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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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2018/0089 (COD)

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)

{SWD(2018) 96 final} - {SWD(2018) 98 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Effective enforcement of EU rules matters to Europeans and affects their daily lives. That is why a robust, efficient and effective enforcement system is needed to ensure that Member States fully apply, implement and enforce EU law and provide adequate redress for citizens.

In this context, this proposal aims to modernise and replace Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests[1] ("the Injunctions Directive"). It is being presented together with the proposal on targeted amendments to four EU consumer law Directives[2] as part of the "New Deal for Consumers"[3], included in the 2018 Commission Work Programme[4] so as to improve the effectiveness of the injunction procedure and contribute to the elimination of the consequences of the infringements of Union law which affect the collective interests of consumers.

This proposal is a follow-up to the REFIT Fitness Check of EU consumer and marketing law, published on 23 May 2017 (from now onwards: "Fitness Check")[5], which covered also the Injunctions Directive, and to the Commission Report of 25 January 2018 on the implementation of Commission Recommendation 2013/396/EU[6] on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (from now onwards: "Collective Redress Report")[7].

These evaluations demonstrated that the risk of infringements of Union law affecting the collective interests of consumers is increasing due to economic globalisation and digitalisation. Traders that infringe EU law may affect thousands or even millions of consumers with the same misleading advertisement or unfair standard contract terms in a number of different economic sectors. In light of increasing cross-border trade and EU-wide commercial strategies, these infringements increasingly also affect consumers in more than one Member State. Moreover, the Collective Redress Report showed that a number of Member States still do not provide for collective compensatory redress mechanisms tailored for mass harm situations. It stated the Commission's intention to follow up the assessment of

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1 OJ L 110, 1.5.2009, p. 30–36.

2 COM(2018) 185, Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules.

3 See the State of the Union Address and Letter of Intent to the President of the Council and the EP, available at: https://ec.europa.eu/commission/state-union-2017_en.

4 COM(2017) 650 final.

5 The Fitness Check covered the Unfair Contract Terms Directive 93/13/EEC, Consumer Sales and Guarantees Directive 1999/44/EC, Price Indication Directive 98/6/EC, Unfair Commercial Practices Directive 2005/29/EC and Injunctions Directive 2009/22/EC. See for results SWD (2017) 208 final and SWD (2017) 209 final of 23.5.2017, available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332.

6 OJ L 201/60, 26.7.2013.

7 COM(2018) 40 final.

the 2013 Recommendation with a particular focus on strengthening the consumer redress and enforcement aspects of the Injunctions Directive.

Since 1998, when the Injunctions Directive was first adopted[8], this EU instrument makes it possible for qualified entities designated by the Member States, such as consumer organisations or independent public bodies, to bring representative actions for the protection of the collective interests of consumers with the primary aim of stopping both domestic and cross-border infringements of EU consumer law listed in its Annex I. The Injunctions Directive has been codified by Directive 2009/22/EC, which is currently in force. It was last amended by Regulation (EU) 2018/302 on geoblocking[9] in order to include that Regulation in Annex I.

The 2008 and 2012 Commission reports on the application of the Injunctions Directive and the 2016-2017 Fitness Check confirmed the Directive's importance. However, the Fitness Check concluded that it had considerable shortcomings, which, if left unaddressed, would continue to hinder its full effectiveness and lead to sub-optimal use. Even in Member States where injunctions are considered effective and are widely used, the Directive's potential is not fully exploited due to a number of elements that it does not sufficiently address. The key shortcomings are its limited scope, the limited effects of injunction decisions on redress for harmed consumers and the cost and length of the procedure (see section 3 for an overview of the results).

The need for EU action on collective redress has also been identified by the European Parliament. In its 2012 Resolution 'Towards a Coherent European Approach to Collective Redress'[10], the European Parliament highlighted the need for a horizontal EU approach to collective redress, with focusing on infringement of consumers' rights, based on a common set of principles respectful of national legal traditions and providing safeguards to avoid abusive litigation. It underlined the possible benefits of collective judicial actions in terms of lower costs and greater legal certainty for claimants, defendants and the judicial system alike, from avoiding separate litigation of similar claims. In its 2017 Recommendation to the Council and the Commission following the inquiry into emission measurements in the automotive sector[11], the European Parliament called on the Commission to propose legislation on a harmonised system of collective redress for EU consumers, based on best practices within and outside the EU. This would end the current situation where consumers lack protection in many Member States which do not allow them to enforce their rights collectively. The European Economic and Social Committee has also supported EU action on collective redress for decades and called for legislation in its opinion on the 2013 Commission Recommendation, highlighting the importance of both injunctive and compensatory collective redress.

This proposal addresses those identified problems that hamper the effective and efficient application of the current Injunctions Directive.

In sum, the proposal aims at the following:

- **Scope -** The scope of the Directive will be expanded to cover other horizontal and sector-specific EU instruments relevant for the protection of collective interests of consumers in

8 OJ L 166, 11.6.98, p. 51.

9 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 I, 2.03.2018, p. 1.

10 2011/2089(INI).

11 2016/2908(RSP).

different economic sectors such as financial services, energy, telecommunications, health and the environment. This amendment would make the procedure more responsive to the broad spectrum of infringements in economic sectors where the traders' illegal practices may affect a large number of consumers.

- **Representative actions by qualified entities** – The proposal builds on the approach of the current Injunctions Directive which enables 'qualified entities' designated by the Member States to bring representative actions. Under the proposal, these qualified entities will have to satisfy minimum reputational criteria (they must be properly established, not for profit and have a legitimate interest in ensuring compliance with the relevant EU law). For compensatory collective redress actions, qualified entities would also be required to disclose to the courts or administrative authorities their financial capacity and the origin of their funds supporting the action. The courts and administrative authorities will be empowered to assess the arrangements for third party funding.
- **Efficiency of the procedure** – The proposal will require Member States to ensure 'due expediency' of procedures and to avoid procedural costs becoming a financial obstacle to bringing representative actions. Consumers will be adequately informed of the outcome of representative actions and how they will benefit from them. The proposal also promotes collective out-of-court settlements, subject to court or administrative authority scrutiny. Final decisions of a court or authority establishing that a trader has infringed the law will be irrefutable evidence in redress actions (within the same Member State) or a rebuttable presumption that the infringement has occurred (for cases brought in another Member State).
- **Injunctive and compensatory redress** – The proposal will enable qualified entities to bring representative actions seeking different types of measures as appropriate, depending on the circumstances of the case. These include interim or definitive measures to stop and prohibit a trader’s practice, if it is considered an infringement of the law, and measures eliminating the continuing effects of the infringement. The latter could include redress orders and declaratory decisions establishing the trader's liability towards the consumers harmed by the infringements.

As a rule, qualified entities should be 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.

It is however also necessary to provide flexibility to the Member States in cases where the quantification of the harm of the consumers concerned by the representative action is complex due to the characteristics of their individual harm. In such cases, Member States will have a possibility to empower courts or administrative authorities to decide whether 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, which may be directly relied upon in subsequent redress actions.

Such flexibility, however, should not be available in specific types of cases which are particularly prevalent in B2C mass harm situations. The first type includes cases where the consumers concerned by the same practice are identifiable and the consumers suffered comparable harm in relation to a period of time or a purchase, such as in the case of long-term consumer contracts. The second type concerns 'low-value cases' where a number of consumers have suffered such a small amount of loss that it would be disproportionate or impracticable to distribute the redress back to the consumers. Nonetheless, the infringing trader should compensate for the damages caused. The redress should therefore be directed to a public purpose to serve the collective interests of consumers.

- This proposal strikes a **balance between facilitating access to justice to safeguard consumers' interests and ensuring adequate safeguards from abusive litigation**. The proposed representative action model, within which qualified entities need to be designated by the Member States against minimum reputational criteria, is a strong safeguard against frivolous actions. Other Member States or the Commission will be able to raise concerns against qualified entities that have legal standing in other Member States. In redress actions qualified entities must be transparent about their source of funding in order to enable the court or administrative authority to ensure that there are no conflicts of interests or risks of abuse in a given case. Furthermore, if the representative action concludes with a settlement, the court or authority will scrutinise the legality and the fairness of that outcome to ensure that it takes into consideration the interests of all parties involved.

- **Consistency with existing policy provisions in the policy area**

This proposal takes into account the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (2013/396/EU)[12]. That Recommendation lays down a set of common principles for collective redress mechanisms, including representative actions for injunctive and compensatory relief, that should apply to all breaches of Union law across all policy fields. The principles in the Recommendation are self-standing and this proposal does not reproduce all procedural elements addressed by the principles. This proposal only regulates certain key aspects that are necessary for the establishment of a framework, which must be complemented by specific procedural rules on the national level. Some procedural elements from the Recommendation are not reproduced in this proposal due to its more targeted scope, which is limited to infringements that may affect the collective interests of consumers, and the pre-existing features of the representative action model in the current Injunctions Directive.

This proposal takes into account the recently adopted revision of the Consumer Protection Cooperation (CPC) Regulation.[13] While the revised CPC Regulation supports public enforcement, this proposal strengthens private enforcement. According to a long-standing Commission position, supported by the European Parliament,[14] private enforcement should be independent and complementary to public enforcement. For public enforcement, the CPC Regulation lays down the basis for the joint work of the national consumer protection authorities in tackling cross-border infringements. Its revision will make cross-border public enforcement more effective and give the relevant national authorities a uniform set of powers to work more effectively together against widespread infringements, including to adopt interim measures to avoid the risk of serious harm to the collective interests of consumers and to bring about the cessation or prohibition of infringements covered by the Regulation. It also enables the European Commission to launch and coordinate common enforcement actions to address EU-wide infringements. Importantly, the revised Regulation did not introduce a right to redress to the benefit of consumers harmed by cross-border or even EU-wide infringements. Public enforcers can only receive or seek from the trader voluntary remedial

12 OJ L 201/60, 26.7.2013.

13 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, OJ L 345, 27.12.2017.

14 European Parliament resolution of 2 February 2012 on 'Towards a Coherent European Approach to Collective Redress' (2011/2089(INI)); European Parliament recommendation of 4 April 2017 to the Council and the Commission following the inquiry into emission measurements in the automotive sector (2016/2908(RSP).

commitments to redress the harm caused to consumers by infringements covered by the Regulation, without prejudice to a consumer's right to seek redress through appropriate means.[15] Nonetheless, during the negotiations for the Regulation, the need for strong private enforcement measures complementing public enforcement was acknowledged. Specific measures related to individual and collective consumer redress are introduced by this proposal.

This proposal takes into account existing EU-level measures concerning individual redress, in particular the Directive on consumer alternative dispute resolution (ADR)[16], which ensures that EU consumers have access to quality-ensured out-of-court dispute resolution systems for both domestic and cross-border contractual disputes. Member States are also encouraged to ensure that collective ADR schemes are available. An online dispute resolution platform set up by the Commission[17] also helps consumers and traders resolve their domestic and cross-border disputes over online purchases of goods and services with the assistance of ADR entities. The 2013 ADR/ODR legislation is tailored for individual redress actions, whereas the Injunctions Directive is aimed at redress actions brought by qualified entities designated by the Member States to act in the collective interest of consumers. The 2013 Directive on consumer ADR states in its recital 27 that the Directive should be without prejudice to Member States maintaining or introducing ADR procedures dealing jointly with identical or similar disputes between a trader and several consumers and that the existence of an effective system for collective claims and easy recourse to ADR should be complementary and not be mutually exclusive procedures. Union law mechanisms to be used by individual consumers to enforce their rights are also set out in other instruments, such as Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure[18] and in Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.[19]

Together with the amendments contained in the other proposal adopted as part of the "New Deal for Consumers" package, in particular the rules strengthening penalties and introducing individual remedies for consumers harmed by unfair commercial practices, the combination of the amendments in the present proposal will enhance the compliance of traders with applicable consumer protection rules, provide consumers better redress opportunities and thus reduce consumer detriment.

- **Consistency with other Union policies**

The proposal is fully consistent and compatible with existing Union policies. It supplements the injunction and redress procedures available in sectoral instruments by introducing a specific representative action mechanism if the collective interests of consumers have been or may be harmed. The better enforcement of the Union law instruments covered by the scope of application will particularly support the strategies on the Digital Single Market, Capital Markets Union, Energy Union and Circular Economy. In line with Article 11 of the Treaty on the Functioning of the European Union, the proposal integrates environmental protection

15 Regulation (EU) 2017/2394, Recital 46 and Article 9(4)(c).

16 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes.

17 Available since 15 February 2016, based on Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes.

18 OJ L 341, 24.12.2015, p. 1–13.

19 OJ L 136, 24.5.2008, p. 3–8.

requirements, and is consistent with the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters.[20]

For example, in a Dieselgate-type scenario, victims of unfair commercial practices, such as misleading advertising by car manufacturers, will be able to obtain remedies collectively through a representative action under this proposal even if the Union regulatory framework for type approval of vehicles is not covered as such by Annex I. Such collective redress was previously not provided under Union law.

This proposal should be taken into account in other Union policies. In 2015, the Commission submitted a proposal for a European Accessibility Act requiring Member States to ensure that public bodies and private entities having a legitimate interest may take action on behalf of consumers. Once that proposal is adopted by the co-legislators, the Commission will present, as appropriate, a proposal to include the European Accessibility Act within the scope of this Directive. Where it is decided that future Union legislative acts are relevant for the protection of the collective interests of consumers this Directive should be amended in order for a reference to be placed in its Annex I. The Commission should monitor the above process and evaluate it within its first reporting exercise, which should assess the scope of this Directive in light of continuing developments in consumer markets and policy.

The proposal does not duplicate the existing sectoral rules referred to above and it does not affect rules establishing contractual and non-contractual remedies for infringements of Union law covered by the scope of application.

The proposal is also without prejudice to the existing EU private international law instruments, in particular the rules related to court jurisdiction and applicable laws.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for the proposal, as is the case for the current Injunctions Directive, is Article 114 of the TFEU to which Article 169 of the TFEU refers. The proposal aims, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by ensuring that qualified entities can seek representative actions aimed at the protection of the collective interests of consumers in case of infringements of Union law.

• Subsidiarity

The development of an effective representative action mechanism for the protection of the collective interests of consumers across the Union, which builds on the features of the existing Injunctions Directive and respects the legal traditions of the Member States, will strengthen consumer confidence in the retail internal market, including in the area of e-commerce, and encourage businesses to comply with Union law. Action by Member States alone is likely to result in further fragmentation, which in turn would contribute to unequal treatment for consumers and traders in the internal market and create diverging levels of consumer redress in the Union. Action at Union level, such as proposed, should provide all European consumers increased protection through representative actions led by qualified entities and promote

[20] Ratified by Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, OJL 124, 17.5.2005, p1.

compliance amongst businesses, thus increasing the exchange of products or services across borders.

In the area of public enforcement, widespread infringements were addressed by the revised CPC Regulation, which provides a procedural framework for cooperation between national enforcers. However, in the area of private enforcement, consumers from all Member States do not yet have access to effective redress opportunities. The significant disparities identified among Member States concerning the effectiveness the current Injunctions Directive require EU intervention, particularly in light of its cross-border implications. In addition, the existing national collective compensatory redress mechanisms vary significantly in terms of their effectiveness and modalities, and nine Member States still do not provide for any such mechanisms. Defining at Union level a common framework for representative actions aimed at injunctions and redress for the protection of the collective interests of consumers will ensure an effective and efficient treatment of infringements of Union law arising from domestic or cross-border transactions. Increasing use by traders operating within the EU of the EU-wide commercial strategies deepens the EU-wide nature of the problem given an increased risk of mass harm situations affecting consumers in several Member States at the same time.

- **Proportionality**

The proposal does not go beyond what is strictly necessary to achieve its objectives. It does not regulate all aspects of representative actions but only focuses on certain key aspects that are necessary for the establishment of a framework, which must be complemented by specific procedural rules on the national level. The proposed action would respect the legal traditions of Member States since it would not replace existing national mechanisms but instead provide for a specific representative action mechanism, thereby ensuring that consumers in all Member States have at their disposal at least one mechanism with the same main procedural modalities.

- **Choice of the instrument**

Similarly to the Injunctions Directive, the only suitable instrument for addressing procedural law with the above objectives is a Directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The 2008 Report[21] on the application of the Injunctions Directive concluded that the injunctions procedure had been used with some success in national infringements but was less effective at stopping cross-border infringements, mainly because qualified entities lacked resources in terms of the funds and expertise required to deal with the different procedures in the various Member States. The 2012 Report[22] concluded that, despite their limitations, injunctions were useful in protecting EU consumers' interests and had considerable potential if the shortcomings identified could be overcome, in particular the high costs and length of the

[21] COM(2008) 756 final, Report from the Commission concerning the application of Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interest.

[22] COM(2012) 635 final, Report from the Commission to the European Parliament and the Council concerning the application of Directive 2009/22/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interest.

proceedings, the complexity of the procedures, the relatively limited effects of the rulings on injunctions and the difficulty of enforcing them. These difficulties applied even more to injunctions with a cross-border dimension.

The comprehensive evaluation of the Injunctions Directive as part of the 2017 Commission Fitness Check of EU consumer and marketing law[23] assessed its effectiveness, efficiency, coherence, relevance and EU added value, as follows.

- **Effectiveness**

The Fitness Check confirmed that the Injunctions Directive forms a necessary part of the bundle of EU instruments dealing with the enforcement of consumer law. It is still fit for purpose as an enforcement tool to stop infringements by traders which harm the collective interests of consumers, particularly in the light of digitalisation and globalisation of economies, which increase the risk of mass harm across the EU. However, the injunction procedure remains underused; its effectiveness is hampered by shortcomings such as its costs and complexity, while the results obtained for the consumers harmed may be limited. The evaluation showed that the Directive should be made more effective, for example, by further harmonising the injunction procedure and expanding its scope to more EU instruments relevant for the protection of the collective interests of consumers. Any changes to be made should facilitate access to justice, reduce costs for qualified entities that protect the collective interests of consumers and increase the deterrent effect of injunctions. The Injunctions Directive should also be amended to have a more useful impact on the consumers harmed by an infringement, even if currently Member States must already make available, where appropriate, measures aimed at eliminating the continuing effects of the infringements to which it applies. It is not always clear whether the Directive also covers consumer redress as a measure aimed at eliminating the continuing effects of the infringement. This uncertainty is widely considered to be a key reason for its insufficient effectiveness. Consumers are not able to rely on the injunction order to obtain redress. Instead, consumers must sue for redress on the same grounds, proving the infringement again.

The Fitness Check demonstrated that European consumers face the same obstacles when seeking individual redress now as they did 10 years ago; these include the excessive length of the proceedings, the perceived low likelihood of obtaining redress, previous experience of complaining unsuccessfully, uncertainty about their rights, not knowing where or how to complain, and psychological reluctance. There is no obligation to publish the result of the case, so consumers are not made aware of the breach and infringing traders are not deterred by the 'naming and shaming' effect of such publicity. Moreover, injunctions are not often used for cross-border infringements and qualified entities from different Member States do not cooperate enough with each other on exchanging best practices or developing common strategies to challenge widespread infringements.

- **Efficiency**

The Injunctions Directive does not impose any specific obligations on compliant traders, since its aim is to stop infringements of substantive EU law by traders. Likewise, the action does not generate any costs for individual consumers, since they are not parties to the proceedings initiated by the qualified entity. On the contrary, in cases where the infringement has widespread effects and individual consumers do not take legal action for various reasons such as lack of awareness of their rights, lack of finance or psychological reluctance, the collective

[23] SWD(2017) 209 final.

action brought by an entity to stop the infringement, and to prohibit it in future, benefits all consumers affected. The Fitness Check concluded that complaint traders incurred no costs from the Directive other than those linked to the substantive rules. The only additional costs would come from any frivolous claims brought. However, the Fitness Check found no evidence of qualified entities bringing frivolous claims in the EU under the Directive.

- **Coherence**

The Fitness Check confirmed that the scope of the Injunctions Directive should be extended to cover more EU legislation relevant to consumer protection, at least by aligning it with the scope of the CPC Regulation, which would help make the Directive more consistent with other injunction procedures prescribed at EU level.

- **Relevance**

The data collected and stakeholder consultations confirm the continued relevance of the Injunctions Directive. Its objectives and content are consistent with market developments and current needs and trends in consumer behaviour. The evaluation showed that the consumer protection and internal market integration objectives pursued continue to be highly relevant.

- **EU added value**

The Fitness Check found that the level of consumer protection would be lower in a number of Member States had the EU not introduced the duty to protect the collective interests of consumers through a collective enforcement mechanism in the form of the injunction procedure. Stakeholders have confirmed the added value of the Injunctions Directive in the Member States, both where injunction procedures had been introduced for the first time and where the existing mechanisms had been improved after the Directive was adopted. Although a few Member States had already established injunction procedures in relation to specific kinds of infringements, such as unfair commercial practices law or unfair contract terms, their legislation, at the time, did not extend to all the areas of consumer law that are now listed in Annex I to the Directive.

In addition, the Collective Redress Report concluded that the 2013 Commission Recommendation was a benchmark for the principles of a European model of collective redress. However, it also found that there had been limited follow-up to the Recommendation in legislative terms.[24] So the potential for facilitating access to justice is still far from being fully exploited. While the Recommendation has a horizontal dimension, given the different areas in which mass harm may occur, the absence of an EU-wide collective redress mechanism is of particular practical relevance to consumer protection, as shown by concrete cases, including the diesel emissions case. The European Commission announced as a follow-up to this assessment that it would focus on strengthening the enforcement and redress aspects of the Injunctions Directive.

- **Stakeholder consultations**

The proposed Directive builds on the extensive consultation work carried out for the Fitness Check in 2016-2017, on the 2017 call for evidence on collective redress, and additional

[24] The availability of collective redress mechanisms as well as the implementation of safeguards against the potential abuse of such mechanisms is still very unevenly distributed across the EU. The impact of the Recommendation is visible in the two Member States where new legislation was adopted after its adoption (BE and LT) as well as in SI where new legislation is pending, and to a certain extent in the Member States that changed their legislation after 2013 (FR and UK).

targeted consultations of relevant networks of Member State authorities, legal practitioners, consumer organisations and business organisations which was carried out in the context of the Impact Assessment for this initiative.

In the targeted consultations, most stakeholders, with the exception of business organisations, showed overall support for the amendments proposed to boost the effectiveness of the actions for the protection of the collective interests of consumers. In particular, Member State authorities and consumer organisations were supportive of additional redress possibilities within the Injunctions Directive. There were mixed views on the potential role of business organisations as qualified entities. A majority of stakeholders indicated that the proposed amendments would help to deter non-compliance with EU law and to reduce consumer detriment in mass harm situations. In feedback to the Inception Impact Assessment, responding business representatives and public authorities expressed concerns about the introduction of redress opportunities at EU level, while consumer organisations, academic/research institutions and citizens expressed overall support. A majority of respondents agreed that any action at EU level should respect the legal traditions of the Member States and provide safeguards against possible risks of abuse.

- **Collection and use of expertise**

Between 2007 and 2017, the Commission and external contractors carried out several surveys, consultations and studies on the application of the Injunctions Directive, on the procedural protection of consumers under EU consumer law and on the state of collective redress in the EU, most recently while implementing the 2013 Recommendation.

The results have been taken into account in this legislative proposal with a view to boosting the protection of the collective interests of consumers and improving redress opportunities.

- **Impact assessment**

An impact assessment was carried out for this proposal[25]. The Regulatory Scrutiny Board (RSB) first issued a negative opinion with comprehensive comments on 12 January 2018. On 9 February 2018, the RSB issued a positive opinion[26] with further comments on the resubmitted impact assessment, following a significant revision of the initial draft. Annex I to the Impact Assessment explains how the RSB comments were addressed. In particular, the first comment of the RSB considered that the Impact Assessment did not sufficiently demonstrate the need for legislative action on EU level on collective redress. Several sections were revised to better demonstrate the need for action in light of several mass harm situations where European consumers were unable to receive redress. The evidence collected by the Commission over the course of 15 years, including for the preparation of the 2008 Green Paper on consumer collective redress and the 2008 White Paper on antitrust damages actions, has demonstrated the lack of effective protection in the absence of collective redress mechanisms. The findings of the 2018 Commission Report on the 2013 Recommendation, particularly its limited impact on improving the situation in many Member States, and the 2017 European Parliament Recommendation following the inquiry into emission measurements in the automotive sector were further highlighted. Additional information was added about the number of Member State authorities (21) that supported the addition of mechanisms for redress to the Injunctions Directive in the targeted consultations and the descriptions of the degree of legal change required in Member States were further developed.

[25] SWD(2018) 96.
[26] SEC(2018) 185.

For improving compliance, the Impact Assessment considered three options besides the baseline scenario: (1) the option of only increasing deterrence and the proportionality of public enforcement through stronger rules on penalties and a more effective injunctions procedure; (2) the option of adding to these measures the consumer right to individual remedies and (3) the option of adding further measures for collective consumer redress. The preferred option was option 3, combining all the measures. This proposal addresses option 3 concerning a more effective injunctions procedure with the addition of collective consumer redress.

Option 1 included a set of amendments to the injunction procedure that are addressed by this proposal. The Impact Assessment concluded that there are no viable alternatives to revising the Directive, as this would tackle common problems regarding the cost, length and complexity of the current procedure that were raised in all the relevant consultations. The preferred option 3 maintains all of the amendments under option 1 and additionally includes stronger mechanisms for collective redress, which is addressed by this proposal. The Impact Assessment concluded that the preferred option 3 would provide stronger incentives for traders to comply with EU consumer law than option 1. For example, the deterrent effect of remedies for victims of unfair commercial practices will be stronger with option 3 since, as the 2017 Consumer Conditions Scoreboard[27] confirmed consumers would be more likely to use remedies under the Unfair Commercial Practices Directive if they were also given access to a practical collective mechanism for a qualified entity to handle their case on their behalf. The same reasoning applies to the general objectives of protecting the interests of consumers and ensuring a high level of consumer protection. They would be best met by option 3, since this option would have the strongest impact in terms of improving compliance with EU consumer law. Stronger mechanisms for collective redress would ensure a higher level of consumer protection in mass harm situations and reduce consumer detriment. As concerns the general objective of promoting the smooth functioning of the internal market, all three options would contribute to fairer competition by not creating an unfair advantage for non-compliant traders versus compliant ones. However, the best overall results for compliant traders would be achieved by option 3, since the introduction of stronger mechanisms for collective redress would further contribute to fair competition to the benefit of compliant traders.

As concerns efficiency, all options could lead to initial familiarisation costs, but also to savings for compliant traders. Data on costs and savings were gathered via the consultations for the Impact Assessment but relatively few respondents were able to provide for quantitative estimates. For option 1, most business associations considered that the revision of the injunctions procedure could increase the insurance premiums for coverage against claims in mass harm situations and could lead to increased use of the Directive. Option 3 includes the costs of options 1 and costs related to collective redress. National authorities were divided in their assessment of the implementation and running costs for courts and administrative authorities, but did not consider such costs significant. Qualified entities held mixed views with similar numbers predicting increased or decreased costs. For compliant traders, the costs of introducing option 3 would be insignificant and lowered for traders engaging in cross-border trade due to further harmonisation among the national procedures.

[27] The 2017 Scoreboard found that the main reasons for consumers not to act in case of problems are: excessive length of the procedures (for 32.5% of those who didn't take action); perceived unlikelihood of obtaining redress (19.6%); previous experience of complaining unsuccessfully (16.3%); uncertainty about consumer rights (15.5%); not knowing where or how to complain (15.1%); psychological reluctance (13.3%).

Given that option 3 is the broadest, it also entails more costs than the other options. On the other hand, under all options there would be savings for traders when trading cross-border due to increased harmonisation of the rules. In particular, there would be increased clarity on the possible consequences for traders in case of non-compliance, which would lead to lower and more accurate risk-assessment costs. These savings would be bigger under option 3, as it has a wider scope than the other options. Costs for public enforcement authorities and courts under all options would include a possible increase in the number of enforcement and court cases. However, these costs are likely to be off-set by an overall reduction of breaches of EU consumer law and by the streamlining effects and procedural efficiencies introduced by all options. Such savings would be higher under option 3 due to its broader scope and greater deterrent effect.

- **Regulatory fitness and simplification**

As this is a revision of an existing piece of legislation, it falls under the Commission's Regulatory Fitness and Performance Programme (REFIT). The Commission has thus looked at opportunities to simplify and reduce burdens. The main objective of this proposal is the strengthening the representative actions available for the protection of the collective interests of consumers. Considering that the Union law covered by this proposal applies to all traders, including micro-enterprises, no exemption is being made for micro-enterprises under this proposal.

Given the lack of data, the simplification elements have not been quantified. However, the analysis showed that in light of the built-in safeguards and the scrutiny of the qualified entities enabled to bring representative actions the proposed legislation is not expected to increase significantly costs for compliant traders. Furthermore, in case of infringements, traders would also benefit from enhanced legal certainty and the ability to resolve questions of fact and law common to the consumers concerned by an infringement through a single representative action. The costs for traders engaging in cross-border trade would be lowered due to further harmonisation among the national procedures protecting the collective interests of consumers. Finally, strengthening representative actions has the potential of creating a level playing field for the traders.

- **Fundamental rights**

The proposed Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union and it is to be interpreted and applied in accordance with those rights and principles.

In particular the proposal contributes to ensuring a high level of consumer protection (Article 38 of the Charter).

The proposal also facilitates the exercise by consumers of their right to an effective remedy enshrined in Article 47 of the Charter, as the proposed representative action model contributes to safeguarding and enforcing their interests. The representative action model may, in particular, obviate those situations where individual consumers may be deterred from seeking redress in court, due to, for example, high litigation costs, especially for low value claims. At the same time, the proposed model does not prevent nor hamper access to justice by individual consumers, in line with the requirements of Article 47. In addition, the proposal provides an obligation upon Member States to ensure that the submission of a representative action 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.

The proposal strikes a balance between the collective interests of consumers and the rights of the traders within the representative actions, taking full account of the requirements related to the freedom to conduct business (Article 16 of the Charter).

4. BUDGETARY IMPLICATIONS

The proposed Directive establishes that the Member States and the Commission shall support and facilitate the cooperation of qualified entities and the exchange and dissemination of their best practices and experiences as regards the resolution of cross-border and domestic infringements. This will trigger an additional workload for the Commission, estimated to require one full-time official. These resources will be obtained through the redistribution and refocusing of the existing personnel.

Additional costs for capacity-building of qualified entities and coordination activities can be covered by the Rights, Equality and Citizenship Programme 2014-2020 and similar financing possibilities may also be included under the subsequent programme under the next Multiannual Financial Framework. The details are set out in the financial statement attached to this proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposed Directive provides for the Commission to carry out periodic reviews of the impact of the Directive. The Commission will monitor how the representative actions set out in the Directive are used by the qualified entities across the Union.

- **Explanatory documents**

The effective transposition of the proposed Directive will require specific and targeted amendments to the relevant national rules. The proposed Directive establishes certain key aspects, which must be complemented by several procedural rules on the national level. In order for the Commission to monitor the correct transposition, it is thus not sufficient for Member States to transmit the text of the implementing provisions, as an overall assessment of the resulting regime under national law may be necessary. For these reasons, Member States should also transmit to the Commission explanatory documents showing which existing or new provisions under national law are meant to implement the individual measures set out in the proposed Directive.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 specifies the subject matter of the Directive. The purpose of the Directive (like its predecessor Directive 2009/22/EC) is to ensure that qualified entities can seek representative actions aimed at the protection of the collective interests of consumers. It makes clear that Member States can provide for other procedural means aimed at the protection of the collective interests of consumers at national level.

Article 2 specifies the scope of the Directive referring to the Union law listed in Annex I which contains specific provisions regulating the relationship between a trader and a consumer and therefore relevant for the protection of the collective interests of consumers. Thus, the scope covers all infringements by traders of Union law listed in Annex I that harm or may harm the collective interests of consumers in a variety of sectors such as financial services, energy, telecommunications, health and the environment. In particular, the scope

includes the Union law covered by the current Injunctions Directive and it is aligned with the scope of the revised CPC Regulation (EU) 2017/2394. This Regulation strengthens cross-border public enforcement and enables the Commission to launch and coordinate common enforcement actions to address EU-wide infringements, without however introducing a right to redress for the benefit of consumers harmed by such cross-border infringements. Thus, the specific measures related to individual and collective consumer redress introduced by this Directive are complementary to the revised Regulation with the aim to increase its effectiveness. To ensure that the scope of the Directive remains up to date, the Commission will pay special attention to the possible need to include provisions amending Annex I in any future new Union law which regulates the relationship between a trader and a consumer. The issue of the scope of application of the Directive will also be given particular attention when the Commission conducts the evaluation of this Directive.

Article 3 contains the relevant definitions for the purposes of the Directive, namely the definition of "consumer", "trader", "collective interests of the consumers", "representative action", "practice" and "final decision".

Article 4 sets out the criteria that qualified entities must fulfil in order to be entitled to bring representative actions under the Directive as well as the obligations of Member States related to the designation of qualified entities. Qualified entities will have to meet certain criteria, in particular they must have a non-profit character and have a legitimate interest in ensuring the provisions of relevant Union law are complied with. Since in particular consumer organisations and independent public bodies will be eligible for the status of qualified entity this provision also provides for a possibility for Member States to decide on the type of measures that may be sought under the Directive by a specific type of qualified entities or by a specific qualified entity.

Article 5 sets out the measures that may be sought under the Directive within the representative actions. These measures may consist in an injunction order as an interim measure, an injunction order establishing an infringement and measures aimed at the elimination of the continuing effects of the infringements, including redress orders. Qualified entities will be allowed to seek the above measures within a single representative action.

Article 6 sets out procedural modalities for representative actions seeking a redress order available under the Directive as a measure eliminating the continuing effects of the infringements. As a rule the redress order must be available. Exceptionally, in complex cases, Member States may empower the courts and administrative authorities to issue, instead of a redress order, a declaratory decision on the trader's liability towards consumers harmed by an infringement. However in two types of cases the possibility to issue a declaratory decision should not be available, but the court or administrative authority should issue a redress order. This is firstly the case, where the consumers concerned by the same practice are identifiable and suffered comparable harm in relation to a period of time or a purchase, such as in the case of long-term consumer contracts. The second case is so-called 'low-value cases' where consumers have suffered such a small amount of loss that it would be disproportionate to distribute the redress back to the consumers. In these two cases, specific procedural modalities are also needed. In particular, in the second type of cases, Member States should not require the mandate of consumers concerned within the representative action and the funds awarded as redress should be directed to a public purpose serving the collective interests of consumers, such as awareness campaigns.

Article 7 requires that qualified entities should be fully transparent about the source of funding of their activity in general and specifically 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 the risk of abusive litigation for example between competitors, as well as to assess whether the funding third party has sufficient resources in order to meet its financial commitments to the qualified entity should the action fail.

Article 8 establishes the rules on collective settlements under the Directive. The Member States have a possibility to set out the procedure within which the court or administrative authority could approve a collective settlement reached by a qualified entity and the alleged author of the infringement before the representative action regarding the same practice of the same trader started in front of the court or administrative authority of the same Member State. In case of an ongoing representative action, the court or administrative authority overseeing the action should always be able to invite parties to settle on redress. In Member States that will choose to allow, in complex cases which do not fall within the two types of cases specifically provided for in Article 6(3), for declaratory decisions regarding the liability of the infringing trader towards consumers concerned, the court or administrative authority issuing such a declaratory decision will always have the opportunity to request the parties of the representative action to reach a settlement on redress. Collective settlements reached in all of the above circumstances will be subject to court or administrative authority scrutiny to ensure their legality and fairness. Consumers concerned by an approved collective settlement will be always given a possibility to accept or reject redress offered therein.

Article 9 sets out the rules requiring the infringing trader to adequately inform the consumers concerned about the final injunction orders, final decisions on measures eliminating continuing effects of the infringements, including final redress orders and, if applicable, declaratory decisions regarding liability of the trader towards consumers, as well as final decisions approving collective settlements available under this Directive. This provision ensures consumers' awareness about the breach of law and their redress opportunities.

Article 10 establishes the effects of final decisions establishing the infringement of Union law covered by the Directive in domestic and cross-border redress actions. According to this provision, final decisions taken by a court or an administrative authority within public enforcement procedures, final injunctions orders establishing a breach of Union law or final declaratory decisions on trader's liability towards consumers concerned by an infringement issued within the representative action under this Directive will have a probative effect in subsequent actions for redress. Such actions for redress could be taken individually by consumers, within a representative action under this Directive or, if available, within other collective redress mechanism under national rules. If a decision establishing an infringement has become final, it should be irrefutable evidence in any subsequent redress action in the same Member State. This will avoid legal uncertainty and unnecessary costs for all parties involved, including the judiciary. For the same reasons, in cross-border cases, final decisions taken by the court or an administrative authority within the public enforcement procedures and final injunctions orders establishing a breach of Union law under this Directive will provide for a rebuttable presumption that an infringement of Union law has occurred. Such effect is not foreseen for declaratory decisions on trader's liability towards consumers concerned by an infringement, since national rules regarding liability may significantly vary across the EU.

Article 11 provides for the suspension effects of a representative action in relation to limitation periods for redress actions. It complements the provisions on the effects of final injunction orders establishing an infringement issued within the representative actions under the Directive and gives consumers harmed by an infringement a reasonable opportunity to bring redress action either within the representative actions brought on their behalf under this Directive or in individual actions.

Article 12 ensures procedural expediency throughout the proceedings. It makes it mandatory for the Member States to ensure that all representative actions are treated with due expediency and that representative actions which seek an interim injunction order are treated by way of an accelerated procedure. It ensures that any further harm that may be caused by a trader's practice subject to the representative action may be prevented as quickly as possible.

Article 13 sets out the possibility for the court or administrative authority overseeing the representative action, at the request of the qualified entity that brought the representative action, to order the defending trader to provide evidence relevant for the case, which lies in its control. Establishing an infringement, causality between the infringement and the harm of consumers, and quantifying actual damages of consumers concerned, require a factual and economic analysis. Some of the relevant evidence a qualified entity will need to prove its case will be in the possession of the defendant and is not accessible to the qualified entity. It may also be the case of the information necessary to adequately inform the consumers concerned about the ongoing representative action. This provision will ensure that in all Member States there is a minimum level of effective access to the information needed by qualified entities to prove their claim and adequately inform consumers concerned about the ongoing representative action. At the same time, the Directive avoids overly broad and costly disclosure obligations that could create undue burdens for the defendant parties and risks of abuses. Such disclosure will be always subject to strict judicial or administrative control as to its necessity, scope and proportionality.

Article 14 ensures effective, dissuasive and proportionate penalties in case the defendant trader does not comply with a final decision issued by a court or administrative authority within a representative action. These penalties will be available in the form of fines in all Member States. It provides for an important incentive for defendant traders to quickly comply with final injunctions and redress orders, as well as approved settlements.

Article 15 sets out the rules on the assistance for qualified entities. It ensures that qualified entities are not prevented from bringing representative actions under this Directive because of the costs involved with the procedures. Costs of proceedings should not create excessive obstacles for qualified entities in exercising their right to act in a public interest of protecting the collective interests of consumers. The provision also mandates the Member States and the Commission to support and facilitate the cooperation between qualified entities and their exchange of experience in order to increase the use of representative actions against infringements with cross-border implications.

Article 16 sets out the rules relevant for cross-border representative actions. It ensures 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. Moreover, it enables qualified entities from different Member States to act jointly within a single representative action in front of a single forum competent under relevant Union and national rules.

Articles 17 to 22 set out the provisions regarding the repeal of Directive 2009/22/EC, evaluation and reporting by the Commission, transposition, transitional provisions, and the entry into force, temporal application and addressees of the proposed Directive.

2018/0089 (COD)

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[28],

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

(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.

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28 OJ C […], […], p. […].

29 OJ L 110/30, 1.5.2009.

(4) It is important to ensure the necessary balance between access to justice and procedural safeguards against abusive litigation which could unjustifiably hinder the ability of businesses to operate in the Single Market. To prevent the misuse of representative actions, elements such as punitive damages and the absence of limitations as regards the entitlement to bring an action on behalf of the harmed consumers should be avoided and clear rules on various procedural aspects, such as the designation of qualified entities, the origin of their funds and nature of the information required to support the representative action, should be laid down. This Directive should not affect national rules concerning the allocation of procedural costs.

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

(6) This Directive should cover a variety of areas such as data protection, financial services, travel and tourism, energy, telecommunications and environment. 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.

(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[30] and for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations.[31] It is therefore appropriate to provide that, one year after the entry into force of this Directive, the Commission assesses whether the Union rules in the area of air and rail passengers' rights offer an adequate level of protection for consumers, comparable to that provided for in this Directive, and draws any necessary conclusions as regards the scope of this Directive.

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

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

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30 COM(2013) 130 final.

31 COM(2017) 548 final.

(10) As only qualified entities can bring the representative actions, to ensure that the collective interests of consumers are adequately represented the qualified entities should comply with the criteria established by this Directive. In particular, they would need to be properly constituted according to the law of a Member State, which could include for example requirements regarding the number of members, the degree of permanence, or transparency requirements on relevant aspects of their structure such as their constitutive statutes, management structure, objectives and working methods. They should also be not for profit and have a legitimate interest in ensuring compliance with the relevant Union law. These criteria should apply to both qualified entities designated in advance and to ad hoc qualified entities that are constituted for the purpose of a specific action.

(11) Independent public bodies and consumer organisations in particular should play an active role in ensuring compliance with relevant provisions of Union law and are all well placed to act as qualified entities. Since these entities have access to different sources of information regarding traders' practices towards consumers and hold different priorities for their activities, Member States should be free to decide on the types of measures that may be sought by each of these qualified entities in representative actions.

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

(13) To increase the procedural effectiveness of representative actions, qualified entities should have the possibility to seek different measures within a single representative action or within separate representative actions. These measures should include interim measures for stopping an ongoing practice or prohibiting a practice in case the practice has not been carried out but there is a risk that it would cause serious or irreversible harm to consumers, measures establishing that a given practice constitutes an infringement of law and, if necessary, stopping or prohibiting the practice for the future, as well as measures eliminating the continuing effects of the infringement, including redress. If sought within a single action, qualified entities should be able to seek all relevant measures at the moment of bringing the action or first seek relevant injunctions order and subsequently and if appropriate redress order.

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

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

adequate opportunities to benefit from 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.

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

(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.

(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.[32]

(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

[32] OJ L 345, 27.12.2017.

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 representative action.

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

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

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

(31) Ensuring that consumers are informed about a representative action is crucial for its success. Consumers should be informed of ongoing representative action, the fact that a trader's practice has been considered as a breach of law, their rights following the establishment of an infringement and any subsequent steps to be taken by consumers concerned, particularly for obtaining redress. The reputational risks associated with spreading information about the infringement are also important for deterring traders infringing consumer rights.

(32) To be effective, the information should be adequate and proportional to the circumstances of the case. The infringing trader should adequately inform all consumers concerned of a final injunction and redress orders issued within the representative action as well as of a settlement approved by a court or administrative authority. Such information may be provided for instance on the trader's website, social media, online market places, or in popular newspapers, including those distributed exclusively by electronic means of communication. If possible, consumers should be informed individually through electronic or paper letters. This information should be provided in accessible formats for persons with disabilities upon request.

(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.

(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.

(36) Representative actions for injunction orders should be treated with due procedural expediency. Injunction orders with interim effect should always be treated by way of an accelerated procedure in order to prevent any or further harm caused by the infringement.

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

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

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

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

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

(45) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[33], 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,

[33] OJ C 369, 17.12.2011, p. 14.

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 representative actions aimed at the protection of the collective interests of consumers, while ensuring appropriate safeguards to avoid abusive litigation.

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

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 that harm or may harm the collective interests of consumers. It shall apply to domestic and cross-border infringements, including where those infringements have ceased before the representative action has started or before the representative action has been concluded.

2. This Directive shall not affect rules establishing contractual and non-contractual remedies available to consumers for such infringements under Union or national law.

3. This Directive is without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction and 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 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 name or on their behalf, for purposes relating to their trade, business, craft or profession;

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

(5) ‘practice’ means any act or omission by a trader;

(6) ‘final decision’ means a decision by a Member State's court that cannot or can no longer be appealed or a decision by an administrative authority that can no longer be subject to judicial review.

Chapter 2

Representative actions

Article 4

Qualified entities

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

   Member States 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 are eligible for the status of qualified entity. Member States may designate as qualified entities consumer organisations that represent members from more than one Member State.

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.

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 5

Representative actions for the protection of the collective interests of consumers

1. Member States shall ensure that representative actions can be brought before national courts or administrative authorities 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.

2. Member States shall ensure that qualified entities are entitled to bring representative actions seeking 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.

   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 ensure that qualified entities are able to seek the measures eliminating the continuing effects of the infringement together with measures referred to in paragraph 2 within a single representative action.

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

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

3. Member States shall ensure that the court or administrative authority that issued the final declaratory decision referred to in Article 6(2) is empowered to request the

parties to the representative action to reach within a reasonable set time limit a settlement regarding the redress to be provided to consumers on the basis of this final decision.

4. The settlements referred to in paragraphs 1, 2 and 3 shall be subject to the scrutiny of the court or administrative authority. The court or administrative authority shall assess the legality and fairness of the settlement, taking into consideration the rights and interests of all parties, including the consumers concerned.

5. If the settlement referred to in paragraph 2 is not reached within the set time-limits or the settlement reached is not approved, the court or administrative authority shall continue the representative action.

6. Individual consumers concerned shall be given the possibility to accept or to refuse to be bound by settlements referred to in paragraphs 1, 2 and 3. The redress obtained through an approved settlement in accordance with paragraph 4 shall be without prejudice to any additional rights to redress that the consumers concerned may have under Union or national law.

Article 9

Information on representative actions

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

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

Article 10

Effects of final decisions

1. Member States shall ensure that an infringement harming collective interests of consumers established in a final decision of an administrative authority or a court, including a final injunction order referred to in Article 5(2)(b), is deemed as irrefutably establishing the existence of that infringement for the purposes of any other actions seeking redress before their national courts against the same trader for the same infringement.

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 period

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.

Article 12

Procedural expediency

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

Article 13

Evidence

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

Article 14

Penalties

1. Member States shall lay down the rules on penalties applicable to non-compliance with the final decisions issued within the representative action and shall take all necessary measures to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall ensure that penalties may take 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 to ensure that procedural costs related to representative actions do not constitute financial obstacles for qualified entities to effectively exercise the right to seek the measures referred to in Articles 5 and 6, such as limiting applicable court or administrative fees, granting them access

to legal aid where necessary, or by providing them with public funding for this purpose.

2. Member States shall take the necessary measures to ensure that in cases where the qualified entities are required to inform consumers concerned about the ongoing representative action the related cost may be recovered from the trader if the action is successful.

3. Member States and the Commission shall support and facilitate the cooperation of qualified entities and the exchange and dissemination of their best practices and experiences as regards the resolution of cross-border and domestic infringements.

Article 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.

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 of representative actions brought pursuant to this Directive before administrative and judicial authorities;

   (b) the type of qualified entity bringing the actions;

   (c) the type of the infringement tackled within the representative actions, the parties to the representative actions and the economic sector concerned by the representative actions;

   (d) the length of the proceedings from initiating an action until the adoption of a final injunctions orders referred to in Article 5, redress orders or declaratory decisions referred to in Article 6 or final approval of the settlement referred to in Article 8;

   (e) the outcomes of the representative actions;

   (f) the number of qualified entities participating in cooperation and exchange of best practices mechanism referred to in Article 15(3).

Article 19

Transposition

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

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

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

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

Article 20

Transitional provisions

1. Member States shall apply the laws, regulations and administrative provisions transposing this Directive to infringements that started after [*date of application of this Directive*].

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

Article 21

Entry into force

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

Article 22

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned in the ABM/ABB structure

1.3. Nature of the proposal/initiative

1.4. Objective(s)

1.5. Grounds for the proposal/initiative

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2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

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3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

3.2.2. Estimated impact on operational appropriations

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3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

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 on injunctions for the protection of consumers' interests

1.2. Policy area(s) concerned in the ABM/ABB structure[34]

Title 33 – Justice and Consumers - Chapter 33 02 01 - Rights, Equality and Citizenship (REC) Programme

Scope of other policy areas concerned - See Annex I of proposal

1.3. Nature of the proposal/initiative

☐ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action[35]**

X The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

Fairer and deeper internal market; digital single market

DG JUST - Rights, Equality and Citizenship (REC) programme, Specific objective No 9 related to consumer policy:

– To enable individuals in their capacity as consumers in the internal market to enforce their rights deriving from Union law.

Specific objective of proposal:

– With improved representative actions, the objective is to reduce the number of infringements of Union law affecting the collective interests of consumers and therefore improve compliance and eliminate consumer detriment.

Specific objective of proposed budgeted action:

– To continue and expand the education and cooperation measures to a larger number of qualified entities across the EU in order to increase the use of representative actions for infringements with cross-border implications.

[34] ABM: activity-based management; ABB: activity-based budgeting.

[35] As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

ABM/ABB activity(ies) concerned
Analytical activities (collection of data and statistics)
Mutual learning and cooperation (events, electronic exchange platform, remote communication means)

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

On consumers: higher level of consumer protection and reduced consumer detriment as there will be strenghtened mechanisms for collective redress in mass harm situations and therefore stronger incentives for traders to comply with EU consumer law.

On qualified entities: New measures and clearer rules for qualified entities that are enabled to bring representative actions, particularly in cross-border cases.

On traders: Traders will benefit from a more level playing field and an increase in fair competition.

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

Article 18 (Monitoring and evaluation) of this proposal requires the Member States to provide the statistical information regarding the following indicators:

- the number and types of representative actions brought pursuant to this Directive before administrative and judicial authorities;

- the type of qualified entity bringing the action;

- the type of the infringement tackled within the representative actions, the parties to the representative actions and the economic sector concerned by the representative actions;

- the length of the proceedings from initiating an action until the adoption of 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 of this Directive

- the final outcomes of the representative actions (e.g. settlements, redress orders)

- the number of qualified entities participating in cooperation and exchange of best practices mechanism referred to in Article 15(3) of this Directive .

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

The proposal seeks to improve the effectiveness of the injunction procedure and to introduce measures for the elimination of the consequences of violations of consumer rights. With improved representative actions, the objective is to reduce the number of

infringements of Union law affecting the collective interests of consumers and therefore improve compliance and eliminate consumer detriment.

1.5.2. Added value of EU involvement

Consumers do not yet have access to effective redress opportunities in all Member States. The significant disparities identified among Member States concerning the effectiveness the current Injunction Directive require EU intervention, particularly in light of its cross-border implications. Action by Member States alone is likely to result in further fragmentation, which in turn would maintain unequal treatment of consumers and traders in the internal market, diverging levels of consumer redress in the Union and ulitmatly weaken the Single Market for consumers.

1.5.3. Lessons learned from similar experiences in the past

The 2008 Commission Report on the application of the Injunctions Directive concluded that the injunctions procedure was used with some success in national infringements but less so in cross-border infringements, mainly because of the lack of resources of qualified entities to deal with the different procedures in the various Member States. The 2012 Commission Report concluded that the injunctions procedure hadconsiderable potential if the shortcomings could be overcome, in particular the high costs linked to the proceedings, the length and complexity of the procedures, the relatively limited effects on consumers of the rulings on injunctions and the difficulty of enforcing them. The comprehensive evaluation of the Injunctions Directive within the 2017 Commission Fitness Check of Union consumer and marketing law identified many of the same obstacles, in particular the lack of sufficient redress for consumers.

1.5.4. Compatibility and possible synergy with other appropriate instruments

The proposal is fully consistent and compatible with existing Union policies. It supplements the injunction and redress procedures available in sectoral instruments by introducing a specific representative action mechanism if the collective interests of consumers have been or may be harmed. The better enforcement of the Union law instruments covered by the scope will particularly support the strategies on the Digital Single Market, Capital Markets Union, Energy Union and Circular Economy.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

- ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- ☐ Financial impact from YYYY to YYYY

X Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.7. Management mode(s) planned[36]

X **Direct management** by the Commission

- X by its departments, including by its staff in the Union delegations;
- ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

- ☐ third countries or the bodies they have designated;
- ☐ international organisations and their agencies (to be specified);
- ☐the EIB and the European Investment Fund;
- ☐ bodies referred to in Articles 208 and 209 of the Financial Regulation;
- ☐ public law bodies;
- ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

Both the Member States and the European Commission must support and facilitate the cooperation and exchange of best practices between the qualified entities (Article 15(3) of the proposal).

[36] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Article 18 (Monitoring and evaluation) requires the Commission to carry out an evaluation no sooner than 5 years after the date of application. The Commission will establish a detailed programme for monitoring the outputs, results and impacts of this Directive, the indicators, the collection frequency. The role of the Member States in this exercise will consist in particular in providing relevant statistical information as foreseen in Article 18. The examples of indicators listed in section 1.4.4. of this financial statement will be used to support the evaluation. As regards monitoring of any financial expenditure, the provisions of Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 apply.

2.2. Management and control system

2.2.1. Risk(s) identified

No risks identified

2.2.2. Information concerning the internal control system set up

N/A

2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error

N/A

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

In addition to the application of the Financial Regulation to prevent fraud and irregularities, quality control and verification of the submitted data will be carried out in order to address any gaps or irregularities.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number 3. Security and citizenship	Diff./Non-diff.[37]	from EFTA countries[38]	from candidate countries[39]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	33 02 01	Diff.	YES	NO	NO	NO

- New budget lines requested - N/A

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading……]	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation

[37] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[38] EFTA: European Free Trade Association.

[39] Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	3	Security and citizenship

DG JUST			Year **2019**	Year **2020**	Year **2021**	Year **2022**	Year **2023**	Year **2024**	**TOTAL**
• Operational appropriations									
Number of budget line 33 02 01	Commitments	(1)	0.700						**0.700**
	Payments	(2)	0.560						**0.560**
Number of budget line	Commitments	(1a)							
	Payments	(2a)							
Appropriations of an administrative nature financed from the envelope of specific programmes[40]									
Number of budget line 33.01 04 01		(3)	0.125	0.125					**0.250**
TOTAL appropriations for DG JUST (under the Rights, Equality and Citizenship Programme)	Commitments	=1+1a +3	0.825	0.125					**0.950**
	Payments	=2+2a +3	**0.685**	**0.125**					**0.810**

[40] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)	0.700						**0.700**
	Payments	(5)	0.560						**0.560**
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	0.125	0.125					**0.250**
TOTAL appropriations under HEADING Nr 3. Security and citizenship of the multiannual financial framework	Commitments	=4+ 6	0.825	0.125					**0.950**
	Payments	=5+ 6	0.685	0.125					**0.810**

If more than one heading is affected by the proposal / initiative:

• TOTAL operational appropriations	Commitments	(4)							
	Payments	(5)							
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)							
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6							
	Payments	=5+ 6							

Heading of multiannual financial framework	5	'Administrative expenditure'

EUR million (to three decimal places)

		Year 2019	Year 2020	Year 2021	Year 2022	Year 2023	Year 2024	TOTAL
DG: JUST.								
• Human resources		0.143	0.143					**0.286**
• Other administrative expenditure								
TOTAL DG JUST		**0.143**	**0.143**					**0.286**

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	**0.143**	**0.143**					**0.286**

EUR million (to three decimal places)

		Year 2019	Year 2020	Year 2021	Year 2022	Year 2023	Year 2024	TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	**0.968**	**0.268**					**1.236**
	Payments	**0.828**	**0.268**					**1.096**

3.2.2. Estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– X The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **2019**		Year **2020**		Year **2021**		Year **2022**		Year **2023**		Year **2024**		**TOTAL**	
	OUTPUTS															
	Type	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1	Continue and expand the education and cooperation measures to a larger number of qualified entities across the EU in order to increase the use of representative actions for infringements with cross-border implications															
- Output - Mutual learning, ooperation (Events, electronic exchange platform, remote communication means)			2	0.825	1	0.125									**3**	**0.950**
Subtotal for specific objective No 1			**2**	**0,825**	**1**	**0,125**									**3**	**0,950**

SPECIFIC OBJECTIVE No 2 ...	Reduce the number of infringements of Union law affecting the collective interests of consumers and therefore improve compliance and eliminate consumer detriment.

- Output Analytical activities - collection of data and statistics															**0**	**0**
Subtotal for specific objective No 2																**0**
TOTAL COST			**2**	**0.825**	**1**	**0.125**									**3**	**0.950**

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– X The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **2019**	Year **2020**	Year **2021**	Year **2022**	Year **2023**	Year **2024**	**TOTAL**
HEADING 5 of the multiannual financial framework							
Human resources	0.143	0.143					**0.286**
Other administrative expenditure							
Subtotal HEADING 5 of the multiannual financial framework	**0.143**	**0.143**					**0.286**

Outside HEADING 5[41] of the multiannual financial framework							
Human resources							
Other expenditure of an administrative nature *(1 intra muros)*	0.125	0.125					**0.250**
Subtotal outside HEADING 5 of the multiannual financial framework	**0.125**	**0.125**					**0.250**

TOTAL	**0.268**	**0.268**					**0.536**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

41 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– X The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		Year **2019**	Year **2020**	Year **2021**	Year **2022**	Year **2023**	Year **2024**
• Establishment plan posts (officials and temporary staff)							
33. 01 01 01 (Headquarters and Commission's Representation Offices)		1	1				
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External staff (in Full Time Equivalent unit: FTE)[42]							
33. 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)							
XX 01 04 **yy** [43]	- at Headquarters						
	- in Delegations						
XX 01 05 02 (AC, END, INT - Indirect research)							
10 01 05 02 (AC, END, INT - Direct research)							
Other budget lines (specify)							
TOTAL		**1**	**1**				

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	To launch the call for interest and coordinate the initiative
External staff	

[42] AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

[43] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. Compatibility with the current multiannual financial framework

– X The proposal/initiative is compatible the current multiannual financial framework.

– ☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

– ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

– X The proposal/initiative does not provide for co-financing by third parties.

– The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

3.3. Estimated impact on revenue

– X The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

– ☐ on own resources

– ☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[44]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

[44] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.