



The Representative Actions Directive across Central Europe

October 2024

A new era in consumer-trader litigation and the wake of class-actions in the European Union?



On 25 June 2023, the deadline expired for the entering into force of the national legislation transposing the Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers.

The process of implementing the Representative Actions Directive is still ongoing and varies from country to country, but a cross-jurisdictional assessment is required for a full understanding and better prediction of the impact of this new framework. One year later, while in some countries the legislation regarding representative actions has not been transposed or the process is still in an early stage, in other states such lawsuits have already appeared based on the new regulation. Following the transposition of the Directive becomes relevant, since the practice in all Member States could be a source of inspiration for the states where this process is in its infancy.

The Directive aims to harmonise the collective civil litigation mechanisms available to consumers seeking redress from traders from various sectors of the economy that infringe their consumer rights. Essentially, the new regulation allows a very large (virtually unlimited) number of consumers to raise collectively and in a coordinated manner identical or similar claims against the same company and in the same lawsuit. This new framework mirrors the class-actions existing in the US but taking into consideration the traditions existing in European jurisdictions.

Covering both domestic and cross-border representative actions, the legislation has the potential to impact the balance of power between consumers and traders.

Which entities are eligible to bring representative actions on behalf of consumers?

Under the Directive, multiple consumers affected by a single trader's unlawful practice can be represented in proceedings by a qualified entity to seek injunctive or redress measures on their behalf.

Generally, to be designated as a qualified entity, consumer organisations and public bodies should meet specific criteria defined in the Directive and in the implementing national legislation in areas such as consumer protection experience, independence and financing.

However, the Directive leaves it to the discretion of Member States to decide whether qualified entities can bring representative actions in administrative or judicial proceedings, or in both, and to design procedural mechanisms for actions that align with their national procedural law.



Opt-in or opt-out? Which consent mechanism applies?

In the case of redress measures, Member States are given discretion as to whether consumers should be required to opt in (explicitly consent) to a representative action in order to benefit from it or whether to adopt an opt-out (tacit consent) mechanism in which consumers will be represented unless they explicitly express their wish to be excluded from an action.

However, as far as injunctive measures are concerned, consumers do not have to express their consent to be represented by qualified entities (opt-out system), as their agreement is presumed by virtue of the law.

In this respect, some countries have chosen to vest the national authorities with the power to decide or to adopt

a dual approach which foresees different mechanisms applied for injunctive and redress measures.

The various implementing laws (and bills) take different approaches when it comes to determining the qualified entities, how consumers are expressing their consent to be represented in this type of collective action or the procedure for various stages of the process.

In this publication, we look at the transposition status of the Directive across 10 Central European EU Members States. In addition, we provide insights into class actions regimes in selected non-EU Member States. We hope you will find this overview interesting and helpful to your work.



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Transposition Status of Directive (EU) 2020/1828 across Central Europe



Draft bill

- Bulgaria

Transposed

- Austria
- Czech Republic
- Croatia
- Hungary
- Lithuania
- Poland
- Romania
- Slovakia
- Slovenia

Transposition Status of Directive (EU) 2020/1828 across Central Europe

Austria

Directive transposition status

- Transposed into Austrian law by
 - implementing the Federal Act on Qualified Entities for Collective Legal Action (Qualified Entities Act - QEG); and
 - amending (i) the Civil Procedural Order (ZPO), (ii) Consumer Protection Act (KSchG), (iii) Court Fees Act (GGG) and (iv) Attorney Tariff Act (RATG).
- transposing provisions came into force on 18 July 2024.

Legal standing

- Representative actions can be brought by qualified entities.
- Legal entities established under Austrian law may be recognized as qualified entities with regard to (i) cross-border representative actions (sec 1 QEG) and/or (ii) domestic representative actions (sec 2 QEG).
- The Federal Cartel Prosecutor is responsible for making the recognition decision in both cases:
 - A legal entity established under Austrian law may be recognized as a qualified entity for cross-border representative actions (sec 1 QEG) if it meets the following conditions: It has been publicly active for at least 12 months in protecting consumer interests, its statutory purpose shows a legitimate interest in consumer protection, it is non-profit, not insolvent, independent from external influence (particularly from businesses with economic interests in the litigation), and has transparent procedures to prevent conflicts of interest. Additionally, it must publicly provide clear information on compliance with these criteria and details regarding its financing, structure, and activities.
 - For domestic representative actions (sec 2 QEG), the legal entity must also demonstrate that it is equipped to continue fulfilling its statutory duties effectively, based on its past activities and sufficient personnel, material, and financial resources. Furthermore, it cannot receive more than 20% of its funding from corporate donations or gifts. The Federal Cartel Prosecutor is responsible for making the recognition decision in both cases.
- By law, the Austrian Federal Economic Chamber and the Federal Chamber of Labour are qualified entities within the meaning of sec 1 and 2 QEG; the Austrian Chamber of Agricultural Workers, the Conference of Presidents of the Austrian Chambers of Agriculture, the Austrian Trade Union Federation, the Association for Consumer Information, and the Austrian Senior Citizens' Council are qualified entities within the meaning of sec 2 QEG.

Opt-in or opt-out mechanism

- **Injunctive Measures:** The qualified entity represents the interests of affected consumers as a whole. Who is affected must be defined by the qualified entity within the lawsuit. The lawsuit itself suspends the statute of limitations for any individual consumer claims subject to the qualified entity's definition. This suspension remains in place until the case is legally concluded, after which consumers have an additional six months to file their individual claims. While consumers are not required to actively opt in or join the action during the injunctive phase, they benefit from the lawsuit's outcome, as it indirectly affects their rights to bring individual claims afterward.
- **Redress Measures:** For redress actions, an explicit opt-in mechanism applies. Consumers whose claims are based on similar facts can actively opt-in to the collective redress action brought by the qualified entity. The following conditions apply:
 - a) The claim must involve at least 50 consumers based on essentially similar facts against the same business.
 - b) Consumers can only join the action within three months after the court decides to allow the collective redress procedure.
 - c) The qualified entity has full discretion to accept or reject a consumer's request to join, without providing a reason for the rejection.
- Once a consumer opts in, their claim is considered legally part of the collective case, and the court's decision or any settlements will apply to their claim as well. Importantly, once a consumer has opted in, they cannot withdraw from the collective action, and they are bound by the outcome of the case, including any settlements confirmed by the court.

Certification stage

- At the outset of a collective action procedure, the court reviews whether the general or specific requirements for the case are met. If these conditions are not fulfilled, the court may dismiss the action on its own or based on an objection. If the case proceeds, the court issues a formal order to conduct the procedure. Only after any interim declaratory applications are conclusively decided can claims for individual consumers' relief be addressed.
- If the procedure is approved, the court also specifies in its order which issues should be addressed and decided collectively at the outset.

Court fees

- The new provision concerning court fees in collective redress actions introduces the following changes:
 - Court fees are calculated based on the valuation of an interim declaratory judgment request (Zwischenfeststellungsantrag) submitted by a qualified entity. If the qualified entity fails to provide it, other procedural fee rules will apply.
 - The total value of the interim declaratory request and any simultaneous redress claims forms a unified basis for calculating court fees for the entire case, up until the decision on the interim declaratory request. Importantly, any additional consumers joining the collective action (opt-in) will not affect the court fee calculation.
 - After a final decision on the interim declaratory request, a portion of the paid court fees may be refunded for claims not yet fully resolved.

Allocation of costs

- According to the general cost rule the losing party covers the winning party's costs. If a party only partially succeeds, costs are proportionally divided. In cases of an equal outcome, costs are split evenly. However, only qualified entities and their opponents may be liable to reimburse the costs of proceedings. If a consumer who has joined court proceedings causes costs intentionally, the court may, upon a party's request, rule that the consumer is jointly liable with the party ordered to cover these costs. This request must be made at the latest when submitting the cost statement that includes the relevant expenses.

Quantum of monetary compensation

- In actions for redress, courts determine the amount owed to each claimant on a case-by-case basis. Austrian law does not provide for punitive or exemplary damages.

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Bulgaria

Directive transposition status

- Transposition pending (draft bill stage). In April 2024 the first draft bill which envisaged a separate act to be adopted has been rejected by the Bulgarian Parliament. A second draft bill is prepared by the Council of Ministers but still it is not submitted officially. The second draft bill envisages that the Directive (EU) 2020/1828 will be transposed by supplement to the Consumer Protection Act (CPA) and the Civil Procedure Code (CPC).

Legal standing

- The Bulgarian legislative proposal foresees that representative actions can be initiated by qualified entities (consumer associations or public authorities). To be approved as a qualified entity, organisations must, among other conditions, demonstrate at least one year of actual public activity in the protection of consumer interests, be registered as a non-profit organisation to exercise public benefit activities and ensure that it is independent from persons other than consumers who have an economic interest in the bringing of a representative action.
- Under the legislative proposal, representative actions can be brought against infringements by traders of the legal provisions referred to in & 11, item 2 of the legislative proposal (amended article 186c of CPA) that harm or may harm the collective interests of consumers (i.e. infringements arising from B2C relationships).

Opt-in or opt-out mechanism

- The legislative proposal provides for an opt-in mechanism for representative actions aimed at redress measures (claim for compensation). In this respect, the proposal requires the court to set a term within which consumers can join the action.
- The proposal also provides for an opt-out mechanism. Under & 30, item 1 of the proposal (future article 388o, para 4 of CPC), consumers who declare that they will participate in the representative claim for redress measures can withdraw their participation at any stage of the case. In this case, the consumer must inform the qualified entity and the court of his or her decision in writing.

Certification stage

- The national courts can dismiss a claim brought by an entity at an early stage if (i) the claim is financed by a third party and cannot pass the conflict-of-interest check or (ii) the claim is brought by entities which are not included in the national official list kept by the Ministry of Economy and Industry.
- The national court checks that the party providing the financing:
 - a) does not influence the decisions of the qualified entity, including decisions to enter into agreements that would damage the collective interests of the consumers concerned; and
 - b) is not financing a representative action in which the defendant is a competitor of the financing party or against a defendant on which the financing party is dependent.
- The court's ruling on this issue can be appealed by interlocutory appeal.

Court fees

- Representative actions for compensation of damages to the collective interests of consumers are exempt from payment of stamp duty.

Allocation of costs

- The *losing party* in court pays the other party's legal costs. As a general rule, only qualified entities – and not individual consumers – are liable to reimburse the legal fees. However, individual consumers may be ordered to pay the costs of proceedings if these were incurred because of intentional or negligent conduct by the individual consumer.

Quantum of monetary compensation

- The courts can determine the amounts to which each claimant is entitled on a case-by-case basis (in case of redress measures), based on the evidence provided in the court proceedings. Punitive (or exemplary) damages are not regulated under Bulgarian law

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Croatia

Directive transposition status

Transposed into Croatian law by the Act on Representative Actions for the Protection of Collective Interests and Consumer Rights (the "Act"), which came into force on 25 June 2023.

Legal standing

- Representative actions can be brought by *qualified entities* (consumer associations, qualified entities previously designated in another member state for the purpose of bringing cross-border actions before their courts or administrative bodies, consumer protection authorities that are included on the list of qualified entities designated to bring representative actions).
- Representative actions can be brought against:
 - a) individual traders or groups of traders from the same economic sector that infringe the regulations referred to in Annex I of the Act;
 - b) trade associations and interest groups that promote unlawful conduct; or
 - c) bodies maintaining a traders' code of conduct that promotes the use of unfair commercial practices.
- A qualified entity can bring a representative action for the purpose of:
 - a) determining that the defendant infringed the regulations referred to in Annex I of the Act (Representative action for determination);
 - b) prohibiting conduct that infringes the regulations referred to in Annex I of the Act (Representative action for injunctive measures); or
 - c) obtaining redress for material and non-material damage and/or compensation for unjust enrichment for consumers affected by infringements of the regulations referred to in Annex I of the Act (Representative action for redress measures).

Opt-in or opt-out mechanism

- Consumers wishing for their claims against a defendant to be included in a representative action must expressly express their wish to be represented by the qualified entity (opt-in mechanism).
- In the case of representative actions for injunctive measures, consumers are not required to express their consent to be represented by the qualified entity (opt-out mechanism).

Certification stage

- Before bringing a representative action for determination and prohibition, the qualified entity must give *written warning* to the trader (or other body) against which it intends to bring the representative action that, if it does not cease the infringing conduct, the qualified entity will bring the action against it. The qualified entity must then wait 30 days from the date of the written warning before it can bring the representative action for determination and prohibition.

Court fees

- Qualified entities are *exempt* from paying court fees for the duration of proceedings.

Allocation of costs

- For proceedings relating to representative actions, the rules of civil procedure for commercial court proceedings apply accordingly. As a general rule, the *losing party* in court pays the other party's legal costs.
- A qualified entity may demand a symbolic participation fee from consumers who have expressed their wish to be represented in a representative action for redress. The fee must not exceed 5% of the value of each consumer's claim and must not exceed EUR 70.

Quantum of monetary compensation

- In representative actions for *prohibition* of conduct, claimants are not required to quantify the value of the damage suffered or how the intention or negligence of the defendant has been deduced.
- Representative actions for *compensation* must contain a list of consumers, together with their consent to be represented and the amount of the damages due to them.

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Directive transposition status

- The directive is implemented through the act No. 179/2024 Coll. on civil procedure in representative actions and is effective from 1st of July 2024 (Act)
- The Act is applicable on all dispute over rights and obligations arising after 24th of November 2020.
- The Act is not applicable on individual proceedings that have began on 25th of June 2023 or sooner.

Legal standing

- Individual consumers are not a party to the proceedings. Their procedural rights are limited to withdrawing their application, commenting on the subject-matter of the dispute, exercising their right to be informed, inspecting the court file, objecting to the settlement proposal, submitting proposals to modify or withdraw the representative action and responding to appeals.
- Eligible claimants in representative actions are legal entities that are registered to represent customers under article 25 of the Consumer Protection Act.
- For a legal entity to be eligible to register, it must:
 - a) have been established in accordance with the Czech law;
 - b) have been actively involved in consumer protection for at least two years;
 - c) be independent and non-profit-making; and
 - d) have settled all financial obligations towards the state of Czech Republic.
- All representative actions should be published in the register of representative actions instituted by the Ministry of Justice.

Opt-in or opt-out mechanism

- The Act applies the opt-in mechanism (Article 23 in connection with Article 31). The Act also considers entrepreneurs who employ less than 10 employees and whose annual turnover does not exceed 50,000,000 CZK as consumers.

Certification stage

- For a representative action to be admissible, it must meet the following criteria:
 - a) the claimant must fulfil the condition stipulated in Article 8(1);
 - b) the claimant must be acting in the interest of the group and must not be in a position of conflict of interest;
 - c) the group must have at least 10 members;
 - d) the claimed rights or legitimate interests of the group members must be based on a similar factual basis;
 - e) it must not have been filed with abusive intent; and
 - f) it must not be financed by a third party who is a competitor of the defendant, who is dependent on the defendant, or who has an undue influence over the claimant that would harm the interests of the group.

- Before the start of proceedings, the court assess whether these criteria are met. Article 16 does not state exact time period for the court to decide whether the criteria are met (Article 16). The court must however do so in reasonable time.
- If the criteria are not met, the court will discontinue the proceedings.

Court fees

- Representative actions are not exempt from a court fee, as they are not listed in article 11 of Act on the Court Fees Act.

Allocation of costs

- Under the Act, the Civil Procedure Code applies to representative actions. Article 142 of the Civil Procedural Code provides that the court should award the costs necessary to effectively assert or defend a right against the unsuccessful party in the case in favour of the party that was fully successful in the case.
- Only the parties to proceedings (i.e. the legal entity representing consumers) are eligible to be awarded costs.

Quantum of monetary compensation

- Compensation is allocated on a case-by-case basis according to the circumstances of each individual claim and the amount of the damages. However, there is limitation on the amount of monetary compensation for legal entities that are representing customers.
- According to Article 62, monetary compensation must not exceed 16 % of the value of the dispute. If the monetary compensation has been agreed as fixed amount, this compensation may not exceed CZK 2 500 000 (approx. EUR 100,000).
- Monetary compensation does not interfere with party's right to claim the cost of proceedings (Article 67).

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Hungary

Directive transposition status

- **Transposed** into Hungarian law. The legal framework for representative actions is set out in Act CLV of 1997 on consumer protection, as amended by Act LXI of 2022 amending certain laws to ensure effective consumer protection (the “Act”), which came into force on 25 June 2023.

Legal standing

- Representative actions can be brought by qualified entities (consumer associations, ad hoc entities or public authorities). To be approved as a qualified entity, an organisation must, among other conditions, have a registered office in Hungary, demonstrate at least 12 months of actual public activity in the protection of consumer interests, demonstrate that it has a non-profit status and ensure that it is independent of persons other than consumers who have an economic interest in the bringing of a representative action. It must disclose publicly that it meets these conditions. Qualified entities previously designated in another Member State may also bring cross-border representative actions before Hungarian courts.
- Qualified entities can bring representative actions for civil claims raised by consumers against traders (therefore, in matters arising from B2C relationships) within the framework of the public interest actions legislated for by the Hungarian Civil Procedure Act.

Opt-in or opt-out mechanism

- Any civil actions brought by a qualified entity on behalf of consumers must describe the affected consumers and the means by which they can prove their connection to the case for the judgment to have an effect on the claims of each individual customer. Affected consumers do not need to actively opt into the representative action other than proving their connection to the case as described above.

Certification stage

- Hungarian law does not provide for a “certification stage” that would allow the court to dismiss any claims falling short of the requisite certification standard. Furthermore, the national law transposing the Directive does not establish any additional conditions for the admissibility of consumer representative actions.

Court fees

- Obligations to pay court fees can be suspended in the case of representative actions.

Allocation of costs

- The losing party in court pays the other party's legal costs. As a general rule, only qualified entities – and not individual consumers – are liable to reimburse legal fees.

Quantum of monetary compensation

- In actions for redress measures, the courts can determine the amounts to which each claimant is entitled on a case-by-case basis, based on the evidence provided in the court proceedings.

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Lithuania

Directive transposition status

- **Transposed** into Lithuanian law by amendments to (i) the Law on the Implementation of European Union and International Legal Acts Regulating Civil Proceedings and ((ii) the Law on Protection of Consumer Rights (determining which institutions or entities can bring representative actions). Both amendments came into force on 25 June 2023.

Legal standing

- Representative actions can be brought by *qualified entities*. These are namely the State Consumer Rights Protection Service (the public body entitled to bring actions for injunctive measures only) and authorised consumer associations.
- To be included on the official list of authorised consumer associations (maintained by the State Consumer Rights Protection Service), an organisation should, among other conditions, demonstrate at least 12 months of actual public activity in the protection of consumer interests, demonstrate that it has a non-profit status and ensure that it is independent from persons other than consumers who have an economic interest in the bringing of a representative action.

Opt-in or opt-out mechanism

- Lithuanian law provides an *opt-in mechanism* for representative actions aimed at redress measures. In this respect, the law stipulates that:
 - a) after accepting an action for examination, the court must set a term of between 30 and 90 days in which other consumers may join the representative action, publishing an announcement to that effect on a dedicated web page of the court;
 - b) consumers must file an application to join the action to the qualified entity, which must then bring the supplemented action before the court no later than 14 days after the term indicated above expires.
- For representative actions aimed at *injunction measures*, consumers are not required to express their consent to be represented by the qualified entity in court (*opt-out mechanism*).

Certification stage

- Lithuanian legislation does not provide for a “certification stage” that would allow the court to dismiss any claims falling short of the requisite certification standard. The law does not establish any specific additional conditions for the admissibility of consumer representative actions.
- However, where a national court that is preparing to hear a case finds that a qualified entity has filed a claim that is *manifestly unfounded*, it can decide (before issuing a decision to set a hearing date) to leave the claim *unexamined*.

Court fees

- *Injunctive measures* in consumer representative actions are exempt from the payment of stamp duty, whereas *redress measures* are subject to stamp duty at the standard rates set out in the Code of Civil Procedure.

Allocation of costs

- The losing party in court pays the other party's costs of proceedings. As a general rule, only qualified entities – and not individual consumers – are liable to reimburse the costs of proceedings in actions both for injunctive measures and for redress measures.
- However, in actions for redress measures, individual consumers may be ordered to pay a part of the costs of proceedings if the court finds that the conduct of that consumer during the court proceedings was not proper and/or fair.
- Furthermore, in actions for redress measures, qualified entities may ask consumers (who participate in the action) to pay an administration fee, which is subsequently included in the costs of proceedings.

Quantum of monetary compensation

- In actions for redress measures, the courts can determine the amounts to which each claimant is entitled on a *case-by-case basis*, based on the evidence provided in the court proceedings. Punitive (or exemplary) damages are not regulated under Lithuanian law.

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Poland

Directive transposition status

- The Act of July 24, 2024, implementing Directive (EU) 2020/1828 (hereinafter: "The Act"), came into effect on August 29, 2024. Instead of introducing a new law about Representative Actions, the Polish legislator has decided to expand the existing regulations on class actions, as well as Competition and Consumer Protection Act.

Legal standing

- The Act anticipates that representative actions can be brought by qualified entities. To be approved as a qualified entity, the organisation's statutory purpose must be to ensure the protection of consumer interests; it must demonstrate that it has been engaged in non-profit activities for the protection of consumer interests for at least 12 months prior to its application for inclusion in the register designated by the Head of the Polish Antimonopoly Authority. In case consumer rights are violated by a financial institution, the Financial Ombudsman is deemed to be a qualified entity.
- Representative actions can be brought against infringements that harm or may harm the general interests of consumers according to the regulations specified in Annex I of the Directive (in particular infringements arising from B2C relationships).

Opt-in or opt-out mechanism

- The Act provides for an opt-in mechanism, if the consumers wish for their claim to be included in a representative action:
 - a) once a decision to hear a case becomes final, the court announces the commencement of the proceedings, indicating a timescale between 1-3 months (the announcement can be published on websites of the court, the parties, or their attorneys, or in the national or local press).
 - b) consumers must give a written declaration that they have joined the group no later than the date indicated in the announcement.
- However, consumers are not required to give their consent if representative actions concern determination that the practices violate the general interests of consumers (opt-out mechanism).

Certification stage

- The Act does not foresee any specific “certification stage”. However, all claims must comply with current formal requirements for class-action proceedings.
- Nevertheless, domestic courts can dismiss an action at an early stage if:
 - a) the action brought by a qualified entity is not within the scope of its statutory activities; or
 - b) the action does not apply to a sector (of a given qualified entity) specified in the Annex I of the Directive.
- According to the general rule in class actions, the dismissal of an action in the cases mentioned above does not affect the rights of consumers to assert their rights later.
- The Act also provides some additional conditions for the admissibility of representative actions:
 - a) Before bringing an action to stop the practices affecting the interests of a group of consumers, a qualified entity must ask the trader to stop the practices within 14 days. Only if the trader has not stopped the practices, will a qualified entity be entitled to bring an action.
 - b) A qualified entity can charge each consumer who wants to join the group a joining fee of no more than 5% of the claim or PLN 2,000 (with regard to monetary claims).

Court fees

- Representative actions are exempt from court fees.

Allocation of costs

- In accordance with the general rules, the qualified entities should be liable for the reimbursement of legal fees if their action is unsuccessful, i.e. the losing party pays the other party's legal costs.
- The members of representative actions are not liable to pay the costs if claimant is a qualified entity. According to the Act, the only cost incurred by a group member is the fee for joining the group.

Quantum of monetary compensation

- Courts are qualified to determine the amounts to which the claimant is entitled (in case of redress measures) on a case-by-case basis, based on the evidence provided. The maximum liability is not capped and is limited only to the value of the actual damage.

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Romania

Directive transposition status

Transposed into Romanian law by Law No. 414 of 23 December 2023 on representative actions for the protection of the collective interests of consumers ("*Law No. 414/2023*")

Legal standing

- Representative actions can be brought by *qualified entities* (consumer associations, ad hoc entities and public authorities). To be approved as a qualified entity, organisations must, among other conditions, demonstrate at least 12 months of actual public activity in the protection of consumer interests, demonstrate that they have a non-profit-making character and ensure that they are independent of persons, other than consumers, who have an economic interest in the bringing of a representative action.
- Representative actions can be brought against infringements by traders of the legal provisions referred to in the Annex of Law No. 414/2023, which harm or may harm the collective interests of consumers (i.e. infringements arising from B2C relationships).

Opt-in or opt-out mechanism

- Law No. 414/2023 provides an opt-in mechanism for representative actions aimed at redress measures. In this respect, national legislation stipulates that:
 - a) within 30 days of the action being registered with the national court, the qualified entity must seek the consumers' consent to be represented in the representative action and for the court decision to be binding on them;
 - b) consumers must give their consent within 30 days of the qualified entity's request (the consumer's consent may be given up to the closure of the proceedings on the merits of the case and must be communicated to the court, which will mention the consumer's name in the decision rendered in that case).
- However, for representative actions aimed at injunctive measures, consumers are not required to give their consent to be represented by the qualified entity in court (*opt-out mechanism*).

Certification stage

- *Law No. 414/2023 does not provide for a "certification stage"* that would allow the court to dismiss any claims falling short of the requisite certification standard. Furthermore, the national law transposing the Directive does not establish any additional conditions for the admissibility of consumer representative actions.
- Nevertheless, domestic courts can dismiss a claim at an early stage if it has been brought by an entity that does not meet the statutory criteria for representative entities, irrespective of whether the entity is included in the official national lists or is an ad hoc entity.

Court fees

- Representative actions are *exempt* from the payment of stamp duty.

Allocation of costs

- The *losing party* in court pays the other party's costs of proceedings. As a general rule, only qualified entities – and not individual consumers – are liable to reimburse the costs of proceedings. However, individual consumers may be ordered to pay the costs of proceedings if these were incurred because of intentional or negligent conduct of the individual consumer.

Quantum of monetary compensation

- The courts can determine the amounts to which each claimant is entitled on a *case-by-case basis* (in case of redress measures), based on the evidence provided in the court proceedings. Punitive (or exemplary) damages are not regulated under Romanian law.

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Slovakia

Directive implementation status

Transposed by Act No. 261/2023 Z. z. on actions for the protection of consumers' collective interests (the "Act")

Legal standing

- Representative actions can be brought by *qualified entities*. A qualified entity is a legal entity which represents the interests of consumers and which is included on the list of qualified entities maintained by the Slovak Ministry of Economy.
- To be registered, a qualified entity must comply with the criteria set out by the Act. For instance, it must have a non-profit making character, it must perform activities in the consumer protection sector, it must be independent and prevent conflicts of interest, and it must comply with certain reporting obligations as set out by the Act.
- Representative actions may be brought against a trader. A trader is defined as a person acting for the purposes of that person's business or profession, including through another person acting in that person's name or on that person's behalf (B2C relationships).

Opt-in or opt-out mechanism

- At least 2 months before bringing a representative action before the court, the qualified entity must publish a *notice of intent* to bring the representative action in the Commercial Bulletin.
- Consumers can opt into the notice of intent in an application delivered to the notarial office indicated in the notice of intent (*opt-in mechanism*). The consumer must attach all documentation required by law, including legal title (such as a purchase agreement) and facts surrounding the reason for the application, and must pay an application fee. If a consumer does not attach the required documents, the application will not be considered valid by the notary.
- Consumers may withdraw their consent to participate in the notice of intent after filing their application.
- If at least 20 consumers opt in within 2 months of publishing the notice of intent, the representative action may be brought before the court.

Certification stage

- Before the first court hearing, the court must order a preliminary court examination. At the preliminary examination, the court, in cooperation with the parties, ascertains whether the procedural conditions are met and, where appropriate, takes measures to remedy the deficiencies found.
- The court imposes on the parties such obligations as are necessary to achieve the purpose of the proceedings, in particular regarding the preparation of the hearing.
- The court also determines which allegations of fact are disputed between the parties, which issues it considers to be undisputed, and which evidence it will and will not consider.
- The court also indicates its preliminary legal assessment of the case and the expected date of the hearing.

Court fees

- Representative actions are *exempt* from the payment of stamp duty.

Allocation of costs

- No payment is required of consumers other than the application fee or the fee for withdrawing an application to join a notice of intent (including the notary's fee and reimbursement of the notary's out-of-pocket expenses).
- The *losing party* in court pays the other party's legal costs.
- Individual consumers are not liable for the reimbursement of legal fees with the exception of consumers who have opted in to the notice of intent, who may be required to reimburse any costs incurred as a result of their intentional conduct or negligence.

Quantum of monetary compensation

- The courts can determine the amounts to which each claimant is entitled (in the case of redress measures) on a case-by-case basis.
- If, having regard to the circumstances, it is not possible for the court to determine the monetary compensation the trader must pay, the court may make an estimation of the monetary value of the compensation, which must not exceed the value of the actual damage caused to the consumer.

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Slovenia

Directive transposition status

- **Transposed** into Slovenian law by the Act amending and supplementing the Collective Actions Act ("ZKoliT-A"); Official Gazette of RS, No. 133/2023 dated 27 December 2023, which came into force on 26 January 2024. In Slovenia, the majority of institutes and remedies for the protection of collective interests of consumers prescribed by Directive (EU) 2020/1828 have already been regulated under the existing Collective Actions Act. The ZKoliT-A was adopted to close gaps in the mechanism.
- ZKoliT-A amends and supplements the existing mechanism in place for collective representative procedures in Slovenia under the Collective Actions Act (ZKoliT), which covers the areas of: (i) consumer protection; (ii) protection of competition; (iii) rules on trading on regulated markets and market abuse under the law governing the financial instruments market; (iv) claims of employees within individual labour disputes; (v) liability for damage caused by environmental disasters; and (vi) protection from discrimination.

Legal standing

- Slovenian law regulates for two principal types of procedures for the protection of collective interests of certain groups (including consumers): (i) collective actions (for redress and injunctive measures) and (ii) collective settlements.
- The following authorities and entities have legal standing to bring a collective action or proposal for collective settlement in Slovenia (domestic procedures):
 - a) The *State Attorney's Office* (Državno odvetništvo) of the Republic of Slovenia (except where the defendant is the Republic of Slovenia);
 - b) *Qualified entities*, which are namely private legal persons (i) that are engaged in a non-profit-making activity and (2) whose main objectives are directly connected to the allegedly infringed rights regarding which the collective action is brought. Qualified entities must also fulfil the condition of representativeness. This condition is determined by the court on a case-by-case basis by assessing whether the entity will be a suitable representative of the group and will act honestly and appropriately and in the best interests of its members (various factors are considered, such as independence, sufficient financial means, prior activities in pursuit of the voluntary cessation of infringements by defendant, etc.).
 - c) Entities representing the interests of consumers in *another EU Member State*, which must be *registered as a qualified entity* for bringing collective actions in such other EU Member State and whose statutory purpose must justify the bringing of a collective action or proposal for collective settlement for the specific case in question.
- A private legal person with its registered seat in Slovenia may file a collective consumer action in another EU Member State (cross-border action) if it is officially registered in Slovenia as a qualified entity for bringing such cross-border actions. The criteria for registration are based on Article 4(3) of the Directive (EU) 2020/1828.

Opt-in or opt-out mechanism

- Both mechanisms can apply both in collective settlement procedures and in collective actions for redress measures.
- In principle, the claimant can propose and give justification for either of the two mechanisms. The court will then decide which mechanism should apply based on the circumstances of each case, after considering the value of the individual claims of the group members and the circumstances relevant to letting the collective action proceed, among other things.
- In collective actions for *redress measures*, the *opt-in* mechanism is *mandatory* under any of the following circumstances:
 - a) at least one of the claims in the collective action relates to compensation for non-pecuniary damage;
 - b) it is estimated in the action that at least 10% of group members are claiming payment exceeding EUR 2,000; or
 - c) for individual consumers concerned by the collective action who, at the time of the court's decision to admit that action, do not have permanent residence in the Republic of Slovenia.
- Collective actions for injunctive measures are not subject to an opt-in or opt-out mechanism, since the injunction only takes effect from the time the judgment is rendered (*ex nunc*).

Certification stage

- As the first step in both types of procedures (collective actions and proposals for collective settlement), the court assesses the formal completeness and admissibility of the action or proposal (i.e. legal standing and mandatory content of the action or proposal). If the action or proposal is found to be incomplete or inadmissible, the court dismisses it.
- Proceedings in *collective actions for redress measures* provide for a *special certification stage* in which the court decides, at a court hearing, whether to refuse the collective action or let it proceed. The collective action is allowed to proceed if:
 - a) the claims in the action are of the same type, are on behalf of an identifiable group of persons, concern the same, similar or related questions of fact or law, relate to the same mass injury case and are appropriate for collective proceedings;
 - b) questions of law and fact that are common to the group as a whole predominate over questions relating only to individual members of the group;
 - c) the group is so numerous that pursuing the claims in individual actions or by a different procedural association of its members would be less efficient;
 - d) the claimant fulfils the condition of representativeness;
 - e) the claim brought under the collective action for redress measures is not manifestly unfounded;
 - f) the conditions regarding financing by third parties are fulfilled (if applicable); and
 - g) the court considers any agreement reached with the attorney, in which the attorney's fees are set as a percentage of the amount awarded to the claimant, to be reasonable.

The trial on the merits of the case may proceed once the decision to let the collective action proceed is final.

Court fees

- Fees are determined in line with the Slovenian Court Fee Act. However, the Collective Actions Act specifically regulates how the "value" of a dispute, upon which the fees are calculated, should be determined:
 - a) The value of any collective action for redress measures is *capped at 20%* of (i) the sum of the estimated values of all amounts to be paid to the individual group members or (ii) the claim for payment of redress measures in the aggregate (as appropriate).
 - b) The value of any collective action for injunctive measures is *capped at EUR 10,000*.

Allocation of costs

- The party that is unsuccessful in a collective action must reimburse the successful opposing party all costs that were necessary for the proceedings. This includes the claimant's costs in activities relating to organising and informing the group members of the intended collective action.
- The group members themselves are not entitled to reimbursement of their own costs and are not liable to reimburse costs to the opposing party, except for costs incurred due to culpable conduct.

Quantum of monetary compensation

- The quantum of monetary compensation is assessed on a case-by-case basis, based on the claims and evidence, according to the general rules of Slovenian law. Exemplary (or punitive) damages are not provided for under Slovenian law.
- Where all group members are known and it is possible to decide the monetary compensation for each of them without disproportionately complicating the procedure, the court specifies each of the group members and their corresponding compensation (or other redress), which the defendant must pay (or fulfil) to each of them.
- If the judgment does not specify all group members and their corresponding compensation (or other redress), the court specifies the following in the operative part of the judgment:
 - a) the amount of the compensation in the aggregate, or
 - b) the specific amount or another determinable value (expressed, for instance, as a percentage of the price of the product or of a different unit of measurement) to be awarded to each group member who applies and demonstrates that he or she fulfils the conditions set out in the judgment; the court also estimates the defendant's anticipated liability in the aggregate.

In the case of both (a) and (b) the court also appoints a notary as the administrator of the collective compensation.

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Similar Regimes

in Selected Non-EU Member States

Albania

Legal standing

- Law No. 9902 of 17 April 2008 on Consumer Protection, as amended (the “LCP”), is only partially harmonised with Directive 2009/22/EC and Recommendation 2013/396/EU.
- A bill on representative actions is currently being discussed in Albania but is yet to be passed. The LCP does not itself provide for *collective actions for redress measures* within the meaning of Directive (EU) 2020/1828. However, Albanian law more generally does provide mechanisms for *quasi-collective actions for injunctive measures* in the field of consumer protection.
- Entities that violate the provisions of the LCP without committing a criminal offense are liable to a *fine of up to approximately EUR 5,000*.
- Article 161 of the Albanian Code of Civil Procedure provides that multi-claimant actions can be filed jointly by several claimants or against several respondents (joint litigants) when:
 - a) they have common rights or obligations concerning the cause of the action; and
 - b) their rights and obligations have the same basis.
- In these cases, each claimant must have a direct, personal and current interest in the action. In other words, consumers not directly harmed by the trader cannot file an action or be represented.
- The LCP provides that the Responsible Consumer Protection Structure (“RCPS”) and consumer associations can bring a representative action before the Administrative Court for the cessation or prohibition of infringements that undermine collective consumer interests. Unfortunately, *Albanian law does not directly enable them to seek compensation before the court*.
 - Article 53 provides three criteria for consumer associations to represent consumers’ interests in court: active membership, experience and geographic location. The court assesses these criteria on a case-by-case basis, with no minimum statutory thresholds.
- Article 52 of the LPC provides that the main purpose of the Consumer Protection Commission (the “CPC”) is to review alleged violations and take measures to uphold the LPC. The CPC is a decision-making body and is in charge of identifying alleged violations based on findings, requests, complaints and any other type of information that constitutes sufficient cause for consideration. The CPC collaborates with the RCPS and the Inspectorate for Market Surveillance. The LPC also provides for alternative dispute resolution bodies within the structure of the Consumer Protection Commission (known in Albanian as “ZAM structures”).
- For specific consumer rights violations (e.g. in the areas of food, product safety or cosmetic products, which are overseen by separate public institutions), Law No. 8454 of 4 February 1999 on the Ombudsman, as amended, gives the Ombudsman the right to conduct a full investigation into complaints from interested persons (i.e. consumers). The Ombudsman, who is also entitled to represent groups of interested persons, then issues recommendations on the nature of the infringement of the rights, freedoms and legitimate interests of any person in the group by the unlawful or improper conduct of public administration.
- In addition, the Law on Administrative Courts provides that any association can bring an action against any government act that is considered to breach its rights granted by law.

Opt-in or opt-out mechanism

- Opt-in. Consumer associations can only represent consumers that have a legitimate interest in the case (i.e. are directly harmed by the trader).

Certification stage

- *Not applicable.*

Court fees

- The LCP provides for administrative actions aimed at the cessation or prohibition of violations. As a general rule, the claimant (whether a consumer association or an individual consumer) pays a *filing fee* of approximately EUR 30 for claims of up to approximately EUR 1,000. For claims higher than EUR 1,000, the court fee is 1% of the claim.
- The RCPS is a statutory body and so does not pay a court fee.

Allocation of costs

- Generally, the *losing party* is liable to pay costs to the other party.

Quantum of monetary compensation

- Under the LCP, consumer associations and individual consumers can lodge complaints with the *Administrative Court* for violations of the LCP. However, this means they *cannot claim damages*, nor can the court award damages on the basis of a representative action.
- The maximum fine that can be imposed under the LCP is approximately EUR 5,000.
- Consumers seeking compensation for direct harm caused by a trader must file a claim for damages with the *Civil Court*.

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Serbia

Legal standing

- The Law on Consumer Protection provides that representative actions can be brought by the *qualified entities* designated as such by the Ministry of Internal and Foreign Trade.
- To be designated as a qualified entity, an organisation must:
 - a) primarily engage in consumer protection activities;
 - b) demonstrate a minimum three-year track record in the field;
 - c) possess the necessary resources for consumer protection work;
 - d) have qualified personnel with relevant expertise; and
 - e) submit a comprehensive report, including financial documentation, to the Ministry detailing its three years of experience in consumer protection.
- The Ministry of Internal and Foreign Trade decides the outcome of representative actions brought by qualified entities. Therefore, this is an administrative, rather than judicial, process.

Opt-in or opt-out mechanism

- This mechanism is *not precisely reflected* in Serbian domestic law.

Certification stage

- Under Serbian law, the certification stage is carried out by the *Ministry of Internal and Foreign Trade*.

Court fees

- Representative actions are *exempt* from the payment of stamp duty.

Allocation of costs

- Each party initially bears its own costs. If the proceedings were concluded unfavorably for the party who initiated them, they are obliged to reimburse the opposing party for justified costs, in proportion to the part of the claim in which they were unsuccessful.

Quantum of monetary compensation

- The Law on Consumer Protection does not specify monetary compensation as a remedy for the party bringing the representative action. Instead, it only outlines that traders are liable to *monetary sanctions*.

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Ukraine

Legal standing

- The Directive (EU) 2020/1828 is not directly applicable in Ukraine. The Ukrainian procedural codes permit the filing of a claim from several plaintiffs against one defendant and vice versa. Plaintiffs should pay court fees separately though. As a general rule, claimants in customer protection disputes don't pay court fees. One attorney can represent several plaintiffs. However, each plaintiff is able to act separately and file a petition, waive the claim, conclude an agreement with the defendant, etc. In this case all other plaintiffs will have to either wait or react. This makes participation in such proceedings quite difficult. The prevailing practice in Ukraine remains to file a separate claim from each of the plaintiffs, which can be done by one attorney.

Allocation of costs

- The *losing party* in court pays the other party's legal costs, including court fees (if applicable) and legal support fees.

Quantum of monetary compensation

- The courts can determine the amounts to which each claimant is entitled on a *case-by-case basis*, based on the evidence provided in the court proceedings.

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