



Plenary sitting

A8-0447/2018

7.12.2018

*****I**
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

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION	53
OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM	93
PROCEDURE – COMMITTEE RESPONSIBLE.....	115
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE.....	116

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 (A8-0447/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Recital 1

Text proposed by the Commission

(1) The purpose of this Directive is to enable qualified entities, which represent the collective interest of consumers, to seek remedy through representative actions against infringements of provisions of

Amendment

(1) The purpose of this Directive is to enable qualified **representative** entities, which represent the collective interest of consumers, to seek remedy through representative actions against

Union law. The qualified entities should be able to ask for stopping or prohibiting an infringement, for confirming that an infringement took place and to seek redress, such as compensation, repair *or* price reduction as available under national laws.

infringements of provisions of Union law. The qualified *representative* entities should be able to ask for stopping or prohibiting an infringement, for confirming that an infringement took place and to seek redress, such as compensation, *reimbursement of the price paid*, repair, *replacement, removal or contract termination* as available under national laws.

Amendment 2

Proposal for a directive Recital 2

Text proposed by the Commission

(2) Directive 2009/22/EC of the European Parliament and of the Council²⁹ enabled qualified entities to bring representative actions primarily aimed at stopping and prohibiting infringements of Union law harmful to the collective interests of consumers. However, that Directive did not sufficiently address the challenges for the enforcement of consumer law. To improve the deterrence of unlawful practices and to reduce consumer detriment, it is necessary to strengthen the mechanism for protection of collective interests of consumers. Given the numerous changes, for the sake of clarity it is appropriate to replace Directive 2009/22/EC.

²⁹ OJ L 110/30, 1.5.2009.

Amendment

(2) Directive 2009/22/EC of the European Parliament and of the Council²⁹ enabled qualified *representative* entities to bring representative actions primarily aimed at stopping and prohibiting infringements of Union law harmful to the collective interests of consumers. However, that Directive did not sufficiently address the challenges for the enforcement of consumer law. To improve the deterrence of unlawful practices, *to encourage good and responsible business practices*, and to reduce consumer detriment, it is necessary to strengthen the mechanism for protection of collective interests of consumers. Given the numerous changes, for the sake of clarity it is appropriate to replace Directive 2009/22/EC. *There is a strong need for Union intervention, on the basis of Article 114 TFEU, in order to ensure both access to justice and sound administration of justice as it will reduce the costs and burden entailed by individual actions.*

²⁹ OJ L 110/30, 1.5.2009.

Amendment 3

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) A representative action should offer an effective and efficient way of protecting the collective interests of consumers. It should allow qualified entities to act with the aim of ensuring compliance with relevant provisions of Union law and to overcome the obstacles faced by consumers within individual actions, such as the uncertainty about their rights and available procedural mechanisms, psychological reluctance to take action and the negative balance of the expected costs and benefits of the individual action.

Amendment

(3) A representative action should offer an effective and efficient way of protecting the collective interests of all consumers ***against both internal and cross-border infringements***. It should allow qualified ***representative*** entities to act with the aim of ensuring compliance with relevant provisions of Union law and to overcome the obstacles faced by consumers within individual actions, such as the uncertainty about their rights and available procedural mechanisms, ***previous experience of unsuccessful claims, excessively lengthy proceedings***, psychological reluctance to take action and the negative balance of the expected costs and benefits of the individual action, ***thereby increasing legal certainty for both claimants and defendants, as well as for the legal system***.

Amendment 4

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) It is important to ensure the necessary balance between access to justice and procedural safeguards against abusive litigation which could unjustifiably hinder the ability of businesses to operate in the Single Market. To prevent the misuse of representative actions, elements such as punitive damages and the absence of limitations as regards the entitlement to bring an action on behalf of the harmed consumers should be avoided and clear rules on various procedural aspects, such as the designation of qualified entities, the origin of their funds and nature of the information required to support the representative action, should be laid down.

Amendment

(4) It is important to ensure the necessary balance between access to justice and procedural safeguards against abusive litigation which could unjustifiably hinder the ability of businesses to operate in the Single Market. To prevent the misuse of representative actions, elements such as punitive damages and the absence of limitations as regards the entitlement to bring an action on behalf of the harmed consumers should be avoided and clear rules on various procedural aspects, such as the designation of qualified ***representative*** entities, the origin of their funds and nature of the information required to support the representative action, should be laid down.

This Directive should not affect national rules concerning the allocation of procedural costs.

The unsuccessful party should bear the costs of the proceedings. However, the court or tribunal should not award costs to the unsuccessful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

Amendment 5

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) This Directive should cover a variety of areas such as data protection, financial services, travel and tourism, energy, telecommunications *and* environment. It should cover infringements of provisions of Union law which protect the interests of consumers, regardless of whether they are referred to as consumers or as *travellers*, users, customers, retail investors, retail clients or other in the relevant Union law. To ensure adequate response to infringement to Union law, the form and scale of which is quickly evolving, it should be considered, each time where a new Union act relevant for the protection of the collective interests of consumers is adopted, whether to amend the Annex to the present Directive in order to place it under its scope.

Amendment

(6) This Directive should cover a variety of areas such as data protection, financial services, travel and tourism, energy, telecommunications, environment *and health*. It should cover infringements of provisions of Union law which protect the *collective* interests of consumers, regardless of whether they are referred to as consumers or as travellers, users, customers, retail investors, retail clients or other in the relevant Union law, *as well as the collective interests of data subjects within the meaning of the GDP Regulation*. To ensure adequate response to infringement to Union law, the form and scale of which is quickly evolving, it should be considered, each time where a new Union act relevant for the protection of the collective interests of consumers is adopted, whether to amend the Annex to the present Directive in order to place it under its scope.

Amendment 6

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6 a) This Directive applies to representative actions brought against

infringements with a broad consumer impact related to the provisions covered by the Union law listed in Annex I. The broad impact starts when two consumers are affected.

Amendment 7

Proposal for a directive Recital 9

Text proposed by the Commission

(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.

Amendment

(9) This Directive should not establish rules of private international law regarding jurisdiction, the recognition and enforcement of judgments or applicable law. The existing Union law instruments apply to the representative actions set out by this Directive ***preventing any increase in forum shopping.***

Amendment 8

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9 a) This Directive should not affect the application of EU rules on private international law in cross-border cases. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast - Brussels I), Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) apply to the representative actions set out by this

Amendment 9

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, 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.***

Amendment

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

Amendment 10

Proposal for a directive Recital 15

Text proposed by the Commission

(15) The qualified entity initiating the representative action under this Directive should be a party to the proceedings. Consumers concerned by the infringement should have adequate ***opportunities to***

Amendment

(15) The qualified entity initiating the representative action under this Directive should be a party to the proceedings. Consumers concerned by the infringement should have adequate ***information***

benefit from the relevant outcomes of the representative action. Injunction orders issued under this Directive should be without prejudice to individual actions brought by consumers harmed by the practice subject to the injunction order.

regarding the relevant outcomes of the representative action ***and how they can benefit from them***. Injunction orders issued under this Directive should be without prejudice to individual actions brought by consumers harmed by the practice subject to the injunction order.

Amendment 11

Proposal for a directive

Recital 16

Text proposed by the Commission

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

Amendment

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

Amendment 12

Proposal for a directive

Recital 18

Text proposed by the Commission

(18) Member States ***may*** require qualified entities to provide sufficient information to support a representative action for redress, including a description of the group of consumers concerned by an infringement and the questions of fact and law to be resolved within the representative action. The qualified entity should not be required to individually identify all consumers concerned by an infringement in order to initiate the action. In representative actions for redress the court or administrative authority should verify at

Amendment

(18) Member States ***should*** require qualified ***representative*** entities to provide sufficient information to support a representative action for redress, including a description of the group of consumers concerned by an infringement and the questions of fact and law to be resolved within the representative action. The qualified entity should not be required to individually identify all consumers concerned by an infringement in order to initiate the action. In representative actions for redress the court or administrative

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.

authority should verify at the earliest possible stage of the proceedings whether the case is suitable for being brought as a representative action, given the nature of the infringement and characteristics of the damages suffered by consumers concerned.

In particular, the claims should be ascertainable and uniform and there should be a commonality in the measures sought, third-party funding arrangement of the qualified entity should be transparent and without any conflict of interest. Member States should also ensure that the court or administrative authority has the authority to dismiss manifestly unfounded cases at the earliest possible stage of proceedings.

Amendment 13

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

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

deleted

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.

Amendment 14

Proposal for a directive Recital 20

Text proposed by the Commission

Amendment

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

deleted

Amendment 15

Proposal for a directive Recital 21

(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.

deleted

Amendment 16

Proposal for a directive Recital 23

(23) This Directive provides for a procedural mechanism, which does not affect the rules establishing substantive rights of consumers to contractual and non-contractual remedies in case their interests have been harmed by an infringement, such as the right to compensation for damages, contract termination, reimbursement, replacement, repair or price reduction. A representative action seeking redress under this Directive can only be brought where Union or national law provides for such substantive rights.

(23) This Directive provides for a procedural mechanism, which does not affect the rules establishing substantive rights of consumers to contractual and non-contractual remedies in case their interests have been harmed by an infringement, such as the right to compensation for damages, contract termination, reimbursement, replacement, **removal**, repair or price reduction. A representative action seeking redress under this Directive can only be brought where Union or national law provides for such substantive rights.

Amendment 17

Proposal for a directive
Recital 24

Text proposed by the Commission

(24) This Directive does not replace existing national collective redress mechanisms. Taking into account their legal traditions, it leaves it to the discretion of the Member States whether to design the representative action set out by this Directive as a part of an existing or future collective redress mechanism or as an alternative to these mechanisms, insofar as the national mechanism complies with the modalities set by this Directive.

Amendment

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

Amendment 18

Proposal for a directive
Recital 25

Text proposed by the Commission

(25) Qualified entities should be fully transparent about the source of funding of their activity in general and regarding the funds supporting a specific representative action for redress in order to enable courts or administrative authorities to assess whether there may be a conflict of interest 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

Amendment

(25) Qualified ***representative*** entities should be fully transparent about the source of funding of their activity in general and regarding the funds supporting a specific representative action for redress in order to enable courts or administrative authorities to assess whether there may be a conflict of interest between third party funder and the qualified entity and to avoid risks of abusive litigation as well as to assess whether the ***qualified entity*** has sufficient resources in order to ***represent the best interests of consumers concerned and to support all necessary legal costs should the action fail***. The information

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.

provided by the qualified entity *at the earliest stage of proceeding* to the court or administrative authority overseeing the representative action should enable it to assess whether the third party may influence procedural decisions of the qualified entity *in general and* in the context of the representative action, including on settlements and whether it provides financing for a representative action for redress against a defendant who is a competitor of the fund provider or against a defendant on whom the fund provider is dependant. If any of these circumstances is confirmed, the court or administrative authority *must* be empowered to require the qualified entity to refuse the relevant funding and, if necessary, reject standing of the qualified entity in a specific case. *Member States should prevent law firms from establishing qualified representative entities. Indirect financing of the action through donations, including traders donations in the framework of a corporate social responsibility initiatives, shall be eligible for third party financing provided that it complies with the requirements on transparency, independence and absence of conflict of interest listed in Article 4 and Article 7.*

Amendment 19

Proposal for a directive Recital 26

Text proposed by the Commission

(26) Collective out-of-court settlements aimed at providing redress to harmed consumers should be encouraged both before the representative action is brought and at any stage of the representative action.

Amendment

(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.

Amendment 20

Proposal for a directive

Recital 27

Text proposed by the Commission

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

Amendment

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

Amendment 21

Proposal for a directive

Recital 29

Text proposed by the Commission

(29) ***In order to facilitate redress for individual consumers sought on the basis of final declaratory decisions regarding the liability of the trader towards the consumers harmed by an infringement issued within representative actions, the court or administrative authority that issued the decision should be empowered to request the qualified entity and the trader to reach a collective settlement.***

Amendment

deleted

Amendment 22

Proposal for a directive
Recital 30

Text proposed by the Commission

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

Amendment 23

Proposal for a directive
Recital 32

Text proposed by the Commission

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

Amendment 24

Amendment

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

Amendment

(32) To be effective, the information should be adequate and proportional to the circumstances of the case. *Member States* should *ensure that the court or the administrative authority may require the defeated party to* adequately inform all consumers concerned of a final *decision concerning* injunction and redress issued within the representative action, *and both parties in cases* of a settlement approved by a court or administrative authority. Such information may be provided for instance on the website, social media, online market places, or in popular newspapers, including those distributed exclusively by electronic means of communication. This information should be provided in accessible formats for persons with disabilities upon request. *The defeated party shall bear the costs of consumer information.*

Proposal for a directive
Recital 32 a (new)

Text proposed by the Commission

Amendment

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

Amendment 25

Proposal for a directive
Recital 33

Text proposed by the Commission

Amendment

(33) To enhance legal certainty, avoid inconsistency in the application of Union law and to increase the effectiveness and procedural efficiency of representative actions and of possible follow-on actions for redress, the finding of an infringement established in a final decision, including a final injunction order under this Directive, issued by an administrative authority or a court should ***not be relitigated in subsequent legal actions related to*** the same ***infringement by*** the same trader ***as regards the nature of the infringement and its material, personal, temporal and territorial scope as determined by that final decision.*** Where an action seeking measures eliminating the continuing effects of the infringement, including for redress, is brought in a Member State other than the Member State where a final decision establishing this infringement was issued, the decision should constitute ***a rebuttable presumption*** that the infringement has occurred.

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

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

Amendment 26

Proposal for a directive Recital 35

Text proposed by the Commission

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

Amendment

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

Amendment 27

Proposal for a directive Recital 39

Text proposed by the Commission

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

Amendment

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

this should be without prejudice to the fact that the party that loses a representative action reimburses necessary legal costs borne by the winning party ('loser pays principle'). However, the court or administrative authority should not award costs to the unsuccessful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

Amendment 28

Proposal for a directive

Recital 39 a (new)

Text proposed by the Commission

Amendment

(39a) Member States should ensure that contingency fees are avoided and lawyers' remuneration and the method by which it is calculated do no create any incentive to litigation that is unnecessary from the point of view of the interest of consumers or any of the parties concerned and could prevent consumers from fully benefiting from the representative action. The Member States that allow for contingency fees should ensure that such fees do not prevent obtaining full compensation by consumers.

Amendment 29

Proposal for a directive

Recital 40

Text proposed by the Commission

Amendment

(40) Cooperation and exchange of information between qualified entities from different Member States have proven to be useful in addressing cross-border infringements. There is a need for continuing and expanding the capacity-building and cooperation measures to a larger number of qualified entities across

(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

the Union in order to increase the use of representative actions with cross-border implications.

cooperation measures to a larger number of qualified **representative** entities across the Union in order to increase the use of representative actions with cross-border implications.

Amendment 30

Proposal for a directive Recital 41 a (new)

Text proposed by the Commission

Amendment

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

Amendment 31

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 32

Proposal for a directive Article 1 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 33

Proposal for a directive Article 2 – paragraph 1

Text proposed by the Commission

1. This Directive shall apply to representative actions brought against infringements by traders of provisions of the Union law listed in Annex I that harm or may harm the collective interests of consumers. It shall apply to domestic and cross-border infringements, including where those infringements have ceased before the representative action has started or before the representative action has been concluded.

Amendment

1. This Directive shall apply to representative actions brought against infringements **with a broad consumer impact** by traders of provisions of the Union law listed in Annex I **that protect** the collective interests of consumers. It shall apply to domestic and cross-border infringements, including where those infringements have ceased before the representative action has started or before the representative action has been concluded.

Amendment 34

Proposal for a directive Article 2 – paragraph 3

Text proposed by the Commission

3. This Directive is without prejudice to the Union rules on private international

Amendment

3. This Directive is without prejudice to the Union rules on private international

law, in particular rules related to court jurisdiction *and* applicable *law*.

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

Amendment 35

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

Text proposed by the Commission

Amendment

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

Amendment 36

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

Text proposed by the Commission

Amendment

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

Amendment 37

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

Text proposed by the Commission

Amendment

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

Amendment 38

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

Text proposed by the Commission

Amendment

(2) ‘trader’ means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in their name or on their behalf, for purposes relating to their trade, business, craft or profession;

(2) ‘trader’ means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting ***in civil capacity under the rules of civil law***, including through any other person acting in their name or on their behalf, for purposes relating to their trade, business, craft or profession;

Amendment 39

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

Text proposed by the Commission

Amendment

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

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

Amendment 40

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

Text proposed by the Commission

Amendment

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

Amendment 41

Proposal for a directive Article 4 – title

Text proposed by the Commission

Amendment

Qualified entities

Qualified **representative** entities

Amendment 42

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

Text proposed by the Commission

Amendment

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

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

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

Amendment 43

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

Text proposed by the Commission

Amendment

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

(b) ***its statutes or another governance document and its continued activity involving the defence and protection of***

with;

consumers interests demonstrate its legitimate interest in ensuring that provisions of Union law covered by this Directive are complied with;

Amendment 44

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 45

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 46

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 47

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 3

Text proposed by the Commission

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

Amendment

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

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

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

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

Amendment 48

Proposal for a directive

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Member States may provide that public bodies already designated before the entry into force of this Directive in

accordance with national law shall remain eligible for the status of representative entity within the meaning of this Article.

Amendment 49

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment 50

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 consumer organisations *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 *representative* entities consumer organisations that represent members from more than one Member State.

Amendment 51

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

Amendment

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.

deleted

Amendment 52

Proposal for a directive Article 4 – paragraph 5

Text proposed by the Commission

Amendment

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

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

Amendment 53

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

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.

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 EU law ensuring the higher level of protection of collective consumer interest.

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

Amendment 54

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 55

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 56

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

Text proposed by the Commission

(a) an injunction order as an interim measure for stopping the practice or, if the practice has not yet been carried out but is imminent, prohibiting the practices;

Amendment

(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** practices;

Amendment 57

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 58

Proposal for a directive
Article 5 – paragraph 4

Text proposed by the Commission

4. ***Without prejudice to Article 4(4), Member States shall ensure that qualified entities are able to seek the measures eliminating the continuing effects of the infringement together with measures referred to in paragraph 2 within a single***

Amendment

deleted

representative action.

Amendment 59

Proposal for a directive Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Registry of collective redress actions

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

Amendment 60

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

Text proposed by the Commission

Amendment

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

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

made or a redress order is issued.

redress order is issued.

Amendment 61

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 62

Proposal for a directive

Article 6 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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

Amendment 63

Proposal for a directive

Article 6 – paragraph 2

Text proposed by the Commission

Amendment

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

Amendment 64

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

Amendment

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

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

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

Amendment 65

Proposal for a directive Article 6 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 66

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

Text proposed by the Commission

Amendment

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

Amendment 67

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

Text proposed by the Commission

Amendment

4 b. In particular, punitive damages, leading to overcompensation in favour of the claimant party of the damage suffered, shall be prohibited. For instance, the

compensation awarded to consumers harmed collectively shall not exceed the amount owed by the trader in accordance with the applicable national or Union law in order to cover the actual harm suffered by them individually.

Amendment 68

Proposal for a directive Article 7 – title

Text proposed by the Commission

Funding

Amendment

Admissibility of a representative action

Amendment 69

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 70

Proposal for a directive Article 7 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 71

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

Text proposed by the Commission

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

Amendment

(a) 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;

Amendment 72

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

Text proposed by the Commission

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

Amendment

3. Member States shall ensure that courts and administrative authorities assess ***the absence of conflict of interest referred to in paragraph 1 and*** the circumstances referred to in paragraph 2 ***at the stage of admissibility of the representative action and at a later stage during the court proceedings if the circumstances only yield then.***

Amendment 73

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

Text proposed by the Commission

Amendment

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

Amendment 74

Proposal for a directive Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7 a

Loser pay principle

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

Amendment 75

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

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. ***Such a request should be admitted by the court or administrative authority only***

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.

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 76

Proposal for a directive Article 8 – paragraph 6

Text proposed by the Commission

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

Amendment 77

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

Text proposed by the Commission

Amendment

-1 Member States shall ensure that the representative entities:

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

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

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

Amendment 78

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 79

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

Text proposed by the Commission

Amendment

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

Amendment 80

Proposal for a directive Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 81

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

Text proposed by the Commission

Amendment

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

Amendment 82

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

Text proposed by the Commission

Amendment

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

Amendment 83

Proposal for a directive Article 10 – paragraph 1

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

Amendment 84

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 85

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

Text proposed by the Commission

Amendment

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

Amendment 86

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Amendment 87

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

Amendment

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

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

actions for the *consumers* concerned, if the relevant rights are subject to a limitation period under Union or national law.

periods applicable to any redress actions for the *individuals* concerned, if the relevant rights are subject to a limitation period under Union or national law.

Amendment 88

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 89

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

Text proposed by the Commission

Amendment

1a. Member States shall ensure that the courts limit the disclosure of evidence to what is proportionate. To determine whether any disclosure requested by a representative entity is proportionate, the

court shall consider the legitimate interest of all parties concerned, namely to which extent the request for disclosure of evidence is supported by available facts and evidence and whether the evidence the disclosure of which is requested contains confidential information.

Amendment 90

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

Text proposed by the Commission

Amendment

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

Amendment 91

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Amendment 92

Proposal for a directive Article 14 – paragraph 3

Text proposed by the Commission

Amendment

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

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

representative actions.

Amendment 93

Proposal for a directive Article 15 – title

Text proposed by the Commission

Assistance for qualified entities

Amendment

Assistance for qualified *representative* entities

Amendment 94

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 95

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

Text proposed by the Commission

Amendment

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

Amendment 96

Proposal for a directive Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Legal representation and fees

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

Amendment 97

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

Amendment

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

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

justifies its taking action in a specific case.

of the qualified **representative** entity justifies its taking action in a specific case.

Amendment 98

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

Text proposed by the Commission

Amendment

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

Amendment 99

Proposal for a directive Article 16 – paragraph 4

Text proposed by the Commission

Amendment

4. If a Member State **or** the Commission raises concerns regarding the compliance by a qualified entity with the criteria laid down in Article 4(1), the Member State that designated that entity shall investigate the concerns and, where appropriate, revoke the designation if one or more of the criteria are not complied with.

4. If a Member State, the Commission **or the trader** raises concerns regarding the compliance by a qualified **representative** entity with the criteria laid down in Article 4(1), the Member State that designated that entity shall investigate the concerns and, where appropriate, revoke the designation if one or more of the criteria are not complied with.

Amendment 100

**Proposal for a directive
Article 16 a (new)**

Text proposed by the Commission

Amendment

Article 16a

Public Register

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

Amendment 101

**Proposal for a directive
Article 18 – paragraph 2**

Text proposed by the Commission

Amendment

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

deleted

Amendment 102

**Proposal for a directive
Article 18 a (new)**

Text proposed by the Commission

Amendment

Article 18a

Review clause

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

Amendment 103

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

Text proposed by the Commission

Amendment

(59a) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4).

Amendment 104

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

Text proposed by the Commission

Amendment

(59b) Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (OJ L 96, 29.3.2014, p. 357).

Amendment 105

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

Text proposed by the Commission

Amendment

(59c) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

Amendment 106

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

Text proposed by the Commission

Amendment

(59d) Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments (OJ L 96, 29.3.2014, p. 107).

Amendment 107

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

Text proposed by the Commission

Amendment

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

Amendment 108

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

Text proposed by the Commission

Amendment

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

23.11.2018

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Legal Affairs

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))

Rapporteur for opinion: Dennis de Jong

(*) Associated committees – Rule 54 of the Rules of Procedure

SHORT JUSTIFICATION

The Rapporteur agrees with the underlying principles of the Commission proposal and is of the opinion that the Commission strikes the right balance of facilitating representative actions, without opening the doors to abusive practices. In particular, the Rapporteur considers it vital that only not-for-profit organisations can act as ‘qualified entities’ in the sense of the Directive.

Minimum harmonisation

In Article 1, the current formulation is rather vague. The Rapporteur therefore suggests making it very clear that the Directive aims at minimum harmonisation and that Member States remain free to adopt or maintain provisions that are more favourable to consumers.

Qualified entities and representative measures

Although most Member States have independent bodies dealing with consumer rights, this is not the case in, for example, Germany. This Directive is not the suitable tool to require all Member States to establish such bodies. Hence, the Rapporteur added the words 'where applicable' in Article 4.

With respect to Article 5, the launch of representative actions for redress should not have to wait until the final decision establishes that a practice constitutes an infringement of Union law. Otherwise, procedures may take so long that the actual evidence of damage may be lost.

Redress measures

In Article 6, the Rapporteur suggests to limit the possibility for Member States to empower a court or administrative authority to issue a declaratory decision in order to prevent that cases will too easily be marked as complex. Secondly, the Rapporteur proposes to give all consumers the right to receive their compensation, regardless of the amount of loss. A small amount of loss is a subjective term, since a small amount for one consumer can mean a lot for another.

Scope

Although the Rapporteur would not be in favour of taking out passengers' rights from the scope of the Directive, he refrained from deleting the references to an evaluation of this aspect, as the latest Commission legislative proposals on air and rail passenger rights are still under negotiation. Once these negotiations have been finalised, a more complete picture will emerge. Re-assessment after one year after the entry into force of the Directive, seems too soon, however, to establish whether the new rules on passenger rights offer an adequate level of protection comparable to that provided in the Directive.

In the Annex I the Rapporteur included a number of legislative instruments which have proven to be important for consumers, thus broadening the material scope of the Directive.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) A representative action should offer an effective and efficient way of protecting the collective interests of consumers. It should allow qualified entities to act with the aim of ensuring compliance with relevant provisions of Union law and to overcome the obstacles faced by consumers within individual actions, such as the uncertainty about their rights and available procedural mechanisms, psychological reluctance to take action and the negative balance of the expected costs and benefits of the individual action.

Amendment

(3) A representative action should offer an effective and efficient way of protecting the collective interests of **all** consumers, **without discrimination**. It should allow qualified entities to act with the aim of ensuring compliance with relevant provisions of Union law and to overcome the obstacles faced by consumers within individual actions **with regard to their generally weaker position**, such as the uncertainty about their rights and available procedural mechanisms, psychological reluctance to take action and the negative balance of the expected costs and benefits of the individual action.

Amendment 2

Proposal for a directive

Recital 6

Text proposed by the Commission

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

Amendment

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

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.

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 **individuals** is adopted, whether to amend the Annex to the present Directive in order to place it under its scope.

Amendment 3

Proposal for a directive Recital 7

Text proposed by the Commission

Amendment

(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 air³⁰ and for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations.³¹ 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.

deleted

³⁰ COM(2013) 130 final.

³¹ COM(2017) 548 final.

Amendment 4

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9 a) This Directive should not affect the application of EU rules on private international law in cross-border cases. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast - Brussels I), Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) apply to the representative actions set out by this Directive.

Amendment 5

Proposal for a directive Recital 10

Text proposed by the Commission

Amendment

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

(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 ***should be registered in a Member State of the European Union as having been*** properly constituted according to the law of ***that*** Member State. ***In particular,*** they should have a ***non-profit making character and a governance structure***

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.

ensuring that *no excessive salaries or fees or reimbursement of excessive office costs or other expenses are paid just to fulfil the non-profit criterion.*

Amendment 6

Proposal for a directive Recital 11

Text proposed by the Commission

(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.

Amendment

(11) Independent public bodies, consumer organisations, *and citizens' advice groups* 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.

Amendment 7

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11 a) Qualified entities should have no structural or financial interrelationship with a third person or organisation that financially benefits of the action by providing legal assistance or financial support.

Amendment 8

Proposal for a directive

Recital 13

Text proposed by the Commission

(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.*

Amendment 9

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) Qualified entities should be able to seek measures aimed at eliminating the continuing effects of the infringement. These measures should take the form of a redress order obligating the trader to provide for, inter alia, compensation, repair, replacement, price reduction,

Amendment

(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.

Amendment

(16) Qualified entities should be able to seek measures aimed at eliminating the continuing effects of the infringement. These measures should take the form of a redress order *for a material or non-material damage* obligating the trader to provide for, inter alia, compensation,

contract termination or reimbursement of the price paid, as appropriate and as available under national laws.

repair, replacement, *removal*, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under national laws.

Amendment 10

Proposal for a directive Recital 20

Text proposed by the Commission

Amendment

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

deleted

Amendment 11

Proposal for a directive Recital 21

Text proposed by the Commission

Amendment

(21) In low-value cases most consumers are unlikely to take action in order to enforce their rights because the efforts would outweigh the individual

deleted

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 12

Proposal for a directive Recital 22

Text proposed by the Commission

(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 2006/2004**.³²

Amendment

(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 Council¹. ***However, in order not to prolong procedures and not to increase the risk that consumers may lose evidence which supports their case and may cease to have an interest in the case, the actions for those measures may be launched in parallel with the actions seeking injunction orders and decided upon simultaneously with the decision establishing an infringement of Union***

law.

³² OJ L 345, 27.12.2017.

³² OJ L 345, 27.12.2017.

Amendment 13

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) This Directive does not replace existing national collective redress mechanisms. Taking into account their legal traditions, it leaves it to the discretion of the Member States whether to design the representative action set out by this Directive as a part of an existing or future collective redress mechanism or as an alternative to these mechanisms, insofar as the national mechanism complies with the *modalities set* by this Directive.

Amendment

(24) This Directive 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 *minimum standards established* by this Directive.

Amendment 14

Proposal for a directive

Recital 26

Text proposed by the Commission

(26) Collective out-of-court settlements aimed at providing redress to harmed consumers should be encouraged both before the representative action is brought and at any stage of the representative action.

Amendment

(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.

Amendment 15

Proposal for a directive

Recital 27

Text proposed by the Commission

Amendment

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

(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 *and file or pursue their corresponding individual action.*

Amendment 16

Proposal for a directive Recital 29

Text proposed by the Commission

(29) In order to facilitate redress for individual consumers sought on the basis of final declaratory decisions regarding the liability of the trader towards the consumers harmed by an infringement issued within representative actions, the court or administrative authority that issued the decision should be empowered to request the qualified entity and the trader to reach a collective settlement.

Amendment

deleted

Amendment 17

Proposal for a directive Recital 31

Text proposed by the Commission

(31) Ensuring that consumers are

Amendment

(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*.

Amendment 18

Proposal for a directive Recital 32

Text proposed by the Commission

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

Amendment 19

Proposal for a directive Recital 33

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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 *presumption of innocence principle and* reputational risks *related to* spreading information about *a potential* infringement *should be taken into account*.

Amendment

(32) To be effective, the information should be adequate and proportional to the circumstances of the case. The infringing trader should adequately inform all *individuals* concerned *as well as the general public* of a final injunction and redress orders issued within the representative action as well as 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, *individuals* should be informed individually through electronic or paper letters. This information should be provided in accessible formats for persons with disabilities upon request.

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Text proposed by the Commission

(33) To enhance legal certainty, avoid inconsistency in the application of Union law and to increase the effectiveness and procedural efficiency of representative actions and of possible follow-on actions for redress, the finding of an infringement established in a final decision, including a final injunction order under this Directive, issued by an administrative authority or a court should not be relitigated in subsequent legal actions related to the same infringement by the same trader as regards the nature of the infringement and its material, personal, temporal and territorial scope as determined by that final decision. Where an action seeking measures eliminating the continuing effects of the infringement, including for redress, is brought in a Member State other than the Member State where a final decision establishing this infringement was issued, the decision should constitute a rebuttable presumption that the infringement has occurred.

Amendment

(33) To enhance legal certainty, avoid inconsistency in the application of Union law and to increase the effectiveness and procedural efficiency of representative actions and of possible follow-on actions for redress, the finding of an infringement established in a final decision, including a final injunction order under this Directive, issued by an administrative authority or a court should not be relitigated in subsequent legal actions related to the same infringement by the same trader as regards the nature of the infringement and its material, personal, temporal and territorial scope as determined by that final decision. Where an action seeking measures eliminating the continuing effects of the infringement, including for redress, is brought in a Member State other than the Member State where a final decision establishing this infringement was issued, the decision should constitute *at least* a rebuttable presumption that the infringement has occurred.

Amendment 20

**Proposal for a directive
Recital 34 a (new)**

Text proposed by the Commission

Amendment

(34 a) Members States should ensure that individuals are allowed to apply for a suspension of their own action for redress until the final decision of a corresponding representative action.

Amendment 21

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

Text proposed by the Commission

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

Amendment

1. This Directive sets out rules enabling qualified entities to seek representative actions aimed at the protection of the collective interests of consumers, ***thus achieving a high level of consumer protection and, in particular, of access to justice***, while ensuring appropriate safeguards ***at EU and Member State level and their consistent EU-wide application*** to avoid abusive litigation.

Amendment 22

**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 ***aims at minimum harmonisation and shall therefore*** not prevent Member States from adopting or maintaining in force provisions designed to ***ensure a higher level of consumer protection and 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 ***than those provided for in the Directive***.

Amendment 23

**Proposal for a directive
Article 2 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1 a. This Directive shall not prevent Member States from adopting or maintaining additional areas of consumer protection than those to which this Directive shall apply.

Amendment 24

Proposal for a directive Article 2 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1 b. *The Commission shall be empowered to adopt delegated acts in accordance with Article 17a to amend Annex I for the purposes of adding to it provisions of the Union law to which article 2(1) refers.*

Amendment 25

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

Text proposed by the Commission

Amendment

(1) ‘consumer’ means any natural person who is acting for purposes which are outside their trade, business, craft or profession;

(1) ‘consumer’ means any natural person who is acting for purposes which are **mainly** outside their trade, business, craft or profession;

Amendment 26

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

Text proposed by the Commission

Amendment

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

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

Amendment 27

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

Text proposed by the Commission

Amendment

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

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

Amendment 28

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) it is properly constituted according to the law of a Member State;

(a) it is properly constituted **and registered** according to the law of a Member State;

Amendment 29

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

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

(b) **its statute or another relevant governance document demonstrates its** legitimate interest in ensuring that provisions of Union law covered by this Directive are complied with;

Amendment 30

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

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

(c) it has a non-profit making character **and a governance structure ensuring the non-profit criterion;**

Amendment 31

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

Text proposed by the Commission

Amendment

(c a) it is, at all times, fully transparent about the source of funding of its activity in general and the funds that it uses to support the action;

Amendment 32

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

Text proposed by the Commission

Amendment

(c b) it has in place due procedures to identify, prevent and resolve conflicts of interest;

Amendment 33

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

Text proposed by the Commission

Amendment

(c c) it has a proper communication policy in place, through which it informs consumers in a general manner of costs and risks that could arise from a collective action;

Amendment 34

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

Text proposed by the Commission

Amendment

(c d) it has no structural or financial interrelationship with a third person or organisation that financially benefits of the action by providing legal assistance or

financial support.

Amendment 35

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 consumer organisations and, *where applicable*, 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 36

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that representative actions *according to Article I* can be brought before national courts or administrative authorities by qualified entities.

Amendment 37

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

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, including a final injunction order referred to in paragraph (2)(b).

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 *point b of* paragraph 2. *Although the decision on these representative actions can only be taken after it has been formally established that a practice constitutes an infringement of Union law, however, in order not to prolong procedures, the actions can be launched in parallel with the actions for injunction orders referred to in paragraph 2 or as part of a single representative action in accordance with national law.*

Amendment 38

Proposal for a directive Article 5 – paragraph 4

Text proposed by the Commission

4. *Without prejudice to Article 4(4), Member States shall ensure that qualified entities are able to seek the measures eliminating the continuing effects of the infringement together with measures referred to in paragraph 2 within a single representative action.*

Amendment

deleted

Amendment 39

Proposal for a directive Article 5 – paragraph 4 a (new)

Text proposed by the Commission

4 a. *Member States shall ensure that the 'loser pays' principle applies for all types of representative actions.*

Amendment

Justification

The 2013 Commission Recommendation stipulates that the party that loses a collective

redress action reimburses necessary legal costs borne by the winning party.

Amendment 40

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 ***for the economic and non-economic damages***, which obligates the trader to provide for, inter alia, compensation, repair, replacement, ***removal***, price reduction, contract termination or reimbursement of the price paid, as appropriate. ***Moreover, Member States may ensure that, in strictly exceptional, duly justified cases, qualified entities can seek a declaratory decision instead of a redress order.***

A Member State may require the mandate of the individual consumers concerned before a declaratory decision is made or a redress order is issued, ***including, where applicable, on the type of remedies sought. Other affected consumers, including those who are not habitually resident in the Member State where the action occurs, shall be able to join the representative action seeking a declaratory decision or a redress order.***

Amendment 41

Proposal for a directive

Article 6 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The redress resulting from a representative action shall normally be allocated to affected consumers.

Amendment 42

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

Amendment

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

Amendment 43

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

Amendment

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

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

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

interests of consumers.

Amendment 44

Proposal for a directive Article 6 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 45

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 ***in detail at the stage of admissibility*** of the action the source of the funds used for its activity in general and the funds that it uses to support the action. ***This may include a guarantee or indemnity from a third party subject also to the provisions of paragraphs 2 and 3 of this Article.***

Amendment 46

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

Text proposed by the Commission

Amendment

1 a. The unsuccessful party shall bear the costs of the proceedings subject to the conditions provided for in the relevant national law.

Amendment 47

Proposal for a directive

Article 7 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

2. Member States shall ensure that in cases where a representative action for redress is funded by a third party, ***transparency as to the origin of the funds is ensured and that*** it is prohibited for the third party:

Amendment 48

Proposal for a directive

Article 7 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 49

Proposal for a directive

Article 7 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(a a) to receive any direct or indirect financial benefit through the litigation process or decision;

Amendment 50

Proposal for a directive

Article 7 – paragraph 3

Text proposed by the Commission

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.

Amendment 51

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 52

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.

3. Member States shall ensure that courts and administrative authorities 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

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 **and file or pursue their corresponding individual action**. 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

1. Member States shall ensure that the court or administrative authority shall require the infringing trader to inform affected **in particular consumers and workers, as well as the general public** 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. ***In addition to the channels of the trader who committed the infringement, this information may also be provided via relevant public authority channels or through the channels of designated qualified entities, in every case at the expense of the trader who committed the infringement.***

Justification

The channels of the party who committed the infringement may not be regarded by the injured party as worthy of confidence. It would therefore be appropriate for consumers to be informed through channels perceived as reliable.

Amendment 53

Proposal for a directive Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 54

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

Amendment

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

occurred.

infringement has occurred.

Amendment 55

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 56

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 that such evidence be presented by the defendant. ***This decision should be based on an assessment of the need, scope and proportionality of the requested disclosure, in accordance with national procedural rules, and*** subject to the applicable Union and national rules on confidentiality.

Amendment 57

Proposal for a directive

Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 58

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Member States shall take the necessary measures to ensure that ***the party that loses a collective redress action reimburses necessary legal costs borne by the winning party, subject to the conditions provided for in the relevant national law.*** 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.

Amendment 59

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

1. Member States shall take the measures necessary to ensure that any qualified entity designated in advance in one Member State in accordance with Article 4(1) may apply to the courts or

Amendment

1. Member States shall take the measures necessary to ensure that any qualified entity designated in advance in one Member State in accordance with Article 4(1) may apply to the courts or

administrative authorities of another Member State upon the presentation of the publicly available list referred to in that Article. The courts or administrative authorities shall accept this list as proof of the legal standing of the qualified entity *without prejudice to their right to examine whether the purpose of the qualified entity justifies its taking action in a specific case.*

Amendment 60

Proposal for a directive Article 16 a (new)

Text proposed by the Commission

administrative authorities of another Member State upon the presentation of the publicly available list referred to in that Article. The courts or administrative authorities shall accept this list as proof of the legal standing of the qualified entity.

Amendment

Article 16 a

In order to make the possibility of cross-border injunctions more visible, Member States shall ensure that the relevant domestic administrative authorities set up a registry of unlawful acts which have been subject to injunction orders in order to provide a basis for best practice and information to other Member State authorities.

Amendment 61

Proposal for a directive Article 17 a (new)

Text proposed by the Commission

Amendment

Article 17 a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 2 shall be conferred on the Commission for five years from ... [insert the date of entry into force of this

Directive]. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 2 maybe revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 2 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Amendment 62

Proposal for a directive Article 18 – paragraph 2

Text proposed by the Commission

Amendment

2. No later than one year after the entry into force of this Directive, the Commission shall assess whether the rules on air and rail passenger rights offer a level of protection of the rights of

deleted

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.

Amendment 63

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

Text proposed by the Commission

Amendment

(59 a) Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance (OJ L 349, 5.12.2014, p. 1).

Amendment 64

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

Text proposed by the Commission

Amendment

(59 b) Regulation [...] of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications).

Amendment 65

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

Text proposed by the Commission

Amendment

(59 c) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4).

Amendment 66

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

Text proposed by the Commission

Amendment

(59 d) Directive [...] of the European Parliament and of the Council establishing the European electronic communications code (recast).

Amendment 67

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

Text proposed by the Commission

Amendment

(59 e) Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (OJ L 96, 29.3.2014, p. 357).

Amendment 68

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

Text proposed by the Commission

Amendment

(59 f) Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and

amending Directive 95/16/EC (OJ L 157, 9.6.2006, p. 24).

Amendment 69

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

Text proposed by the Commission

Amendment

(59 g) Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (OJ L 81, 31.3.2016, p. 51).

Amendment 70

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

Text proposed by the Commission

Amendment

(59 h) Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

Amendment 71

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

Text proposed by the Commission

Amendment

(59 i) Directive 2014/33/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 lifts and safety components for lifts (OJ L 96, 29.3.2014,

p. 251).

Amendment 72

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

Text proposed by the Commission

Amendment

(59 j) Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments (OJ L 96, 29.3.2014, p. 107).

Amendment 73

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

Text proposed by the Commission

Amendment

(59 k) Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (OJ L 178, 28.6.2013, p. 27).

Amendment 74

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

Text proposed by the Commission

Amendment

(59 l) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending

Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

Amendment 75

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

Text proposed by the Commission

Amendment

(59 m) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59).

Amendment 76

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

Text proposed by the Commission

Amendment

(59n) Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ L 170, 30.6.2009, p. 1).

Amendment 77

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

Text proposed by the Commission

Amendment

(59 o) Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC(OJ L 338,

13.11.2004, p. 14).

Amendment 78

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

Text proposed by the Commission

Amendment

(59 p) Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).

Amendment 79

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

Text proposed by the Commission

Amendment

(59 q) Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

Amendment 80

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

Text proposed by the Commission

Amendment

(59 r) Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC

Amendment 81

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

Text proposed by the Commission

Amendment

(59 s) Regulation (EC) No 726/2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L136, 30.4.2004, p. 1).

Amendment 82

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

Text proposed by the Commission

Amendment

(59 t) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (OJ L 263, 9.10.2007, p. 1).

Amendment 83

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

Text proposed by the Commission

Amendment

(59 u) Regulation (EC) 1924/2006 of 20 December 2006 on nutrition and health claims made on foods (OJ L 404, 30.12.2006, p. 9).

Amendment 84

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

Text proposed by the Commission

Amendment

(59 v) 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).

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the opinion, until the adoption thereof in committee:

Entity and/or person
BEUC (European Consumers Organisation) Ursula Pachl (Deputy Director) Augusta Maciuleviciuté (Senior Legal Officer)
MKB Nederland (Dutch Association of Small and Medium Enterprises) Fried Kaanen (Vice Chair) Egbert Roozen (Vice chair)
VNO-NCW (Dutch Confederation of Netherlands Industry and Employers)
BUSINESSEUROPE Winand Quaedvlieg (Head Brussels' Office)
VZBV (Federatin of German Consumer Organisation) Otmar Lell (Team leader Legal Affairs and Trade) Isabelle Buscke (Leader Team Brussels) Julian Gallash (Policy Officer Team Legal Affairs and Trade) Christiane Seidel (Policy Officer Team Brussels)
ETNO-GSMA Pierantonio Rizzo Malte Firlus Kristina Olausson
BitKom Torben David

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Representative actions for the protection of the collective interests of consumers		
References	COM(2018)0184 – C8-0149/2018 – 2018/0089(COD)		
Committee responsible Date announced in plenary	JURI 2.5.2018		
Opinion by Date announced in plenary	IMCO 2.5.2018		
Associated committees - date announced in plenary	13.9.2018		
Rapporteur Date appointed	Dennis de Jong 16.5.2018		
Discussed in committee	24.9.2018	10.10.2018	21.11.2018
Date adopted	22.11.2018		
Result of final vote	+: 18	–: 10	0: 3
Members present for the final vote	Carlos Coelho, Sergio Gaetano Cofferati, Daniel Dalton, Nicola Danti, Dennis de Jong, Evelyne Gebhardt, Maria Grapini, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Philippe Juvin, Antonio López-Istúriz White, Morten Løkkegaard, Eva Maydell, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Jasenko Selimovic, Ivan Štefanec, Catherine Stihler, Anneleen Van Bossuyt, Marco Zullo		
Substitutes present for the final vote	Birgit Collin-Langen, Julia Reda, Adam Szejnfeld, Marc Tarabella, Sabine Verheyen		
Substitutes under Rule 200(2) present for the final vote	Salvatore Cicu, Mady Delvaux, Czesław Hoc, Jean Lambert, Anne-Marie Mineur		

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

18	+
ALDE	Morten Løkkegaard, Jasenko Selimovic
ECR	Anneleen Van Bossuyt
GUE/NGL	Anne-Marie Mineur, Dennis de Jong
S&D	Sergio Gaetano Cofferati, Nicola Danti, Mady Delvaux, Evelyne Gebhardt, Maria Grapini, Liisa Jaakonsaari, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler, Marc Tarabella
Verts/ALE	Jean Lambert, Julia Reda

10	-
ECR	Daniel Dalton, Czesław Hoc
PPE	Salvatore Cicu, Birgit Collin-Langen, Philippe Juvin, Antonio López-Istúriz White, Eva Maydell, Ivan Štefanec, Adam Szejnfeld, Sabine Verheyen

3	0
EFDD	Robert Jarosław Iwaszkiewicz, Marco Zullo
PPE	Carlos Coelho

Key to symbols:

+ : in favour

- : against

0 : abstention

26.11.2018

OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM

for the Committee on Legal Affairs

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))

Rapporteur: Georg Mayer

SHORT JUSTIFICATION

The rapporteur welcomes the Commission's proposed directive on representative actions, which should ensure that Member States fully apply, implement and enforce EU law and provide adequate redress for citizens.

The Representative Actions Directive does not intervene in existing mechanisms to improve or amend the directives referred to in Annex 1 through transport operators or tour operators in situ; it should rather be seen as an instrument for the consumer-friendly application of existing law. In the event of a dispute, the admissibility of a representative action falls within the jurisdiction of the Member State concerned (jurisdiction is determined by Regulation (EC) No 44/2001 - Brussels I).

The specific characteristics of the sectors in the area of transport and tourism concerned, such as air, rail, sea and package travel, are taken into account in the sector-specific directives to which the possibility of conducting a representative action will apply.

The rapporteur believes that, in the interest of holistic consumer protection, there is an urgent need for sector-specific directives to be overhauled, updated and brought into line with market developments. This is particularly true in the case of the Air Passenger Rights Directive. The Representative Actions Directive must not divert attention away from the fact that a revision of passenger rights is long overdue. However, at present it is too soon to say whether there will be a recast a year after the Representative Actions Directive has come into force, so that the deadline proposed by the Commission for the evaluation of continued retention in Annex 1 would seem to be of little value.

Collective redress procedures should not be used to carry out public service tasks such as prosecuting conduct which results in damage. Such tasks should not be contracted out to private bodies whereby private entities are provided with exclusive access to the

corresponding procedures.

The Directive does not consider the possibility of competing procedures which have a blocking effect on subsequent representative actions. In this case there is a need for detailed analysis and regulation if an excessive number of procedures, to the detriment of the courts, consumers and businesses, is to be avoided.

There must be no incentive to bring arbitrary, blackmailing actions against businesses, which could develop into a profitable business model.

In addition, the rapporteur sees a need for further improvement on the following points:

1. **Definition of qualified entities:** The prerequisite conditions need to be more tightly defined and all conditions must be sound in the relevant qualified entities for the duration of the representative action.
2. **Opt-in regime:** The rapporteur rejects representative actions under private law with no mandate from the consumers concerned, as a move away from this opt-in regime is not in line with our European legal tradition. A prerequisite for collective remedies must be the agreement of consumers that their claims be sustained. However, we must assume that the application of an opt-in regime in 'small' disputes would meet with little overall agreement among the putative injured persons, since any potential compensation would not benefit them directly.
3. **Funding of qualified entities:** Qualified entities should under no circumstances be funded with government support. The principle of equality must apply to complainants and defendants in this matter. Neither side may be given preferential treatment.
4. **Lawyers' fees:** Representative actions should not provide an incentive for disputes which are unnecessary for the parties concerned. The Member States should ensure that there is no possibility for contingency fees.
5. **Penal process:** The amount of any potential compensation should not be greater than the extent of the remedy which might have been obtained in individual litigation.

AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Recital 1

Text proposed by the Commission

(1) The purpose of this Directive is to enable qualified entities, which represent the collective interest of consumers, to seek remedy through representative actions

Amendment

(1) The purpose of this Directive is to enable qualified entities, which represent the collective interest of consumers, to seek remedy through representative actions

against infringements of provisions of Union law. The qualified entities should be able to ask for stopping or prohibiting an infringement, for confirming that an infringement took place and to seek redress, such as compensation, repair or price reduction as available under national laws.

against infringements of provisions of Union law. The qualified entities should be able to ask for stopping or prohibiting an infringement, for confirming that an infringement took place and to seek redress, such as compensation, repair, **replacement, removal** or price reduction, **contract termination or reimbursement of the price paid** as available under national laws.

Amendment 2

Proposal for a directive

Recital 7

Text proposed by the Commission

Amendment

(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 air³⁰ and for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations.³¹ 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.

deleted

³⁰ COM(2013) 130 final.

³¹ COM(2017) 548 final.

Amendment 3

Proposal for a directive Recital 16

Text proposed by the Commission

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

Amendment

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

Amendment 4

Proposal for a directive Recital 18

Text proposed by the Commission

(18) Member States may require qualified entities to provide sufficient information to support a representative action for redress, including a description of the group of consumers concerned by an infringement and the questions of fact and law to be resolved within the representative action. The qualified entity should **not** be required to individually identify all consumers concerned by an infringement in order to initiate the action. In representative actions for redress the court or administrative authority should verify at the earliest possible stage of the proceedings whether the case is suitable for being brought as a representative action, given the nature of the infringement and characteristics of the damages suffered by consumers concerned.

Amendment

(18) Member States may require qualified entities to provide sufficient information to support a representative action for redress, including a description of the group of consumers concerned by an infringement and the questions of fact and law to be resolved within the representative action. The qualified entity should be required to individually identify all consumers concerned by an infringement, **and to obtain their prior consent to be involved in the representative action**, in order to initiate the action. In representative actions for redress the court or administrative authority should verify at the earliest possible stage of the proceedings whether the case is suitable for being brought as a representative action, given the nature of the infringement and characteristics of the damages suffered by consumers concerned.

Amendment 5

Proposal for a directive Recital 20

Text proposed by the Commission

(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.

Amendment 6

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

Amendment

(20) Where consumers concerned by the same practice are identifiable and they suffered comparable harm in relation to a period of time or a purchase, such as in the case of long-term consumer contracts, the court or administrative authority may clearly define the group of consumers concerned by the infringement in the course of the representative action. In particular, the court or administrative authority could ask the infringing trader to provide relevant information, such as the identity of the consumers concerned and the duration of the practice. For expediency and efficiency reasons, in these cases Member States in accordance with their national laws could consider *providing* consumers with the possibility *of* directly *benefiting* from a redress order after it was issued, *requiring them* to give their individual mandate before the redress order is issued.

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, *notwithstanding the right of individual consumers to claim compensation*, a court or authority may consider that, it is disproportionate to distribute the funds

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.

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. ***The funds should not be assigned to the qualified entity having brought the action, to avoid conflicts of interest.***

Amendment 7

Proposal for a directive Recital 23

Text proposed by the Commission

(23) This Directive provides for a procedural mechanism, which does not affect the rules establishing substantive rights of consumers to contractual and non-contractual remedies in case their interests have been harmed by an infringement, such as the right to compensation for damages, contract termination, reimbursement, replacement, repair or price reduction. A representative action seeking redress under this Directive can only be brought where Union or national law provides for such substantive rights.

Amendment

(23) This Directive provides for a procedural mechanism, which does not affect the rules establishing substantive rights of consumers to contractual and non-contractual remedies in case their interests have been harmed by an infringement, such as the right to compensation for damages, contract termination, reimbursement, replacement, ***removal***, repair or price reduction. A representative action seeking redress under this Directive can only be brought where Union or national law provides for such substantive rights.

Amendment 8

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

Amendment

(25) Qualified entities should, ***throughout each phase of the process***, be fully transparent about the source of funding of their activity in general and regarding the funds supporting a specific

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.

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 9

Proposal for a directive Recital 31

Text proposed by the Commission

(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

Amendment

(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.

important for deterring traders *deliberately* infringing consumer rights.

Amendment 10

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 11

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 *aims at minimum harmonisation and* 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 12

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*

Amendment

1. This Directive shall apply to representative actions brought against infringements by traders of provisions of the Union law listed in Annex I that *does*

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 is likely to do mass harm to the collective interests of consumers. It shall apply to infringements ***with a Union dimension***, including where those infringements have ceased before the representative action has started or before the representative action has been concluded.

Amendment 13

Proposal for a directive Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The representative action shall not replace the right of consumer to receive individual compensation, provided by specific Union law, in case of infringement by traders of provisions of Union law.

Amendment 14

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

Text proposed by the Commission

Amendment

3a. This Directive shall not apply to Union law under revision as listed in Annex III (new).

Amendment 15

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

Text proposed by the Commission

Amendment

(6a) ‘mass harm’ means a widespread infringement with a Union dimension by traders of provisions of the Union law listed in Annex I that harm or may harm the collective interest of a considerable

number of consumers;

Amendment 16

Proposal for a directive

Article 3 – paragraph 1 – point 6 b (new)

Text proposed by the Commission

Amendment

(6b) ‘widespread infringement with a Union dimension’ means a widespread infringement that has done, does or is likely to do harm to the collective interests of consumers in at least two-thirds of the Member States, accounting, together, for at least two-thirds of the population of the Union.

Amendment 17

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) it is properly constituted according to the law of a Member State;

(a) it is properly constituted according to the law of a Member State *and is registered on a list at the competent ministry of the company's Member State;*

Amendment 18

Proposal for a directive

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

Text proposed by the Commission

Amendment

(aa) it has been established for at least three years and has been active continuously over the preceding three years;

Amendment 19

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ca) Member States communicate to the Commission the list of qualified entities and any updates.

Amendment 20

Proposal for a directive

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

Text proposed by the Commission

Amendment

(cb) it has sufficient capacity in terms of financial resources, human resources and legal expertise to represent multiple claimants acting in their best interest.

Amendment 21

Proposal for a directive

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

Text proposed by the Commission

Amendment

(cc) there should be a direct relationship between the main objectives of the entities and the rights granted under Union law that are claimed to have been violated and in respect of which the action is brought;

Amendment 22

Proposal for a directive

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

Text proposed by the Commission

Amendment

(cd) it serves a public benefit purpose.

Amendment 23

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 **established or ad-hoc organisations defending a public interest**, in particular consumer organisations and independent public bodies are eligible for the status of qualified entity. Member States may designate as qualified entities organisations that represent members from more than one Member State.

Amendment 24

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

Text proposed by the Commission

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

Amendment

In order to seek injunction orders, qualified entities shall 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 25

Proposal for a directive
Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. A redress order, which obligates the trader to provide for, inter alia, compensation, repair, replacement, removal, price reduction, contract termination or reimbursement of the price paid, as appropriate.

Amendment 26

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

Amendment 27

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

The qualified entity **must** 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 **and a demonstration that the claim procedure has been exhausted where consumers rights are protected by pre-defined claim-based regulations.**

Amendment 28

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***

Amendment

2. Member States **shall ensure that qualified entities can only lawfully receive the mandate from an individual consumer, after the qualified entity has**

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.

fully informed those individual consumers in writing about: (i) all relevant aspects of the collective procedure; (ii) the possibility for consumers to first claim directly with the trader without intervention of the qualified entity or represented by their lawyer or another representative allowed by national law; and (iii) any available options for individual recourse, including those under Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution.

Amendment 29

Proposal for a directive Article 6 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(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;

deleted

Amendment 30

Proposal for a directive Article 6 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(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

deleted

interests of consumers.

Amendment 31

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

Text proposed by the Commission

Amendment

3a. The information to be provided by the qualified entities further to article 6.2.ii shall include the following: (i) the identity of the qualified entity and its legitimate interest in the relevant provisions of Union law; (ii) all possible steps of the collective procedure and their expected duration; (iii) ways or the lack thereof for the involved consumers to influence the decisions of the qualified entity with regard to the collective procedure individually or collectively; (iv) clear information on any costs related to the collective procedure which may be charged to or withheld in any way from the individual consumers, including a calculation example of how such costs may impact the possible compensation or other form of redress which individual consumers may receive; and (v) detailed information on how and when the individual consumers will receive their compensation or other form of redress in case the collective procedure proves to be successful.

Amendment 32

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

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

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 ***throughout the whole***

it has sufficient *financial* resources to represent the best interests of the consumers concerned and to meet any adverse costs should the action fail.

procedure. It shall demonstrate *in a transparent way* that it has sufficient resources to represent the best interests of the consumers concerned and to meet any adverse costs should the action fail.

Amendment 33

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

Text proposed by the Commission

Amendment

(3a) Member States shall ensure that any compensation owed by a company following a successful outcome in a representative action goes only to the consumers involved; any staff costs or legal costs incurred may be deducted if these are not refunded to the qualified entity by other means.

Amendment 34

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

Text proposed by the Commission

Amendment

(3b) The costs incurred in an unsuccessful representative action must be borne by the qualified entity.

Amendment 35

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

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

(1) Member States shall ensure that the court or administrative authority shall 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

8, by means appropriate to the circumstance of the case and within specified time limits, including, where appropriate, through notifying all consumers concerned individually.

circumstance of the case and within specified time limits, including, where appropriate, through notifying all consumers concerned individually.

Amendment 36

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

Text proposed by the Commission

Amendment

2a. *Member States shall ensure that information is provided to the public in an accessible way on upcoming, ongoing and closed collective action, i.e. on a public website.*

Amendment 37

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

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, subject to the applicable Union and national rules on confidentiality.

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 that such evidence be presented by the defendant. ***This order shall be based on an assessment of the need, scope and proportionality of the requested disclosure, in accordance with national procedural rules and*** subject to the applicable Union and national rules on confidentiality.

Amendment 38

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 39

Proposal for a directive Article 18 – paragraph 2

Text proposed by the Commission

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.***

Amendment

deleted

Amendment 40

Proposal for a directive Annex I – point 10

Text proposed by the Commission

Amendment

(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). *deleted*

Amendment 41

Proposal for a directive Annex I – point 15

Text proposed by the Commission

Amendment

(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). *deleted*

Amendment 42

Proposal for a directive Annex I – point 31

Text proposed by the Commission

Amendment

(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). *deleted*

Amendment 43

Proposal for a directive Annex I – point 32

Text proposed by the Commission

Amendment

(32) Regulation (EU) No 181/2011 of *deleted*

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).

Amendment 44

**Proposal for a directive
Annex II a (new) - title**

Text proposed by the Commission

Amendment

***ANNEX III LIST OF UNION LAW
REFERRED TO IN ARTICLE 2(4)***

Amendment 45

**Proposal for a directive
Annex II a (new) - point 1**

Text proposed by the Commission

Amendment

(1) 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).

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Representative actions for the protection of the collective interests of consumers
References	COM(2018)0184 – C8-0149/2018 – 2018/0089(COD)
Committee responsible Date announced in plenary	JURI 2.5.2018
Opinion by Date announced in plenary	TRAN 31.5.2018
Rapporteur Date appointed	Georg Mayer 23.5.2018
Discussed in committee	9.10.2018
Date adopted	22.11.2018
Result of final vote	+: 21 –: 14 0: 1
Members present for the final vote	Daniela Aiuto, Lucy Anderson, Marie-Christine Arnautu, Inés Ayala Sender, Georges Bach, Deirdre Clune, Michael Cramer, Luis de Grandes Pascual, Andor Deli, Isabella De Monte, Jacqueline Foster, Innocenzo Leontini, Peter Lundgren, Elżbieta Katarzyna Łukacijewska, Marian-Jean Marinescu, Gesine Meissner, Markus Pieper, Gabriele Preuß, Franck Proust, Christine Revault d'Allonnes Bonnefoy, Massimiliano Salini, Claudia Țapardel, Keith Taylor, Pavel Telička, István Ujhelyi, Marita Ulvskog, Wim van de Camp, Janusz Zemke, Roberts Zīle
Substitutes present for the final vote	Jakop Dalunde, Mark Demesmaeker, Anders Sellström, Henna Virkkunen
Substitutes under Rule 200(2) present for the final vote	Michael Gahler, Clare Moody, Flavio Zanonato

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

21	+
ALDE	Gesine Meissner, Pavel Telička
ECR	Mark Demesmaeker, Jacqueline Foster, Peter Lundgren, Roberts Zīle
ENF	Marie-Christine Arnautu
PPE	Georges Bach, Deirdre Clune, Andor Deli, Michael Gahler, Innocenzo Leontini, Elżbieta Katarzyna Łukacijewska, Marian-Jean Marinescu, Markus Pieper, Franck Proust, Massimiliano Salini, Anders Sellström, Henna Virkkunen, Luis de Grandes Pascual, Wim van de Camp

14	-
S&D	Lucy Anderson, Inés Ayala Sender, De Monte, Clare Moody, Gabriele Preuß, Christine Revault d'Allonnes Bonnefoy, Claudia Țapardel, István Ujhelyi, Marita Ulvskog, Flavio Zanonato, Janusz Zemke
VERTS/ALE	Michael Cramer, Jakop Dalunde, Keith Taylor

1	0
EFDD	Daniela Aiuto

	Corrections to vote
+	
-	
0	

Key to symbols:

+ : in favour

- : against

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Representative actions for the protection of the collective interests of consumers	
References	COM(2018)0184 – C8-0149/2018 – 2018/0089(COD)	
Date submitted to Parliament	11.4.2018	
Committee responsible Date announced in plenary	JURI 2.5.2018	
Committees asked for opinions Date announced in plenary	IMCO 2.5.2018	TRAN 31.5.2018
Associated committees Date announced in plenary	IMCO 13.9.2018	
Rapporteurs Date appointed	Geoffroy Didier 22.5.2018	
Discussed in committee	20.6.2018	20.11.2018
Date adopted	6.12.2018	
Result of final vote	+: –: 0:	19 0 3
Members present for the final vote	Joëlle Bergeron, Jean-Marie Cavada, Mady Delvaux, Rosa Estaràs Ferragut, Mary Honeyball, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer	
Substitutes present for the final vote	Geoffroy Didier, Pascal Durand, Angel Dzhambazki, Ana Miranda, Jens Rohde, Virginie Rozière, Tiemo Wölken	
Substitutes under Rule 200(2) present for the final vote	Lucy Anderson, Georges Bach, Kostadinka Kuneva, Jeroen Lenaers, Philippe Loiseau, Marco Zullo	
Date tabled	7.12.2018	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

19	+
ALDE	Jean-Marie Cavada, Jens Rohde
EFDD	Joëlle Bergeron, Marco Zullo
PPE	Georges Bach, Geoffroy Didier, Rosa Estaràs Ferragut, Jeroen Lenaers, Pavel Svoboda, József Szájer
S&D	Lucy Anderson, Mady Delvaux, Mary Honeyball, Evelyn Regner, Virginie Rozière, Tiemo Wölken
VERTS/ALE	Pascal Durand, Ana Miranda, Julia Reda

0	-

3	0
ECR	Angel Dzhambazki
ENF	Philippe Loiseau
GUE/NGL	Kostadinka Kuneva

Key to symbols:

+ : in favour

- : against

0 : abstention