

Alert | Class Action Litigation



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EU Deadline Sharpens Contours of European Consumer Class Action Landscape

As of 25 June 2023, new rules apply protecting consumers' collective interests in mass claims throughout Europe. The rules stem from the [European Parliament and Council Directive \(EU\) 2020/1828 of 25 November 2020](#) (the Directive). The Directive applies not only in European Union Member States, but also in Liechtenstein, Norway, and Iceland.¹

Whereas the old directive (which is being repealed) only provided for collective actions seeking a court order to cease violations of consumer rights, the new Directive requires at a minimum that consumers may collectively claim damages. Collective monetary redress was already possible in some Member States (including Belgium, France, the Netherlands, and Poland), but now the option to claim damages through collective actions is mandatory for all Member States.

The Directive aims to strengthen consumer protection and enhance confidence in the European internal market. Consumer rights cover many areas, such as financial services, travel and tourism, energy, health, telecommunications, and data protection and privacy, which is receiving attention currently. Thus, for consumers, the Directive increases the opportunities to take legal action against violations of their rights. Moreover, the Directive aims for minimum harmonization, allowing Member States to implement broader regimes than those outlined in the Directive.

¹ For the sake of this alert, any reference to "Member State" shall aim to include European Economic Area (EEA) member states.

The Directive requires implementation of certain minimum requirements effective by 25 June 2023, supplementing any existing national collective redress mechanisms, rather than replacing them. In the Netherlands, collective actions for mass damages, known as the WAMCA, have already existed since 1 January 2020. Dutch legislation protects consumer interests as well as companies and persons acting in the course of a profession or business. The WAMCA has so far proven to be a reasonably effective mechanism. At the time of writing this alert, there are 70 collective actions registered with the Dutch Central Register of Collective Actions, indicative of a significant increase of cases in recent years. Because the Netherlands already uses a regime similar to the Directive, the effects of implementing the Directive in the Netherlands are limited.

Under the Directive, entities can bring both domestic and cross-border collective actions. To this end, Member States are required to publish a list of qualified entities that are designated to bring cross-border collective actions. To prevent abuse, these entities must meet certain conditions, including the requirement that the organization is a non-profit which operates independently of parties with an economic interest in the collective action. The first step for companies that are involved in legal proceedings brought by such an entity would be to verify whether these conditions are met.

When a collective action leads to an order to cease violations of consumer rights, the Directive also provides for the possibility of imposing sanctions for non-compliance with such order. Those sanctions must be “effective, proportionate and dissuasive” and may include fines. Unlike in other jurisdictions, such as the United States, the Directive does not provide for punitive damages.

Companies affected by the Directive should consider these changes when developing business strategies.

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