



TEXTS ADOPTED

P8_TA(2019)0222

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 Committee of 20 September 2018¹,
 - having regard to the opinion of the Committee of the Regions of 10 October 2018²,
 - 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,

¹ OJ C 440, 6.12.2018, p. 66.

² OJ C 461, 21.12.2018, p. 232.

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.

P8_TC1-COD(2018)0089

Position of the European Parliament adopted at first reading on 26 March 2019 with a view to the adoption of Directive (EU) 2019/... of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

Whereas:

¹ OJ C 440, 6.12.2018, p. 66.

² OJ C 461, 21.12.2018, p. 232.

³ Position of the European Parliament of 26 March 2019.

- (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*, price reduction *or contract termination* as available under national laws. [Am. 1]
- (2) Directive 2009/22/EC of the European Parliament and of the Council⁴ 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 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.* [Am. 2]

⁴ OJ L 110, 1.5.2009, p. 30.

- (3) A representative action should offer an effective and efficient way of protecting the collective interests of 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***. [Am. 3].

- (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. ~~This Directive~~ ***The unsuccessful party should bear the costs of the proceedings. However, the court or tribunal should not affect national rules concerning the allocation of procedural award costs to the unsuccessful party to the extent that they were unnecessarily incurred or are disproportionate to the claim. [Am. 4]***
- (5) Infringements that affect the collective interests of consumers often have cross-border implications. More effective and efficient representative actions available across the Union should boost consumer confidence in the internal market and empower consumers to exercise their rights.

- (6) This Directive should cover a variety of areas such as data protection, financial services, travel and tourism, energy, telecommunications, ~~and~~ 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 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. [Am. 5]
- (6a) ***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.*** [Am. 6]

- (7) The Commission has adopted legislative proposals for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air and for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations. It is therefore appropriate to provide that, one year after the entry into force of this Directive, the Commission assesses whether the Union rules in the area of air and rail passengers' rights offer an adequate level of protection for consumers, comparable to that provided for in this Directive, and draws any necessary conclusions as regards the scope of this Directive.
- (8) Building on Directive 2009/22/EC, this Directive should cover both domestic and cross-border infringements, in particular when consumers concerned by an infringement live in one or several Member States other than the Member State where the infringing trader is established. It should also cover infringements which ceased before the representative action started or concluded, since it may still be necessary to prevent the repetition of the practice, establish that a given practice constituted an infringement and facilitate consumer redress.

- (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***. [Am. 7]
- (9a) ***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.*** [Am. 8]

- (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 established by this Directive. In particular, they would need to be properly constituted according to the law of a Member State, which ~~could~~ *should* 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~~ *Furthermore, the qualified representative entities must be independent from market operators, including financially. The qualified entities designated in advance and to ad hoc qualified entities that are constituted for the purpose of a specific action 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.*
- [Am. 9]

- (11) Independent public bodies and consumer organisations in particular should play an active role in ensuring compliance with relevant provisions of Union law and are all well placed to act as qualified entities. Since these entities have access to different sources of information regarding traders' practices towards consumers and hold different priorities for their activities, Member States should be free to decide on the types of measures that may be sought by each of these qualified entities in representative actions.
- (12) Since both judicial and administrative procedures may effectively and efficiently serve the protection of the collective interests of consumers it is left to the discretion of the Member States whether the representative action can be brought in judicial or administrative proceedings, or both, depending on the relevant area of law or relevant economic sector. This shall be without prejudice to the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union, whereby Member States shall ensure that consumers and businesses have the right to an effective remedy before a court or tribunal, against any administrative decision taken pursuant to national provisions implementing this Directive. This shall include the possibility for the parties to obtain a decision granting suspension of enforcement of the disputed decision, in accordance with national law.

- (13) To increase the procedural effectiveness of representative actions, qualified entities should have the possibility to seek different measures within a single representative action or within separate representative actions. These measures should include interim measures for stopping an ongoing practice or prohibiting a practice in case the practice has not been carried out but there is a risk that it would cause serious or irreversible harm to consumers, measures establishing that a given practice constitutes an infringement of law and, if necessary, stopping or prohibiting the practice for the future, as well as measures eliminating the continuing effects of the infringement, including redress. If sought within a single action, qualified entities should be able to seek all relevant measures at the moment of bringing the action or first seek relevant injunctions order and subsequently and if appropriate redress order.
- (14) Injunction orders aim at the protection of the collective interests of consumers independently of any actual loss or damage suffered by individual consumers. Injunction orders may require traders to take specific action, such as providing consumers with the information previously omitted in violation of legal obligations. Decisions establishing that a practice constitutes an infringement should not depend on whether the practice was committed intentionally or by negligence.

- (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~~ **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. **[Am. 10]**
- (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. **[Am. 11]**
- (17) The compensation awarded to consumers harmed in a mass harm situation should 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, should be avoided.

- (18) Member States ~~may~~ **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.*** [Am. 12]

(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 of a redress order in a particular case. [Am. 13]

(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. [Am. 14]

- ~~(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. [Am. 15]~~
- (22) Measures aimed at eliminating the continuing effects of the infringement may be sought only on the basis of a final decision, establishing an infringement of Union law covered by the scope of this Directive harming collective interest of consumers, including a final injunction order issued within the representative action. In particular, measures eliminating the continuing effects of the infringement may be sought on the basis of final decisions of a court or administrative authority in the context of enforcement activities regulated by Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004⁵.

(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.

[Am. 16]

(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.*** [Am. 17]

(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 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~~ **qualified entity** has sufficient resources in order to ~~meet its financial commitments to the qualified entity~~ **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 ~~should~~ **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. [Am. 18]**

- (26) Collective out-of-court settlements, *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. [Am. 19]
- (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~~ *Settlements should be final and binding upon all parties.* [Am. 20]

- (28) The court and administrative authority should have the power to invite the infringing trader and the qualified entity which brought the representative action to enter into negotiations aimed at reaching a settlement on redress to be provided to consumers concerned. The decision of whether to invite the parties to settle a dispute out-of-court should take into account the type of the infringement to which the action relates, the characteristics of the consumers concerned, the possible type of redress to be offered, the willingness of the parties to settle and the expediency of the procedure.
- ~~(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 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. [Am. 21]~~

- (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~~ ***The settlements are binding upon all parties without prejudice to any additional rights to redress that the*** consumers concerned ~~shall be given the possibility to accept or to refuse to be bound by such a settlement~~ ***may have under Union or national law.*** [Am. 22]
- (31) Ensuring that consumers are informed about a representative action is crucial for its success. Consumers should be informed of ongoing representative action, the fact that a trader's practice has been considered as a breach of law, their rights following the establishment of an infringement and any subsequent steps to be taken by consumers concerned, particularly for obtaining redress. The reputational risks associated with spreading information about the infringement are also important for deterring traders infringing consumer rights.

- (32) To be effective, the information should be adequate and proportional to the circumstances of the case. ~~The infringing trader~~ **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 concerning*** injunction and redress orders issued within the representative action, ~~as well as~~ ***and both parties in cases*** of a 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. ***The defeated party shall bear the costs of consumer information.*** [Am. 23]
- (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.*** [Am. 24]

- (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 administrative authority or a court should ~~not be relitigated in subsequent legal actions related to~~ ***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 infringement ~~by practice, the same trader as regards the nature of the infringement and its material, personal, temporal and territorial scope as determined by that final decision~~ ***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 ~~a rebuttable presumption~~ ***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.***

[Am. 25]

- (34) Member States should ensure that individual actions for redress may be based on a final declaratory decision issued within a representative action. Such actions should be available through expedient and simplified procedures.
- (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 have the effect of suspending or interrupting the limitation periods for any redress actions for the consumers concerned by this action. **[Am. 26]**
- (36) Representative actions for injunction orders should be treated with due procedural expediency. Injunction orders with interim effect should always be treated by way of an accelerated procedure in order to prevent any or further harm caused by the infringement.

(37) Evidence is an important element for establishing whether a given practice constitutes an infringement of law, whether there is a risk of its repetition, for determining the consumers concerned by an infringement, deciding on redress and adequately informing consumers concerned by a representative action about the ongoing proceedings and its final outcomes. However, business-to-consumer relationships are characterised by information asymmetry and the necessary information may be held exclusively by the trader, making it inaccessible to the qualified entity. Qualified entities should therefore be afforded the right to request to the competent court or administrative authority the disclosure by the trader of evidence relevant to their claim or needed for adequately informing consumers concerned about the representative action, without it being necessary for them to specify individual items of evidence. The need, scope and proportionality of such disclosure should be carefully assessed by the court or administrative authority overseeing the representative action having regard to the protection of legitimate interests of third parties and subject to the applicable Union and national rules on confidentiality.

- (38) In order to ensure the effectiveness of the representative actions infringing traders should face effective, dissuasive and proportionate penalties for non-compliance with a final decision issued within the representative action.
- (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.* [Am. 27]
- (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.* [Am. 28]

- (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. **[Am. 29]**
- (41) In order to effectively tackle infringements with cross-border implications the mutual recognition of the legal standing of qualified entities designated in advance in one Member State to seek representative action in another Member State should be ensured. Furthermore, qualified entities from different Member States should be able to join forces within a single representative action in front of a single forum, subject to relevant rules on competent jurisdiction. For reasons of efficiency and effectiveness, one qualified entity should be able to bring a representative action in the name of other qualified entities representing consumers from different Member States.

- (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. [Am. 30]*
- (42) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles, including those related to the right to an effective remedy and to a fair trial, as well as the right of defence.
- (43) With regard to environmental law, this Directive takes account of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ('the Aarhus Convention').

(44) The objectives of this Directive, namely establishing a representative action mechanism for the protection of the collective interests of consumers in order to ensure a high level of consumer protection across the Union and the proper functioning of the internal market, cannot be sufficiently achieved by actions taken exclusively by Member States, but can rather, due to cross-border implications of representative actions, be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (45) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁶, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (46) It is appropriate to provide rules for the temporal application of this Directive.
- (47) Directive 2009/22/EC should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

6 OJ C 369, 17.12.2011, p. 14.

Chapter 1

Subject matter, scope and definitions

Article 1

Subject matter

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. [Am. 31]
2. This Directive shall not prevent Member States from adopting or maintaining in force provisions designed to grant qualified **representative** entities or ~~any other persons concerned~~ **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 the scope of Union law.** [Am. 32]

Article 2

Scope

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 ~~harm or may harm~~ ***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. **[Am. 33]**
2. This Directive shall not affect rules establishing contractual and non-contractual remedies available to consumers for such infringements under Union or national law.
3. This Directive is without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction, ~~and~~ ***to the recognition and enforcement of judgements in civil and commercial matters and rules on the law applicable law to contractual and non-contractual obligations, which apply to the representative actions set out by this Directive.*** **[Am. 34]**

- 3a. *This Directive is without prejudice to other forms of redress mechanisms provided for in national law. [Am. 35]*
- 3b. *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. [Am. 36]*

Article 3
Definitions

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

- (1) ‘consumer’ means any natural person who is acting for purposes which are outside their trade, business, craft or profession;
- (1a) ‘consumer organisation’ means any group that seeks to protect consumers’ interests from illegal acts or omissions committed by traders. [Am. 37]**
- (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; **[Am. 38]**
- (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)***; **[Am. 39]**

- (4) 'representative action' means an action for the protection of the collective interests of consumers to which the consumers concerned are not parties;
- (5) 'practice' means any act or omission by a trader;
- (6) 'final decision' means a decision by a Member State's court that cannot or can no longer be appealed or a decision by an administrative authority that can no longer be subject to judicial review;
- (6a) ***“consumer law” means Union and national law adopted to protect consumers. [Am. 40]***

Chapter 2

Representative actions

Article 4

Qualified *representative* entities [Am. 41]

1. ~~Member States shall ensure that representative actions can be brought by qualified entities designated, at their request, by the Member States in advance for this purpose and placed in a publicly available list.~~ ***Member States or their 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: [Am. 42]

- (a) it is properly constituted according to the law of a Member State;
- (b) ~~it has~~ ***its statutes or another governance document and its continued activity involving the defence and protection of consumers interests demonstrate its*** a legitimate interest in ensuring that provisions of Union law covered by this Directive are complied with; [Am. 43]
- (c) it has a non-profit making character.

- (ca) 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; [Am. 44]*
- (cb) it does not have financial agreements with plaintiff law firms beyond a normal service contract; [Am. 45]*
- (cc) it has established internal procedures to prevent a conflict of interest between itself and its funders; [Am. 46]*

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. [Am. 47]

1a. 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. [Am. 48]

~~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. [Am. 49]~~

3. Member States shall ensure that ~~in particular~~ consumer organisations ~~and independent~~ *meeting the criteria listed in paragraph 1 and* public bodies are eligible for the status of qualified *representative* entity. Member States may designate as qualified entities consumer organisations that represent members from more than one Member State. [Am. 50]

- ~~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. [Am. 51]~~
5. The compliance by a qualified entity with the criteria referred to in paragraph 1 is without prejudice to the ~~right~~ *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). [Am. 52]

Article 5

Representative actions for the protection of the collective interests of consumers

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. [Am. 53]

2. 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: **[Am. 54]**
- (a) an injunction order as an interim measure for stopping the *illegal* practice or, if the practice has not yet been carried out but is imminent, prohibiting the *illegal* practice; **[Am. 56]**
 - (b) an injunction order establishing that the practice constitutes an infringement of law, and if necessary, stopping the practice or, if the practice has not yet been carried out but is imminent, prohibiting the practice.

In order to seek injunction orders, qualified *representative* entities shall not have to obtain the mandate of the individual consumers concerned ~~or~~ *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. **[Am. 55]**

3. Member States shall ensure that qualified *representative* 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).~~ [Am. 57]
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 referred to in paragraph 2 within a single representative action.~~ [Am. 58]

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. [Am. 59]*

Article 6

Redress measures

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 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 ~~declaratory decision is made~~ or a redress order is issued. [Am. 60]

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. [Am. 61]

The qualified *representative* entity shall provide ~~sufficient~~ *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. [Am. 62]

~~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. [Am. 63]~~

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

~~(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. [Am. 64]~~

4. The redress obtained through a final decision in accordance with ~~paragraphs 1, 2 and 3~~ **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.*** [Am. 65]
- 4a. ***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.*** [Am. 66]
- 4b. ***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.*** [Am. 67]

Article 7

~~Funding~~ ***Admissibility of a representative action*** [Am. 68]

1. The qualified ***representative*** entity seeking a redress order as referred in Article 6(1) shall ~~declare at an early~~ ***submit to the court or administrative authority at the earliest*** stage of the action ~~the source of the~~ ***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. [Am. 69]
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~~ ***The representative action may be declared inadmissible by the national court if it establishes that the funding by the third party would:*** [Am. 70]
 - (a) ~~to~~ influence decisions of the qualified ***representative*** entity in the context of a representative action, including ***the initiation of representative actions and decisions*** on settlements; [Am. 71]
 - (b) ~~to~~ provide financing for a collective action against a defendant who is a competitor of the fund provider or against a defendant on whom the fund provider is dependant;

3. Member States shall ensure that courts and administrative authorities ~~are empowered to~~ assess ***the absence of conflict of interest referred to in paragraph 1 and*** the circumstances referred to in paragraph 2 and ~~accordingly require the qualified entity to refuse the relevant funding and, if necessary, reject the standing~~ ***at the stage of admissibility*** of the qualified entity ~~in a specific case~~ ***representative action and at a later stage during the court proceedings if the circumstances only yield then.*** [Am. 72]
- 3a. ***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.***
[Am. 73]

Article 7a

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. [Am. 74]

Article 8
Settlements

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. ~~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.~~
[Am. 75]
2. Member States shall ensure that at any moment within the representative actions, the court or administrative authority may invite the qualified entity and the defendant, after having consulted them, to reach a settlement regarding redress within a reasonable set time-limit.

3. Member States shall ensure that the court or administrative authority that issued the final declaratory decision referred to in Article 6(2) is empowered to request the parties to the representative action to reach within a reasonable set time limit a settlement regarding the redress to be provided to consumers on the basis of this final decision.
4. The settlements referred to in paragraphs 1, 2 and 3 shall be subject to the scrutiny of the court or administrative authority. The court or administrative authority shall assess the legality and fairness of the settlement, taking into consideration the rights and interests of all parties, including the consumers concerned.
5. If the settlement referred to in paragraph 2 is not reached within the set time-limits or the settlement reached is not approved, the court or administrative authority shall continue the representative action.
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 ***binding upon all parties*** without prejudice to any additional rights to redress that the consumers concerned may have under Union or national law. [Am. 76]

Article 9

Information on representative actions

-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. [Am. 77]***

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 ~~infringing trader~~ ***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, ~~including, where appropriate,~~ ***Members States may provide that the information obligation can be complied with*** through ~~notifying all consumers concerned individually~~ ***a publicly available and easily accessible website.***
[Am. 78]
- 1a. ***The defeated party shall bear the costs of consumer information in accordance with the principle laid down in Article 7.*** [Am. 79]
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.*** [Am. 80]

- 2a. *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. [Am. 81]***
- 2b. *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. [Am. 82]***

Article 10

Effects of final decisions

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~~ ***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 ~~infringement~~ ***facts providing that the same damage cannot be compensated twice to the same consumers concerned.*** [Am. 83]
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 ~~a rebuttable presumption~~ ***evidence*** that an infringement has occurred. [Am. 84]
 - 2a. ***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.*** [Am. 85]

3. Member States shall ensure that a *are encouraged to create a database containing all* 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 *decisions on redress* actions seeking *that could facilitate other* 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 *measures, and to share their best practices in this field.* [Am. 86]

Article 11

Suspension of limitation period

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 ~~eonsumers~~ ***individuals*** concerned, if the relevant rights are subject to a limitation period under Union or national law.

[Am. 87]

Article 12

Procedural expediency

1. Member States shall take the necessary measures to ensure representative actions referred to in Articles 5 and 6 are treated with due expediency.
2. Representative actions for an injunction order in the form of an interim measure referred to in Article 5(2)(a) shall be treated by way of an accelerated procedure.

Article 13

Evidence

Member States shall ensure that, at the request of a ~~qualified entity~~ ***one of the parties*** that has presented reasonably available facts and ~~evidence~~ sufficient ***evidence and a substantive explanation*** to support the representative action ***its views***, and has indicated further ***specific and clear defined*** evidence which lies in the control of the ~~defendant~~ ***other party***, the court or administrative authority may order, in accordance with national procedural rules, that such evidence be presented by the ~~defendant~~ ***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.*** [Am. 88]

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 contains confidential information. [Am. 89]

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. [Am. 90]

Article 14

Penalties

1. Member States shall lay down the rules on penalties applicable to non-compliance with the final decisions issued within the representative action and shall take all necessary measures to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall ensure that penalties may take, *inter alia*, the form of fines. **[Am. 91]**
3. When deciding about the allocation of revenues from fines Member States shall take into account the collective interests of consumers. ***Member States may decide for such revenues to be allocated to a fund created for the purpose of financing representative actions.*** **[Am. 92]**
4. Member States shall notify provisions referred to in paragraph 1 to the Commission by [date for transposition of the Directive] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 15

Assistance for qualified *representative* entities [Am. 93]

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. [Am. 94]***
 - 1a. ***Member States shall provide structural support to entities acting as qualified entities within the scope of this Directive. [Am. 95]***
2. Member States shall take the necessary measures to ensure that in cases where the qualified entities are required to inform consumers concerned about the ongoing representative action the related cost may be recovered from the trader if the action is successful.
3. Member States and the Commission shall support and facilitate the cooperation of qualified entities and the exchange and dissemination of their best practices and experiences as regards the resolution of cross-border and domestic infringements.

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.

[Am. 96]

Article 16

Cross-border representative actions

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 ~~shall accept this list as proof of~~ *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.

[Am. 97]

2. Member States shall ensure that where the infringement affects or is likely to affect consumers from different Member States the representative action may be brought to the competent court or administrative authority of a Member State by several qualified entities from different Member States, acting jointly or represented by a single qualified entity, for the protection of the collective interest of consumers from different Member States.
 - 2a. ***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. [Am. 98]***

3. For the purposes of cross-border representative actions, and without prejudice to the rights granted to other entities under national legislation, the Member States shall communicate to the Commission the list of qualified entities designated in advance. Member States shall inform the Commission of the name and purpose of these qualified entities. The Commission shall make this information publicly available and keep it up to date.
4. If a Member State, or 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.
[Am. 99]

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. [Am. 100]

Chapter 3

Final provisions

Article 17

Repeal

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

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

Article 18

Monitoring and evaluation

1. No sooner than 5 years after the date of application of this Directive, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation guidelines. In the report, the Commission shall in particular assess the scope of application of this Directive defined in Article 2 and Annex I.
- ~~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. [Am. 101]~~

3. Member States shall provide the Commission on annual basis, for the first time at the latest 4 years after the date of application of this Directive, with the following information necessary for the preparation of the report referred to in paragraph 1:
- (a) the number of representative actions brought pursuant to this Directive before administrative and judicial authorities;
 - (b) the type of qualified entity bringing the actions;
 - (c) the type of the infringement tackled within the representative actions, the parties to the representative actions and the economic sector concerned by the representative actions;
 - (d) the length of the proceedings from initiating an action until the adoption of a final injunctions orders referred to in Article 5, redress orders or declaratory decisions referred to in Article 6 or final approval of the settlement referred to in Article 8;
 - (e) the outcomes of the representative actions;
 - (f) the number of qualified entities participating in cooperation and exchange of best practices mechanism referred to in Article 15(3).

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. [Am. 102]

Article 19
Transposition

1. Member States shall adopt and publish, by [18 months from the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

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

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

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

Article 20

Transitional provisions

1. Member States shall apply the laws, regulations and administrative provisions transposing this Directive to infringements that started after [date of application of this Directive].
2. Member States shall apply the laws, regulations and administrative provisions transposing Directive 2009/22/EC to infringements that started before [date of application of this Directive].

Article 21

Entry into force

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

Article 22

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

ANNEX I

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

- (1) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210 , 07.08.1985, p. 29 –33)⁷.
- (2) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).
- (3) Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27).
- (4) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).

⁷ The said Directive was amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 141, 04.06.1999, p. 20 - 21).

- (5) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects on information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1).
- (6) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use: Articles 86 to 100 (OJ L 311, 28.11.2001, p. 67).
- (7) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51–77).
- (8) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37): Article 13.
- (9) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services (OJ L 271, 9.10.2002, p. 16).

- (10) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).
- (11) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (OJ L 149, 11.6.2005, p. 22).
- (12) Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1).
- (13) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21): Article 1, point (c) of Article 2 and Articles 4 to 8.

- (14) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).
- (15) Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).
- (16) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).
- (17) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3): Articles 22, 23 and 24.
- (18) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1–1355).

- (19) Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33, 3.2.2009, p. 10).
- (20) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55–93).
- (21) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94–136).
- (22) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32–96).
- (23) Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11–18).

- (24) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7–17).
- (25) Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10–35).
- (26) Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters (OJ L 342, 22.12.2009, p. 46–58).
- (27) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1–155): Articles 183, 184, 185 and 186.

- (28) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1): Articles 9, 10, 11 and Articles 19 to 26.
- (29) Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13–35).
- (30) Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1–19).
- (31) Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).
- (32) Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

- (33) Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45–65).
- (34) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1–73).
- (35) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

- (36) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18–63).
- (37) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22–37).
- (38) Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10–35).

- (39) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1–56).
- (40) Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (OJ L 165, 18.6.2013, p. 63): Article 13.
- (41) Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1): Article 14.
- (42) Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1–17).
- (43) Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18–38).

- (44) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34): Articles 10, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23, Chapter 10 and Annexes I and II.
- (45) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349–496).
- (46) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214): Articles 3 to 18 and Article 20(2).

- (47) Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).
- (48) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1–23).
- (49) Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98–121).
- (50) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35–127).

- (51) Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1–18).
- (52) Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19–59).
- (53) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).
- (54) Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37–85).

- (55) Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (OJ L 168, 30.6.2017, p. 1).
- (56) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12–82).
- (57) Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8–45).
- (58) Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1–23).

- (59) Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60, 02.03.2018, p. 1).
- (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). [Am. 103]*
- (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). [Am. 104]*
- (59c) *Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1). [Am. 105]*

- (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).* [Am. 106]
- (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 (OJ L 212, 22.7.1989, p. 79).* [Am. 107]
- (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 (OJ L 211, 14.8.2009, p. 36).* [Am. 108]

ANNEX II

CORRELATION TABLE

Directive 2009/22/EC	This Directive
Article 1(1)	Article 1(1)
Article 1(2)	Article 2(1)
-	Article 2(2)
-	Article 3
Article 2(1)	Article 5(1)
Article 2(1) point (a)	Article 5(2) points (a) and (b) Article 12
-	Article 5(2) second subparagraph
Article 2(1) point (b)	Article 5(3) Article 9
Article 2(1) point (c)	Article 14
Article 2(2)	Article 2(3)
Article 3	Article 4(1)-(3)
-	Article 4(4)
-	Article 4(5)
-	Article 5(4)
-	Article 6
-	Article 7
-	Article 8
-	Article 10
-	Article 11
-	Article 13
-	Article 15
Article 4	Article 16
Article 5	-
Article 6	Article 18
Article 7	Article 1(2)
Article 8	Article 19
Article 9	Article 17
-	Article 20
Article 10	Article 21
Article 11	Article 22