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From: Permanent Representatives Committee (Part 1)
To: Council

Subject: 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
- General approach

I. INTRODUCTION

1. On 11 April 2018, the Commission transmitted the above-mentioned proposal to the European Parliament and to the Council. This proposal is part of the 'New Deal for Consumers' package which consists of two Directives¹ and a horizontal Communication² with the aims to ensure that consumers fully benefit from their rights under Union law and to create the conditions for a fairer competition for compliant traders.

¹ Cf. doc. 7876/18 for the other proposal on Modernisation of consumer law.

² Cf. doc. 7875/18.

2. This draft directive proposes to modernise and replace the Injunctions Directive³ by providing redress measures as well as injunction measures in case of infringements of Union law affecting a group of consumers. The aim is to boost the effectiveness of collective actions through better enforcement rules especially in situations where individual consumers may be deterred from seeking redress in court due to high litigation costs and/or low value claims. The proposal also covers situations where infringements affect consumers of more than one Member State with a view to enhancing consumer protection in an increasingly globalised and digitalised economy.

The Injunctions Directive provides only for representative actions to stop or prohibit infringements of EU consumer law, but not to obtain collective redress allowing individual consumers to receive for e.g. a financial compensation. As a result, significant differences exist in the protection of the collective interests of consumers throughout the European Union, as some Member States have introduced procedures for collective redress whereas others have not. With this proposal a representative actions procedure covering redress measures would be available for consumers in all Member States, both in domestic and cross border actions.

3. More specifically, the proposal allows qualified entities to defend the collective interests of consumers through:
- the designation by Member States of, in particular, consumer organisations or public bodies as qualified entities;
 - the bringing of representative actions against infringing traders, including traders domiciled in another Member State;
 - the introduction of redress measures, including notably financial compensation.

³ Directive 2009/22/EC on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30).

The proposal also aims at regulating key aspects necessary for the establishment of a framework that should be complemented at national level by specific procedural rules or by existing collective redress mechanisms.

Finally, the proposed system includes safeguards against the risk of abusive or unmerited litigation by requiring qualified entities to be fully transparent on their sources of funding.

4. The European Economic and Social Committee issued its opinion on 20 September 2018.⁴
5. The responsible committee in the European Parliament is the Committee on Legal Affairs (JURI). Mr Geoffroy Didier (EPP – FR) is the rapporteur. JURI adopted its report on 6 December 2018 and the European Parliament completed its position at first reading on 26 March 2019 and indicated its decision to enter into negotiations with the Council.

II. WORK CONDUCTED WITHIN THE COUNCIL

6. The examination of the proposal by the Working Party on Consumer Protection and Information started under the Bulgarian Presidency in April 2018. The impact assessment accompanying the proposal was examined on 24-25 April 2018, on the basis of answers to the checklist. Two other working party meetings were also organised in May and June 2018.
7. The discussion continued under the Austrian and the Romanian Presidencies during which eleven Working Party meetings were organised, in order to examine several Presidency compromise proposals. Work continued under the Finnish Presidency, with extensive discussions held during ten Working Party meetings as well as numerous comments submitted by delegations. The proposal was therefore significantly re-structured, while preserving the spirit and objectives of the Commission proposal.

⁴ EESC INT/853.

8. In the course of discussions at Working Party level, the proposal has been adapted (see III.A below) with a view to accommodating concerns raised by Member States. A number of technical modifications have also been made with a view to clarifying, restructuring and complementing the proposal where necessary (see III.B below).

III. CHANGES TO THE COMMISSION PROPOSAL

9. The Presidency compromise is based on the building blocks described below and represents a fair and balanced compromise package which is supported by a majority of Member States.

A - Main changes

a) Distinction between domestic and cross-border representative actions (Articles 4, 4a and 4b; recitals 9a to 11h)

The Commission proposal intends to enable qualified entities designated in a Member State to bring representative actions in another Member State, provided they satisfy a number of criteria such as being properly established and non-profitable.

The Presidency suggests the following:

- a clear distinction between domestic and cross-border representative actions, with the corresponding definitions;
- separate criteria for the designation of qualified entities for the purpose of domestic and cross-border representative actions, with criteria defined in accordance with national law for qualified entities for the purpose of domestic representative actions (Article 4);
- common and reinforced criteria for qualified entities designated for the purpose of cross-border representative actions (Articles 4a and 4b);

- mutual recognition of qualified entities designated for the purpose of cross-border representative actions, while allowing the possibility for national courts and administrative authorities to examine the financial independence of a qualified entity in a given cross-border representative action and, where appropriate, reject its legal capacity (Article 4b(3), second paragraph).

b) Declaratory decisions (Article 6(2) and recital 4a)

At the request of Member States, the Presidency suggests deleting in Article 6(2) the possibility for the court or administrative authority to issue a declaratory decision on liability instead of a redress order on its own motion, while allowing Member States to maintain or enact legislation on actions for a declaratory decision at national level as provided for in recital 4a.

c) Redistribution of compensations for small losses (Article 6(3)(b))

At the request of Member States and for reasons of legal certainty, the Presidency suggests to delete a provision on redistributing small amounts of financial compensation to public purposes serving consumer protection, instead of distributing it to the consumers who suffered the harm.

d) Effects of final decisions (Article 10; recitals 31a and 33)

The Presidency compromise takes into account the concerns expressed by several Member States on effects of final decisions, particularly on the requirement that a final decision establishing an infringement is to be considered as irrefutable evidence in similar cases, as this could be contrary to national law on evaluation of evidence.

The Presidency proposes to indicate instead that the above-mentioned final decisions can be used as evidence of the existence of that infringement.

e) Transitional provisions (Article 20 together with Article 11; recitals 35 and 35a)

At the request of Member States, the Presidency suggests that the Directive applies to representative actions brought after the date of application of the Directive, instead of to infringements that have started thereafter. The change proposed by the Presidency is in line with procedural law and ensures a swifter application of the Directive (Article 20(1) and (2)).

The Presidency also believes that it is necessary to take into account the particularities of national law on suspension or interruption of limitation periods (Article 20(2a)).

B - Other changes

A number of other modifications have also been made, in particular regarding:

- complementing and streamlining the scope (Article 2 and Annex I);
- clarifying the functioning of representative actions, notably on information, procedural costs/fees and the distinction between injunction measures and redress measures (Articles 5, 5a, 5b, 8 and 9);
- limiting penalties to failures to comply with injunction measures, orders to disclose evidence and information obligations, as well as keeping Member States' competence on the allocation of revenues from fines (Article 14);
- simplifying information requirements for the monitoring and evaluation of the Directive (Article 18).

10. The Permanent Representatives Committee at its meeting on 20 November 2019 concluded that the text would be submitted to the Competitiveness Council of 28 November 2019, with a view to reaching a general approach. The new text appears in **bold/underlined** and deletions are in ~~strike through~~ with respect to the Commission proposal.

IV. **CONCLUSION**

The Presidency considers that the text, as set out in the Annex, reflects a balanced and fair compromise between the views expressed by delegations. The Council is invited to agree on a general approach on this basis at the Competitiveness Council on 28 November 2019.

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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(0) Globalisation and digitalisation have increased the risk of a large number of consumers being harmed by the same unlawful practice. Infringements of Union law cause consumer detriment. Without effective means to obtain the cessation of unlawful practices and redress losses of consumers, consumer confidence in the internal market is hindered.

(0a) Lack of effective means of enforcement of Union law protecting consumers could also give rise to distortion of fair competition between infringing traders and compliant traders that operate either domestically or cross-border. This could hamper the smooth functioning of the internal market.

(0b) In accordance with Article 26(2) of the Treaty on the Functioning of the European Union (TFEU), the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. The internal market should provide consumers with added value in the form of better quality, greater variety, reasonable prices and high safety standards for goods and services, which should promote a high level of consumer protection.

(0c) Article 169(1) and point (a) of Article 169(2) TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies are to ensure a high level of consumer protection.

~~(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.~~

(2) Directive 2009/22/EC of the European Parliament and of the Council 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 **in an increasingly globalised and digitalised marketplace**, it is necessary to strengthen the mechanism for protection of collective interests of consumers **to cover redress measures as well as injunction measures**. Given the numerous changes **required**, for the sake of clarity it is appropriate to replace Directive 2009/22/EC.

(2a) Representative action procedures, both for injunction and redress measures, vary across the Union and offer different level of protection for consumers. There are also Member States that at present do not have any collective redress procedure in place. This diminishes consumers' and businesses' confidence and ability to operate in the internal market, distorts competition and hampers the effective enforcement of Union law in the field of consumer protection.

(2b) Addressing these issues requires at least one representative action procedure for injunction and redress measures in all Member States that corresponds to this Directive. Effective and efficient representative actions available across the Union should boost consumer confidence, empower consumers to exercise their rights, contribute to fairer competition and create a level playing field for traders operating in the internal market.

(2c) This Directive aims to contribute to the functioning of the internal market and the achievement of a high level of consumer protection by enabling qualified entities, which represent the collective interests of consumers, to bring representative actions for the purpose of both injunction and redress measures against traders infringing provisions of Union law. The qualified entities should be able to ask to stop or prohibit an infringement and to seek redress, such as compensation, repair or price reduction as appropriate and available under Union and national laws.

- (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.
- (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~~ **internal 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 **certain** ~~various~~ procedural aspects, such as the designation **and funding** of qualified 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.~~

(4a) This Directive should not replace existing national procedural mechanisms aiming at the protection of collective or individual consumer interests. 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 injunction or redress mechanism or as a separate mechanism, insofar as at least one national procedural mechanism in the form of representative action complies with the modalities set by this Directive. For instance, this Directive should not prevent Member States from enacting legislation on actions for a declaratory decision even though this Directive does not provide for rules on such actions. If there are mechanisms in place at national level in addition to the mechanism required by this Directive, the qualified entity could choose which mechanism to use.

(4b) In line with the principle of procedural autonomy, this Directive should not contain provisions on all aspects of proceedings in representative actions. Consequently, it is for the Member States to set down rules, for instance, on admissibility, evidence or means of appeal applicable to representative actions. For example, it should be for Member States to decide on the required degree of similarity of individual claims or the minimum number of consumers concerned by an action for redress for the purpose of a case being admitted to be heard as a representative action. Such national rules should not hamper the effective functioning of representative actions as set out by this Directive.

~~(5) Infringements that affect the collective interests of consumers often have cross-border implications. More effective and efficient representative actions available across the Union should boost consumer confidence in the internal market and empower consumers to exercise their rights.~~

(6) The scope of this Directive should reflect the recent developments in the field of consumer protection. Since consumers now operate in a wider and increasingly digitalised market, achieving a high level of consumer protection requires that cover a variety of areas such as data protection, financial services, travel and tourism, energy, and telecommunications and environment are covered by the Directive, in addition to general consumer law. 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. **In particular, as there is increased consumer demand for financial and investment services, it is important to improve the enforcement of consumer law in these fields. Also in the field of digital services, the consumer market has evolved and there is an increased need for a more efficient enforcement of consumer law, including data protection.**

- (6a) The Directive should cover infringements of provisions of Union law listed in Annex I to this Directive to the extent that these provisions protect the interests of consumers, regardless of whether they are referred to as consumers or as travellers, users, customers, retail investors, retail clients, data subjects or other. However, it should protect the interests of natural persons that may be harmed or have been harmed by those infringements only if they qualify as consumers according to this Directive. Infringements harming natural persons qualifying as traders should not be covered.**
- (6b) This Directive should be without prejudice to the legal acts listed in Annex I and therefore it should not change or extend the definitions provided therein or replace any enforcement mechanisms that those legal acts may contain. For example, the enforcement mechanisms provided for or based on Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation) could, if applicable, still be used for the protection of the collective interests of consumers.**
- (6c) For the sake of clarity, the scope of this Directive should be set out as precisely as possible in Annex I. If the legal acts listed in Annex I contain provisions that do not relate to consumer protection, reference should be made to the specific provisions that protect consumers' interests. However, such references are not always feasible or possible due to the structure of certain legal acts, in particular in the field of financial services, including investment services.**
- (6d) 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 Annex I to this Directive in order to place the new act under the scope of this Directive.**
- (6e) Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may for instance maintain or introduce national legislation corresponding to the provisions of this Directive, or certain of its provisions, in relation to disputes that fall outside the scope of Annex I.**

- (7) The Commission has adopted legislative proposals for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air and for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations. It is therefore appropriate to provide that, one year after the entry into force of this Directive, the Commission assesses whether the Union rules in the area of air and rail passengers' rights offer an adequate level of protection for consumers, comparable to that provided for in this Directive, and draws any necessary conclusions as regards the scope of this Directive.

(7a) Since both judicial and administrative procedures may effectively and efficiently serve the protection of the collective interests of consumers, it is left to the discretion of the Member States whether the representative action can be brought in judicial or administrative proceedings, or both, depending on the relevant area of law or relevant economic sector. This shall be without prejudice to the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union, whereby Member States shall ensure that consumers and traders have the right to an effective remedy before a court or tribunal, against any administrative decision taken pursuant to national provisions implementing this Directive. This shall include the possibility for the parties to obtain a decision granting suspension of enforcement of the disputed decision, in accordance with national law.

- (8) Building on Directive 2009/22/EC, this Directive should cover both domestic and cross-border infringements, in particular when consumers ~~concerned~~ **affected** by an infringement live in one or several Member States other than the Member State where the infringing trader is established. It should also cover infringements which have ceased before the representative action has been started or concluded, since it may still be necessary to prevent the repetition of the practice **by prohibiting it, to** establish that a given practice constituted an infringement and **to** facilitate consumer redress.

(9) This Directive should not **affect the application of nor** establish rules of **on** 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. **In particular, 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 (Brussels Ia), 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) should apply to the representative actions set out by this Directive.**

(9-a) It should be noted that Brussels Ia does not cover competence of administrative authorities nor recognition or enforcement of decisions by such authorities. These questions should be left to national law.

(9a) As the case may be, it could be possible, in accordance with rules on private international law, for a qualified entity to bring a representative action in the Member State where it has been designated as well as in another Member State. Building on Directive 2009/22/EC, this Directive should make a distinction between these two types of representative actions. When a qualified entity brings a representative action in another Member State than the one of its designation, that action should be considered a cross-border action. When a qualified entity brings a representative action in the Member State where it is designated, it should be considered a domestic representative action even if that action is brought against a trader domiciled in another Member State or even if consumers from several Member States are represented within that action. Decisive for determining the type of the representative action should be the Member State in which the action is brought. For this reason, a domestic representative action could not become a cross-border one during the course of proceedings, or vice versa.

(9b) Consumer organisations in particular should play an active role in ensuring compliance with relevant provisions of Union law and are all well placed to apply for the status of qualified entity in accordance with national law. According to national legal traditions, public bodies could also play an active role in ensuring compliance with relevant provisions of Union law by bringing the representative actions set out by this Directive.

- (10) ~~As only qualified entities can bring the representative actions, to ensure that the collective interests of consumers are adequately represented~~ **For the purpose of cross-border representative actions**, the qualified entities should comply with the **same** criteria established by this Directive **across the Union**. In particular, they would need to be **legal persons** properly constituted according to the law of a Member State, **have a certain degree of permanence and public activity**, 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 **have a non-profit making character** and have a legitimate interest, **in light of their statutory purpose**, in **protecting consumer interests as provided by** 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. **For the purpose of protecting the consumers, those qualified entities should possess certain qualities necessary for taking decisions relating to representative actions on behalf of the consumers. They should possess knowledge and skills in the field of their activity, including such understanding of law that they are independently able to make informed decisions on whether to bring a representative action or not. This should be without prejudice to their right to use legal counsel such as lawyers. In order to guarantee the independence of the qualified entities, they should be financially sound and stable, taking into account for example any revenues or assets the entities may have. They should also be fully transparent about the source of their funding and provide for the relevant procedures to prevent detrimental influences to the collective interests of the represented consumers. In particular, qualified entities should not be influenced by any third party, other than their legal counsel and the consumers concerned, in taking their procedural decisions in the context of the representative action, including on settlements. Such third parties should not provide 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. However, this should be without prejudice to any public funding.**

(10a) Regarding qualified entities designated for the purpose of domestic representative actions, the Member States should be able to establish the criteria for such entities freely in accordance with their national legislation. However, Member States should be able to apply the criteria set out by this Directive for qualified entities designated for the purpose of cross-border actions also in respect of qualified entities acting only for the purpose of domestic actions.

(10b) Any criteria applied to qualified entities in cross-border or domestic representative actions should not hamper the effective functioning of representative actions as set out by this Directive.

(10c) Member States could set out rules to limit the right of a qualified entity to bring a cross-border representative action to the area of activity of that entity. The rules could provide, for example, that qualified entities protecting consumer interests in the field of food safety or passenger rights could only bring cross-border representative actions that are related to these purposes.

~~(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 type of measures that may be sought by each of these qualified entities in representative actions.~~

(11a) Member States should be able to designate qualified entities in advance. However, for the purpose of domestic representative actions, Member States could also or alternatively designate qualified entities on an *ad hoc* basis for a specific action. Such designation could be made by the court or administrative authority seized, including by way of acceptance, where applicable. However, for the purpose of cross-border representative actions, common safeguards are needed. Therefore, qualified entities designated on an *ad hoc* basis should not be allowed to bring cross-border representative actions.

(11b) It should be for the designating Member State to ensure that the qualified entity designated for the purpose of cross-border representative actions fulfils the criteria, to assess whether it continues to comply with them and, if necessary, to revoke the designation of the qualified entity. Member States should assess the compliance by qualified entities with the criteria at least every five years.

(11c) If concerns appear regarding the compliance with the criteria by a qualified entity, the Member State that designated that entity should investigate the concerns and, where appropriate, revoke the designation. Member States should designate national contact points for the purpose of transmitting and receiving requests for investigations.

(11d) Member States should ensure that cross-border representative actions can be brought in their courts or administrative authorities by qualified entities designated for the purpose of such representative actions in another Member State. Furthermore, qualified entities from different Member States should be able to join forces within a single representative action in front of a single forum, subject to relevant rules on competent jurisdiction. This should be without prejudice to the right of the court or administrative authority seized to examine whether the action is suitable to be heard as a single representative action.

(11e) The mutual recognition of the legal capacity of qualified entities designated for the purpose of cross-border representative actions should be ensured. The identity of these organisations and public bodies should be communicated to the Commission and the Commission should make that list publicly available. Inclusion on the list should serve as proof of the legal capacity of the organisation or public body bringing the action. This should be without prejudice to the right to examine whether the purpose of the qualified entity justifies the action in a specific case.

(11ea) In order to prevent conflicts of interest, Member States should be able to set out rules according to which their courts or administrative authorities could examine whether a qualified entity bringing a cross-border representative action for redress is funded by a third party having an economic interest in the outcome of a specific cross-border representative action and, if this is the case, reject the legal capacity of the qualified entity for the purpose of that action.

(11f) When bringing a cross-border representative action, the qualified entity should be obliged to confirm to the court or the administrative authority overseeing the action that it still complies with the criteria. Nevertheless, the court or administrative authority should examine the compliance with the criteria if it becomes aware of any justified concerns in that regard.

(11g) Member States should take measures to address situations where the information presented by the entity on compliance with the criteria is incorrect. Those measures could include for example sanctions, dismissal of the action or other procedural measures. However, a dismissal of the action should not affect the rights of the consumers concerned by the action.

(11h) The courts or administrative authorities should be able to assess the admissibility of a specific cross-border representative action in accordance with national law. In accordance with the principle of non-discrimination, the admissibility requirements applied to specific cross-border representative actions should not differ from those applied to specific domestic representative actions.

~~(12) Since both judicial and administrative procedures may effectively and efficiently serve the protection of the collective interests of consumers it is left to the discretion of the Member States whether the representative action can be brought in judicial or administrative proceedings, or both, depending on the relevant area of law or relevant economic sector. This shall be without prejudice to the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union, whereby Member States shall ensure that consumers and businesses have the right to an effective remedy before a court or tribunal, against any administrative decision taken pursuant to national provisions implementing this Directive. This shall include the possibility for the parties to obtain a decision granting suspension of enforcement of the disputed decision, in accordance with national law.~~

(12a) Injunction measures aim at the protection of the collective interests of consumers independently of any actual loss or damage suffered by individual consumers. Injunction measures may require traders to take specific action, such as providing consumers with the information previously omitted in violation of legal obligations. A decision on an injunction measure should not depend on whether the practice was committed intentionally or by negligence.

(12b) When bringing a representative action, the qualified entity should provide sufficient information on the consumers concerned by the action to the court or the administrative authority. The information should allow the court or the administrative authority to establish its jurisdiction and the applicable law. In a case related to tort this would require informing the court or the administrative authority of the place where the harmful event affecting the consumers occurred or may occur. The detail of the required information could differ depending on which measure the qualified entity is seeking and whether an opt-in or an opt-out mechanism is applied. Furthermore, when bringing a representative action for injunction measures, the possible suspension or interruption of limitation periods applicable to subsequent claims for redress would require the qualified entity to provide sufficient information on the group of consumers concerned by the action.

(13) Member States should ensure that qualified entities are able to seek injunction measures and redress measures. ~~To increase~~ **With the objective of** the procedural effectiveness of representative actions, **Member States should be able to decide that** qualified entities ~~should~~ have the possibility to seek ~~different~~ **injunction and redress** 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 or~~ **measures** and subsequently and if appropriate redress ~~or~~ **measures**.

(13a) The qualified entity bringing the representative action under this Directive should be seeking the relevant measures, including redress measures, in the interests of the consumers affected by an infringement. The qualified entity should have the procedural rights and obligations of the claimant party to the proceedings. Member States could provide individual consumers concerned by the action with certain rights within the representative action. However, individual consumers should not be able to interfere with the procedural decisions undertaken by the qualified entities, individually request evidence within the proceedings or individually appeal the procedural decisions of the court or the administrative authority overseeing the representative action. Neither should the individual consumers have procedural obligations within the representative action.

(13b) However, the consumers concerned should be entitled to benefit from the representative action. In representative actions for redress measures, these benefits would come in form of remedies, such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid. In representative actions for injunction measures, the benefit would be the cessation or prohibition of a practice that constitutes an infringement.

(13c) This Directive should not affect national rules on recovery of procedural costs or on the "loser pays" principle. Individual consumers concerned by an action should not bear the costs of the proceedings, neither those of the qualified entity nor the trader. Exceptions to this rule should be made only in exceptional circumstances, as provided for in national law, such as when a consumer has deliberately or negligently caused unnecessary legal costs by, for example, prolonging the proceedings by unlawful conduct, or when it is otherwise exceptionally justified. The costs of the proceedings should include, for example, any costs resulting from the fact that either party was represented by a lawyer or another legal professional, or any costs arising from the service or translation of documents. Moreover, Member States should be able to set out rules that allow qualified entities to require modest entry fees or similar participation charges from the consumers who have explicitly expressed their will to be represented by a qualified entity within a particular representative action for redress measures.

(14) Injunction orders aim at the protection of the collective interests of consumers independently of any actual loss or damage suffered by individual consumers. Injunction orders may require traders to take specific action, such as providing consumers with the information previously omitted in violation of legal obligations. Decisions establishing that a practice constitutes an infringement should not depend on whether the practice was committed intentionally or by negligence.

(14a) Injunction measures should include definitive and provisional measures. The latter could cover interim, precautionary and preventive 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. Injunction measures could also include measures establishing that a given practice constitutes an infringement of law, in cases where that practice ceased before the representative actions has been brought, when there is still a need for establishing that such a practice constituted an infringement of law, for instance to facilitate follow-up actions for redress measures. They could, moreover, include an obligation for the infringing trader to publish the decision on the measure in full or in part, in such form as deemed adequate, or to publish a corrective statement.

(14b) Building on directive 2009/22/EC, Member States should be able to require that a prior consultation be undertaken by the party that intends to bring an action for an injunction, in order to give the defendant an opportunity to bring the contested infringement to an end. Member States should be able to require that this prior consultation takes place jointly with an independent public body designated by those Member States. Where the Member States have established that there should be prior consultation, a deadline of two weeks after the request for consultation is received should be set after which, should the cessation of the infringement not be achieved, the applicant should be entitled to bring an action, without any further delay, before the competent court or administrative authority. These requirements could, in accordance with national law, be applied also to actions for redress measures.

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

(15a) 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 as appropriate and as available under Union or national law. This Directive should not enable punitive damages being imposed on the infringing trader or overcompensation being awarded to consumers affected by an infringement. A representative action seeking redress under this Directive can only be brought where Union or national law provides for such substantive rights.

(15b) Consumers concerned by a representative action for redress should have adequate opportunities, after the action has been brought, to express their will on whether or not to be represented by the qualified entity in that specific representative action and whether or not to benefit from the relevant outcomes of that representative action. To best respond to their legal traditions, Member States should provide for an opt-in or opt-out mechanism, or a combination of both. In an opt-in mechanism, consumers should be required to explicitly express their will to be represented by the qualified entity within a representative action for redress. In an opt-out mechanism, consumers should be required to explicitly express their will not to be represented by the qualified entity within a representative action for redress. Member States should be able to decide at which stage of the representative action the individual consumers could exercise their right to opt in or opt out from the proceedings.

(15ba) Member States providing for an opt-in mechanism should be able to require that some consumers opt in to the action for a redress measure before the action has been brought as long as other consumers have an opportunity to opt in also after the action has been brought.

(15c) However, in order to ensure sound administration of justice and to avoid irreconcilable judgments, an opt-in mechanism should be required regarding a representative action for redress when the consumers affected by an infringement do not habitually reside in the Member State of the court or administrative authority before which the representative action is brought. In such a situation, consumers should have to explicitly express their will to be represented in that representative action in order to be bound by the outcome of the action.

(15d) When consumers explicitly or tacitly express their will to be represented by a qualified entity within a representative action for redress, whether that action is brought within an opt-in or an opt-out mechanism, they should no longer be able to be represented in other representative actions nor bring individual actions with the same cause of action and against the same trader. However, this should not apply if a consumer, after having explicitly or tacitly expressed his or her will to be represented within a representative action for redress, later opts out from that action in accordance with national law, for example when a consumer later refuses to be bound by a settlement.

(15e) For expediency and efficiency reasons, the Member States in accordance with their national laws could also provide consumers with the possibility to directly benefit from a redress measure after it was issued without other requirements on prior participation in the action.

(15f) Member States should lay down rules for the coordination between representative actions, individual actions initiated by individual consumers and any other actions aimed at the protection of individual and collective interests of consumers as provided under Union and national law. Injunction measures issued under this Directive should be without prejudice to individual redress actions brought by consumers harmed by the practice subject to the injunction measures.

~~(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.~~

~~(17) The compensation awarded to consumers harmed in a mass harm situation should not exceed the amount owed by the trader in accordance with the applicable national or Union Law in order to cover the actual harm suffered by them. In particular, punitive damages, leading to overcompensation in favour of the claimant party of the damage suffered, should be avoided.~~

(18) Member States ~~may~~ **should** require qualified entities to provide sufficient information to support a representative action for redress, including a description of the group of consumers ~~concerned~~ **affected** 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 the action in order to initiate ~~the action~~ **it**. 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 **the** consumers ~~concerned~~ **affected**.

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

(19a) The redress measure should identify the individual consumers or at least describe the group of consumers entitled to remedies provided by that measure, and if applicable state the method of quantification and the relevant steps to be taken by consumers and traders for the implementation of the remedies. Consumers entitled to remedies should be able to recover these remedies without having to initiate separate proceedings. For example, a requirement for separate proceedings implies the obligation for the consumer to bring an individual action to a court or an administrative authority for the quantification of harm. Conversely, in order to obtain individual redress, consumers may be required to take certain steps, such as addressing themselves to an entity in charge of the enforcement of the redress measure.

(19b) Member States should lay down or maintain rules on time limits, such as limitation periods or other time limits for exercising their right to redress, for individual consumers to benefit from the redress measures. Member States may lay down rules on the destination of any outstanding redress funds that were not recovered within the established time limits.

- ~~(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.~~
- ~~(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.~~
- ~~(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.~~

- ~~(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.~~
- ~~(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.~~
- ~~(25) Qualified entities should be fully transparent about the source of funding of their activity in general and regarding the funds supporting a specific representative action for redress in order to enable courts or administrative authorities to assess whether there may be a conflict of interest between the third party funder and the qualified entity and to avoid risks of abusive litigation as well as to assess whether the funding third party has sufficient resources in order to meet its financial commitments to the qualified entity. The information provided by the qualified entity to the court or administrative authority overseeing the representative action should enable it to assess whether the third party may influence procedural decisions of the qualified entity in the context of the representative action, including on settlements and whether it provides financing for a representative action for redress against a defendant who is a competitor of the fund provider or against a defendant on whom the fund provider is dependant. If any of these circumstances is confirmed, the court or administrative authority should be empowered to require the qualified entity to refuse the relevant funding and, if necessary, reject standing of the qualified entity in a specific case.~~

(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 within a representative action for redress measures.

~~(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.~~

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

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

(30) Any ~~out of court~~ settlement reached within the context of a representative action **for redress** 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 **unless the conditions of the settlement cannot be enforced or the settlement is contrary to mandatory national law, applicable to the cause of the action, which by way of contract cannot be departed from to the detriment of consumers. For example, a settlement which would explicitly leave unchanged a term of contract giving the trader an exclusive right to interpret any other term of that contract could be against mandatory national law.**

(30a) Member States should be able to set out rules allowing the court or administrative authority to refuse to approve a settlement also when the court or administrative authority considers the settlement unfair.

(30b) Member States could set out rules according to which the individual consumers concerned are given the possibility to accept or to refuse to be bound by a settlement.

(31) Ensuring that consumers are informed about a representative action is crucial for its success. Consumers should be informed of ongoing **have to be aware of the** 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. **in order to be able to explicitly or tacitly express their will to be represented in a representative action for redress. Member States should enable that by setting out appropriate rules on dissemination of information of actions to consumers. It should be for Member States to decide who should be responsible for disseminating the information.** The reputational risks associated with spreading information about the infringement are also important for deterring traders infringing consumer rights.

(31a) Consumers should equally be informed of final decisions providing for injunction measures, redress measures or approved settlements, their rights following the establishment of an infringement and any subsequent steps to be taken by consumers concerned, particularly for obtaining redress. The reputational risks associated with spreading information about the infringement are also important for deterring traders infringing consumer rights.

(32) To be effective, the information should be adequate and proportional to the circumstances of the case. ~~The infringing trader 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 **and appropriate**, consumers should be informed individually through electronic or paper letters. This information should be provided in accessible formats for persons with disabilities upon request.

(32a) It should be for the infringing trader to inform, at its own expense, all consumers concerned of final injunction and redress measures. The trader should also inform the consumers of a settlement approved by a court or administrative authority. Member States could set out rules according to which such an obligation depends on the request by the qualified entity. If, according to national law, information of final decisions and approved settlements is provided to the consumers concerned by the action by the court or administrative authority or by the qualified entity, the trader should not need to provide the information a second time.

- (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. **Member States should ensure that a final decision of a court or an administrative authority of any Member State establishing an infringement harming collective interests of consumers can be used as evidence of the existence of that infringement for the purposes of any other actions seeking redress before their national courts or administrative authorities against the same trader for the same infringement. In line with the independence of the judiciary and the free evaluation of evidence, this should be without prejudice to national law on evaluation of evidence.**~~
- (34) ~~Member States should ensure that individual actions for redress may be based on a final declaratory decision issued within a representative action. Such actions should be available through expedient and simplified procedures.~~

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

Limitation periods are usually suspended when the action is brought. However, actions for injunction measures do not necessarily have this effect in relation to subsequent redress measures that may arise from the same infringement. Member States should therefore ensure that a pending representative action for an injunction measure has the effect of suspending or interrupting applicable limitation periods in respect of consumers concerned by the action so that those consumers, individually or represented by a qualified entity, are not prevented from subsequently bringing a redress action concerning the alleged infringement due to the expiry of limitation periods during the representative actions for those injunction measures. When bringing a representative action for injunctions, the qualified entity should sufficiently define the group of consumers whose interests are affected by the alleged infringement, and who could possibly have a claim arising from that infringement and could be affected by the expiry of limitation periods during the action for injunctions. For the sake of clarity, it should be stated that also a pending representative action for a redress measure should have the effect of suspending or interrupting applicable limitation periods in respect of consumers concerned by that action.

(35a) In order to ensure legal certainty, suspension or interruption of limitation periods imposed in accordance with this Directive should apply only to redress claims based on infringements that occurred on or after [date of application of this Directive]. This should not preclude the application of national provisions on suspension or interruption of limitation periods which were already applicable prior to [date of application of the Directive] to redress claims based on infringements that occurred before that date.

- (36) Representative actions for injunction orders measures should be treated with due procedural expediency. **If an infringement is ongoing, the need for expediency could be accentuated.** ~~Injunction orders with interim~~ **Actions for injunction measures with provisional** effect should, always **as appropriate,** be treated by way of **a summary** an accelerated procedure in order to prevent any or further harm caused by the infringement.
- (37) Evidence is an important element for establishing whether ~~a given practice constitutes an infringement of law, whether there is a risk of its repetition, for determining the consumers concerned by an infringement, deciding on redress and adequately informing consumers concerned by a representative action about the ongoing proceedings and its final outcomes~~ **representative action for injunctions or redress is well founded.** However, business-to-consumer relationships are **often** characterised by information asymmetry and the necessary ~~information~~ **evidence** may be held exclusively by the trader, making it inaccessible to the qualified entity. Qualified entities should therefore ~~be afforded~~ **have** the right to request to the competent court or administrative authority **to order** the disclosure by the trader of evidence relevant to their claim ~~or needed for adequately informing consumers concerned about the representative action, without it being necessary for them to specify individual items of evidence.~~ **On the other hand, taking into account the principle of equality of arms, the trader should have a similar right to request evidence that is in control of the qualified entity.** The need, scope and proportionality of such ~~the~~ **disclosure of evidence** should **in accordance with national procedural law** be carefully assessed by the court or administrative authority overseeing the representative action having regard to the protection of legitimate interests of third parties and subject to the applicable Union and national rules on confidentiality.

- (38) In order to ensure the effectiveness of the representative actions, infringing traders should face effective, dissuasive and proportionate penalties for non-compliance with a final decision issued within the representative action **for failure or refusal to comply with an injunction measure. Member States should ensure that those penalties could take the form of fines, for example conditional fines, periodical payments or penalty payments. There should also be penalties for failure or refusal to comply with an order to provide information to consumers concerned on final decisions or settlements or to disclose evidence. Also other types of penalties, such as procedural measures, should be able to be applied to a refusal to comply with an order to disclose evidence.**
- (39) Having regard to the fact that representative actions pursue a public interest by protecting the collective interests of consumers, Member States should **maintain or aim to find means for the purpose of ensuring** ensure that qualified entities are not prevented from bringing representative actions under this Directive because of **due to** the costs involved with the procedures. **These means could include limiting applicable court or administrative fees, granting the qualified entities access to legal aid where necessary or providing them with public funding for bringing representative actions as well as other means of support. However, Member States should not be required to finance representative actions.**
- (40) Cooperation and exchange of information between qualified entities from different Member States have proven to be useful in addressing **in particular** 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 the Union in order to increase the use of representative actions with cross-border implications.

(40a) For the purposes of the evaluation of this Directive, Member States should provide the Commission with data on representative actions brought under this Directive. Member States should provide information on the number and type of representative actions that have been concluded by any of their courts or administrative authorities. Information on the outcomes of representative actions, such as whether or not they have been admissible and whether or not they have been successful or resulted in an approved settlement, should also be provided. In order to ease Member States' administrative burden in fulfilling these obligations, it should, in particular concerning injunction measures, suffice to provide the Commission with general information on the type of infringements and the parties. As regards parties, for example, it should be enough to inform the Commission on whether the qualified entity has been a public body or a consumer organisation, and on the trader's field of business, for example financial services. Alternatively, Member States could provide the Commission with copies of relevant decisions or settlements. Information on the identities of the consumers concerned by the representative actions should not be provided.

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

(42) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles, including those related to the right to an effective remedy and to a fair trial, as well as the right of defence.

- (43) With regard to environmental law, this Directive takes account of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (‘the Aarhus Convention’).
- (44) The objectives of this Directive, namely ~~establishing~~ **ensuring that** a representative action mechanism **for the purpose of both injunction and redress measures is established in all Member States** for the protection of the collective interests of consumers in order to ensure a high level of consumer protection across the Union and the ~~proper~~ functioning of the internal market, cannot be sufficiently achieved by actions taken exclusively by Member States, but can rather, due to cross-border implications of **infringements** ~~representative actions~~, be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (45) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (46) It is appropriate to provide rules for the temporal application of this Directive.
- (47) Directive 2009/22/EC should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

Chapter 1

Subject matter, scope and definitions

Article 1 *Subject matter*

1. This Directive sets out rules ~~enabling qualified entities to seek~~ **ensuring that** representative actions aimed at the protection of the collective interests of consumers **are available in all Member States**, while ~~ensuring~~ **providing** appropriate safeguards to avoid abusive litigation. **The measures adopted for the approximation of laws, regulations and administrative provisions of the Member States have as their objective the better functioning of the internal market taking as a base the achievement of a high level of consumer protection.**
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~~ **for** the protection of the collective interests of consumers at national level. **However, Member States shall ensure that at least one representative action mechanism complies with this Directive.**

Article 2
Scope

1. This Directive shall apply to representative actions brought against infringements by traders of provisions of the Union law listed in Annex I, **also as transposed into national law**, that harm or may harm the collective interests of consumers. **This Directive is without prejudice to the Union law listed in Annex I.** 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.
2. This Directive shall not affect rules establishing contractual and non-contractual remedies available to consumers for such infringements under Union or national law.
3. This Directive is without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction, **recognition and enforcement of judgments**, and applicable law.

Article 3
Definitions

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

- (1) ‘consumer’ means any natural person who is acting for purposes which are outside ~~their~~ **that person's** 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, including through any other person acting in ~~their~~ **that person's** name or on ~~their~~ **that person's** behalf, for purposes relating to ~~their~~ **that person's** trade, business, craft or profession;

- (3) ‘collective interests of consumers’ means the **general** interests of ~~a number of consumers~~ **and, in particular for the purpose of redress measures, the interests of a group of consumers;**
- (4) ‘representative action’ means an action for the protection of the collective interests of consumers ~~to which the consumers concerned are not parties~~ **brought by a qualified entity aiming at an injunction measure or a redress measure, or both;**
- (4a) ‘domestic representative action’ means a representative action brought by a qualified entity in the Member State in which the qualified entity is designated;**
- (4b) ‘cross-border representative action’ means a representative action brought by a qualified entity in a Member State other than that in which the qualified entity is designated;**
- (5) ‘practice’ means any act or omission by a trader;
- (6) ‘final decision’ means a decision by a Member State's court **or administrative authority** that cannot or can no longer be ~~appealed or a decision by an administrative authority that can no longer be subject to judicial review~~ **reviewed by ordinary means of appeal.**

Chapter 2

Representative actions

Article 4

Qualified entities for the purpose of domestic representative actions

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

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

- ~~(a) it is properly constituted according to the law of a Member State;~~
- ~~(b) it has a legitimate interest in ensuring that provisions of Union law covered by this Directive are complied with;~~
- ~~(c) it has a non-profit making character.~~

~~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.~~

- ~~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.~~
3. Member States shall ensure that in particular consumer organisations ~~and independent public bodies~~, **including those representing consumers from more than one Member State**, are eligible **to apply** for the status of qualified entity **in accordance with national law**. ~~Member States may designate as qualified entities consumer organisations that represent members from more than one Member State.~~
- ~~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.~~
- 4a. Member States may designate public bodies as qualified entities.**
- 4b. Member States may designate a qualified entity, at its own request, on an ad hoc basis for the purpose of a particular representative action.**
- 4c. Information on qualified entities designated in advance for the purpose of any representative action shall be made available to the public.**
- ~~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).~~

Article 4a

Designation of qualified entities for the purpose of cross-border representative actions

1. Member States shall ensure that entities, in particular consumer organisations, including those representing members from more than one Member State, are eligible to apply for the status of qualified entity for the purpose of cross-border representative actions.
2. Member States may designate public bodies as qualified entities for the purpose of cross-border representative actions.

3. Without prejudice to paragraph 2, Member States shall designate an entity, at its request, as a qualified entity for the purpose of cross-border representative actions if it complies with all of the following criteria:

(a) it is a legal person properly constituted according to the law of the Member State of designation 18 months prior to the designation request and can demonstrate 12 months of actual public activity in the protection of consumers' interests;

(b) in accordance with its statutory purpose, it has a legitimate interest in protecting consumer interests as provided by Union law covered by this Directive;

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

(ca) it possesses knowledge and skills in the field of its activity necessary for the bringing of cross-border representative actions in that field;

(caa) it is in a sound and stable financial situation;

(cb) it is not influenced by persons, other than consumers, who have an economic interest in the bringing of any representative action, in particular by traders, including in case of funding by third parties, and it has procedures to prevent such an influence;

(cc) it discloses publicly by any appropriate means, in particular on its website, information on the above listed criteria and information about the source of funding of its activity in general.

3a. Member States may set out rules to limit the right of a qualified entity to bring a representative action to the area of activity of that entity.

3b. Member States shall communicate to the Commission a list of the qualified entities referred to in paragraphs 2 and 3, including the name and purpose of those qualified entities as well as possible limitations referred to in paragraph 3a, no later than on... [one year after the date of transposition] and whenever there are changes to that list. Member States shall make that list publicly available.

The Commission shall make a compiled list of these qualified entities publicly available. The list shall be updated annually and whenever changes are communicated to the Commission.

4. Member States shall assess at least every five years whether qualified entities continue to comply with the criteria listed in paragraph 3. Member States shall ensure that the qualified entity loses its status if it no longer complies with one or more of the criteria.

5. If a Member State or the Commission raises concerns regarding the compliance by a qualified entity with the criteria laid down in paragraph 3, 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.

6. Member States shall designate national contact points for the purpose of paragraph 5 and communicate the name and contact details of those contact points to the Commission. The Commission shall compile a list of designated contact points and make that list available to the Member States.

Article 4b
Bringing of cross-border representative actions

1. Member States shall ensure that cross-border representative actions can be brought in their courts or administrative authorities by qualified entities designated for the purpose of such representative actions in another Member State.
2. Member States shall ensure that where the alleged infringement affects or is likely to affect consumers from different Member States the representative action may be brought to the competent court or administrative authority of a Member State by several qualified entities from different Member States, acting jointly, for the protection of the collective interest of consumers from different Member States.
3. The courts or administrative authorities shall accept the list referred to in Article 4a(3b) as proof of the legal capacity of the qualified entity to bring a cross-border representative action, without prejudice to their right to examine whether the statutory purpose of the qualified entity justifies the action in a specific case.

Notwithstanding the first subparagraph, Member States may set out rules according to which its courts or administrative authorities have the competence to examine whether the qualified entity bringing a cross-border representative action for redress is funded by a third party having an economic interest in the outcome of the action and if so, reject the legal capacity of the qualified entity for the purpose of that specific cross-border representative action.

4. When bringing a cross-border representative action, the qualified entity shall confirm to the court or the administrative authority before which the action is brought that it complies with the criteria listed in Article 4a(3). However, Member States may take measures to ensure that the court or administrative authority has the competence to examine the compliance with the criteria if justified concerns are raised in that regard.

- 5. Member States shall take the necessary measures to address situations where the information referred to in paragraph 4 regarding compliance with the criteria is not correct. Those measures may include a possibility for the court or administrative authority to dismiss the action. Such a dismissal shall not affect the rights of the consumers concerned by the action.**
- 6. The courts or administrative authorities before which the action is brought shall assess the admissibility of a specific cross-border representative action in accordance with national law.**

Article 5

Representative actions for the protection of the collective interests of consumers

1. Member States shall ensure that representative actions **in accordance with Article 2** 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.~~

When bringing a representative action, the qualified entity shall provide to the court or to the administrative authority sufficient information on the consumers concerned by the action.

2. Member States shall ensure that qualified entities are entitled to ~~bring representative actions~~ seeking, **as appropriate, at least** the following measures:
- (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 practice;**
 - (b) ~~an injunction order establishing that the practice constitutes an infringement of law, and if necessary, stopping the practice or, if the practice has not yet been carried out but is imminent, prohibiting the practice.~~

(ba) redress measures.

~~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.~~

~~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).~~

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

4a. Member States shall ensure that, within a representative action, consumers' interests are represented by qualified entities and that the entities have the rights and obligations of a party to the proceedings. The consumers concerned by the action shall be entitled to benefit from the measures referred to in paragraph 2. The consumers concerned by the action may bear costs of the proceedings only in exceptional circumstances in accordance with national law. Member States may set out rules allowing for modest entry fees or similar participation charges.

Article 5a
Injunction measures

1. The injunction measures referred to in Article 5(2)(a) are:

(a) a provisional measure to cease or, where appropriate, to prohibit a practice deemed to constitute an infringement;

(b) a definitive measure to cease or, where appropriate, to prohibit a practice that constitutes an infringement.

- 1a. A measure referred to in paragraph 1(b) may include, in accordance with national law:**
- (a) a measure to establish that the practice constitutes an infringement;**
 - (b) an obligation to publish the decision on the measure in full or in part, in such form as deemed adequate, or to publish a corrective statement.**
- 2. In order to seek an injunction measure, the qualified entity shall not have to prove the actual loss or damage on the part of individual consumers affected by an infringement nor the intention or negligence on the part of the trader. The consumers concerned by a representative action for an injunction measure shall not be required to participate in that representative action.**
- 3. Member States may introduce or maintain provisions of national law whereby a qualified entity is only able to seek the injunction measures provided in paragraph 1(b) after it has attempted to achieve the cessation of the infringement in consultation with the trader. If the trader, after receiving the request for consultation, does not cease the infringement within two weeks, the qualified entity may bring a representative action for such an injunction measure without any further delay. Member States shall notify to the Commission the relevant provisions of national law. The Commission shall ensure that this information is publicly accessible.**

Article 5b
Redress measures

- 1. A redress measure shall oblige the trader to provide consumers concerned with remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under Union or national law.**

- 2. Member States shall establish rules on how and at which stage the individual consumers concerned by the action may explicitly or tacitly express their will within the appropriate time limits, after that action has been brought, to be or not to be represented by the qualified entity within the representative action for redress measures and to be bound by the outcome of the action.**

- 3. Notwithstanding paragraph 2, Member States shall ensure that individual consumers, who are not habitually resident in the Member State of the court or administrative authority before which the representative action has been brought, have to explicitly express their will to be represented in that action in order to be bound by the outcome of the action.**

- 3a. Consumers who have explicitly or tacitly expressed their will to be represented in a representative action cannot be represented in other representative actions nor bring an individual action with the same cause of action and against the same trader.**

- 4. If the redress measure does not specify individual consumers entitled to benefit from remedies provided by the measure, it shall at least describe the group of consumers entitled to benefit from those remedies.**
- 5. Member States shall ensure that the redress measure entitles the consumers to seek recovery of the damages without the need to bring a separate action.**
- 6. Member States shall lay down or maintain rules on time limits for individual consumers to benefit from the redress measures. Member States may lay down rules on the destination of any outstanding redress funds that were not recovered within the established time limits.**
- 7. The remedies provided by redress measures within a representative action shall be without prejudice to any additional remedies available to consumers under Union or national law, which were not subject to that representative action.**
- 8. Member States shall ensure that qualified entities are able to bring representative actions for a redress measure without the condition of the prior establishment of an infringement by a court or an administrative authority through separate proceedings.**

Article 6
Redress measures

1. ~~For the purposes of Article 5(3), Member States shall ensure that qualified entities are entitled to bring representative actions seeking a redress order, which obligates the trader to provide for, inter alia, compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate. A Member State may require the mandate of the individual consumers concerned before a declaratory decision is made or a redress order is issued.~~

~~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.~~

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.~~

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

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

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

~~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.~~

~~Article 7~~
~~Funding~~

~~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.~~

~~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:~~

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

~~(b) to provide financing for a collective action against a defendant who is a competitor of the fund provider or against a defendant on whom the fund provider is dependant;~~

~~3. Member States shall ensure that courts and administrative authorities are empowered to assess the 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.~~

Article 8
Settlements on redress

- ~~1. Member States may provide that a qualified entity and a trader who have reached a settlement regarding redress for consumers affected by an allegedly illegal practice of that trader can jointly request a court or administrative authority to approve it. Such a request should be admitted by the court or administrative authority only if there is no other ongoing representative action in front of the court or administrative authority of the same Member State regarding the same trader and regarding the same practice.~~
2. **In view of an approval of a settlement**, Member States shall ensure that at any moment within the a representative actions, **for redress measures**:
 - (a) the qualified entity and the trader may jointly propose to the court or administrative authority a settlement regarding redress for consumers; or**
 - (b) the court or administrative authority may invite the qualified entity and the defendant trader**, after having consulted them, to reach a settlement regarding redress within a reasonable set time-limit.
- ~~3. Member States shall ensure that the court or administrative authority that issued the final declaratory decision referred to in Article 6(2) is empowered to request the parties to the representative action to reach within a reasonable set time limit a settlement regarding the redress to be provided to consumers on the basis of this final decision.~~

4. The settlements referred to in paragraphs ~~1, 2 and 3~~ shall be subject to the scrutiny of the court or administrative authority. The court or administrative authority shall assess ~~the legality and fairness of the settlement~~ **whether it must refuse to approve a settlement that is contrary to mandatory national law, or includes conditions which cannot be enforced**, taking into consideration the rights and interests of all parties, ~~including~~ **and in particular those of** the consumers concerned. **Member States may set out rules allowing the court or administrative authority to refuse approval of a settlement on the basis of a settlement being unfair.**
5. If the settlement referred to in paragraph 2 is not reached within the set time limits or the settlement reached is not approved, the court or administrative authority shall continue **to hear** the representative action.
6. **Member States may set out rules according to which** individual consumers concerned **by the action and by the subsequent settlement** shall be **are** given the possibility to accept or to refuse to be bound by settlements referred to in paragraphs ~~1, 2 and 3~~. The ~~redress~~ **remedies** obtained through an approved settlement in accordance with paragraph 4 shall be without prejudice to any additional ~~rights~~ **remedies** to redress that the consumers concerned may have **available** under Union or national law **which were not subject to that settlement.**

Article 9

Information on representative actions

0. **Member States shall set out rules in order to ensure that the consumers concerned by a representative action for a redress measure have a possibility to become informed about the action in a timely manner and by appropriate means in order to enable consumers to exercise their rights as referred to in Article 5b(2).**

1. Member States shall ensure that the court or administrative authority shall require the ~~infringing~~ trader to inform ~~affected~~ consumers **concerned by the action**, 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 circumstances of the case and within specified time limits, including, where appropriate, through notifying all consumers concerned individually. **This does not apply if the consumers concerned are informed of the final decision or approved settlement in another manner. Member States may set out rules according to which such an obligation depends on the request of the qualified entity.**

1a. If the qualified entities are required to inform consumers concerned about an action, the related necessary costs may be recovered from the trader if the action is successful.

The first subparagraph shall apply *mutatis mutandis* to final decisions.

2. The information referred to in paragraphs **0 and 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.

Article 10
Effects of final decisions

~~1.~~—Member States shall ensure that **a final decision of a court or an administrative authority of any Member State establishing** 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 **can be used** as irrefutably ~~establishing~~ **evidence of** the existence of that infringement for the purposes of any other actions seeking redress before their national courts **or administrative authorities** against the same trader for the same infringement, **in accordance with national law on evaluation of evidence.**

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

Article 11
Suspension of Limitation periods

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~~ **a pending representative action for an injunction measure as referred to in Article 5a has the effect of suspending or interrupting applicable limitation periods in respect of consumers concerned by the action so that those consumers are not prevented from subsequently bringing a redress action concerning the alleged infringement due to the expiry of limitation periods during the representative actions for those injunction measures. Member States shall also ensure that a pending representative action for a redress measure as referred to in Article 5b(1) has the effect of suspending or interrupting applicable limitation periods in respect of consumers concerned by that action.**

Article 12
Procedural expediency

1. Member States shall ~~take the necessary measures to ensure~~ **that** representative actions **for injunction measures** referred to in Articles ~~5a and 6~~ are treated with due expediency.
2. Representative actions for **provisional measures to cease or, where appropriate, to prohibit a practice deemed to constitute an infringement** ~~an injunction order in the form of an interim measure referred to in Article 5(2)(a)~~ **a(1)(a)** shall, **if appropriate**, be treated by way of an ~~accelerated~~ **summary** procedure.

Article 13
Disclosure of evidence

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 **or a third party**, the court or administrative authority may order, in accordance with national procedural rules, that such evidence be presented by the defendant **or the third party**, subject to the applicable Union and national rules on confidentiality **and proportionality**. **Member States shall ensure that a court or an administrative authority is able, upon request of the defendant, to equally order the claimant or a third party to disclose relevant evidence, in accordance with national procedural rules.**

Article 14
Penalties

1. Member States shall lay down ~~the rules on penalties applicable to non-compliance with the final decisions issued within the representative action and~~ **ensuring that penalties may be imposed for failure or refusal to comply with an injunction measure referred to in Article 5a(1) or in point (b) of Article 5a(1a) or obligations referred to in Articles 9(1) and 13. Member States** shall take all necessary measures to ensure that they **those rules** are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall ensure that penalties may take the form of fines.
- ~~3. When deciding about the allocation of revenues from fines Member States shall take into account the collective interests of consumers.~~
- ~~4. Member States shall notify provisions referred to in paragraph 1 to the Commission by [date for transposition of the Directive] at the latest and shall notify it without delay of any subsequent amendment affecting them.~~

Article 15
Assistance for qualified entities

1. Member States shall take ~~the necessary~~ measures **aiming** to ensure that procedural costs related to representative actions do not constitute financial **become insurmountable** obstacles for **preventing** qualified entities to **from** effectively exercise the **exercising their** 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.~~

- ~~2. Member States shall take the necessary measures to ensure that in cases where the qualified entities are required to inform consumers concerned about the ongoing representative action the related cost may be recovered from the trader if the action is successful.~~
3. ~~Member States and~~ The Commission shall support and facilitate the cooperation of qualified entities and the exchange and dissemination of **information about** ~~their~~ best practices and experiences as regards the resolution of ~~cross-border and domestic~~ infringements.

Article 16

Cross-border representative actions

- ~~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.~~
- ~~2. Member States shall ensure that where the infringement affects or is likely to affect consumers from different Member States the representative action may be brought to the competent court or administrative authority of a Member State by several qualified entities from different Member States, acting jointly or represented by a single qualified entity, for the protection of the collective interest of consumers from different Member States.~~
- ~~3. For the purposes of cross-border representative actions, and without prejudice to the rights granted to other entities under national legislation, the Member States shall communicate to the Commission the list of qualified entities designated in advance. Member States shall inform the Commission of the name and purpose of these qualified entities. The Commission shall make this information publicly available and keep it up to date.~~

4. ~~If a Member State or the Commission 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.~~

Chapter 3

Final provisions

Article 17

Repeal

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

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

Article 18

Monitoring and evaluation

1. No sooner than 5 years after the date of application of this Directive, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation guidelines. In the report, the Commission shall in particular assess the scope of application of this Directive defined in Article 2 and Annex I **and the functioning and effectiveness of this Directive in cross-border situations, including in terms of legal certainty.**

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

Article 19
Transposition

1. Member States shall adopt and publish, by [~~18~~ **30** months from the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Member States shall apply those provisions from [~~6~~ **12** months after the transposition deadline].

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

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

Article 20
Transitional provisions

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

2a. Member States shall ensure that national laws, regulations or administrative provisions on suspension or interruption of limitation periods transposing Article 11 only apply to redress claims based on infringements that occurred on or after [date of application of this Directive]. This shall not preclude the application of national provisions on suspension or interruption of limitation periods which were already applicable prior to [date of application of this Directive] to redress claims based on infringements that occurred before that date.

Article 21
Entry into force

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

Article 22
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

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

A – General consumer law

- (1) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210 , 07.08.1985, p. 29 –33).
- (2) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).
- (4) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).
- (4a) Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1–27).**
- (4b) Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 28–50).**
- (4c) 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. 4–17): Articles 3 and 5.**
- (11) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (OJ L 149, 11.6.2005, p. 22).
- (13) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21): ~~Article 1, point (e) of Article 2 and Articles 4 to 8.~~
- (14) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36): **Articles 20 and 22.**

- (35) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).
- (59) Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60, 02.03.2018, p. 1): **Articles 3 - 5**.

B – Product information and labelling

- (3) Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27).
- (18) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1–1355): **Articles 1 - 35**.
- (26) Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters (OJ L 342, 22.12.2009, p. 46–58): **Articles 4 - 6**.
- (30) Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1–19): **Articles 9 - 10**.

- (36) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18–63).
- (58) Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1–23): **Articles 3 - 6**.

C – Passenger rights

(10-a) Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ L 285 , 17.10.1997, p. 1 –3).

- (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).
- (12) Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1).
- (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).

(17) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3): ~~Articles 22, 23 and 24.~~

(17a) Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131, 28.5.2009, p. 24–46).

(31) Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).

(32) Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

D – Tourism

(19) Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33, 3.2.2009, p. 10).

(47) Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).

E – Health

(6) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67): Articles 86–**90, 98 and** 100.

(6a) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (recast) (OJ L 342, 22.12.2009, p. 59–209): Articles 3–8 and 19–21.

~~(33) Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45–65).~~

(33a) 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 and 93/42/EEC: Chapter II.

(33b) Regulation 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU: Chapter II.

F – Electronic commerce and services

- (5) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects on information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1): **Articles 5–7, 10 and 11.**
- (28) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1): Articles 9–11, ~~and~~ 19–26 **and 28b.**
- (55) Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (OJ L 168, 30.6.2017, p. 1).

G – Telecommunication

- (7) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51–77): **Article 10 and Chapter IV.**

(7a) Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (OJ L 321, 17.12.2018, p. 36–214): Articles 88, 98 – 116 and Annexes VI and VIII.

- (38) Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10–35).

- (51) Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access **and retail charges for regulated intra-EU communications** and amending Directive 2002/22/EC ~~on universal service and users' rights relating to electronic communications networks and services~~ and Regulation (EU) No 531/2012 ~~on roaming on public mobile communications networks within the Union~~ (OJ L 310, 26.11.2015, p. 1–18).

H – Personal data

- (8) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37): Articles **4–8 and 13**.
- (53) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).

I – Energy market

- (20) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55–93): **Article 3 and Annex I**.
- (21) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94–136): **Article 3 and Annex I**.

J – Energy efficiency

- (25) Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10–35): **Article 14 and Annex I**.
- ~~(29) Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13–35).~~
- (39) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1–56): **Articles 9–11a**.

K – Dispute resolution

- (40) Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (OJ L 165, 18.6.2013, p. 63): Article 13.
- (41) Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1): Article 14.

L – General financial services

- (9) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services (OJ L 271, 9.10.2002, p. 16).
- (16) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

- (23) Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11–18).
- (24) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7–17).
- (37) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22–37).

- (44) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34): ~~Articles 10, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23, Chapter 10 and Annexes I and II.~~
- (46) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214): ~~Articles 3 to 18 and Article 20(2).~~
- (50) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35–127).

M – Investment services

- (22) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32–96).
- (34) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1–73).
- ~~(42) Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1–17).~~

- ~~(43) Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18–38).~~
- (45) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349–496): **Articles 23–29.**
- (48) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1–23).
- (49) Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98–121).
- (56) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12–82).
- (57) Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8–45).

N – Insurance and retirement services

- (27) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1–155): Articles 183–186.
- (52) Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19–59): **Articles 17–24 and 28–30.**

~~(54) Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37–85).~~
