The purpose of this Directive is to ensure that a representative action mechanism for the protection of the collective interests of consumers is available in all Member States, while providing appropriate safeguards to avoid abusive litigation, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning representative actions. To this end, this Directive also aims to improve consumers’ access to justice. It gives powers to organisations or public bodies designated by European Union (EU) Member States to seek injunctive or redress measures on behalf of groups of consumers through representative actions (including cross-border representative actions). This includes seeking compensation from traders who infringe consumer rights in areas such as financial services, travel and tourism, energy, health, telecommunications and data protection, as appropriate and available under EU or national law.

The major novelty of this Directive is the express recognition of remedies or reparation measures that may extend even to cross-border complaints where the consumers concerned do not reside in the same Member State as that of the offending trader. Such measures will oblige the trader to “provide consumers concerned with remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under Union or national law.” (Art. 9.1).

**Scope (Art. 2)**

This Directive applies to representative actions brought against infringements by traders of the provisions of Union law referred to in Annex I, including such provisions as transposed into national law, that harm or may harm the collective interests of consumers. It applies to domestic and cross-border infringements, including where those infringements ceased before the representative action was brought or where those infringements ceased before the representative action was concluded.

**Key points**

**1. Qualified entities**

Member States designate the entities that will be enabled to bring representative actions on behalf of consumers (qualified entities).

In order to be enabled to bring the representative actions in a Member State other than that of their designation (cross-border actions), the qualified entities must (Art. 4.3):

- be a legal person that is constituted in accordance with the national law of the Member State of its designation;
- be able to demonstrate 12 months of actual public activity in consumer protection, prior to its request for designation;
- be non-profit-making;
- demonstrate its statutory purpose of having a legitimate interest in protecting consumers’ interests as provided for in the rules of EU law referred to in Annex I to the directive;
- not be the subject of insolvency proceedings and not be declared insolvent;
- be independent and not influenced by persons other than consumers, in particular market operators;
- have an established procedure to prevent such influence and conflicts of interest;
- disclose publicly how it is financed;
- disclose its organisational, management and membership structure, objectives, working methods and activities;
- disclose publicly information that demonstrates that it complies with all the above criteria.

Member States may also apply the abovementioned criteria to the qualified entities designated in advance and enabled to bring domestic actions (in the Member State of their designation). Member States may also designate qualified entities on an ad hoc basis for the purpose of bringing a particular domestic representative action.

The European Commission publishes the list of qualified entities designated for cross-border actions on an online portal, updated as necessary.

**2. Injunctive measures (Art. 8)**

An injunctive measure is a provisional or definitive measure to stop or prohibit a practice. Both could be used to stop an existing practice or prohibit an imminent practice. It could also include (depending on national law) an obligation to publish the court's decision or a corrective statement.

The qualified entity does not have to prove actual loss or damage by individual consumers affected by the infringement, or intent or negligence by the trader.

**3. Redress measures (Art. 9)**

A redress measure requires a trader to provide remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate and available under EU or national law.

Member States ensure that:

- consumers who explicitly or tacitly expressed their wish to be represented in a representative action ('opted-in' or 'opted-out') cannot be represented in another representative action or bring individual action with the same cause and against the same trader;
- consumers do not receive compensation more than once for the same cause;
- a redress measure entitles consumers to benefit from the remedies without the need to bring a separate action;
- rules are laid down on time limits for individual consumers to benefit from redress measures.

These remedies are without prejudice to any additional remedies that are not the subject of the representative action.

To avoid a conflict of interest where a third party provides redress funding, Member States that allow that type of funding must ensure, in particular, that: decisions of qualified entities are not influenced by the third party funding provider in a manner that would be detrimental to the collective interests of the consumers concerned;

the representative action is not brought against a competitor of the funding provider or a defendant on which the funding provider is dependent.
4. Funding of representative actions for redress measures (Art. 10)

The Directive includes provisions on the possible financing of representation actions by third parties other than the qualified entity or the actions for damages by third parties other than the qualified entity or the consumers whose proprietary interests are the subject of the claim (litigation funding). The Directive leaves it to the Member States to decide whether to allow or prohibit such funding, but, to the extent that they do allow it, the Directive indicates that they must then put in place mechanisms to prevent conflicts of interest that would divert the exercise of this type of actions from their purpose of protection of the interests of the consumers represented. Thus, it is stipulated that actions may not be financed by competitors of the defendant company; mechanisms must be in place to ensure that the represented mechanisms to ensure that the funders do not have the capacity to influence the decisions of the authorised entity in relation to the representative actions they initiate and, in particular, the decision to settle; or that judges and courts are able to monitor compliance with such duties, so that they may demand from qualified entities detailed financial information on their sources of funding and may issue instructions to them in relation to the funding they may or may not accept or refuse, and may even deny or revoke their legal standing to bring legal actions.

5. Settlements (Art. 11)

Member States must ensure that:

- the qualified entity and the trader may jointly propose a redress settlement; or
- the court or administrative authority, after having consulted the qualified entity and the trader, may invite the parties to reach a settlement within a reasonable time limit;

settlements approved by the court or administrative authority are binding on the qualified entities, defendant traders and consumers concerned, but Member States may lay down rules allowing consumers concerned to accept or to reject the settlement.

6. Costs of the proceedings (Art. 12)

The unsuccessful party is in principle required to pay the costs of the proceedings. Individual consumers in a representative action do not pay the costs of the proceedings, except potentially when the costs were incurred as a result of the individual consumer’s intentional or negligent conduct. Member States must introduce rules aiming to ensure that the costs of the proceedings related to representative actions do not prevent qualified entities from effectively exercising their right to seek the injunctive measures. Member States may lay down rules to allow qualified entities to require consumers who wish to be represented by them in a specific representative action for redress measures to pay a modest entry fee or similar charge in order to take part in that representative action.

7. Penalties (Art. 19)

Member States must:

set out rules on penalties for failure or refusal to comply with an injunctive measure, information obligation or disclosure of evidence obligation; ensure that those rules are implemented – penalties must be effective, proportionate and dissuasive.

Repeal (Art. 21)

Directive (EU) 2020/1828 repeals Directive 2009/22/EC (see summary) from 25 June 2023. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

From when does the directive apply? (Art. 24 and 25)

It entered into force on 24 December 2020. It has to become law in the Member States by 25 December 2022 and to apply in the Member States as of 25 June 2023.