests;***

Or. en

## Amendment 13

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

*(c d) it is neither financed by, nor has lucrative agreements with, plaintiff law firms; and*

Or. en

## Amendment 14

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

*(c e) it discloses relevant aspects of its structure including its constitutive statutes and management structure in order to comply with the transparency rules listed in Article 7.*

Or. en

## Amendment 15

### Proposal for a directive

#### Article 4 – paragraph 1 – subparagraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

*Member States shall communicate to the Commission the list of entities that receive the status of qualified entities under this Directive and shall inform the Commission on a regular basis of any qualified entities that lose that status.*

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

## Amendment 16

### Proposal for a directive Article 4 – paragraph 2

*Text proposed by the Commission*

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.*

*Amendment*

*deleted*

Or. en

## Amendment 17

### Proposal for a directive Article 4 – paragraph 3

*Text proposed by the Commission*

3. Member States shall ensure that *in particular* consumer organisations and independent public bodies are eligible for the status of qualified entity. Member States may designate as qualified entities consumer organisations that represent members from more than one Member State.

*Amendment*

3. Member States shall ensure that *only* consumer organisations and independent public bodies are eligible for the status of qualified entity. Member States may designate as qualified entities consumer organisations that represent members from more than one Member State.

Or. en

## Amendment 18

### Proposal for a directive Article 5 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that representative actions can be brought

*Amendment*

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.

before national courts or administrative authorities **only** by qualified 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 entities shall be able to choose the most suitable instrument available that ensures the highest level of protection of the collective consumer interest.**

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

Or. en

## Amendment 19

### 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*

***deleted***

Or. en

## Amendment 20

### 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 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.

Or. en

**Amendment 21**

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

*Text proposed by the Commission*

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 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.***

*Amendment*

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 alia, compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate.

Or. en

**Amendment 22**

**Proposal for a directive  
Article 6 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

The qualified entity shall provide sufficient 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*

***By way of admissibility criteria, the qualified entity shall provide to the court or administrative authority evidence that it complies with the requirements set out in Article 4(1) and sufficient 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. The Court or authority shall ascertain that the qualified entity complies with the transparency rules listed in Article 7 and that there is no conflict of interest.***

Or. en

**Amendment 23**

**Proposal for a directive  
Article 6 – paragraph 2**

*Text proposed by the Commission*

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.***

*Amendment*

2. ***Exceptionally***, 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.

Or. en

**Amendment 24**

**Proposal for a directive  
Article 6 – paragraph 2 a (new)**



**2 a.** *Member States shall require that a mandate from individual consumers is given at an advanced stage of the proceedings, except as a condition to initiate the action, both for national and cross-border cases. Member States may not require a mandate from individual consumers that have suffered a small amount of loss in national cases involving only consumers from the same Member State.*

Or. en

## **Amendment 25**

### **Proposal for a directive Article 6 – paragraph 3**

**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 26**

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

*Text proposed by the Commission*

*Amendment*

***4 a. The redress measures shall aim to grant consumers concerned full compensation for their loss. In the event of there being an unclaimed amount remaining after the compensation, the Court shall decide on the beneficiary of that remaining amount. Any unclaimed amounts shall not go to the qualified entity or to the trader.***

Or. en

## **Amendment 27**

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

*Text proposed by the Commission*

*Amendment*

***4 b. The compensation awarded to consumers harmed in a mass harm situation 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. In particular, punitive damages, leading to overcompensation in favour of the claimant party of the damage suffered, shall be prohibited.***

Or. en

## Amendment 28

### 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 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. ***It shall make its funding transparent and demonstrate the absence of a conflict of interest. Qualified entities shall act in a manner that is independent of market operators to fulfil their purposes.***

Or. en

## Amendment 29

### Proposal for a directive Article 7 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1 a. 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.***

Or. en

## Amendment 30

### 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 the standing of the qualified entity in a specific case.

*Amendment*

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 the standing of the qualified entity in a specific case. ***Member States shall provide that third party funding is prohibited, except in the case of individual contributions.***

Or. en

**Amendment 31**

**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 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.

Or. en

**Amendment 32**

**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 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.

*Amendment*

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 settlement shall be deemed to be reached when a majority of the consumers that gave their mandate for the proceeding, approves it. The settlement reached shall be binding for all parties concerned by the proceeding.*** The 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.

Or. en

### **Amendment 33**

#### **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. 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.

Or. en

## Amendment 34

### Proposal for a directive Article 10 – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

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 ***considered as evidence*** 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.

Or. en

## Amendment 35

### 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 as ***evidence*** that an infringement has occurred.

Or. en

## Amendment 36

### Proposal for a directive Article 10 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3 a.** *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.*

Or. en

## **Amendment 37**

### **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 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 ***as narrowly as possible on the basis of reasonably available facts***, subject to the applicable Union and national rules on confidentiality.

Or. en

## **Amendment 38**

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

*Text proposed by the Commission*

*Amendment*

***Member States shall ensure that the courts limit the disclosure of evidence to what is proportionate. To determine***

*whether any disclosure requested by a qualified 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 contains confidential information.*

Or. en

### **Amendment 39**

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

*Text proposed by the Commission*

*Amendment*

*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.*

Or. en