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Representative Actions in the European Union: An Analysis of the Effectiveness of the Directive (EU) 2020/1828

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Abstract (English)

This paper explores the effectiveness of the Directive (EU) 2020/1828 as a mechanism for collective consumer protection within the European Union, focusing on three principal areas.

First, it examines the historical development of representative actions, with particular emphasis on the legal traditions of the United Kingdom and the United States. The purpose of this analysis is to better understand the evolution of collective redress mechanisms and the factors that have influenced their effectiveness across different legal systems.

Second, the paper analyzes the implementation of the Directive (EU) 2020/1828 in selected Member States, namely Germany, the Netherlands, and Latvia, in order to identify differences in national approaches and evaluate their impact on the practical functioning of representative actions. Ineffective implementation may create difficulties in financing collective redress proceedings, while overly burdensome formal requirements may render such mechanisms ineffective in practice and prevent the achievement of the Directive's (EU) 2020/1828 consumer-protection objectives.

Third, the paper evaluates the legal framework introduced by the Directive (EU) 2020/1828, including its core components such as participation mechanisms, requirements for qualified entities, and funding arrangements. The objective of this analysis is to determine which elements of the framework support, and which potentially obstruct, the effective enforcement of consumer rights.

Abstract (Deutsch)

Diese Arbeit untersucht die Wirksamkeit der Richtlinie (EU) 2020/1828 als Instrument des kollektiven Verbraucherschutzes innerhalb der Europäischen Union und konzentriert sich dabei auf drei zentrale Aspekte.

Erstens wird die historische Entwicklung von Verbands- bzw. Sammelklagen analysiert, wobei besonderes Augenmerk auf die Rechtstraditionen des Vereinigten Königreichs und der Vereinigten Staaten gelegt wird. Ziel ist es, die Entwicklung kollektiver Rechtsschutzmechanismen sowie die Faktoren zu verstehen, die zu ihrer Wirksamkeit in unterschiedlichen Rechtssystemen beigetragen haben.

Zweitens bewertet die Arbeit die Umsetzung der Richtlinie (EU) 2020/1828 in ausgewählten Mitgliedstaaten, Deutschland, den Niederlanden und Lettland, um Unterschiede in den nationalen Ansätzen sowie deren Auswirkungen auf die praktische Anwendung von Verbandsklagen aufzuzeigen. Eine unzureichende Umsetzung der Richtlinie (EU) 2020/1828 kann zu Problemen bei der Finanzierung kollektiver Rechtsdurchsetzungsverfahren führen, während übermäßig strenge formelle Anforderungen dazu führen können, dass solche Rechtsinstrumente in der Praxis kaum durchsetzbar sind und somit das ursprüngliche Ziel des Verbraucherschutzes verfehlt wird.

Drittens untersucht die Arbeit den durch die Richtlinie (EU) 2020/1828 geschaffenen Rechtsrahmen, einschließlich seiner wesentlichen Elemente wie Beteiligungsmodelle, Anforderungen an qualifizierte Einrichtungen sowie Finanzierungsregelungen. Ziel der Analyse ist es festzustellen, welche Bestandteile des Rechtsrahmens die wirksame Durchsetzung von Verbraucherrechten fördern und welche diese möglicherweise erschweren.

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LIST OF ABRIVIATIONS

Commission	European Commission
Convention	European Convention on Human Rights
Directive	Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC
GDPR	General Data Protection Regulation (EU) 2016/679
ECHR	European Court of Human Rights
Member States	Member States of the European Union
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

INTRODUCTION

Given the increasing complexity of modern markets, consumers suffer harm that may be minor for the individual but substantial in aggregate, such as slightly inflated prices or unfair contracting practices affecting a large number of people. In such cases, individual litigation is often economically unreasonable due to high legal costs, procedural complexity, and limited expected compensation. As a result, unlawful practices may stay unchallenged, weakening both consumer protection and market fairness. Representative action lawsuits have emerged as a legal response to this structural imbalance; they allow claims to be pooled and facilitate access to justice for affected individuals.

This paper examines the effectiveness of the Directive as a legal instrument for collective consumer protection within the European Union. It focuses on three main aspects.

First, it analyzes the historical development of representative actions, paying particular attention to the legal traditions of the United Kingdom and the United States, in order to understand the evolution of collective redress and the factors that have contributed to its effectiveness in different legal systems.

Second, it evaluates the implementation of the Directive in selected Member States (Germany, the Netherlands, and Latvia) to identify differences in national approaches and their impact on the practical application of representative actions. A poor implementation of the Directive could lead to problems in financing collective redress actions, and the formal requirements could render such legal instruments unenforceable in practice, thus failing to achieve the original objective of consumer protection.

Third, it assesses the legal framework established by the Directive, including its key elements such as participation models, requirements for qualified entities, and funding rules. The analysis aims to determine which elements of the legal framework facilitate or hinder the effective enforcement of consumer rights.

To achieve these objectives, this paper employs a combination of legal research methods. An analysis examines EU legislation, including the Directive and related legal instruments, as well as the national laws implementing its provisions. This is complemented by a comparative method, which allows for an evaluation of the different national approaches and their respective advantages and disadvantages. A historical method is used to trace the development of representative actions and to place the current legal framework in a broader context. Furthermore, selected case law is analyzed to illustrate how the relevant provisions

are applied in practice and to assess their practical impact. Through this methodological approach, the paper provides a structured evaluation of the Directive and its role in creating collective redress mechanisms in the European Union.

1. HISTORICAL BACKGROUND OF REPRESENTATIVE ACTIONS

As one of the methodologies of legal interpretation is historical interpretation, which prescribes understanding legal provisions or concepts based on their historical development,[1] the Author fids important to highlight where and how representative actions (also "class actions")[2] developed before being introduced in legal tradition of Continental Europe.

1.1.United Kingdom

The concept of representative actions roots in English courts of equity, where in the 17th century it emerged within so called "Bill of Peace", which allowed numerous plaintiffs or defendants to resolve disputes in one legal action brought before a court. Equity courts (such as the Chancery) developed flexible procedures that allowed one or a few individuals to represent a larger group with a common interest in a dispute. Such courts were one of the first, which based they decisions on the concepts of "conscience and fairness" rather than following solely written provisions.[3]

One of the first examples is considered the case of *Brown v. Vermuden* (1676). In this case the plaintiff, Brown, sued to enforce a previous decree regarding tithing obligations against local miners' association.[4] As Brown was not the only one who suffered by the violation of his property rights. As making every person involved party of the proceedings would significantly complicate the process and make it more time-consuming, the Chancery held that its decision shall be binding on all other miners and owners in the region, *"even if they were not individually named in the original suit"*.[5]

As this example shows, the idea of representative action claims was driven by practical necessity, as when rights of a large number of parties were violated by one person under the same conditions, it was impracticable to have every individual as a named party in separate proceedings. Already in this case it can be seen that core purpose of representative action regulation was to protect weaker parties and to allow several economically smaller parties to combine their claims and fight against one significantly stronger party. Thus, the idea of

[1] Hegel, Georg Wilhelm Friedrich, *Philosophy of Right* (SW Dyde tr, George Bell and Sons 1896) 6.
[2] Term "class action" is mostly known in Common law countries, while in Continental Europe term "representative action" is more common.
[3] Yeazell, Stephen Charles, 'The Class Menagerie: From Medieval Group Litigation to Rule 23' (1988) 102(2) Harvard Law Review 522 ff.
[4] Joseph Story, Commentaries on Equity Pleadings (Boston, 1842) 121.
[5] Brown v Vermuden (1676) 22 Eng Rep 802 (Ch).

representative action claims could be seen as origin and first steps of generisis of consumer protection.

During this time, unlike in Chancery in common law courts, whose jurisdiction primarily concerned monetary damages, whereas Equity courts or Chanceries dealt mainly with injunctions or enforcement of already decided cases, there were no representative actions permitted and all parties were required to join the lawsuit.

An early precedent in which the court allowed a representative action was in case of *Cockburn v. Thompson* (1809). In this case, several plaintiffs brought a claim on their own behalf and on behalf of all other investors. They claimed that Thompson and the other defendants had committed acts constituting a breach of duty and sought an accounting of the sums received. Thompson called dismissal of the claim, arguing that a large number of other interested parties had not been joined as parties to the action. However, the court rejected defendants' motion to dismiss, holding that where a group is too numerous to bring all members before the court, it is better to allow a class action rather than to deny justice altogether.[6]

By the 19th century, the institute of representative actions had gradually become a natural part of the English legal tradition. It was an accepted part of English civil procedure, used to manage group litigation in wide range of disputes. It should be noted, however, that the early English representative actions differed from contemporary representative actions. They were typically limited to cases where parties shared an *identical* interest (such as members of a single parish, or beneficiaries of the same trust). The relief granted also often benefited the group as a whole, rather than individual monetary judgments for each member.

Notwithstanding the widespread use of representative actions starting from 19th century, an explicit statutory permission for one person sue on behalf of numerous people was adopted only in late 20th century. With that Rule 19.8.(1) of the Part 19 ("Parties and Group Litigations") of the Civil Procedure Rules 1998 states: *"Where more than one person has the same interest in a claim – (a) the claim may be begun; or (b) the court may order that the claim be continued, by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest"*. It is also important to underline that Part 4 of the given provision *expressis verbis* stipulates that the court's decision in such case *"is binding on all*

[6] Cockburn v Thompson (1809) 33 ER 1005 (Ch).

persons represented in the claim", even if they were not actively participating in the proceedings.[7]

Although England being the first country to have introduced representative action regulation, the greatest contribution to its development was made by the USA in the 19th and 20th centuries. The modern understanding of representative actions is based on the American legislation and precedents. Therefore, the next subchapter will cover the most important milestones constituting U.S. regulation on representative actions.

1.2.United States of America

Although the original concept of representative actions was borrowed from the UK, it was the USA that gave it the most substantial development. Following English approach, American courts permitted joint representations where presence of all parties was impracticable.[8] One of the earliest decisions in this field is *Smith v. Swormstedt* (1853). In that case, following the devision of the Methodist Episcopal Church into northern and southern branches over slavery in 1844, the Sothern branch, which was represented only by few members but acted on behalf of all travelling preachers, brought a claim against the Northern Methodist church for a share of the common fund that was previously held by the undivided church. As it was practically impossible to invite all (several thousand) preachers of both churches, the Supreme Court held that in cases like this a limited number of representatives could act on behalf of the entire group.[9]

However, until 1930s, there was federal law regarding representative actions. This changed in 1938, when Federal Rules of Civil Procedure were adopted, in particular Rule 23, which specifically covered representative actions.[10]

Rule 23 introduced three types of representative actions: "true", "Spurious" and "hybrid". "True" representative actions were the only category in which judgements were binding on all members of the class, including the absent ones. "Spurious" actions encompassed cases involving similar legal or factual issues, however, the outcome was binding only on those parties who expressly joined the action and agreed to be bound by the court's decision.

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[7] *Civil Procedure Rules* 1998, r 19.8. This legal act can be accessed via https://www.legislation.gov.uk/uksi/1998/3132/rule/19.8, managed by The National Archives on behalf of HM Government of the United Kingdom.

[8] Amicus Brief of Legal Historians and Scholars of Representative Litigation in Support of Respondents, *Laboratory Corporation of America Holdings v Davis* (US Supreme Court, No 24-304, filed 2024) 12.

[9] Smith v Swormstedt 57 US (16 How) 288 (1853).

[10] *Federal Rules of Civil Procedure* 1938, r 23. This federal act can be accessed via https://www.law.cornell.edu/rules/frcp/rule_23

"Hybrid" covered issues typically involving collective rights in specific property and therefore the judgements were binding to absent parties only in regards to certain legal questions.[11]

This regulation created a lot of uncertainty, as there was not clear way to determine, whether a class is "true", "Spurious" or "hybrid". Consequently, it created a lot of legal disputes around this fact before court could proceed to the merits of the case.

It was only in 1966 Rule 23 was fundamentally revised, thereby establishing modern understanding of representative action regulation. Under the revised and current version of the Rule 23, a lawsuit qualifies as a representative action if it meets one of requirements set out in Section 23b:

(b) (1) *"prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications [..]; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications [..]"*;

(b) (2) *"the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole"*;

(b) (3) *"the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. [..]"*.[12]

What is even more significant is that, according to Rule 23 (c) (2) (B) in order to protect absent plaintiffs, the law introduces so-called *"opt-out"* mechanism if the case was initiated under Rule 23b (b) (3). This means that all potential class members are notified of the pending litigation and, if they remain silent, it is presumed that they consent to be the members of the class and accepts the outcome of the proceedings. This represents a significant change from the previous approach, under which plaintiffs were required to *"opt-in"* within certain time frame in order to benefit from the outcome of the case.

[11] Hensler, Deborah Rhode and others, *Class Action Dilemmas: Pursuing Public Goals for Private Gain* (RAND Institute for Civil Justice 2000) 11.
[12] *Federal Rules of Civil Procedure* 1938, r 23, as amended in 1966.

This change led to a significant increase of representative action litigation, particularly in the field of antitrust and consumer protection, where the defendant was commonly a large corporation, and therefore only pooling claims and bringing a larger case before courts was the only economically viable way to make a litigation to hold law-breakers liable.[13]

In this regard, the Supreme Court of the United States has held that representative actions based on representation without prior consent satisfy due process, provided that class members are given the opportunity to opt out.[14]

There was, however, a concern that class representatives might enter into settlement agreements that favored their own interests at the expense of absent class members. To mitigate such risk, it was (and still remains) required that judges oversight the settlements, allowing courts to review and approve settlements to ensure that they adequately protect the interests of both participating and non-participating members of the class.[15]

Some commentators expressed concerns that representative actions should be used solely as an aggregation mechanism for smaller claims and not as regulatory tools for claims with uncertain number of people involved.[16] Despite the debate, the public good of representative actions was soon recognized. Mauro Cappelletti, professor of Law at the University of Florence and at Stanford University Law School, names representative action regulation as a critical mechanism for overcoming barriers to access to courts.[17] It also became evident that the small-claims representative actions solve the collective action problem by incentivizing lawyers, through contingency fees, to act as private enforcers of public law, therefore making courts more accessible for larger number of individuals.[18]

Overall, the introduction of the *opt-out* mechanisms proved to be one of the most effective changes in representative action regulation and remains one of the key differences between

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[13] Kaplan, Benjamin, 'Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)' (1967) 81 *Harvard Law Review* 356 (386).
[14] *Phillips Petroleum Co v Shutts* 472 US 797 (1985) 813 f.
[15] Federal Rules of Civil Procedure, r 23 (e): *"The claims, issues, or defenses of a certified class — or a class proposed to be certified for purposes of settlement — may be settled, voluntarily dismissed, or compromised only with the court's approval."*
[16] Rosa, Zelly and Walker, Renner K., 'The Device: A History and a Possible Future for Class Actions – Part 2: Rulemaking, Progress, and Counterrevolution' (2025) https://www.hausfeld.com/what-we-think/competition-bulletin/the-device-a-history-and-a-possible-future-for-class-actions-part-2-rulemaking-progress-and-counterrevolution#_ftn13 accessed 26.02.2026.
[17] Cappelletti, Mauro and Garth, Bryant G., *Access to Justice* (vol 1, Sijthoff and Noordhoff 1978) 291.
[18] Rubenstein, William Bruce, 'Why Enable Litigation?: A Positive Externalities Theory of the Small Claims Class Action' (*Journal of Scholarly Perspectives*, 2006) https://escholarship.org/content/qt62m141cg/qt62m141cg.pdf accessed 26.02.2026.

common law and civil law systems, as the opt-out rule is rarely seen in the legal systems of the Continental Europe or EU.[19]

1.3.European Union

As the growing success of representative action regulation in the USA became increasingly obvious, there were several attempts in the EU to adapt its own legislation on representative actions.

In November 2008, *"Green Paper on Consumer Collective Redress"* was published by the Commission.[20] The paper identifies main barriers hindering consumers from protection of their rights before the courts, namely: 1) high litigation costs, where legal and expert fees often exceed eventually received compensation; and 2) complexness and time-consumption of the judicial procedures. In cases involving mass harm to large numbers of consumers, the individual loss suffered by each person often is minimal (such as a small overcharge of a few euros). However, when such overcharges are imposed on a broad range of costomers, the aggregate harm to society can become substantial.[21]

It was also established that collective redress legislation in EU Member States differed significantly, which lead to a problem bringing representative action claims in cases where consumers from several Member States are involved. Such fragmentation of regulation also undermined the EU single market. [22]

In the Green Paper, the Commission also examined the possibility of adopting the US-style regulation on representative actions. However, it was concluded that as the US legal system is significantly different from the legal system of EU, it has numerous elements which Commission considered as *"toxic"* and therefore unsuitable for adaptation in the EU. Those were: 1) contingency fees, whereby lawyers are paid a percentage of the award only if the claim succeeds; 2) punitive damages, which allow awards exceeding compensation to deter future misconduct; 3) pre-trial discovery, which obliges defendants to disclose information before

[19] Fleming, Anne, 'A History of Consumer Class Actions in State Courts' (2021) 15 *Brooklyn Journal of Corporate, Financial & Commercial Law* 152. https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1343&context=bjcfcl accessed 27.02.2026
[20] European Commission, *Green Paper on Consumer Collective Redress*, MEMO/08/741, 27 November 2008. All acts of the European Commission can be accessed vis https://commission.europa.eu/index_en
[21] Ibid 1.
[22] Ibid 2.

trial; and 4) opt-out systems, under which affected consumers are automatically included unless they expressly withdraw. [23]

At the same time, it should be noted that the Commission does not provide a clear answer, whether the above-mentioned legal instruments are not compatible with EU law. It appears that the Commission was reluctant to introduce legal measures not widely used across Member States. However, based on the Green Paper, it cannot be concluded that US-style representative action legislation could not (at least in part) be implemented in the EU legal system (see Section 3 below).

Lastly, 76% of the EU consumers indicated that they would be more willing to defend their rights in the court if they were able to bring a claim together with other consumers affected from the same violation. Such findings in the surveys served as an additional incentive to continue working on the EU representative action regulation.[24]

The next major development in this field occurred in 2013, when the Commission published its Recommendations *"on common principles for injunctive and compensatory collective redress mechanisms."*[25] Although being non-binding to the Member States, it set a clear framework reflecting the regulation the Commission was considering as suitable for the EU and intending to promote in the future. The Commission acknowledged that many individuals are affected by the same unlawful practices of one person.[26] Collective redress mechanisms should have enabled injured natural and legal persons to seek the cessation of unlawful conduct or compensation for harm suffered, particularly where the cost of individual litigation would hinder access to justice.[27]

The Recommendations, however, were not received as positive as initially expected by the Commission. In 2016, during the study conducted by the Universities of Leuven and Oxford was concluded that *"each national system is tailored to domestic needs, often uninfluenced by the Commission's blueprint, and the overview is of piecemeal development which is uncontrolled"*.[28]

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[23] Ibid 4.
[24] Ibid 1.
[25] 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).
[26] Commission Recommendation 2013/396/EU, rec. 2.
[27] Ibid, rec. 9.
[28] Hodges, Christopher and Voet, Stefaan, *Delivering Collective Redress: New Technologies* (Hart Publishing 2018) 7.

The Commission also emphasizes that these mechanisms must be designed in a way that preserves procedural safeguards and the fundamental guarantees afforded to parties in civil proceedings.[29] Such approach also embodies an understanding of the rights to fair trial and access to a court under Article 6 of the European Convention on Human Rights,[30] which encompasses the right to a fair trial also covers the rights to initiate litigation proceedings before court.[31] At the same time, without thorough elaboration, the Commission specifically mentioned that the already above-mentioned elements of the U.S. legal system, such as punitive damages and contingency fees should not be permitted.[32]

Furthermore, in the ECHR case *Lithgow and others v. the United Kingdom*, the court assessed possible violation of the Art. 6 of the Convention (right to a fair trial) in circumstances where an individual claimant within a collective claim was prevented from perusing his rights in a separate litigation. The Court, however, concluded that national legislation that excludes possibility of individual claims in favor of joint representation in certain situations does not violate persons rights to a fair trial, if the national regulation in question provides sufficient safeguards for persons individual participation and expression of one's position. Moreover, the Court recognized that s separation into numerous smaller claims could lead to *a "multiplicity of claims"* in situations where the case can be adequately decided withing one litigation proceeding.[33]

These Recommendations highlighted several key aspects that shaped a framework for representation actions in the EU and were later also incorporated into the Directive. Namely, Point 3(d) of the Recommendations provides a definition of a representative action as *"an action which is* ***brought by a representative entity****, an ad hoc certified entity or a public authority on behalf and in the name of two or more natural or legal persons who claim to be exposed to the risk of suffering harm or to have been harmed in a mass harm situation whereas those persons are not parties to the proceedings"*.

Although the definition is close to the commonly accepted definition of representative action, it contains very important distinction: an action can be brought only by a certified entity,

[29] Commission Recommendation 2013/396/EU, rec. 15.
[30] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, adopted 4 November 1950, entered into force 3 September 1953) ETS No 5.
[31] *Golder v United Kingdom* App no 4451/70 (ECtHR, 21 February 1975) (1975) 1 EHRR 524.
[32] Commission Recommendation 2013/396/EU, points 30 and 31.
[33] *Lithgow and others v United Kingdom* App nos 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81 and 9405/81 (ECtHR, 8 July 1986) (1986) 8 EHRR 329, para. 196 ff.

which must act on non-profit bases and must be licensed by the local authorities.[34] This represents probably the most significant difference that distinguishes EU representative action regulation from American or British, as the limitation of the amount of organization which are allowed to bring a claim, results in the situation where a people cannot react to a specific unjust case, if they are not represented by the organization active in relevant field. Combining this with the prohibition of the contingency fees, the proposed initiative makes filing of a representative action in the EU rather complicated and raises a question, whether it achieves its initial goal – make litigation process and collective redress more accessible for consumers.

Another significantly different from the U.S. model is that before bringing a claim the representative entity must provide to the court origin of the funds to finance the action. This is a quite unusual requirement given that there is no such obligation in any other types of civil proceedings. Moreover, the court is allowed to stay the proceedings if the entity or its sponsors do not possess enough funds to conduct whole proceedings (although the method for assessing such sufficiency is not specified) or if the is a conflict of interest between the funder and parties involved in the action on the claimant's side.[35]

Initially there was no justification given for such strict transparency requirements. Only later, when adopting the Directive, the Commission offered some explanation, namely, that such requirements were intended to mitigate the risk for abusive litigations, ensure that such actions are brought in the best interest of the consumers harmed, prevent possible unsubstantial actions against the competitors of the party funding the action.[36]

Although such objectives appear plausible, it may still be questioned why only representative actions and not all litigation involving consumers are subject to such extensive transparency requirements. Furthermore, if a potential claim against a competitor of the funder (a third party) is well-founded, the identity of the party financing the claim should be irrelevant. Conversely, if the claim lacks merit, it will not succeed, and the claimants represented by the entity and funded by the competitor would, pursuant to Point 13 of the Recommendations, bear the costs of the proceedings for having brought an unfounded action, making such "attacks" on the competitors barely profitable and sustainable *("loser pays"* principle).

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[34] Commission Recommendation 2013/396/EU, point 4 ff.
[35] Commission Recommendation 2013/396/EU, point 14 f.
[36] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC [2020] OJ L 409/1, rec. 52.

In the Recommendations the Commission also made it clear that representation actions in the EU should be founded on the *"opt-in"* principle, meaning on the basis of express consent of individuals claiming to have been harmed. Accordingly, any person of the group should be able to join or leave it before the final judgement is given.[37]

Thus, it may be concluded that the new regulation on representative actions in EU – the Directive was introduced to address the following issues: 1) strengthen consumer protection against unlawful practices by large companies; 2) harmonizing the rules governing representative actions across the EU; and 3) make representative actions more affordable and accessible for consumers.

Furthermore, the Commission chose to create a legal framework based on principles completely opposite from those underpinning U.S. class action regulation, which has proven to be highly effective (See Section 2 below). Now is must to be established which elements of the Recommendation were implemented in the Directive and what is the legal framework of it.

1.4.Directive (EU) 2020/1828

It was already mentioned that prior to the adaptation of the Directive, the Commission concluded that divergences in legislation among Member States hindered, both legally and economically, the full potential of the internal market. Accordingly, the Directive was adopted based on the Article 114(1) TFEU,[38] which empowers European Parliament and the Council of the EU to adopt legislative acts aimed to ensure the functioning of the internal market.

It is also worth noting that this objective corresponds with principle of subsidiarity enshrined in Article 5(3) TEU,[39] according to which in non-exclusive areas (Article 3(1) TFEU), the EU may act only where Member States cannot sufficiently achieve the objectives on their own and where action at EU level is more effective due to its scale or effects.[40]

As concluded in previous subchapter, EU regulation on representative actions is intentionally designed as very distant from the US framework. Therefore, it is not surprising that even the name of the Directive and the legal term thereof was chosen different –

[37] Commission Recommendation 2013/396/EU, point 21 ff.
[38] Treaty on the Functioning of the European Union [2012] OJ C 326/47.
[39] Treaty on European Union [2012] OJ C 326/13.
[40] Gailītis, Kaspars, Buka, Arnis and Schewe, Christoph Johann Ulrich (eds.), *Eiropas Savienības tiesības. I daļa. Institucionālās tiesības*, 3rd expanded edn. (Tiesu namu aģentūra 2025) 104.

"representative actions" instead of *"class actions"* to emphasize that a recognized entity and not self-appointed claimant represent the group.[41]

However, the regulation is not only substantially different for the Rule 23 in the U.S., but there are also some deviations from above-mentioned Recommendations, resulting in a distinct framework for representative actions in EU.

Perhaps the most significant change from the Recommendations is the exclusion of legal persons from the category of potential claimants in representative actions. As noted above, point 3(d) of the Recommendations allowed to bring actions on behalf both natural and legal persons. However, Art. 3(1) of the Directive defines a "consumer", whose rights might be protected through a representative action (Art. 2(1) of the Directive), as *"any **natural person** who acts for purposes which are outside that person's trade, business, craft or profession"*.

The shift from protection of all types of private parties appears to be self-explanatory. The original rationale of class actions in common law jurisdictions and representative actions in Continental Europe has been and continues to be to protect weaker party (consumer) against large and powerful companies, rather than to give any group of persons with similar claims procedural advantage in litigation. Therefore, limiting the scope of the Directive is both justifiable and consistent with international understanding of particular legal mechanism.

When dealing individuals or legal entities that have similar or identical claims against one or several defendants, but who do not qualify as consumers or otherwise as weaker party, is it more appropriate to refer to so-called aggregate litigation. Aggregate litigation covers procedures that allow numerous similar legal claims to be handled together instead of adjudicated separately. Such claims usually arise from the same event or the same alleged wrongdoing. In these cases, many individual proceedings remain separate but are coordinated so that common issues of fact or law are addressed only once.[42]

The approach of allowing only specific entities to bring representative actions before the courts has remained unchanged since the adoption of the Recommendations. On the contrary,

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[41] Agulló Agulló, Diego, 'Directive 2020/1828: A New Era for "European Class Actions"?' (The Official Blog of UNIO-EU Law, 22 November 2021) https://officialblogofunio.com/2021/11/22/directive-2020-1828-a-new-era-for-european-class-actions/#:~:text=The%20European%20Union%20legislator%20avoids,than%20that%20of%20the%20consumer accessed 10.03.2026.

[42] Nagareda, Richard Allen and others, *The Law of Class Actions and Other Aggregate Litigation*, 2nd edn. (Foundation Press 2013) 3.

the requirements for an entity to qualify as a "qualified entity" have been clarified and further specified in the Directive.

According to Art. 4(3) of the Directive, a qualified entity seeking to represent consumers from more than one Member State (cross-border representative action), must receive a license from the Member State and it must meet following criteria: 1) legal entity established under national law with at least 12 months' prior activity in consumer protection; 2) its statutory purpose shows a legitimate interest in protecting consumer interests; 3) it has a non-profit-making character; 4) it is not the subject of insolvency proceedings and is not declared insolvent; 5) it is independent and not influenced by persons other than consumers; 6) it makes publicly available information that demonstrates that the entity complies with the criteria listed above.

Although some of the listed criteria may be considered as relatively formal and easy to fulfill (for example, points 4 and 6), the most of them impose strict limitations on the range of entities that are enabled to participate in representative actions. By contrast, Art. 4(5) of the Directive allows Member States to apply these requirements only to entities involved in cross-border representative actions.[43] This means that requirements for domestic representative actions[44] may be determined by national governments, therefore making them potentially less strict.

Furthermore, according to Art. 4(6) of the Directive, Member States may, upon entity's request, designate it on an *ad hoc* basis to bring a specific domestic representative action, provided it meets the applicable national criteria for qualified entity status.

There has also been a significant change of approach concerning the way, how consumers can join a representative action. In above-mentioned Recommendations it was considered that only opt-in options would be appropriate for representative actions in the EU. However, the Directive adopts more flexible approach by allowing both opt-in and opt-out mechanisms. Art. 9(2) permits Member States to decide on their own rules on how and at which stage of a representative action customers may express their intention to participate of withdraw from an action.

[43] Art. 3(7) of the Directive: *'cross-border representative action'* means a representative action brought by a qualified entity in a Member State other than that in which the qualified entity was designated.
[44] Art. 3(6) of the Directive: *'domestic representative action'* means a representative action brought by a qualified entity in the Member State in which the qualified entity was designated.

Such conclusion also can be followed from preamble of the Directive, which states that *"The level of detail of the information required could differ depending on the measure that the qualified entity is seeking and whether an opt-in or an opt-out mechanism applies."* (Recital 34) or *"To best respond to their legal traditions, Member States should provide for an opt-in mechanism, or an opt-out mechanism, or a combination of the two"* (Recital 43).

On the contrary, Art. 9(3) of the Directive states that *"consumers who are not habitually resident in the Member State of the court or administrative authority before which a representative action has been brought have to explicitly express their wish to be represented in that representative action in order for those consumers to be bound by the outcome of that representative action."*.

This implies that Member States may decide on opt-out mechanisms only in purely domestic cases, as also confirmed in Recital 45 of the Directive.[45] However, within the EU internal market, it could be difficult to confine a purely domestic case, especially where the potential defendant is a multinational corporation, for which the EU constitutes only one of its operational markets.

Furthermore, this restriction could incentivize Member States and representative entities to favor opt-in mechanisms, as these involve less uncertainty and require fewer administrative resources to valid consent of each claimant.[46] This factor; combined with the limited number of cross-border representative actions, may hinder the overall potential of representative actions and therefore consumer protection within the EU. (see further in section 3 below)

One of the last focuses of the paper is the funding of representative actions. The Directive requires that any possible conflicts of interests be avoided and regulates third-party funding where the funder has an economic interest in outcome of the case (Art. 10 (1)). For this reason, according to Art. 10(2) (b) is it *expressis verbis* forbidden to bring a representative action *"against a defendant that is a competitor of the funding provider or against a defendant on which the funding provider is dependent"*.

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[45] "However, [..], an opt-in mechanism should be required regarding representative actions for redress measures where the consumers affected by the infringement do not habitually reside in the Member State of the court or administrative authority before which the representative action is brought. In such situations, consumers should have to explicitly express their wish to be represented in that representative action in order to be bound by the outcome of the representative action."

[46] European Commission, *Workshop on the Implementation of the Representative Actions Directive (EU) 2020/1828: Thematic Debate on Funding of Actions and Public Assistance to Qualified Entities* (Brussels, 26 November 2021) 4, https://commission.europa.eu/publications/workshop-implementation-representative-actions-directive-eu-20201828_en?prefLang=fr accessed 23.02.2026.

Although such restrictions appear plausible, they may potentially raise some legal concerns. For example, according to Art. 10(4) of the Directive, a court may deny a legal standing of a qualified entity, if it identifies a conflict of interest, regardless of the *prima facie* legitimacy of the claim. Even though individual consumer does not lose its rights to bring a claim on its own, such approach rises questions regarding its compatibility with persons rights to a fair trial.

In particular, several considerations are relevant: 1) mechanism of representative actions is specifically designed for situations in which individual claims are economically unreasonable; 2) in certain Member States, only a very limited number of qualified entities are registered (see Section 2 below); and 3) courts already possess the authority to dismiss cases which are manifestly unfounded (see Section 3 below).

Lastly, it is worth mentioning that, in theory, the Directive provides a list of areas and subareas of consumer protection, in which a representative action can be brought (Annex 1 of the Directive). However, the given framework appears to have limited practical impact on the effectiveness of its application for the following reasons: 1) the list set out in Annex 1 is very broad, encompassing 66 legal subareas; 2) according to the Art. 1(2) and Recital 18 of the Directive, the provided scope may be extended on the national level if necessary; and 3) the right of individuals or groups to bring a claim is generally not limited in the national tort law regulation as it constitutes persons rights to access to court, therefore making the proposed list in Annex 1 more formal rather than practical tool.

Before evaluating the implementation of the Directive in national legislations the distinguish between representative actions and so-called *Actio popularis* (popular action). *Actio popularis* is typically utilized in cases when a claimant (usually NGO) brings proceedings to protect collective interests (for instance, in the field of environmental or urban-planning), without having a need to show the harm of personals rights or interests.[47]

Unlike representative actions or above-mentioned forms of aggregate litigation, *actio popularis* is directed towards the protection of the public sphere of law and aims to insure proper public law enforcement. *Actio popularis* can be used generally only when the laws specifically allow that and it does not seek for compensation for potential violation of civil

[47] Latvian Constitutional Court (Satversmes tiesa), 10 December 2021, Case No 2021-11-01, *Decision on Termination of Proceedings* (*Par tiesvedības izbeigšanu lietā Nr. 2021-11-01*), para. 10.

rights of individuals. Consequently, *actio popularis* is not legally protecting a defined group of people, but the community as a whole.[48]

[48] CJEU Case C-321/95 P *Greenpeace and Others v Commission* [1998] ECR I-1651, para. 33.

2. IMPLEMENTATION OF THE DIRECTIVE (EU) 2020/1828 INTO NATIONAL LEGISLATION

In the preamble of the Directive (Recital 7) it is stated that implementation of harmonized regulation on representative actions through the Directive *"would boost consumer confidence, empower consumers to exercise their rights, contribute to fairer competition and create a level playing field for traders operating in the internal market."*. This objective of strengthening confidence in the internal market was also emphasized by EU Commissioner of Justice of that time Didier Reynders in 2021, during the period in which the Directive was still under development.[49]

The effectiveness of the Directive is largely dependent on how it is implemented in national legal systems.[50] In order to assess this, as well as above-mentioned considerations and the overall impact of the Directive at national level, this paper examines 3 Member States form different EU regions and with different level of the implementation of the Directive.

The following analysis aims to determine, which, if any, of these Member States have been successful in applying representative actions in practice, and to evaluate whether (and, if so, how) the legal and practical situation has changes following the adoption of the Directive.

The selection of these countries is based on several considerations. Germany represents the fastest growing market for representative actions. The Netherlands by contrast is country with opt-out rule, which is not the case for Germany and Latvia. A further reason for choosing these countries is that Germany and Netherlands are countries with the highest number of representative actions initiated up to 2023, excluding England, while Latvia represents the opposite with almost no developed practice of representative actions.[51]

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[49] European Commission, *'Workshop on the Implementation of the Representative Actions Directive (EU) 2020/1828'* (26 November 2021) https://commission.europa.eu/publications/workshop-implementation-representative-actions-directive-eu-20201828_en?prefLang=fr accessed 23.02.2026.

[50] Biard, Alexandre and Voet, Stefaan,, 'Collective Redress in the EU: Will It Finally Come True?', in A Uzelac and S Voet (eds.), *Class Actions in Europe: Holy Grail or a Wrong Trail* (Springer 2021) https://www.researchgate.net/publication/344501198_Collective_redress_in_the_EU_will_it_finally_come_true_in_A_Uzelac_and_S_Voet_eds_Class_Actions_in_Europe_Holy_Grail_or_a_Wrong_Trail_Springer_2021 accessed 24.02.2026.

[51] CMS, *European Class Action Report 2023* (2023) 10, https://cms.law/content/download/641561/file/European%20Class%20Action%20Report%202023.pdf accessed 20.02.2026.

In it also important to focus on national legislation as there are very few EUCJ cases concerning the Directive. This is because it was required to be implemented into national legislation only in 2022 and has been applicable only since 2023.

In 2022, EUCJ ruled that customer protection associations were entitled to bring an action against *"Meta"* for violation of GDPR. However, since the Directive had not been transposed at the time yet, the claim had to be based on Art. 80(2) of the GDPR.[52]

A particularly relevant case in regards to the Directive is case *Banco Santander SA v. Asociación de Consumidores y Usuarios de Servicios Generales – Auge* (2025).[53] In this case, the Spanish Supreme Court was asked to refer a question to the CJEU concerning a dispute between the consumer-association Asociación de Consumidores y Usuarios de Servicios Generales – Auge and Banco Santander SA (as successor to Banco Banif SA) over €900 000 invested in high-risk financial products.

The association sought to bring a collective action on behalf of its members, asking whether it had *locus standi*. In particular, the court evaluated, whether so called "private clients" (i.e., wealthy individuals) could rely on EU consumer protection law. The court argued that the status of a "private client" does not automatically grant a standing, because such products were not to be regarded as *"general, every day and widely used goods"*.[54]

Although the Directive was not yet applicable at the time of the dispute, it nevertheless was invoked to clarify the scope of collective redress in the financial sector after the Directive enters in power. Namely, the court referred to the Recital 14 of the Directive, which explicitly extends consumer-protection rules to financial services and confirms that private investors are "consumers" for the purposes of collective actions.[55]

2.1.Germany

Although representative actions were known in Germany prior to the Directive, the german system could be characterized as fragmented and incomplete. The Injunction Act[56] (in German

[52] CJEU Case C-319/20 *Meta Platforms Ireland Ltd v Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband*, 28 April 2022, ECLI:EU:C:2022:322, para. 80.
[53] CJEU Case C-343/22 *Banco Santander SA v Asociación de Consumidores y Usuarios de Servicios Generales — AUGC*, 22 December 2022, ECLI:EU:C:2022:1029.
[54] Ibid, para. 19.
[55] Ibid, para. 39.
[56] *Gesetz über Unterlassungsklagen bei Verbraucherrechts- und anderen Verstößen* (UKlaG); the UKlaG can be accessed via https://www.gesetze-im-internet.de/uklag/

"*Unterlassungsklagengesetz*" and the Act against Unfair Competition[57] (in German *"Gesetz gegen den unlauteren Wettbewerb"* or *"UWG"*) allowed qualified consumer associations to seek injunctions against unlawful business practices. However, these instruments did not provide any legal mechanisms for claiming monetary compensation on behalf of consumers, if unfair practice had been established.

The model of so-called declaratory action (in German *"Musterfeststellungsklage"* or *"MFK"*), which had been incorporated in the German Civil procedure law, empowered qualified entities to obtain a binding judgement on common questions of fact or law. This enabled individual consumers to bring separated claim against the defendant, whose actions had been declared illegal under the above-mentioned declaratory action procedure.[58] However, it was later concluded that such legal framework did not provide effective redress, because consumers still had to initiate subsequent proceedings in order to obtain compensation.[59]

It was only with the implementation of the Directive that it was formally acknowledged that the existing framework for representative actions was insufficient. As a result, mechanisms for redress, previously absent from German legal system, were introduced.[60]

It was further decided to transpose the Directive in a new legal act with an objective of consolidating all provisions on representative actions in one legal act (as much as it was possible). Therefore, in October 2023 Law on the Implementation of the Directive on Class Action Lawsuits[61] (in German – "Verbraucherrechtedurchsetzungsgesetz" – "VDuG") was enacted.[62]

Art. 1(1), point 1, of the VDuG introduces the redress actions (in German – *"Abhilfeklage"*) and integrates above-mentioned MFK in to VduG framework. This integration allows qualified entities to choose between seeking a binding declaration or pursuing direct compensation on

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[57] *Gesetz gegen den unlauteren Wettbewerb* (UWG); the UWG can be accessed via https://www.gesetze-im-internet.de/uwg_2004/

[58] § 606 *Zivilprozessordnung* (German Code of Civil Procedure), as inserted by the Act of 12 July 2018, BGBl I 2018, 1151; the German Code of Civil Procedure can be accessed via https://www.buzer.de/gesetz/7030/al67840-0.htm

[59] CMS, *European Class Action Report 2023* 57.

[60] Deutscher Bundestag, *Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zur Umsetzung der Richtlinie (EU) 2020/1828 über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher und zur Aufhebung der Richtlinie 2009/22/EG (Verbandsklagenrichtlinienumsetzungsgesetz – VRUG)*, BT-Drs 20/6520, 24 April 2023, 1; https://dserver.bundestag.de/brd/2023/0145-23.pdf accessed 17.04.2026.

[61] *Gesetz zur gebündelten Durchsetzung von Verbraucherrechten* (*Verbraucherrechtedurchsetzungsgesetz* – VDuG) (8 October 2023) BGBl I 2023; the VDuG can be accessed via https://www.gesetze-im-internet.de/vdug/BJNR1100B0023.html

[62] Deutscher Bundestag, *Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zur Umsetzung der Richtlinie (EU) 2020/1828*, BT-Drs 20/6520, 134.

behalf of consumers.[63] The same idea was expressed in the draft bill of the VduG: *"With the new class action for redress, authorized entities can now also assert claims for performance by consumers against a business. Not only payment claims can be filed, but also claims seeking a judgment ordering other performance."*[64]

The judicial remedy procedure under VduG has three phases. First, the court may issue a preliminary judgment establishing the defendant's liability in principle and setting criteria and parameters for calculating consumer claims. Second, the parties attempt to reach a settlement. If no agreement is reached, the court delivers a final judgment.

In the subsequent implementation procedure, a court-appointed administrator examines the claims of registered consumers and satisfies valid claims directly, removing the need for individual lawsuits. If the total collective amount set by the court proves insufficient, it may be increased upon the plaintiff's request, while consumers and defendants remain free to pursue rejected claims or objections in separate proceedings.[65]

In addition to VduG the UKlaG was also revised. In particular, specific procedures for the registration, review, and potential revocation of an entity status was introduced.[66] Analysis of the legislative process shows that the VDuG intentionally went beyond a simple transposition of the Directive by extending the scope of the redress actions to a wider range of consumer law violations, thereby establishing a more comprehensive framework for consumer protection.[67]

2.1.1. Type of Participation

The German legal system can be considered as opt-in system with slight exception. Consumers are generally required to actively register their claims in so called "claim register" (in German – *"Verbandsklageregister"*) to be bound by and benefit from the collective proceeding.[68]

What stands out in German system, is that VDuG permits not only customers (natural persons), but also small enterprises to be part of representative actions. Pursuant to Art. 1(2)

[63] Scherer, Andreas, '§ 1 VDuG Verbandsklagen', in R Köhler and J Feddersen (eds.), *UWG*, 44th edn. (2026) para. 6.
[64] BT-Drs 20/6520, 61.
[65] Ibid 61 f.
[66] Köhler, Rainer, and Alexander, Christian, '§ 4f UKlaG – Verordnungsermächtigung', in R Köhler and J Feddersen (eds.), *UWG*, 44th edn. (2026) para. 3.
[67] BT-Drs 20/6520, 64.
[68] Scherer, '§ 1 VDuG Verbandsklagen', para. 12.

VDuG, small enterprises are defined as entities employing fewer than 10 people and having annual turnover or annual balance sheet total not exceeding 2 million euros.

However, unlike in other Member States, a participation threshold must be met for representative action to be possible, which, according to Art. 4(1) VDuG, is at least 50 customers or small entities, which are considered and treated equally with customers within the scope of matters covered by the VDuG.[69]

At the same time, VDuG provides for a targeted opt-out right at the settlement stage. Under Art. 10 VDuG, a consumer who has registered a claim may withdraw from a court-approved settlement within a one-month period after its publication in the register.[70] In legal literature this combination of opt-in when joining a potential action, coupled with opt-out option at the settlement stage, when the interests of the consumer is already represented by a third party (qualified entity), is considered as a fair balance between the goals of collective redress efficiency and the protection of individual procedural autonomy.[71]

Although the German implementation is comprehensive, several aspects require further academic examination. In particular, the effectiveness of the hybrid opt-in/opt-out model should be examined to assess whether the one-month withdrawal period sufficiently protects consumer choice without causing procedural uncertainty. At the same time, it appears to be undeniable that although very limited, however, existing and therefore more flexible and adjustable opt-out opportunity in certain situations is better than opt-in system only with no leverage opportunity for the consumers.

2.1.2. Requirements for Qualified Entities

As prescribed by the Directive the right to initiate a representative action is reserved strictly for qualified entities. German statutory framework distinguishes requirements for domestic qualified entities (Art. 4 UKlaG) and cross-border qualified entities (Art. 4d UKlaG).

Both domestic and cross-border entities must demonstrate so called "organizational maturity", by having at least one year of activity in consumer protection and showing a "permanent, effective, and professional" operational capacity (Art. 4(2) UKlaG and Art. 4d(2) UKlaG respectfully).

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[69] BT-Drs 20/6520, 71.
[70] Scherer, '§ 1 VDuG Verbandsklagen', para. 3.
[71] Scherer, Andreas, '§ 46 VDuG – Anmeldung von Ansprüchen; Rücknahme der Anmeldung', in R Köhler and J Feddersen (eds.), *UWG*, 44th edn. (2026) para. 11.

However, their membership requirements differ: domestic associations must have either three consumer associations or at least 75 natural persons as members, whereas cross-border entities are evaluated more generally based on their professional structure and experience.

2.1.3. Funding of Representative Actions

As mentioned before, Art. 4 VDuG implements *ex ante* approach for preventing funding-based conflicts of interest.[72] According to Art. 4(2) VDuG, a representative action is inadmissible if the third-party funder is a competitor of the defendant, is dependent on the defendant, or is promised a financial share of the recovered amount exceeding 10%. This provision sets a preventive mechanism, empowering courts to demand full transparency and disclosure of any funding agreements if any reasonable doubts about the propriety arise.[73]

In this context, the decision of German Federal Court of Justice (supreme court) in case *Prozessfinanzierer II* should be mentioned. In this case, the court held that profit-sharing agreement with a commercial litigation funder in a profit-skimming case under Art. 10 UWG constituted violation of dealing in good faith under Art. 242 of the German Civil law[74] (in German – *"Bürgerliches Gesetzbuch"* or *"BGB"*).[75] The court reasoned that profit-skimming is intended to transfer unlawful gains to the public treasury, not to generate private profit, and that using a non-profit association for commercial gain is therefore impermissible.[76]

Additionally, it is to be noted that according to Art. 2(1) point 1 (b) VDuG, domestic qualified entities are subject to a strict monetary cap, with no more than 5% of their funding permitted to come from commercial enterprises, with an exception to publicly funded consumer rights protection centers. Cross-border entities, on the contrary, are not subjects to such restriction. At the same time both types of entities must prove their general independence from entrepreneurial influence and fully disclose any commercial funding sources.[77]

Art. 4(2), point 3, provides for an additional circumstance in which a representative action must be dismissed if the qualified entity is funded by a third party. Namely, the action must be

[72] Scherer, Andreas, '§ 4 VDuG – Austritt aus dem Vergleich', in R Köhler and J Feddersen (eds.), *UWG*, 44th edn. (2026) para. 1.
[73] Ibid, para. 16.
[74] *Bürgerliches Gesetzbuch* (BGB); the BGB can be accessed via https://www.gesetze-im-internet.de/bgb/
[75] German BGH 9 May 2019, I ZR 205/17, para. 19.
[76] Ibid, para. 31.
[77] Köhler and Alexander, '§ 4d UKlaG – Liste der qualifizierten Einrichtungen für grenzüberschreitende Verbandsklagen', in R Köhler and J Feddersen (eds.), *UWG*, 44th edn. (2026) para. 13.

declared inadmissible if it is financed by a third party, who is promised an economic share of more than 10 percent of the service to be provided by the defendant.

Lastly, Art. 4b UKlaG gives the Federal Office of Justice the authority and necessary data to monitor for potential abuse of the above-mentioned restrictions. Also, the review mechanisms of Art. 4a and 4e UKlaG, combined with the judicial supervision and possible coercive fines for non-cooperation, allowed to limit risks of violation related to litigation funding.[78]

However, concerns have been raised that 10% cap could have a negative effect on the availability of financing for complex and high-cost litigation, resulting in potentially limiting access to justice.[79]

Overall, it can be concluded, that the implementation of the Directive in Germany has been broadly sufficient. Based on the publicly available information in 2024 and 2025 there have been 10 registered representative actions initiated by the qualified entities.[80] Although Germany is not among the leading jurisdictions in this regard (See section 2.2. below), the German model, by allowing representation of "small" legal entities alongside with natural persons, as well as incorporating of partial opt-out mechanisms, reflects a cautious but notable step toward the effective and inclusive framework for representative actions.

At the same time, it should be mentioned that German legal system allowed representative actions also before the Directive was transposed. Therefore, total number of such claims is likely to be significantly higher, as the above-mentioned statistics do not include actions started before the Directive as implemented into national law (for example, "Swipe fees litigation").[81]

2.2.Netherlands

Before the implementation of the Directive, the Dutch legal framework for representative actions had three major stages of evolvement. The first time regulation in this field was introduced in 1994 amendments to the Dutch Civil Code, namely through new Art. 3:305a,[82]

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[78] Köhler and Alexander, '§ 4a UKlaG – Liste der qualifizierten Einrichtungen für grenzüberschreitende Verbandsklagen', in R Köhler and J Feddersen (eds.), *UWG*, 44th edn. (2026) para. 3.
[79] Scherer, '§ 4 VDuG – Austritt aus dem Vergleich', paras. 23 f.
[80] Federal Office of Justice (*Bundesamt für Justiz*), 'Verbandsklagenregister – VRUG 1/2024' https://www.bundesjustizamt.de/DE/Themen/Verbraucherrechte/VerbandsklageregisterMusterfeststellungsklagenregister/Verbandsklagenregister/Verbandsklagen/Klagen/202401/VRUG_1_2024.html?utm accessed 13.05.2026.
[81] 'Card Fee Damages Claims: Supreme Court Confirms that Mastercard and Visa Interchange Fees Unlawfully ...' (Eversheds Sutherland) https://www.eversheds-sutherland.com/en/germany/insights/card-fee-damages-claims-supreme-court-confirms-that-mastercard-and-visa-interchange-fees-unlawfully?utm accessed 13.05.2026.
[82] art. 3:305a *Burgerlijk Wetboek* (1992); the *Burgerlijk Wetboek* can be accessed via https://wetten.overheid.nl/.

which introduced a general right for foundations or associations with full legal capacity to start a representative action in order to protect "similar interests" of other persons.[83] However, many other European jurisdictions at that time, only claims for injunctive or declaratory relief were allowed and representative organizations were not entitled to seek monetary compensations on behalf of affected individuals.[84]

In 2005, the Mass Claims Collective Settlement Act[85] (in Dutch – *"Wet collectieve afwikkeling massaschade"*) introduced settlement-binding mechanism. Under this mechanism, Court of Appeal of Amsterdam was empowered to declare a settlement agreement binding for all persons affected, unless they did not explicitly opt-out.[86] The opt-out rule was intended to ensure "global peace" for defendants by binding a large number of claimants without the need for individual consent. [87]

The final major development in Dutch legislation before the Directive happened in 2020 with a new Act on the Settlement of Mass Claims in Class Actions ("WAMCA")"[88] (in Dutch – *"Wet afwikkeling massaschade in collectieve actie"*). This act preserved the opt-out rule as default for Dutch residents and opt-in regime for foreign claimants, as well as introduced stricter list of requirements for organizations representing consumers.[89] Therefore, this act combined initial rule 3:305a as well as settlement-binding approach under the 2005 act.

Although a right to claim damages on behalf of the entire group was introduced only with the Directive, significant change in this matter was created by the Supreme Court of Netherlands in 2014, when the Court held that the statute of limitation for individual claim, including also claims for monetary damages, are interrupted where the individual concerned represented by the institution in injunctive claim of the same matter. [90]

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[83] Stolker, Carel Jan Jozef Maria, 'Art 3:305a BW – Collectieve actie', in *Tekst & Commentaar Burgerlijk Wetboek* (updated to 1 September 2025) 2.
[84] British Institute of International and Comparative Law, *Collective Redress: The Netherlands* (2014) 11 https://cdn.infra.unriddle.ai/documents/yzzwy51kw65gec3z7jd1zs5q accessed 20.04.2026.
[85] *Wet collectieve afwikkeling massaschade* (2005); the Act can be accessed via https://wetten.overheid.nl/
[86] van Boom, Willem Hendrik, *Collective Settlement of Mass Claims in The Netherlands* (Rotterdam Institute of Private Law Accepted Paper Series, 2009) 13 https://cdn.infra.unriddle.ai/documents/xdhml720wxz6zsvetze83ux5 accessed 20.04.2026.
[87] Tzankova, Ivelina and Kramer, Xandra, 'From Injunction and Settlement to Action: Collective Redress and Funding in the Netherlands', in A Uzelac and S Voet (eds.), *Class Actions in Europe: Holy Grail or a Wrong Trail* (Springer 2021) 4.
[88] *Wet afwikkeling massaschade in collectieve actie* (2020); the Act can be accessed via https://wetten.overheid.nl/
[89] Klaassen, Cees Johannes Maria, 'De Wet afwikkeling massaschade in collectieve actie. Eindelijk werkelijkheid, nu nog gaan werken…' (2019) *Tijdschrift voor Civiele Rechtspleging* 151.
[90] Hoge Raad (Netherlands Supreme Court), 28 March 2014, ECLI:NL:HR:2014:766, para. 3.8.

The Directive was incorporated into Dutch law primarily through amendments to the WAMCA and Dutch Code of Civil Procedure, by introducing new paragraph to the Art. 1018f of the Code of Civil Procedure.[91] These changes clarify that, for representative actions covered by the Directive the opt-out rule is excluded for non-residents, thereby imposing opt-in system for foreign claimants.[92]

Similar amendments were made to Art. 3:305a (through Art. 3:305c and the new Art. 3:305e) in order to harmonize definition of "qualified entity" and introduce funding safeguard mechanisms in line with the Directive.[93]

2.2.1. Type of Participation

As already mentioned above, the Dutch legal system distinguishes between opt-in and opt-out rule depending on the residency of the claimant: opt-in rule applies for non-residents of Netherlands, while opt-out for all residents, and this division cannot be altered with person's consent.

The outcome of Representative Action is binding on Dutch residents unless they submit a declaration, within the period set by the court, where they express their willingness to be excluded of an action (similar to the Rule 23 in the U.S.).[94] In case for non-residents and opt-in rule a person is bound by the ruling of the court only after a written declaration of consent has been filed to the court through qualified entity. In theory, under Dutch law a person could request the application of an opt-out rule for future representative actions. However, since opt-out mechanism is expressly excluded for cross-border representative actions under Art. 9(3) of the Directive, this rule currently remains unapplicable in practice. [95]

The Netherlands is one of the few countries in EU that applies opt-out mechanism. Within Dutch legal and economic experts it has been widely acknowledged that opt-out model increases participation, thereby ensuring that large-scale representative actions can be started in the first place.[96]

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[91] Stolker, 'Art 3:305a BW – Collectieve actie' 4.
[92] Potjewijd, Gerard Hendrik and Kluwen, Tjitte Daan Andries, 'Art 1018f Rv', in *GS Burgerlijke Rechtsvordering* (updated to 30 July 2025) 17.
[93] Stolker, 'Art 3:305a BW – Collectieve actie' 20 ff.
[94] van Mierlo, Antonius Ignatius Maria, 'Art 1018f Rv – Opt-out/opt-in-mogelijkheid na aanwijzing exclusieve belangenbehartiger', in *Tekst & Commentaar Burgerlijke Rechtsvordering* (updated to 6 February 2026) 3.
[95] Tzankova and Kramer, 'From Injunction and Settlement to Action' 19.
[96] Klaassen, (2019) *Tijdschrift voor Civiele Rechtspleging* 151.

It has also been argued that opt-out approach has increased an overall quality of representative actions by reducing so called "free-riding" problem, when people agree to participate in actions that lack legal standing.[97] Moreover, it considered to be balanced between claimants and the defendants, especially in cases of so called "scattered damages", where individual claims are to small and impractical to pursue separately.[98]

In 2025 this beneficial effect of opt-out was recognized also by the Court of Rotterdam in case *SDBN v. Adobe* stating that *"in cases of litter damage, it is often much more efficient to use opt-out procedures."*.[99]

2.2.2. Requirements for Qualified Entities

In the Netherlands, the requirements for qualified entities differ for domestic representative actions and are less demanding than requirements applicable to cross-border representative actions under Art. 4(3) of the Directive.

According to Art. 3:305a (1) of WAMCA, a qualified entity must take the form of a foundation or association (i.e., non-profit organization) with a statutory objective of protecting the interests of the persons it represents. Under Art. 3:305a (2) of WAMCA, such an entity must be capable of demonstrating that it sufficiently represents the group (size of constituency, scope of claims, support from other organizations, and etc.).

While the requirement might seem formal and hard to measure, it has proven to be central issue of litigation. In above-mentioned case *SDBN v. Adobe*, the court was required to determine, whether the claimant entity had sufficient standing in the first place. In this case Adobe argued that the entity had failed to provide plausible evidence that the number of people formally represented and whose rights were allegedly violated by Adobe, were accounted with the due accuracy and procedure. The court sided with Adobe and concluded that *"the interests represented by SDBN are sufficiently safeguarded."*, and decided that it cannot be determined that the representativeness requirement of Article 3:305a (2) of the Dutch Civil Code had been satisfied.[100]

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[97] British Institute of International and Comparative Law, *Collective Redress: The Netherlands* 15.
[98] Verheij, Albert, 'De Wet afwikkeling massaschade in collectieve actie en de begroting van personenschade' (2020) 69(11) *Verkeersrecht* 333.
[99] Rechtbank Rotterdam, 28 May 2025, ECLI:NL:RBROT:2025:6254, para. 6.57.
[100] Rechtbank Rotterdam, ECLI:NL:RBROT:2025:6254., paras 6.35 ff.

Similar to Germany, prescribed by Art. 3:305a (2) (c) of the Dutch Civil Code qualified entities are required to possess sufficient financial resources to cover litigation costs and courts are empowered to inspect financing agreements.

Although not *expressis verbis* regulated by law, but based on the sole concept of domestic representative actions and strict distinction between opt-in and opt-out mechanisms based on the residency on the applicants, the court practice has established that an action must have a sufficient connection to the Netherlands. Such connection may be demonstrated, for example, where the majority of claimants reside in the Netherlands, the defendant is domiciled there, or the harmful events occurred in the Netherlands.[101] In the recent decision of CJEU in case *Stichting Right to Consumer Justice v Apple* the Court similar to Dutch courts established that: *"[..] in so far as the App Store NL targets specifically the Netherlands market, it is predictable that a representative action for damages in respect of purchases made on that platform will be brought before any Netherlands court having substantive jurisdiction"*.[102]

In order to prevent abusive litigation, Art. 1018 (5,b) of the Dutch Code of Civil Procedure requires the qualified entity to demonstrate that a collective action is more efficient and effective than individual proceedings.[103] In addition, the entity must make a genuine effort in settlement negotiations with the defendant (minimum two-week period after discussion have been requested).[104] Furthermore, Art. 1018(1) of the Dutch Code of Civil Procedure allows courts to impose certain additional punitive costs, for example, attorney fee tariffs, if the claim appears to be manifestly unfounded.

Where several organizations satisfy these criteria, the court designates the most suitable claimant as the exclusive representative based on the size of the group, the financial interest involved and prior experience.[105]

2.2.3. Funding of Representative Actions

The Dutch legal system does forbid third-party funding *per se*. However, certain safeguard actions have to be taken. First, the qualified entity has to remain independent and retain free

[101] Gerechtshof Amsterdam, 7 October 2025, ECLI:NL:GHAMS:2025:2666, para. 4.44.
[102] CJEU Case C-34/24 *Stichting Right to Consumer Justice v Apple*, ECLI:EU:C:2025:936, para. 72.
[103] Verheij, (2020) 69(11) *Verkeersrecht* 335.
[104] van Boom, *Collective Settlement of Mass Claims in The Netherlands* 7.
[105] Klaassen, (2019) *Tijdschrift voor Civiele Rechtspleging* 150.

control from decision-making in regards to strategy, settlement discussion etc.[106] Second, the court has to retain to power to evaluate potential conflicts of interest.[107]

With regard to the avoidance of conflicts of interest, Dutch law establishes several criteria. In particular, investors cannot demand a personal profit return in case of successful claim, and supervisory board is required to oversee the entity's activities, including its funding arrangements. Disciplinary decisions have stressed that insufficient transparency and the overlap of interests between a law firm and its affiliated claim foundation, may constitute a breach of professional integrity.[108]

Additionally, information about the governance structure of the entity (managing and supervisory board) and all funding agreements with the investors have to disclosed on the website of the qualified entity according to Art. 3:305a (2,d) of the Dutch Civil Code.[109]

Furtehrmore, as it was mentioned previously, courts have discresion to demand the disclosure of all funding agreements with third parties and may reject a claim where the funding arrangement threatens the independence of the representative entity. Such approach is reflected in Dutch case law: for example, in *TikTok case*, where the court dismissed doubts of TikTok that funder of the actions had decision-making control over the qualified entity.[110]

In this regard, it is also important to mention that, in 2019 Dutch Claim Code for non-profit organizations representing collective interests of the consumers was introduced as a form of soft law. This instrument sets out, in principles 3 and 7, guidelines for avoiding conflicts of interest.[111] Thus, it could be concluded that, statutory safeguards mitigate the risk of undue influence, as reflected in recent jurisprudence.

In the author's view, the Netherlands have the most effective and successful framework on representative actions. The opt-out mechanisms and significantly lower requirements for qualified entities have resulted in 15 actions in 2024 and at least 30 in 2025, therefore

[106] Tzankova and Kramer, 'From Injunction and Settlement to Action' 13.
[107] Stolker, 'Art 3:305a BW – Collectieve actie' 15.
[108] Raad van Discipline Arnhem-Leeuwarden, 8 January 2018, ECLI:NL:TADRARL:2018:1, sec. 3.
[109] Stolker, 'Art 3:305a BW – Collectieve actie' 21.
[110] Gerechtshof Amsterdam, 7 October 2025, ECLI:NL:GHAMS:2025:2666, para. 4.38.1.
[111] A H van Delden and others, *Claimcode 2019* https://www.massaschadeconsument.nl/static/6de103939aa53649e09c2a53a2d5be32/claimcode-2019.pdf accessed 03.05.2026.

demonstrating a comparatively high level of practical uptake and accessibility of representative actions in practice.[112]

2.3.Latvia

In Latvia, the Directive was implemented by amending two legal acts: Consumer Rights Protection Law[113] (in Latvian – *"Patērētāju tiesību aizsardzības likums"*) and Civil Procedure Law[114] (in Latvian – *"Civilprocesa likums"*).

Prior to implementation of the Directive representative actions were neither recognized not available under Latvian law. However, since the Directive was implemented in 2023, the practical use of this mechanism has remained very limited, as there are no official records of any representative actions started in Latvia whatsoever.

The low level of uptake may be explained not only by the novelty of the regulation, which requires time for lawyers and other practitioners to become familiar with and apply it, but also by the fact, that the Directive was implemented rather poorly, creating few, if any, incentive to bring a representative action.

2.3.1. Type of Participation

The provisions of the Directive concerning consumer participation in representative actions have been transposed into the Consumer Rights Protection Law by adopting the opt-in mechanism. Giving that the opt-in systems generally result in lower participation rates, it might be argued that an opt-out principle could have be considered more preferable.

In particular, the opt-in model may reduce the number of consumers participating in collective proceedings, especially in cases where the potential compensation is of a small amount. By contrast, opt-out claims could be better suited at addressing widespread infringements of consumer rights, as they facilitate broader participation and increase the deterrent effect on traders. This, in turn, enhances the likelihood that a larger number of affected consumers will obtain compensation.[115]

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[112] Rijnhout, Rob and others, *Vijf jaar WAMCA: Evaluatie Wet afwikkeling massaschade in collectieve actie (2020–2025)* (Wetenschappelijk Onderzoeks- en Datacentrum, September 2025) https://zoek.officielebekendmakingen.nl/blg-1224617.pdf accessed 31.03.2026.
[113] *Patērētāju tiesību aizsardzības likums* (18 March 1999); the Act can be accessed via https://likumi.lv/
[114] *Civilprocesa likums* (14 October 1998); the Act can be accessed via https://likumi.lv/
[115] Stöhr, Alexander, 'The Implementation of Collective Redress – A Comparative Approach' (2020) 21 *German Law Journal* 1617.

Furthermore, the opt-out mechanism might also be more appropriate, as there is a risk that, due to information asymmetry and the perception that it would not be worthwhile to participate in a claim, only a small number of consumers might opt into the claims. [116]

Latvian authorities have justified the adaptation of an opt-in only system on the grounds that an opt-out approach could violate the right to a fair trial, given that a binding court judgment could be issued against individuals who have not actively participated in the proceedings. Another reason lies in the structure Latvian legislation on civil procedure, which does not allow the award of damages to an indeterminate group of persons without individually assessing the harm caused to each consumer.[117]

Although such concerns are understandable, it might be argued that both of these issues have already been addressed in other Member States. For example, as mentioned above, Germany provides at least partial opt-out opportunity if the dispute end with a settlement, whereas the opt-out institute *per se* is fully compatible with European legal traditions (See Section 3.1. bellow). Given that the Latvian legal system is significantly influenced by the German model,[118] there appears to be little justification for excluding opt-out tools entirely, especially when there is currently almost no market for representative actions in Latvia.

2.3.2. Requirements for Qualified Entities

The requirements for qualified entities are listed in the Art. 23.1(1) of the Consumer Rights Protection Law. The provision establishes the same requirements for both cross-border and domestic representation actions within the meaning of the Directive. The same requirements apply to both permanently designated entities and ad-hoc authorized entities granted standing to bring a specific action. Moreover, The Latvian legislature has chosen to restrict the status of a qualified entities to only one type of legal entity: associations (non-profit organizations).[119]

Since the implementation of the Directive in 202,3 only one qualified entity has been officially in Latvia.[120] This is not surprising, given the difficulty of meeting the applicable

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[116] Visscher, Louis and Faure, Michael, 'A Law and Economics Perspective on the EU Directive on Representative Actions' (2021) 44(3) *Journal of Consumer Policy* 460.

[117] *Likumprojekta "Grozījumi Patērētāju tiesību aizsardzības likumā" anotācija* 9 https://titania.saeima.lv/LIVS14/saeimalivs14.nsf/0/37E965E0AAA7B90CC22589820038468D?OpenDocument accessed 25.04.2026.

[118] Lazdiņš, Jānis, 'Baltijas Civillikums laikmetu griežos: likuma pieņemšanas 150 gadu jubilejas atcerei' (11 November 2014) 44/45 (846/847) *Jurista Vārds*.

[119] Kreičmanis, Imants, *Patērētāju kolektīvo prasību celšana Latvijā* (Latvijas Universitāte 2025) https://dspace.lu.lv/items/1a20c970-16e5-42ca-8f1d-a0a540ffe50b accessed 13.05.2026.

[120] Consumer Rights Protection Centre of Latvia (*Patērētāju tiesību aizsardzības centrs*), 'Patērētāju kolektīvās prasības' https://www.ptac.gov.lv/lv/pateretaju-kolektivas-prasibas accessed 25.04.2026.

requirements in the legal environment where representative action remain largely undeveloped. For example, conditions such as the requirement to demonstrate at least 12 months of prior public service in the field of consumer protection may pose significant barriers. These challenges are further compounded by the exclusive reliance on an opt-in model, which may limit incentives for organization to enter and operate in this field.

It should also be noted that public authorities are not allowed to act as qualified entities based on the assumption that the function of preventing violations should be separated from the function of compensating for damages. The explanatory memorandum to the amendments to the Consumer Rights Protection Law explains that this measure is intended to avoid the risk of a conflict of interest, where an authority would have an interest in both imposing a penalty and seeking compensation for damages.[121]

2.3.3. Funding of Representative Actions

A qualified entity is required to ensure that its operations are not improperly influenced by third parties, particularly its potential funders, to the detriment of consumers. In Latvia, regarding the work of a qualified entities, Art. 26.[31](1) of the Consumer Rights Protection Law, requires that the qualified entity must ensure that its decisions regarding consumer class actions and settlements remain free from third-party influence in a manner that could harm the collective interests of consumers. Furthermore, it is prohibited to initiate litigation against entities that are competitors of the funder or economically dependent on the funder, thereby reinforcing safeguards against conflicts of interest.

In addition, where the court or the Consumer Protection Center has doubts regarding compliance with the above-mentioned conditions, the qualified entity must submit a financial report disclosing the sources of the qualified entity's funding. Art. 26.[31](3) of the Consumer Rights Protection Law provides that the court or the Consumer Protection Center is entitled to require the qualified entity to withdraw from or make changes regarding a particular financing arrangement, or even prohibit it from bringing a claim in specific case. In such circumstances, an individual customer can bring a personal claim independently or find another qualified entity.[122] This latter option remains largely theoretical in practice.

Although this regulation is very similar to the one in previously mentioned Member States, Latvian legal system provides for the possibility of state-funded representative actions to be

[121] *Likumprojekta "Grozījumi Patērētāju tiesību aizsardzības likumā" anotācija* 33.
[122] Ibid 3 f.

financed by the state though Latvian Consumer Protection Center. Based on the delegation in Art. 26.[32] of the Consumer Rights Protection Law, the Government has adopted *"Regulations Regarding Granting Funding to Qualified Authority for Bringing Class Actions"*.[123]

Point 2 of these regulations state that an application may be inquire the funding, providing detailed information on the objective and the measures necessary to achieve it, the anticipated date of implementation, as well as the amount of funding required along with a breakdown of expenses. The Consumer Protection Center evaluates such applications on the basis of several criteria, including the validity of the claim, its utility, and the public benefit, as well as the amount of remaining funds available for this purpose.

If the requested funding exceeds the allocated funds, the Consumer Protection Center may review the budget items, and may request that specific budget items be reduced or specifically justified. If the funding is granted, an agreement with the qualified entity is concluded within 30 days. The Consumer Protection Center monitors the use of funds and receives reports on the use of funding at intervals specified by law; in the event of violations, it may decide to require full or partial repayment of the funding or to reduce the amount of funding.

Nevertheless, although this funding mechanism covers substantial portion of the cost of a representative action, qualified entities must still secure its own operational and litigation funding. This is particularly relevant given the public funding is limited to only two actions per year.[124]

It may be argued that the absence of any opt-out possibility, combined with the identical legal requirements imposed on qualified entities in both domestic and cross-border entities hold Latvia back in effective use of the legal framework proposed by the Directive.

This limitation is illustrated by recent example: in 2025, 2 years after the Directive was implemented in Latvian legal system, group of attorney's form Latvia founded association with an objective to bring a collective action on behalf of potentially all citizens of Latvia for

[123] Ministru kabineta noteikumi Nr. 729 *par finansējuma piešķiršanu kvalificētajai institūcijai kolektīvo prasību celšanai* (12 December 2023); the Regulation can be accessed via https://likumi.lv/ta/id/348324-noteikumi-par-finansejuma-pieskirsanu-kvalificetajai-institucijai-kolektivo-prasibu-celsanai

[124] *Likumprojekta "Grozījumi Civilprocesa likumā" anotācija* 23 https://titania.saeima.lv/LIVS14/saeimalivs14.nsf/0/15CD2C9E87396A44C225898200387BF9?OpenDocument accessed 25.04.2026.

allegedly unlawfully paid interests for heating services in Latvian for almost 20 years.[125] In theory, this would be the perfect case a representative action.

However, due to the strict requirements for qualified entities, which could not be met for this *ad hoc* situation, the association invited all interested people who are willing to participate in the "representative action" to assign their claims, in amount of the damages allegedly suffered, to the association, with the understanding that compensation would be distributed if the litigation eds successfully.

This example illustrates that the existing regulation for representative actions in Latvia is practically ineffective as it requires prior track of record in the field, even if the claims are to be brought by experiences legal professionals. Moreover, one of the founding attorneys of this association has stated in interview that he sees this association as potential collective consumer rights protector in future as well.[126]

However, while requirements for qualified entities remain so stringent, the use of these mechanisms introduced by the Directive is likely to remain both practically inaccessible and financially unsustainable. Therefore, the Directive has so far brought little tangible change to the Latvian legal landscape in this area.

[125] See *Tiesiskums.lv* https://tiesiskums.lv/ accessed 03.05.2026.
[126] *Par OIK atgūšanas iniciatīvu un iebildumiem pret to* ('Spried ar Delfi', YouTube) https://www.youtube.com/watch?v=s5nZvm_MECA accessed 03.05.2026.

3. EFFECTIVE USE OF REPRESENTATION ACTIONS LEGAL INSTRUMENTS

In the previous Section, it was demonstrated with the examples that the manner of implementing the Directive is crucial and can lead to either effective and used in practice system like, for example, in Netherlands, or can result in *de jure* existing, however, not used in practice whatsoever.

In this final Section, the author intends to cover, what in his view, are the three most important components of the Directive: 1) participation requirements (opt-in or opt-out); 2) requirements for qualified entities, and 3) funding of representative actions.

3.1.Type of Participation

Since opt-in participation mechanisms are usually used in continental Europe, while the opt-out approach is employed only in a few countries few countries, for example, in Netherlands, it is worth first analyzing first, how compatible the opt-out rule, initially and widely used in common law countries, is with European legal system and tradition.

There is a view that opt-out representative actions, which are considered a form of *"representation without authorization"*, should not be allowed in continental Europe as they infringe upon private autonomy rights, and the limitation imposed on a person's freedom to decide whether to bring a claim is regarded as substantial.[127] For example, in Germany, it has been argued that such representation could lead to violation of person's rights to be heard and its rights to disposition.[128] In 2005, the German Federal Cartel Office opposed the introduction of opt-out collective actions, as they could limit both the right to be heard and the principle that parties control their own case.[129]

Conversely, opt-out systems seems to be more suitable for the core aim of the representative actions, which is claiming compensations for groups of people, who are often difficult to identify, because the spread of the harm is wide, while the damage suffered by each individual might stay minimal.[130] In this regard, Prof. Dr Catherine Piché, Associate Dean at the University of Montreal, explained that Canada's opt-out procedure *"enhances access to*

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[127] Nagy, Csongor István, *Collective Actions in Europe: A Comparative, Economic and Transsystemic Analysis* (Springer 2019) 23.
[128] Greiner, Christoph, *Die «Class Action» im amerikanischen Recht und deutscher «Ordre Public»* (1998) 189.
[129] Bundeskartellamt, *Diskussionspapier: Private Kartellrechtsdurchsetzung – Stand, Probleme, Perspektiven* (2005) https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Diskussions_Hintergrundpapier/AK_Kartellrecht_2005_Hintergrundpapier.pdf?__blob=publicationFile&v=2 accessed 31.04.2026.
[130] Nagy, *Collective Actions in Europe* 33.

justice for members, by allowing for the creation of larger classes, wider distributions of compensation, and broader binding effects of judgment".[131]

Opt-out mechanisms are more effective in cases involving widespread, low-value harm, where individual claims are too small to justify separate proceedings. These are also the types of situations typically targeted by public enforcement. Linking public infringement decisions with subsequent opt-out representative actions can strengthen both deterrence, through regulatory sanctions, and compensation, through collective redress, while also reducing litigation costs due to the evidentiary value of the prior public decision.[132]

Opt-in systems on the contrary may be more appropriate where individual claims are of higher value or where consumers can be easily identified, such as in financial services with reliable records. However, they typically require greater information efforts by qualified entities, increasing costs and, in some cases, making alternative dispute resolution more attractive.[133] For example, the Volkswagen emissions scandal case in Spain, which resulted in numerous individual claims against Volkswagen AG for the diminished value of affected vehicles due to the use of defeat devices.[134]

Prof. Dr Stefaan Voet, Associate Professor of Civil Procedure, Faculty of Law, Leuven Centre for Public Law, in Belgium, has also argued that opt-in mechanism is ineffective in cases, where the harm to each individual customer is minimal. He, however, suggests that the decision between opt-in and opt-out should be left to courts, since claimants usually favor opt-out while defendants – opt-in. Therefore, judges should be granted strong case management powers. [135]

Hence, three factors are relevant when choosing between opt-in and opt-out mechanisms: 1) whether the harm is easy to calculate; 2) whether the affected consumers are identifiable; and 3) the value of the individual claims. Where participation rates in opt-in systems are low, the collective objective of deterring unlawful conduct is undermined and the trust in such legal

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[131] European Commission, 'Workshop on the Implementation of the Representative Actions Directive (EU) 2020/1828' 12.
[132] Voet, Stefaan and Dethier, Stien, *Bridging the EU Consumer Enforcement Pathways in Mass Harm Situations* (KU Leuven, January 2024) 12 BEUC-X-2024-005_Bridging_the_EU_consumer_enforcement_pathways_in_mass_harm_situations.pdf accessed 24.02.2026.
[133] Voet and Dethier, *Bridging the EU Consumer Enforcement Pathways in Mass Harm Situations* 107.
[134] European Commission, *Thematic Debate on Consumer Information, Participation in Actions and Redress Distribution* 9.
[135] European Commission, *Thematic Debate on Consumer Information, Participation in Actions and Redress Distribution* 6.

instrument vanishes. Therefore, particularly in low-value cases, the law should provide for an opt-out system rather than leaving the decision to judicial discretion.[136]

In this regard, the ECHR has acknowledged that *“"the right to a court" enshrined in Article 6 is not an absolute one. It may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired.”*.[137]

At the same time, the Court allowed such limitation of individual rights only to pursue a *“legitimate aim”* and if there is not a *“reasonable relationship of proportionality between the means employed and the aim sought to be achieved”*.[138] It also held that representative action in the given case pursued a legitimate aim, namely, avoiding numerous individual claims in the context of large-scale nationalization, and that the measures used were proportionate to that aim. According to this ECHR decision opt-out representative actions can be considered as compatible with the legal tradition of continental Europe, provided that such action in particular situation is adequate and most rational solution.

This case law was later confirmed in case *Wendenburg and Others v Germany*. In this case, the ECHR, held *that “in proceedings involving a decision for a collective number of individuals, it is not always required or even possible that every individual concerned is heard before the court.”*[139]

Even though concerns on limitations of parties’ rights to disposition are understandable, it must be noted that opt-out mechanism is mostly applied in situation where individual claims are too small to be brought in the first place. Therefore, rights to disposition cannot not be considered as significantly limited, if opt-out results in positive outcome for the individual, especially if person is entitled to leave the litigation in any stage of the proceedings.[140]

Hungarian Constitutional Court has gone even further allowing representation without authorization without persons rights to opt-out or pursue its own action. In Case 8/1990, the Court rejected trade unions’ automatic right to represent all employees without consent against

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[136] European Commission, ‘Workshop on the Implementation of the Representative Actions Directive (EU) 2020/1828’ 13.
[137] *De Geouffre de la Pradelle v France* App no 12964/87 (ECtHR, 16 December 1992) (1992) 16 EHRR 169, para. 28.
[138] *Ashingdane v United Kingdom* App no 8225/78 (ECtHR, 28 May 1985) (1985) 7 EHRR 528, para. 57.
[139] *Wendenburg and Others v Germany* App no 71630/01 (ECtHR, 6 February 2003) (2003) 2003-II ECHR 353.
[140] Nagy, *Collective Actions in Europe* 26.

their will. However, this rule did not apply for representation for union members.[141] In Case 1/1994, the Court found the attorney general's broad power to act on behalf of individuals permissible, if individuals are unable to protect their own rights.[142] Therefore, a key issue is that, although group members may be legally identifiable, establishing proof of their membership can be practically difficult.

These examples clearly show that opt-out mechanism is well-know and widely used in many European countries. However, when adopting the Directive, it was however decided not to introduce unified opt-out model on EU level. The author considers this decision to be a mistake, as the opt-out model has proven to function better in practice, meaning that a broader use of representative actions could have been achieved through its adoption.

3.2.Requirements for Qualified Entities

Recital 8 of the Directive explains that the regulation on qualified entities aims to achieve *"a high level of consumer protection"* where the respective EU law has been infringed. This explains the high standards for qualified entities to be registered and recognized as ones, at least for cross-border qualified entities. However, in the same Recital is it is also mentioned that *"qualified entities **should be able to** request that such infringing conduct be ceased or prohibited [..]"*, therefore underlining that these entities must be effective in practice when seeking collective redress for consumers. This aspect of practical implication is also emphasized further in Recital 9 of the Directive by stating: *"A representative action should offer **an effective and efficient way** of protecting the collective interests of consumers. [..]"*.

In the previous Sections, it was concluded that requirements for qualified entities are harmonized only for cross-border Actions, which is particularly important in the context of the the EU Single Market. Based on the publicly available discussion in the Commission, it must be concluded that there were not a lot of debate on whether such high requirements would be legitimate. Jolanda Girzl, Vice Chair of the Consumer Working Group at Business Europe, assumed even that suggested rules would be seen as a sign of quality. On the contrary, it was expressed concerns that the chosen criteria could be viewed as potentially limiting the number of organizations capable of acting.[143] However, it is crucial to emphasize that conclusion of the

[141] Hungarian Constitutional Court, 23 April 1990, Decision 8/1990 (IV.23.) AB.
[142] Hungarian Constitutional Court, 7 January 1994, Decision 1/1994 (I.7.) AB.
[143] European Commission, 'Workshop on the Implementation of the Representative Actions Directive (EU) 2020/1828' 8.

panel was that *"the criteria for designation of qualified entities and admissibility of actions should not be too difficult or the bar set too high"*.[144]

It is worth mentioning that during the discussion on the scope of the Directive it was suggested to allow only public bodies to qualify as qualified entities. However, due to an often lack on resources and funding of public bodies, it was decided that private consumer protection organization cannot be excluded.[145]

This decision can be seen only as positive, as it was not clear from the protocol of the discussion, why private organization could not overtake this task. As representative actions aim to make such class litigation cases monetary justified and profitable at least to consumers, the Author sees no reason to delegate this task solely to public bodies.

Furthermore, there is a growing tendency of having small trust in national governments.[146] This could have led to a situation in, which potential harmed parties decide not to defend their rights and entrusting their case to the public institution. Combined this factor with greater potential to be exposed to the corruptive influence from big companies (potential defenders) on the public servants could have compromised the initially good idea of representative actions. Moreover, the fact that often such claims are brought against the state also strengthens the idea of self-funded entities.[147]

As it can be seen from the previously observed country examples, the country that had the strictest requirements for qualified entities (Latvia), has also currently the worst situation with representative actions. Not only it has officially only one entity registered, but this entity has not succeeded in bringing at least one claim based on the regulation provided by the Directive. Such situation leads to thinking that having legal requirements for domestic entities same as for cross-border ones does not result in affective implementation of the Directive. Quite the opposite, a country is not motivated to work on new regulation, because it has already formally implemented Directive.

On the contrary, it should be regarded as positive that countries have an autonomy to determine their own requirements for domestic entities, therefore tailoring the implementation

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[144] Ibid.
[145] Ibid 7.
[146] OECD, *OECD Survey on Drivers of Trust in Public Institutions: 2024 Results* (2024) https://www.oecd.org/en/publications/oecd-survey-on-drivers-of-trust-in-public-institutions-2024-results_9a20554b-en.html accessed 03.05.2026.
[147] European Commission, *Thematic Debate on Consumer Information, Participation in Actions and Redress Distribution* 2.

of the Directive to economic needs and legal traditions of the country. Thus, the author believes the Directive in this capacity shall not be amended, rather Member States should be generally more engaged and precise when it comes to the implementation of EU legislation in their national legal system.

Moreover, the fact that qualified entities must disclose all information about a potential reprehensive action substantially reduces risks that consumers will not receive a proper representation. By imposing such disclosure requirements, the framework also promotes transparency among all actors involved and helps prevent misleading practices or consumer exploitation.

With all relevant information being available publicly, it becomes easier not only for consumers to evaluate if participating it an action is good for their interests, but also public authorities can monitor whether such entities act in a good faith and work in best interests of consumers. Therefore, Member States may be less concerned about entities acting in bad faith and lower threshold for national representative actions in countries where activity in this area is low or entirely absent.

The author suggests that further improvements on national level, particularly in countries where the implementation of the Directive was not that successful, could be expected when the first Implementation report of the Commission will be issued.

3.3.Funding of a Representative Action

It has been noted that one of the main issues related to the implementation of Directive is the question of funding. The Directive does not fully resolve the issue on how to address the financing of collective consumer claims, largely leaving this matter to the discretion of Member States.[148] At the same time for non-profit organizations, typically high costs of collective actions could pose a significant barrier for effective implication and application of the Directive.[149]

Recital 9 of the Directive highlights that of the reasons why representative action through qualified entities are introduced in the first place is to take over the burden of financing of an action from the consumer and transfer it fully to the qualified entities. However, qualified

[148] Visscher and Faure, 'A Law and Economics Perspective on the EU Directive on Representative Actions' (2021) 44(3) *Journal of Consumer Policy* 460 ff.
[149] *Kolektīvās prasības. Teorētiskie pamati. 2022–2023* 31 https://www.beuc.eu/sites/default/files/publications/consumerpro_redress_LV_2022.pdf accessed 24.04.2026.

entities require financing to the same capacity as consumers, probably even more considering administrative costs.

Already during the discussion period before the Directive was adopted, businesses expressed wide criticisms and argued that the potential provisions of Directive did not contain sufficient safeguards to prevent abusive litigation.[150]

At the same time, it is true, that the right of qualified entities to bring claims on behalf of a large number of consumers creates a risk that such representative actions will be used either in bad faith with an objective to influence market competitors, therefore shifting the original purpose of representative action from putting customers interest first to generating as much capital as possible.[151]

In 2018, the Commission, prior to the adoption of the Directive, noted that, with regard to representative actions, no EU Member State had introduced regulations on receiving funding from third parties, and only two EU Member States had introduced a total ban on receiving funding from third parties.[152]

There have also been opinions suggesting that it could reasonable to prohibit the receipt of funding from the trader's competitors or from companies controlled by the trader. However, the authority must exercise caution when drafting rules on the separation of conflicts of interest, as any third party providing funding for a claim will, to some extent, have an economic interest in the outcome of the claim, even if this may align with the consumer's interests in seeking a favorable resolution for consumers.[153]

Yet, the author believes that even such regulation on funding is too strict and too unnecessary. Art. 7(7) of the Directive grants national courts power to dismiss *"manifestly unfounded"* representative actions, without hearing the case on the merits. Such provisions are similar to courts rights to dismiss the case if it seems to be brought without any plausible

[150] Eurochambres, 'The New Deal for Consumers or How to Open the Door for Abuses: An Example of Needless Overshooting?' (11 April 2018) Press release: The new deal for consumers or how to open the door for abuses: an example of needless overshooting? accessed 24.04.2026.
[151] Dobson, Sarah J., Civatte, Elisabeth, Margolis, Paul and Forrest, Lucy,, 'Collective Redress & Class Actions 2023: EU' https://practiceguides.chambers.com/practice-guides/collective-redress-class-actions-2023/eu/trends-and-developments/O15016 accessed 24.04.2026.
[152] Uzelac, Antonio and Voet, Stefaan (eds.), *Class Actions in Europe: Holy Grail or a Wrong Trail* (Springer Nature Switzerland AG 2021) 65.
[153] Visscher and Faure, (2021) 44(3) *Journal of Consumer Policy* 474.

ground, which is more seen in common law jurisdictions (courts reaction to a motion to dismiss of the respondent).

This provision does not specify that dismission shall be allowed only under specific conditions, meaning that courts should be left to decide on their own, if an action in question has been brought in bad faith. With such broad application of the dismissal right, it is not clear why additional restrictions on funding are necessary, such as ones in Art. 4(3) (e) or Art. 10 of the Directive. If courts are allowed to decide, whether the claim is founded or not, and if it unfounded it can be dismissed at the very start of the proceeding, then why are additional barriers to the funding of a representative action necessary.

Art. 20(1) of the Directive states that "*Member States shall take measures 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 measures referred to in Article 7.*". Yet, the Directive itself hinders such financing, by presuming that a representative action, which was founded by a competitor or persons in conflict of interest, is unacceptable (brought in bad faith) regardless of legal standing of the claim on merits.

Moreover, the Directive does not elaborate, what, if any, measures should be taken if an action is founded by the interested party only in part. Such an application of the provision of the Directive could lead to either legally founded claims being dismissed because of the formal requirement on funding, or such claims could not be filled in the first place because of insufficient funding.

The author believes that potential problem of abusive litigation or litigation in bad faith by the competitors is taken into account by providing national court to dismiss the case in any stage if a claim is filed in bad faith. This applies especially within the EU, where there is a common understanding that judges are held to high professional standards, meaning that the courts of each Member State should be perfectly qualified to decide on each case individually. Such rights by court also cover abusive litigation initiated by the competitors. However, if the claim is legitimate on its merits, then there appears to be no reason, why it should not be founded by the potential competitor of the respondent.

Furthermore, Art. 4(3) (f) and Art. 13 of the Directive require to publish all information not only about the qualified entity itself, but also about its sources of funding and all actions this entity is currently engaged or plans to initiate. This means that judge, when deciding on possible dismissal of the case, is be fully aware of the source of funding, meaning this

information could also be taken into account, when deciding on whether the claim is well founded and brought in good faith.

Thus, the requirement for transparency regarding funding sources is, in principle, an appropriate safeguard under the Directive. Ensuring that courts and affected parties know who is funding a representative action can help to uncover potential litigation in bad faith and maintain confidence in the procedural integrity of collective redress mechanisms. Such disclosure requirements enable judges to better assess whether a claim is being pursued in good faith and in line with consumer interests, particularly in conjunction with existing powers to dismiss manifestly unfounded claims at an early stage.

However, it appears disproportionate to go further and restrict the categories of actors who may provide such funding. Limiting the pool of potential funders, especially by excluding certain third parties solely on the basis of their market position, risks undermining the effectiveness of representative actions by restricting access to necessary financial resources. Since courts already have broad discretion to assess malicious intent and dismiss abusive claims, additional upfront funding restrictions appear excessive and potentially counterproductive, as they could prevent legitimate claims from being brought in the first place.

4. CONCLUSIONS

Representative or class action litigation is a legal mechanism that allows one or a few representative parties to sue on behalf of a larger group with similar claims.

The historical overview shows that the roots of class action lawsuits lie in the equity jurisdiction of English courts, where the need to avoid multiple proceedings led to the acceptance of group representation. This concept was significantly expanded in the United States, where the modern system of class action lawsuits was established. In particular, the opt-out mechanism proved to be a crucial factor in increasing participation and made class action lawsuits an effective enforcement tool, especially in consumer and competition law.

In contrast, the EU has consciously chosen a different regulatory path, rejecting key elements of the US model such as contingency fees, punitive damages, and comprehensive opt-out systems. Instead, the EU framework, as reflected in the Directive, emphasizes procedural safeguards, controlled access through qualified entities, and a cautious approach to collective redress, prioritizing legal certainty and the prevention of abusive litigation over procedural efficiency.

The examination of the Directive and its implementation at national level shows that its effectiveness largely depends on how the member states implement and apply its provisions. In all legal systems, key elements such as participation models, requirements for qualified entities, and financing mechanisms play a crucial role in whether the directive achieves its goal of improving access to justice.

While the EU's cautious regulatory approach aims to prevent abusive litigation, it can simultaneously limit the practical effectiveness of representative actions. Restricting standing to sue to qualified entities, coupled with strict funding rules and transparency requirements, creates significant barriers to initiating legal action. Although these safeguards are intended to guarantee independence and protect consumers, they can restrict the availability of funds and discourage legitimate claims.

The prevailing preference in many Member States for opt-in mechanisms restricts participation and weakens the collective nature of these procedures, particularly compared to the proven effectiveness of opt-out systems. The analysis also shows that the courts already have sufficient instruments to prevent abusive litigation, such as the ability to dismiss manifestly unfounded claims, which raises questions about the need for additional restrictions, especially regarding third-party litigation funding.

The Directive is an important step toward harmonizing collective redress in the EU, but its balance between accessibility and control may limit its effectiveness. While it establishes a common framework, its practical success depends on more flexible application by Member States. Experience, particularly in the Netherlands, shows that broader participation and less restrictive funding conditions can improve effectiveness without leading to increased abuse. Therefore, future development should focus on reducing procedural hurdles, easing funding restrictions, and enabling more flexible participation models.

BIBLIOGRAPHY

Primary sources

- Ashingdane v United Kingdom App no 8225/78 (ECtHR, 28 May 1985) (1985) 7 European Human Rights Reports (EHRR) 528
- Brown v Vermuden (1676) 22 English Reports (ER) 802 (Ch)
- Bürgerliches Gesetzbuch (BGB)
- Civil Procedure Rules 1998
- Civilprocesa likums (14 October 1998)
- Cockburn v Thompson (1809) 33 English Reports (ER) 1005 (Ch)
- 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)
- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, adopted 4 November 1950, entered into force 3 September 1953)
- CJEU Case C-321/95 P Greenpeace and Others v Commission [1998] ECR I-1651
- CJEU Case C-319/20 Meta Platforms Ireland Ltd v Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband, 28 April 2022, ECLI:EU:C:2022:322
- CJEU Case C-343/22 Banco Santander SA v Asociación de Consumidores y Usuarios de Servicios Generales – AUGC, 22 December 2022, ECLI:EU:C:2022:1029
- CJEU Case C-34/24 Stichting Right to Consumer Justice v Apple, ECLI:EU:C:2025:936
- Decision 1/1994 (I.7.) AB (Hungarian Constitutional Court, 7 January 1994)
- Decision 8/1990 (IV.23.) AB (Hungarian Constitutional Court, 23 April 1990)
- De Geouffre de la Pradelle v France App no 12964/87 (ECtHR, 16 December 1992) (1992) 16 European Human Rights Reports (EHRR)
- Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC [2020] OJ L 409/1
- Federal Rules of Civil Procedure 1938
- Gesetz gegen den unlauteren Wettbewerb (UWG)
- Gesetz über Unterlassungsklagen bei Verbraucherrechts- und anderen Verstößen (UKlaG)
- Gesetz zur gebündelten Durchsetzung von Verbraucherrechten (Verbraucherrechtedurchsetzungsgesetz – VDuG) (8 October 2023) BGBl I 2023
- Golder v United Kingdom App no 4451/70 (ECtHR, 21 February 1975) (1975) 1 European Human Rights Reports (EHRR) 524
- Hoge Raad (Netherlands Supreme Court), 28 March 2014, ECLI:NL:HR:2014:766
- Latvian Constitutional Court (Satversmes tiesa), 10 December 2021, Case No 2021-11-01, Decision on Termination of Proceedings

- Lithgow and others v United Kingdom App nos 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81 and 9405/81 (ECtHR, 8 July 1986) (1986) 8 European Human Rights Reports (EHRR) 329
- Ministru kabineta noteikumi Nr. 729 par finansējuma piešķiršanu kvalificētajai institūcijai kolektīvo prasību celšanai (12 December 2023)
- Patērētāju tiesību aizsardzības likums (18 March 1999)
- Phillips Petroleum Co v Shutts 472 US 797 (1985)
- Raad van Discipline Arnhem-Leeuwarden, 8 January 2018, ECLI:NL:TADRARL:2018:1
- Rechtbank Rotterdam, 28 May 2025, ECLI:NL:RBROT:2025:6254
- Smith v Swormstedt 57 US (16 How) 288 (1853)
- Treaty on European Union [2012] OJ C 326/13
- Treaty on the Functioning of the European Union [2012] OJ C 326/47
- Wet afwikkeling massaschade in collectieve actie (2020)
- Wet collectieve afwikkeling massaschade (2005)
- Wendenburg and Others v Germany App no 71630/01 (ECtHR, 6 February 2003) (2003) 2003-II ECHR 353
- Zivilprozessordnung (German Code of Civil Procedure)

Secondary sources

- Agulló Agulló, Diego, 'Directive 2020/1828: A New Era for "European Class Actions"?' (The Official Blog of UNIO-EU Law, 22 November 2021)
- Biard, Alexandre and Voet, Stefaan, 'Collective Redress in the EU: Will It Finally Come True?' in Antonio Uzelac and Stefaan Voet (eds.), Class Actions in Europe: Holy Grail or a Wrong Trail? (Springer 2021)
- British Institute of International and Comparative Law, Collective Redress: The Netherlands (2014)
- Bundeskartellamt, Diskussionspapier: Private Kartellrechtsdurchsetzung – Stand, Probleme, Perspektiven (2005)
- Cappelletti, Mauro and Garth, Bryant G, Access to Justice, vol 1 (Sijthoff and Noordhoff 1978)
- CMS, European Class Action Report 2023 (CMS 2023)
- Dobson, Sarah J., Civatte, Elisabeth, Margolis, Paul and Forrest, Lucy, 'Collective Redress & Class Actions 2023: EU' (Chambers and Partners 2023)
- European Commission, Green Paper on Consumer Collective Redress, MEMO/08/741 (27 November 2008)
- European Commission, Workshop on the Implementation of the Representative Actions Directive (EU) 2020/1828 (26 November 2021)

- European Commission, Workshop on the Implementation of the Representative Actions Directive (EU) 2020/1828: Thematic Debate on Consumer Information, Participation in Actions and Redress Distribution (Brussels, 26 November 2021)
- European Commission, Workshop on the Implementation of the Representative Actions Directive (EU) 2020/1828: Thematic Debate on Funding of Actions and Public Assistance to Qualified Entities (Brussels, 26 November 2021)
- Fleming, Anne, 'A History of Consumer Class Actions in State Courts' (2021) 15 Brooklyn Journal of Corporate, Financial & Commercial Law (BJCFCL)
- Gailītis, Kaspars, Buka, Arnis and Schewe, Christoph Johann Ulrich (eds.), Eiropas Savienības tiesības. I daļa. Institucionālās tiesības, 3rd expanded edn (Tiesu namu aģentūra 2025)
- Greiner, Christoph, Die «Class Action» im amerikanischen Recht und deutscher «Ordre Public» (1998)
- Hegel, Georg Wilhelm Friedrich, Philosophy of Right (SW Dyde tr, George Bell and Sons 1896)
- Hensler, Deborah Rhode and others, Class Action Dilemmas: Pursuing Public Goals for Private Gain (RAND Institute for Civil Justice 2000)
- Hodges, Christopher and Voet, Stefaan, Delivering Collective Redress: New Technologies (Hart Publishing 2018)
- Kaplan, Benjamin, 'Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)' (1967) 81 Harvard Law Review (Harv L Rev)
- Klaassen, Cees Johannes Maria, 'De Wet afwikkeling massaschade in collectieve actie. Eindelijk werkelijkheid, nu nog gaan werken…' (2019) Tijdschrift voor Civiele Rechtspleging (TvCR)
- Kreičmanis, Imants, Patērētāju kolektīvo prasību celšana Latvijā (Latvijas Universitāte 2025)
- Köhler, Rainer, and Alexander, Christian, '§ 4a UKlaG – Liste der qualifizierten Einrichtungen für grenzüberschreitende Verbandsklagen' in Rainer Köhler and Jörn Feddersen (eds.), UWG, 44th edn (2026)
- Köhler, Rainer, and Alexander, Christian, '§ 4f UKlaG – Verordnungsermächtigung' in Rainer Köhler and Jörn Feddersen (eds.), UWG, 44th edn (2026)
- Kolektīvās prasības. Teorētiskie pamati 2022–2023
- Lazdiņš, Jānis, 'Baltijas Civillikums laikmetu griežos: likuma pieņemšanas 150 gadu jubilejas atcerei' (2014) 44/45 (846/847) Jurista Vārds
- Nagareda, Richard Allen and others, The Law of Class Actions and Other Aggregate Litigation, 2nd edn (Foundation Press 2013)
- Nagy, Csongor István, Collective Actions in Europe: A Comparative, Economic and Transsystemic Analysis (Springer 2019)
- OECD, OECD Survey on Drivers of Trust in Public Institutions: 2024 Results (OECD 2024)
- Potjewijd, Gerard Hendrik and Kluwen, Tjitte Daan Andries, 'Art 1018f Rv' in GS Burgerlijke Rechtsvordering (updated to 30 July 2025)

- Rijnhout, Rob and others, Vijf jaar WAMCA: Evaluatie Wet afwikkeling massaschade in collectieve actie (2020–2025) (Wetenschappelijk Onderzoeks- en Datacentrum, September 2025)
- Rosa, Zelly and Wakler, Renner K, 'The Device: A History and a Possible Future for Class Actions – Part 2: Rulemaking, Progress, and Counterrevolution' (2025)
- Rubenstein, William Bruce, 'Why Enable Litigation?: A Positive Externalities Theory of the Small Claims Class Action' (2006)
- Scherer, Andreas, '§ 1 VDuG Verbandsklagen' in Rainer Köhler and Jörn Feddersen (eds.), UWG, 44th edn (2026)
- Scherer, Andreas, '§ 4 VDuG – Austritt aus dem Vergleich' in Rainer Köhler and Jörn Feddersen (eds.), UWG, 44th edn (2026)
- Scherer, Andreas, '§ 46 VDuG – Anmeldung von Ansprüchen; Rücknahme der Anmeldung' in Rainer Köhler and Jörn Feddersen (eds.), UWG, 44th edn (2026)
- Stolker, Carel Jan Jozef Maria, 'Art 3:305a BW – Collectieve actie' in Tekst & Commentaar Burgerlijk Wetboek (updated to 1 September 2025)
- Story, Joseph, Commentaries on Equity Pleadings (Boston 1842)
- Stöhr, Alexander, 'The Implementation of Collective Redress – A Comparative Approach' (2020) 21 German Law Journal (GLJ)
- Tzankova, Ivelina and Kramer, Xandra, 'From Injunction and Settlement to Action: Collective Redress and Funding in the Netherlands' in Antonio Uzelac and Stefaan Voet (eds.), Class Actions in Europe: Holy Grail or a Wrong Trail? (Springer 2021)
- Uzelac, Antonio and Voet, Stefaan (eds.), Class Actions in Europe: Holy Grail or a Wrong Trail? (Springer Nature Switzerland AG 2021)
- van Boom, Willem Hendrik, Collective Settlement of Mass Claims in The Netherlands (Rotterdam Institute of Private Law Accepted Paper Series 2009)
- van Delden, AH and others, Claimcode 2019
- van Mierlo, Antonius Ignatius Maria, 'Art 1018f Rv – Opt-out/opt-in-mogelijkheid na aanwijzing exclusieve belangenbehartiger' in Tekst & Commentaar Burgerlijke Rechtsvordering (updated to 6 February 2026)
- Verheij, Albert, 'De Wet afwikkeling massaschade in collectieve actie en de begroting van personenschade' (2020) 69(11) Verkeersrecht (VR) 333
- Visscher, Louis and Faure, Michael, 'A Law and Economics Perspective on the EU Directive on Representative Actions' (2021) 44(3) Journal of Consumer Policy (J Consum Policy) 460
- Voet, Stefaan and Dethier, Stien, Bridging the EU Consumer Enforcement Pathways in Mass Harm Situations (KU Leuven, January 2024)
- Yeazell, Stephen Charles, 'The Class Menagerie: From Medieval Group Litigation to Rule 23' (1988) 102(2) Harvard Law Review (Harv L Rev)