

Class Action in EU

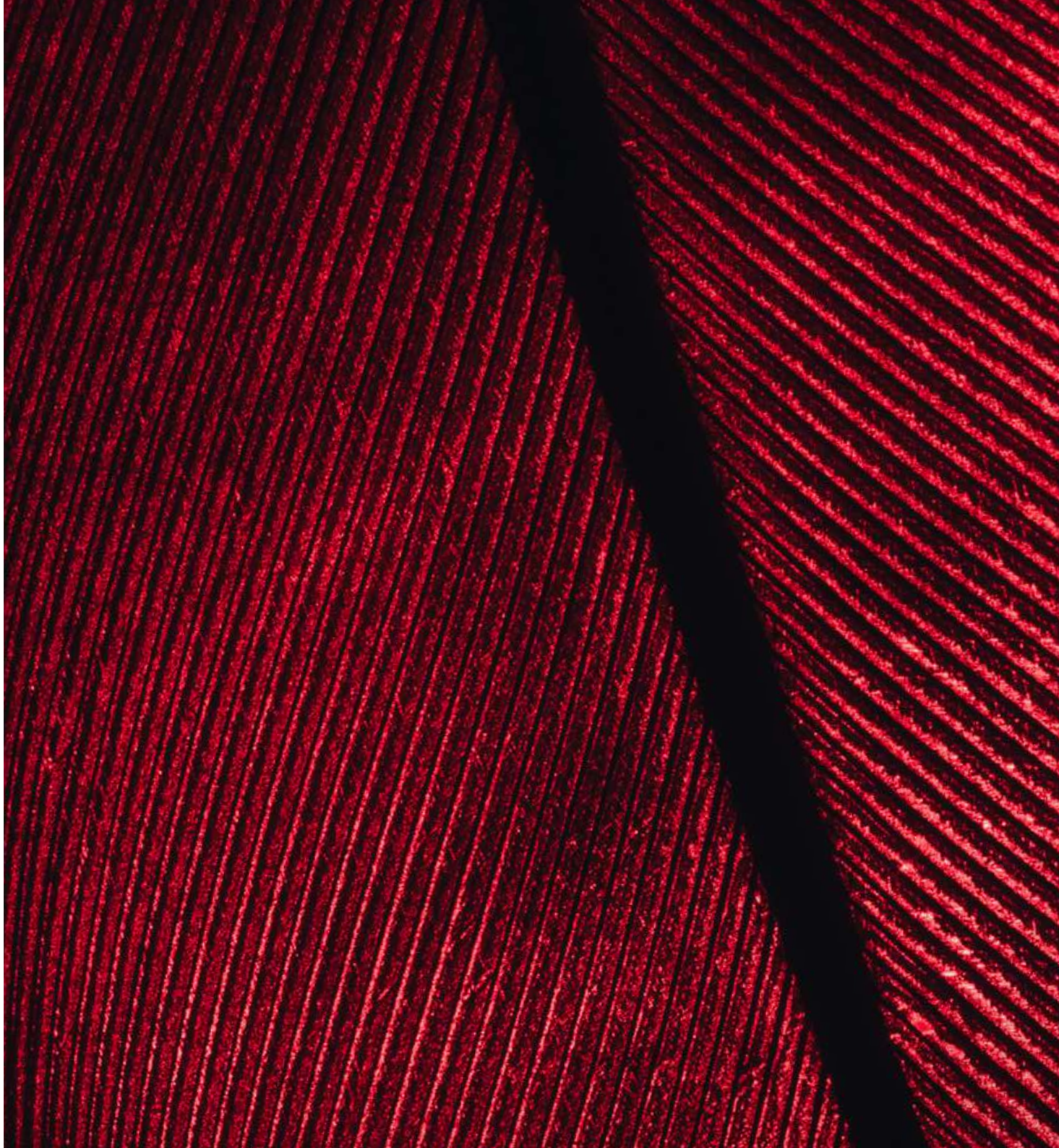
Status of implementation
of the Class Action
Directive 2020/1828

Grow | **Protect** | Operate | Finance

October 2022

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Foreword

On November 25, 2020, the European Parliament approved DIRECTIVE (EU) 2020/1828 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 (Directive).

The Directive entered into force on December 24, 2020. Member states were given 24 months to transpose the directive into national law, and an additional six months to implement it. The new rules will apply to representative actions that were filed on or after the Directive's date of application.

Therefore, we expect these changes to be implemented starting from mid-2023.

The current picture

The data contained in the following pages provide an updated picture of the status of implementation of the Directive across major EU jurisdictions as of October 2022, including the current collective litigation mechanisms in place in these jurisdictions.

It also describes what changes respective governments are already undertaking to update the current legal regime according to the indications provided by the European Parliament.

Considerations

According to details on the most recent cases filed in various EU jurisdictions, we have noticed a rise in the number of class actions in the EU. This is not yet a large increase, but it already denotes the interest of claimants in evaluating, if not initiating class actions on a variety of topics, in particular on data protection infringements, competition, product liability and consumer law. Companies operating in the Technology, Manufacturing, Transportation and Pharmaceutical sectors are the ones that are already suffering the most from this phenomenon.

While various forms of collective action mechanisms have been available in Europe for several years, these haven't been selected by claimants to enforce their rights and are not as established as others largely adopted in other regions, especially in the United States. This is mainly because European legislators have been less inclined to offer a legal framework and basis for "US style" class action claims to spread in Europe.

Even if the situation changes with the deployment of the Directive in EU by each member state by end 2023, so far, only the Netherlands has adopted the Directive. Other member states are still in the

position to choose the opt-in or opt-out models for domestic representative actions and other solutions that will largely influence the way class action claims will be regulated and used in the region.

At the moment, we don't expect a class action trend similar to that in North America over the next years; however, we can foresee a burgeoning interest by the litigation funding industry, which may support European consumers, investors or other types of associations and organizations (depending on the new local framework adopting or even going beyond the Directive) to opt for class action claims – a trend that the EU market has never experienced before.



Takeaways

We believe that companies should carefully monitor the implementation of the Directive across Europe, especially in those jurisdictions where their business is most active and thus may be more exposed to actions.

Once implemented, the Directive will allow for more cross-border mass litigation claims throughout Europe, as it offers the opportunity for consumer associations to partner internationally. International businesses should then get ready to face and coordinate parallel pan-European cross-border class actions in the future.

Beyond the type of mass claims we have indicated before, and the sectors we already identified as to be more concerned by this trend, we believe that companies should pay specific attention to ESG-related topics in order to mitigate or prevent the risk of litigation.

Details on the main representative members of the Dentons Litigation team in Europe are indicated in the following pages, should you wish to discuss your litigation strategy in preparation for possible future class actions under the new legal regime.



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Has the directive been implemented in the jurisdiction?

No.

Latest reform entered into force (date):

September 1, 2014.

Does this latest reform take the directive into account? Is there a draft under discussion?

No, the EU Directive postdates the Belgian legislation. No action has been taken yet to implement the Directive into Belgian law.

Latest reform details: actionable rights.

All consumers and all Small and Medium Enterprises that are individually affected by a common cause.

The cause of action is an alleged violation by the company of one of its contractual obligations, one of the European regulations or one of the laws relating to e.g. consumer protection, protection of competition, payment and credit services, product and service safety, consumer health protection, processing of personal data, air carrier liability, the energy market (this list is regularly amended by the legislator).

Latest reform details: who is entitled to start an action?

The following may act as representatives for the consumer group:

- A recognized consumer interest association.
- An association approved by the Minister, whose social object is directly related to the collective damage suffered by the group.
- The Mediation Service for the consumer, solely with a view to representing the group in the negotiation phase.

- A representative body approved by a Member State of the EU or the EEA.

The following may act as representatives for the SME group:

- A recognized cross-industry organization for the defense of the interests of SMEs.
- An association approved by the Minister, whose social object is directly related to the collective damage suffered by the group.
- A representative body approved by a Member State of the EU or the EEA.

Latest reform details: opt-in/opt-out system.

Within two months of the filing of the request, the judge shall decide on the admissibility of the action for collective redress and shall mention in the decision the applicable option system; if the class action is for compensation for collective physical or moral damage, only the inclusion option (opt-in) system is applicable.

**Latest reform details: outcome:
AN/Quantum (Declaratory judgment/
Quantification of damages).**

The decision on the merits contains among other things: the modalities and amount of damages (global amount to be shared or individualized amount); in case of an opt-out system, the period of time during which the members of the group may apply to the tribunal registry to obtain reparation; the procedure for revising the decision in the event of the emergence of damage subsequent to the decision.

**Latest reform details: what is the final term
for claimants to adhere to the action?**

Where litigation is used, the consumer's right of option must be exercised within the time limits set by the tribunal in its decision on admissibility. Consumers must notify the tribunal registry of their intention to join or to exclude themselves from the group. The exercise of this right of option is irrevocable. At the end of the option period the group will be formed.

**Brief description of major class action cases,
including details if the new legislation applies.**

All cases fall under the current regime and therefore do not relate to the Directive.

Recent representative cases:

- Class action initiated in 2016 by Test Aankoop (a consumer protection association) against five companies of the Volkswagen group (Volkswagen AG, Audi AG, S.A. Seat, Škoda Auto and Dr.-Ing. h.c. F. Porsche AG) and the Belgian importer and distributor of the group (D'Ieteren NV) following the "Dieselgate" emissions scandal. The group representative requested compensation of €1 provisional per car involved in the scandal. The Tribunal has set the hearing for May 15 and 22, 2023. In July 2022, Test Aankoop filed an action for conciliation before the Tribunal, requesting the appearance of the CEO of VW in person.
- Decision of the Court of appeal of Brussels dated January 30, 2019 between Test Aankoop against Proximus (a telecommunications company) regarding a class action alleging misleading commercial practices of the telecommunications company regarding the implementation of decoders to watch digital television. The Court of Appeal declared the class action unfounded.
- Class action filed on July 11, 2019 by Test Aankoop against Ryanair Designated Activity Company before the French-speaking Enterprise Tribunal in Brussels. In 2018, Ryanair's Belgian staff went on strike for 4 days, resulting in the cancellation and delay of numerous flights. Ryanair has systematically refused to pay the compensation provided for in Regulation (EC) No 261/2004. On December 7, 2020, the Tribunal declared the action admissible. The Tribunal chose the opt-in system, with numerous publicity measures.

Czech Republic

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Has the directive been implemented in the jurisdiction?

No.

Latest reform entered into force (date):

Not applicable.

Class actions are currently not available under Czech law.

Does this latest reform take the directive into account? Is there a draft under discussion?

The latest draft on class actions was abandoned in November 2021.

The draft of the new law implementing the Directive has not yet been published.

In accordance with the Government Legislative Action Plan for 2022, the new law is to be discussed by the Government in December 2022.

The comments in this table also relate to the abandoned draft, which may be used as template for new proposal, but will be probably significantly changed.

Latest reform details: actionable rights.

Actionable rights under the abandoned draft were consumer rights.

Latest reform details: who is entitled to start an action?

Under the abandoned draft, the affected consumer or a non-profit organization defending consumer rights were entitled to start an action.

Latest reform details: opt-in/opt-out system?

Under the abandoned draft, the possible outcome was a declaratory judgment together with a decision on compensation.

Latest reform details: outcome: AN/Quantum (Declaratory judgment / Quantification of damages).

Under the abandoned draft, the possible outcome was a declaratory judgment together with a decision on compensation.

Latest reform details: what is the final term for claimants to adhere to the action?

Under the abandoned draft, the final term was two to six months from publication of the decision on the admissibility of the class action in a special register.

Brief description of major class action cases, including details if the new legislation applies.

Not applicable.

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Has the directive been implemented in the jurisdiction?

No.

Latest reform entered into force (date):

March 17, 2014.

Does this latest reform take the directive into account? Is there a draft under discussion?

No, the EU Directive postdates the French legislation.

No action has been taken yet to implement the Directive into French law.

Latest reform details: actionable rights.

Consumer and specific individual rights.

Specific collective claims exist in relation to health; discrimination and employment; environmental damages; and data privacy.

Latest reform details: who is entitled to start an action?

Consumer associations (minimum of two individuals).

Latest reform details: opt-in/opt-out system.

Opt-in.

Latest reform details: outcome: AN/Quantum (Declaratory judgment / Quantification of damages).

Judgment on responsibility, categories of plaintiffs, types of damages and criteria of indemnification).

Follow-up action to seek compensation payment can only be initiated by the association.

Latest reform details: what is the final term for claimants to adhere to the action?

Within a maximum of six months from publication of the judgment on responsibility.

Brief description of major class action cases, including details if the new legislation applies.

No public record is available in France in relation to collective actions.

In 2021, it is believed that around 30 class actions were launched in France, although it is impossible to know the exact number or the exact number of those cases that were successfully terminated.

- Among these actions, 18 cases appeared to be grounded on consumer law and tended to revolve around the fault of the provider to effectively offer the services subscribed by the consumer. None of these has given way to a decision on the merits in relation to the liability of the professional. Three have been settled amicably. The remaining have been either dismissed or are still in discussion as to the formal requirements at the initial stage of the procedure.
- Several of these relate to leases for housing purposes. By a decision of the French Supreme Court dated June 19, 2019 (n° 18-10424), it is now ruled that leases for housing under Law n° 89-462 of July 6, 1989 are excluded from the scope of the collective claims of article L. 423-1 (now L 623-1) of the Consumer Code.
- In a decision dated June 27, 2018 (n° 17-10891) (the first-ever decision on collective claims rendered by the French Supreme Court), the French Supreme Court ruled that if the writ of summons must expressly list the individual cases grounding the collective claims under the collective claims of article L. 423-1 (now L 623-1) of the Consumer Code, it is not a requirement that the judge assess the representativeness of the cases for the validity of the filing.
- Two cases relate to data privacy. However, it is yet unclear whether these two claims are grounded in collective actions or are based on certain GDPR provisions that allow associations to seek remedy in courts for breach of GDPR requirements.
- Three cases relate to the health sector in relation to Valproate/Depakine, contraceptive devices, and Androcur. These cases are ongoing. Note that French law provides other grounds to compensate such claims; notably the ONIAM/CCI commissions, which are more accessible for patients to individually seek remedy and are frequently used for such purposes.
- Seven cases relate to discrimination, in relation to employment and remuneration. In three of them, claims were dismissed at the initial stage on procedural grounds; one of those is being heard on appeal. In one case, the employment representatives withdrew their claims. Two cases are ongoing.



Germany

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Has the directive been implemented in the jurisdiction?

No.

Latest reform entered into force (date):

July 18, 2018.

Does this latest reform take the directive into account? Is there a draft under discussion?

No, the latest reform does not consider the Directive.

No action has been taken yet to implement the Directive into German law.

Latest reform details: actionable rights.

Consumer and investor rights.

Latest reform details: who is entitled to start an action?

Investors or consumer associations (consumer umbrella associations with a minimum of 10 consumer associations as members or a single consumer association with at least 350 individual members).

Latest reform details: opt-in/opt-out system.

Opt-in.

Latest reform details: outcome: AN/Quantum (Declaratory judgment / Quantification of damages).

Judgment on responsibility only.

Individuals must file their own claims to seek damages.

Latest reform details: what is the final term for claimants to adhere to the action?

Consumers: until the day before first hearing.

Investors: within six months from publication of the notice of the proceedings.

Brief description of major class action cases, including details if the new legislation applies.

All cases fall under the current regime and therefore do not relate to the Directive.

Recent representative cases:

- Investors against Telekom AG (Capital Markets Model Case Act).
- Consumers in the aftermath of the "Dieselgate" emissions scandal against Volkswagen AG (model declaratory action under German Code of Civil Procedure).

Hungary

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Has the directive been implemented in the jurisdiction?

No.

Latest reform entered into force (date):

January 1, 2020.

Does this latest reform take the directive into account? Is there a draft under discussion?

No.

To date, no draft law implementing Directive (EU) 2020/1828 has been prepared.

Latest reform details: actionable rights.

Consumer rights.

Latest reform details: who is entitled to start an action?

As regards contracts that involve a consumer and a business party, an action may be brought for the annulment of an unfair contract term that has been incorporated into a contract by any of the following:

- A public prosecutor.
- A minister, autonomous administrative agency, general government agency, the director of a head office.
- The head of a Budapest or county government agency.
- An economic and trade organization or interest-representation body, an association for the protection of consumer affairs within the scope of the consumer interests they protect, or an organization set up for the protection of consumers' interests under the laws of any member state of the European Economic Area.

Latest reform details: opt-in/opt-out system.

Opt-out.

Latest reform details: outcome: AN/Quantum (Declaratory judgment / Quantification of damages).

Judgment on the annulment of an unfair contract term, prohibition from further infringements, restoring the pre-infringement conditions, specifying the beneficiaries and the method to verify them, the amount of indemnification.

In addition, the consumer can initiate follow-up action to seek compensation under civil law.

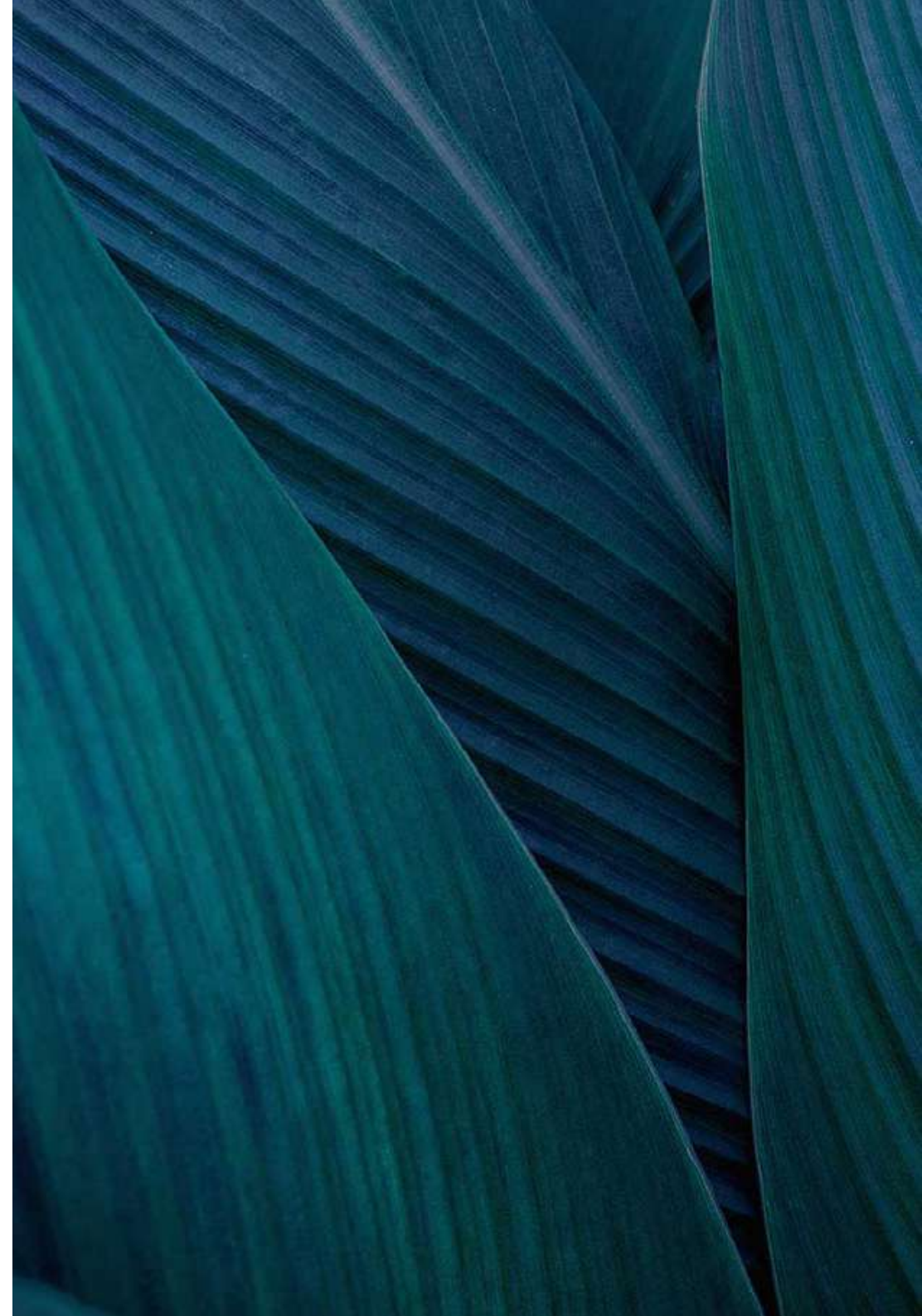
Latest reform details: what is the final term for claimants to adhere to the action?

Not applicable.

Brief description of major class action cases, including details if the new legislation applies.

Representative case:

- A real estate agency has its clients complete a pre-printed contract. According to the decision, the requirements of good faith and fairness were violated by a contractual provision that did not allow consumers to sell their property themselves. (Kúria Gfv. 30.200/2020/8.) According to the decision, a foreign currency loan contract is not in breach of good morals, nor is it a usury contract, an impossible service, or a sham contract due to the fact that the exchange-rate risk is incurred by the debtor against a more favorable interest rate. The information obligation of the financial institution had to cover the possibility of an exchange rate change and its effect on the instalments. The obligation to provide such information could not cover the extent of the exchange rate change. (6/2013. PJE).



Ireland

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Has the directive been implemented in the jurisdiction?

No.

The Irish Government announced that they are taking the first steps to draft and implement the legislation but as of yet, nothing substantial has changed.

Latest reform entered into force (date):

Not applicable.

Ireland is one of a minority of EU member states that does not have a compensatory collective redress procedure. There is currently no comprehensive provision in Irish court rules for tackling class claims in a uniform and consistent manner.

Instead, a range of procedural options are available to allow claims involving multiple parties to be litigated as private actions.

Does this latest reform take the directive into account? Is there a draft under discussion?

The Irish Department of Enterprise, Trade and Employment held a public consultation on March 15, 2021-May 7, 2021 to seek the views of interested parties on the implementation of the Directive in Ireland.

The Department recently published its General Scheme of the Representative Actions for the Protection of the Collective Interests of Consumers Bill 2022 (the Draft Bill).

The Draft Bill will now be subject to pre-legislative scrutiny by the Joint Committee on Enterprise, Trade and Employment.

Once complete, the Bill will be formally drafted and signed into law by the President of Ireland.

Latest reform details: actionable rights.

When implemented, it is envisaged that the Bill will create a new civil litigation mechanism by which a qualified entity may act as the claimant party on behalf of consumers who have opted into a representative action against a trader in the High Court. They may seek either an injunction or redress, or both, against that trader for breach of one of the provisions of EU and Irish consumer protection law set out in Schedule 1 of the Bill.

Latest reform details: who is entitled to start an action?

The Bill will create a mechanism whereby an organisation which represents the collective interests of consumers may apply to the Minister for Enterprise, Trade and Employment to be designated as a Qualified Entity provided it meets minimum criteria and standards. This will allow it to bring a representative action in Ireland or another EU Member States.

Each Member State can designate at least one “Qualified Entity” to bring actions on behalf of consumers. It is anticipated that a Qualified Entity will be a non-profit organization in the area of consumer protection, be independent, and have a legitimate interest in ensuring the provisions of the Directive are complied with.

Latest reform details: opt-in/opt-out system.

Under the Draft Bill, the scheme will operate as an “opt-in” system.

Latest reform details: outcome: AN/Quantum (Declaratory judgment /Quantification of damages).

Not applicable.

Latest reform details: what is the final term for claimants to adhere to the action?

Not applicable.

Brief description of major class action cases, including details if the new legislation applies.

Not applicable.



Italy

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Has the directive been implemented in the jurisdiction?

No.

Nevertheless, on September 10, 2022, law no. 127/2022 concerning the implementation of multiple EU Directives (including Directive 2020/1828), came into force. We therefore reasonably expect revisions of the current Italian class action legal framework – to align it with the Directive – in the next few months.

Latest reform entered into force (date):

May 19, 2021.

Does this latest reform take the directive into account? Is there a draft under discussion?

The new law in Italy was drafted before the Directive was approved.

Therefore, at the time, its implementation into national law was not considered.

The Italian legislators will soon need to revise the law within the Directive's framework and adopt some measures to make it fully compliant. The scope of the current law is much broader in many respects than the Directive.

Latest reform details: actionable rights.

Individual homogenous rights.

Latest reform details: who is entitled to start an action?

Associations, organizations or individuals (no minimum number of individuals).

The Ministry of Justice Decree no. 27/2022, art. 3, provided for the adoption of a list of associations and organizations entitled to start class actions. Besides including all the organizations already listed in art. 137 of the Italian Consumer Code, the requisites for an organization to be admitted in the list currently are:

1. Being established at least for two years before the admission request.
2. Having its legal seat either in Italy or in an EU member state.
3. Having the statutory objective of safeguarding. Individual homogenous rights.
4. Having a democratic internal organization.
5. Performing in a stable and adequate way Its statutory objective.
6. Raising funds according to D.Lgs. 117/2017.
7. Requiring an adequate integrity level for its members.
8. Providing for government and accounting transparency.

Latest reform details: opt-in/opt-out system.

Opt-in.

**Latest reform details: outcome:
AN/Quantum (Declaratory judgment/
Quantification of damages).**

Judgment on responsibility.

Representative of claimants manages the quantum phase.

**Latest reform details: what is the final term
for claimants to adhere to the action?**

Within the deadline fixed by the Tribunal, after the judgment on responsibility.

**Brief description of major class action cases,
including details if the new legislation applies.**

The cases listed below fall under the current regime and therefore do not relate to the Directive.

Recent representative cases (under the newest regime) as published on the class action platform:

- Various unions (Filcams Cgil Roma Lazio/ Ultrasporti Lazio / Fisascat Cisl Roma Capitale e Rieti) and some individuals, the municipality of Rome, public prosecutor: a class action was filed by various unions to keep Roma Capitale from continuing with a procurement procedure unless 1,400 employees were hired with full-time contracts (instead of part time). The contract was eventually awarded to another company, the case was declared closed due to the cessation of the subject matter of the dispute.

- Class action filed before Rome Court against Autostrade per l'Italia S.p.A. by a group of Ligurian citizens in order to obtain compensation for the collapsing of the Morandi bridge, the related damages to the highway's usage and to the region's reputation.
- Class action filed before Milan Court against Binance by a group of investors for damages related to malfunctions that caused a service interruption to the trading platform.
- Class action filed before Rome Court against Italia Trasporto Aereo S.p.A. by Associazione Nazionale Lotta alle Discriminazioni for alleged gender discrimination in the selection of cabin crews.
- Class action filed before the Bari Court against Consorzio di Bonifico Arneo by its contributors, for the compensation of related damages.
- Class action filed before the Catania Court against the Y.M.C.A. Foundation by a group of students, for matters concerning a master's degree course.

The following cases were also reported in the national press and relate to very recent cases:

- Delivery workers/Deliveroo: a class action was initiated before the Court of Bologna by delivery workers against a food delivery company in order to oppose, at the national level, the application of a national collective bargaining agreement.

- Families of the victims of COVID-19/Office of the Prime Minister, the Ministry of Health and the Lombardy Region: a class action has been filed against the Office of the Prime Minister, the Ministry of Health and the Lombardy Region seeking damages of some €100 million for the alleged negligent management of healthcare facilities during the first phase of the pandemic.
- Consumers/Pay TV and Media platform Dazn: a class action is being filed against Pay TV Dazn for malfunctions that caused an interruption of service.
- Families of Taranto/ILVA spa: a class action was filed against ILVA, a steel group operating in Taranto, on health damages caused by pollution.
- Consumers/U-Mask: a class action has been filed before the Court of Milan on the low filtering capacity of the "U-mask."
- Coldiretti Cagliari/Italian State/Regione Sardegna: according to press, a class action is supposed to be filed soon by the association of farmers for the compensation of damages caused by the drought emergency in the Sardinia region during 2017.
- Associazione Apnoici Italiani/ADUSBEP/Philips: national press reported a class action filed by various associations for alleged risks connected to sleep apnea CPAP recalled machines produced by Philips.

Netherlands

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Has the directive been implemented in the jurisdiction?

Yes.

Additional amendments to Dutch class action system have been proposed by submission of Proposal for Act on February 15, 2022.

Latest reform entered into force (date):

January 1, 2020, following prior legislation of July 1, 2004.

New reform expected in 2023.

Does this latest reform take the directive into account? Is there a draft under discussion?

Yes.

The new reform deviates on two points from the directive:

- No central public body for institution of domestic actions.
- No electronic database.

Latest reform details: actionable rights.

Individual homogenous rights.

Latest reform details: who is entitled to start an action?

Associations or foundations (so-called interest groups—no minimum number of members).

Latest reform details: opt-in/opt-out system.

Opt-out for Dutch nationals.

Opt-in for foreign individuals.

Latest reform details: outcome: AN/Quantum (Declaratory judgment/Quantification of damages).

Prior to January 2020 only judgment on responsibility could be sought.

With the reform of January 2020, declaratory judgments and judgments on compensation are possible.

Latest reform details: what is the final term for claimants to adhere to the action?

Due to the opt-out nature for Dutch nationals, no deadline applies.

Foreign individuals need to opt in at the commencement of the legal proceedings.

Brief description of major class action cases, including details if the new legislation applies.

Recent representative cases (under the newest regime):

- Class actions against social media platforms: several interest groups against Tik-Tok seeking compensation for the inappropriate use of data of minors.
- Class actions against car manufacturers: several interest groups seeking compensation for consequences of the “Dieselgate” emissions scandal. Recent judgments in these proceedings have referred the matters back to proceedings under the previous regime (i.e.: only a declaratory judgment can be sought) due to the period in which the alleged facts occurred.

In addition, the following is under the old regime, and only a declaratory judgment:

- Collective action on climate goals: an interest group seeking adherence by the Dutch government to Paris Climate Goals.
- See above: the diesel emission cases have been referred back to be further litigated under the old regime.



Poland

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Has the directive been implemented in the jurisdiction?

No.

Latest reform entered into force (date):

November 7, 2019.

Does this latest reform take the directive into account? Is there a draft under discussion?

The amendment took effect before adoption of Directive (EU) 2020/1828 and mainly addressed procedural issues (e.g.: introduced the possibility to hold case management hearings).

To date, no draft law implementing Directive (EU) 2020/1828 has been prepared.

Latest reform details: actionable rights.

Actionable rights:

- Product liability.
- Tort liability.
- Contractual liability (breach of contract).
- Unjust enrichment.
- Any claims for consumer protection.
- Claims arising out of bodily injury or health disorder, including claims by immediate family members of the injured party who died as a result of bodily injury or health disorder.

Latest reform details: who is entitled to start an action?

A class action member or a consumer rights commissioner, acting for a group of at least 10 individuals pursuing homogeneous claims based on the same factual basis.

Latest reform details: opt-in/opt-out system.

Opt-in.

Latest reform details: outcome: AN/Quantum (Declaratory judgment/Quantification of damages).

Any civil law claims can be heard in the class action (including monetary claims, whose amount needs to be assessed).

Additionally, in cases involving monetary claims, the action may be limited to seeking a declaratory judgment on the defendant's responsibility for a specific event or events.

Latest reform details: what is the final term for claimants to adhere to the action?

After the decision to hear the case in a class action becomes final, the court announces the commencement of the class action, e.g.: in the press, on the defendant's website. In the public announcement, the court sets a deadline to join the class action, which must not be shorter than one month or longer than three months, for individuals who have the same (homogenous) claims as the initial group.

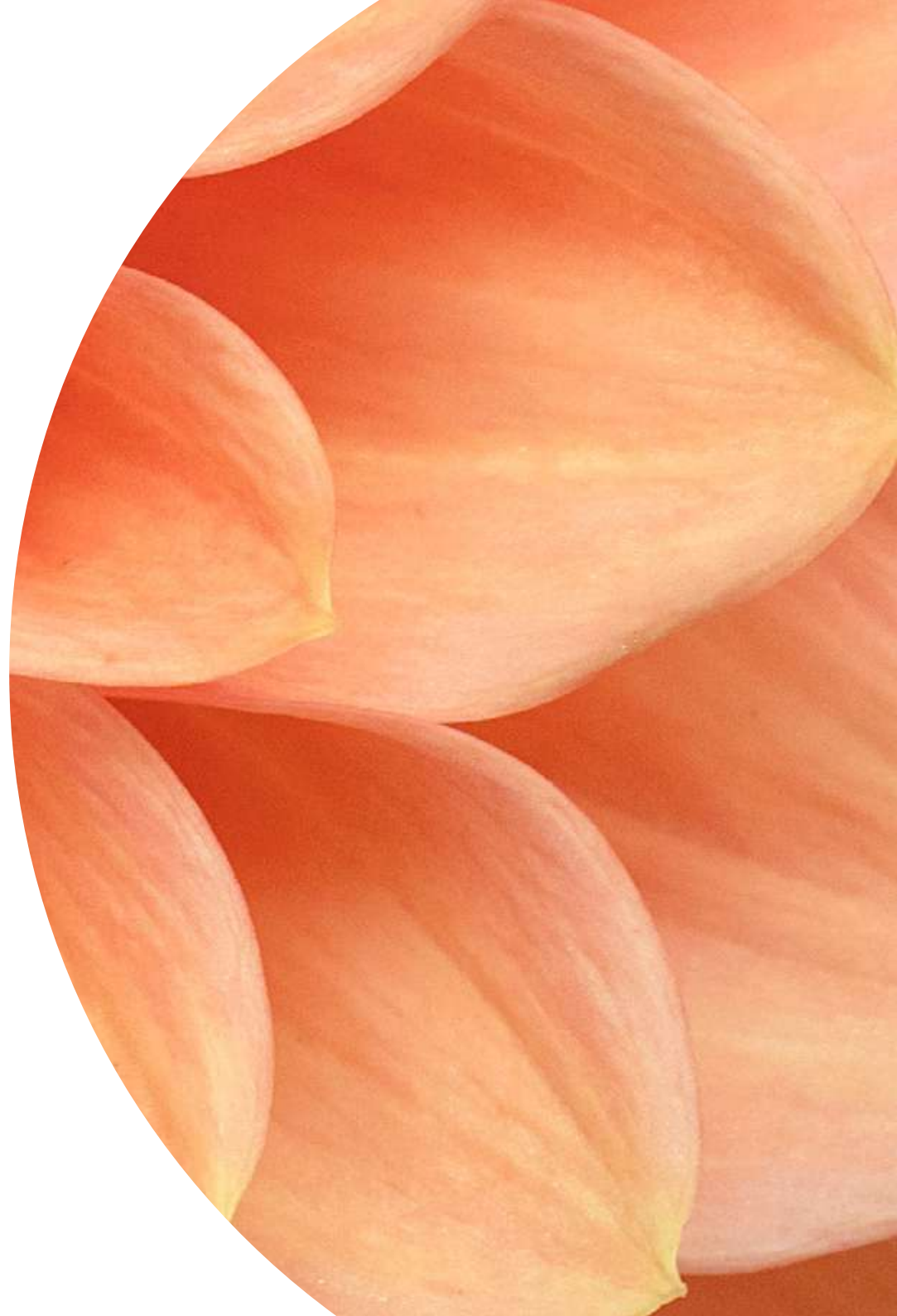
If an individual has already brought a claim against the defendant, against whom the class action is to take place, he/she may join the class until the end of the first-instance proceedings.

Brief description of major class action cases, including details if the new legislation applies.

Cases listed below fall under the current regime and therefore do not relate to the Directive.

Recent representative cases:

- Consumer claims against banks for loan agreements indexed to/ denominated in a foreign currency (Swiss franc): the cases involve borrowers who dispute the validity of their mortgage loans. These were one of the first landmark proceedings under the class action regime.
- Consumer claims against life insurers: Consumers contest the validity of the unit-linked insurance products and the values of their surrender benefits (the amounts paid upon an early withdrawal).
- Consumer class actions against real estate developers: the cases concern claims for reimbursement of a price adjustment and for damages due to construction defects.
- Entertainment and tourist industry businesses against the State Treasury: In these class actions, group members filed in order to establish the liability of the State Treasury for damages resulting from the prohibition / restriction imposed on certain business activities in the wake of the COVID-19 pandemic.



Romania

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Has the directive been implemented in the jurisdiction?

No.

Latest reform entered into force (date):

No uniform framework regarding class actions exist in Romanian law.

Provisions similar to those governing typical class actions can be found in the Romanian Civil Procedure Code and in other special laws. What differentiates these from typical class actions is that in Romanian law the representative usually needs a special power of attorney from each class member in order to act on the member's behalf.

Does this latest reform take the directive into account? Is there a draft under discussion?

Not applicable.

Latest reform details: actionable rights.

There are specific actions, similar to classic collective actions, regarding:

- Defense of consumer rights.
- Human rights protection.
- Labor law (especially in cases involving workers' unions).

Latest reform details: who is entitled to start an action?

Various consumer associations, NGOs, workers' unions.

Latest reform details: opt-in/opt-out system.

Both the opt-in and opt-out system can be applied.

Latest reform details: outcome: AN/Quantum (Declaratory judgment / Quantification of damages).

Individuals to file single claims to seek damages.

Latest reform details: what is the final term for claimants to adhere to the action?

It depends on the specific action and case; there is no unique regulation regarding this matter.

Brief description of major class action cases, including details if the new legislation applies.

Not applicable.

Slovakia

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Has the directive been implemented in the jurisdiction?

No.

Implementing legislation is planned for adoption in 2023.

The implementation of the directive is currently the subject of a legislative process.

Recently, on August 31, 2022, the draft law transposing the directive was officially published.

According to the published draft, the respective legislation, once finally adopted, shall enter into force on June 25, 2023.

However, the draft is currently only at an early legislative stage, therefore various changes can be expected before its final adoption.

Latest reform entered into force (date):

July 1, 2016.

Does this latest reform take the directive into account? Is there a draft under discussion?

See point 1.

Latest reform details: actionable rights.

These are the actions that are permitted:

- Actions filed for unfairness of a contractual term or terms in a consumer contract and unfair commercial practices (i.e., “abstract control in consumer matters proceedings”).
- Anti-discriminatory actions (which are filed for a breach of the principle of equal treatment under the rules on equal treatment and protection against discrimination).
- Actions filed for unfair competition proceedings according to Act No. 513/1991 Coll., the Commercial Code (the “Slovak Commercial Code”); this includes misleading advertising, misleading labelling of goods and services, parasitism on the reputation of the company, and bribery.

Latest reform details: who is entitled to start an action?

The Slovak Dispute Code distinguishes between the following types of joint actions:

- An independent joint action (where every party exercises their own rights and where a legal act performed by one party does not affect the other parties and each claim is decided by the court separately).
- An inseparable joint action (where a procedural act of one party binds the other parties and where the judgment must apply to anyone acting as claimant or defendant).
- A compulsory joint action (where the legitimacy in any dispute is attributed to several parties; under the relevant substantive law, it is necessary for several parties to bring an action jointly or it is necessary to bring an action against more than one party).

Latest reform details: opt-in/opt-out system.

Slovakia has procedures and respective legal instruments that are similar to opt-in class actions. They include when a group of persons is a party to the proceedings.

A group of persons can collectively bring a claim for damages caused to several victims by the same or similar illegal conduct.

Slovakia does not have a specific procedure for bringing “opt-out” class actions.

Latest reform details: outcome: AN/Quantum (Declaratory judgment / Quantification of damages).

Damages are available and can be collectively enforced.

In respect of actions filed for unfair competition proceedings, persons whose rights have been violated by unfair competition practices may demand the counterparty:

1. To refrain from such practices; and
2. To rectify the consequences of unfair competition.

They may also demand adequate financial compensation, damages, and the issuance of unjust enrichment.

In abstract control of consumer matters, if the court determines that the contract term is unfair or that the business practice is unfair, then it shall prohibit the defendant from using a contractual term or a term with the same meaning in all consumer contracts or other contractual documents related to that consumer contract. The court shall also prohibit the defendant from using an unfair business practice.

In anti-discriminatory actions, a court may:

1. Declare that the principle of equal treatment has been infringed
2. Order the defendant to refrain from such discriminatory actions and, if possible, to
3. Order the defendant to remedy the infringement. If any damage occurs as a result of discriminatory proceedings, the damages are also available.

There is no specific legal framework for the calculation of damages.

Latest reform details: what is the final term for claimants to adhere to the action?

No specific term since there is no procedural framework for true class actions.

Brief description of major class action cases, including details if the new legislation applies.

The Directive has not yet been implemented; therefore, the cases listed below fall under the current regime.

Recent representative cases:

- A discrimination dispute against a school that placed children of Romani origin in special classes, separate from other children, only on the basis of their ethnicity.
- The Volkswagen emissions scandal (“Dieselgate”) related to fraudulent emissions testing. A few Volkswagen car owners initially showed interest in filing a “class action” for damages, but due to little interest, the filing of a “class action” was abandoned.
- In relation to a proceeding dealing with “abstract control in consumer matters,” a decision was issued that demanding “2.5 per 1,000” from apartment owners for each day of delay in payment under a contract of administration is an unfair contractual term.

Spain

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Has the directive been implemented in the jurisdiction?

No.

The Ministry of Justice held the mandatory public consultation on the Directive's implementation in September 2021, but the Government has not presented yet any law proposal before the Parliament to implement it.

Latest reform entered into force (date):

July 22, 2015.

Does this latest reform take the directive into account? Is there a draft under discussion?

No (the reform was enacted before the Directive was approved).

Latest reform details: actionable rights.

Consumer rights.

Latest reform details: who is entitled to start an action?

Consumer associations (no minimum number of individuals).

Consumer associations must be representative in accordance with the provisions of Title II of the Spanish Consumer Law ("Texto Refundido de la Ley General de Consumidores y Usuarios").

Latest reform details: opt-in/opt-out system.

Opt-in.

Latest reform details: outcome: AN/Quantum (Declaratory judgment / Quantification of damages).

Judgment on responsibility.

Individuals must file:

1. A claim requesting recognition of their status as aggrieved under the judgment; and
2. An enforcement claim to collect the damages.

Claims may be also initiated by the public prosecutor.

Latest reform details: what is the final term for claimants to adhere to the action?

Within two months of the publication of the filing.

Non-adhered individuals can still request recognition and enforcement within five years after the court decision has become final and non-appealable.

Brief description of major class action cases, including details if the new legislation applies.

The following two examples are the closest equivalent to class actions under Spanish law.

- Supreme Court Decision no. 473/2010, dated July 15: A highway operator is declared liable for damages to drivers and travelers on a highway affected by extreme weather conditions due to a lack of diligence.
- Provincial Court of Barcelona Decision no. 527/2010, dated October 21: Electricity distributors are declared liable to all consumers affected by a city-wide blackout.

Consumer association claims for damages have become increasingly rare, since their function has been largely superseded by mass claims (“pleitos-masa”), which are individual claims filed by law firms specialized in managing clients en masse in litigious sectors, such as consumer finance, (abusive conditions in loans, financial derivatives commercialized at the retail level) or damages claims against truck manufacturers acting under a cartel. Because of this, consumer associations have focused their efforts on managing individual claims, as well as filing collective consumer claims, not to seek damages, but to strike down abusive general terms and conditions used by companies.





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