

## Product Risk Radar

### Collective Redress / Class Actions

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At an EU level, the Representative Actions Directive (Directive 2020/1828) introduced rules “to ensure that a representative action mechanism for the protection of the collective interests of consumers is available in all Member States...”. In summary, this allows organisations and public bodies to seek redress on behalf of groups of consumers through representative actions (including cross-border representative actions). Since 25 June 2023, all Member States have enacted the laws and regulations specified under the Representative Actions Directive.

#### What are the key takeaways?

- A mandatory class action regime has been implemented at European (cross-border) and domestic level.
- This regime provides consumers with enhanced rights to seek compensation from traders who infringe consumer rights on a mass scale.
- “Qualified entities” can bring representative actions on behalf of consumers. Qualified entities are organisations or public bodies representing consumers' interests, which are designated by a Member State, and must comply with certain criteria. Qualified entities are not restricted to bringing actions in their home country, but can bring cross-border actions and even join forces to bring proceedings in a specific local court.
- Member States have the option to choose between an opt-in mechanism, or a (US-style) opt-out mechanism, or a combination of the two. In an opt-in mechanism, consumers must expressly sign up to be represented by the qualified entity in the representative action for redress measures, whereas in an opt-out mechanism, consumers are deemed to be represented if they fall within the represented class, unless they explicitly express their wish not to be represented by the qualified entity in the representative action for redress measures.
- It has been left to Member States' discretion as to whether the representative action can be brought in judicial or administrative proceedings.
- Remedies must include injunctive measures as well as financial redress. Redress includes remedies such as compensation, repair, replacement, price reduction, contract termination, or reimbursement of the price paid, as appropriate and as available under EU or national law.
- Safeguards are in place to protect businesses against abusive lawsuits by using the “loser pays principle”.

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- In so far as third-party funding of litigation is permitted under national law, the Directive encourages transparency about its use, and provides that Member States shall ensure that conflicts of interests are prevented and that funding by third parties (that have an economic interest in the action for redress measures) does not detract from the protection of the collective interests of consumers.

## What impact will this have on you?

The range of industries that are impacted by this legislation is vast and its application to consumer protection related areas is wide. They include financial services, travel and tourism, energy, health, telecommunications, and data protection, as appropriate and available under EU or national law. The strengthening of consumer access to justice may increase many companies' litigation exposures, particularly in Member States that have previously had no or only limited collective action procedures.

## Contacts



**Kate Corby**  
Partner  
London  
  
+44 20 7919 1966  
kate.corby  
@bakermckenzie.com



**Graham Stuart**  
Partner  
London  
  
+44 20 7919 1977  
graham.stuart  
@bakermckenzie.com



**Joanne Redmond**  
Senior Associate  
London  
  
+44 20 7919 1067  
joanne.redmond  
@bakermckenzie.com



**Rachel MacLeod**  
Senior Associate  
London  
  
+44 20 7919 1364  
rachel.macleod  
@bakermckenzie.com



**Lauren Gest**  
Associate  
London  
  
+44 20 7919 1388  
lauren.gest  
@bakermckenzie.com



**Phoebe Bruce**  
Associate  
London  
  
+44 20 7919 1117  
phoebe.bruce  
@bakermckenzie.com