

# Update

## European and Competition Law

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### Class actions in Europe? The EU Directive on representative actions for the protection of the collective interests of consumers

Alberto Saavedra | [as@servulo.com](mailto:as@servulo.com)

Companies doing business in the European Union face new regulatory hurdles under the new **EU Directive on representative actions for the protection of the collective interests of consumers**.

A quick overview of 7 main aspects:

1. Representative actions are **actions brought by qualified entities** before national courts or administrative authorities on behalf of groups of consumers to seek **injunctive measures** (i.e. to stop trader's unlawful practices), or **redress measures** (such as refund, replacement, compensation) or both injunctive and redress measures.
2. The representative actions can be **domestic** or **cross-border**.
3. In order to avoid abusive litigation, Member States should adopt rules so that the court or administrative authority can decide to **dismiss “manifestly unfounded cases”**.
4. Member States have the choice to provide for an **opt-in mechanism, or an opt-out mechanism, or a combination of the two**. It should be noted that **Portugal already has a pure opt-out scheme**, whereby all individuals within the represented class are automatically included in the claim, unless they expressly opt out. As I refer in a **paper**, *“Portugal’s opt-out collective redress regime is making it a leading jurisdiction in the EU as regards mass actions for damages (alongside the UK and the Netherlands)”*.
5. When Member States allow **for the funding of the representative actions by funders who are not party to these actions (the so called “Third Party Funding”)**, they need to ensure that conflicts of interests are prevented. This issue is being intensively debated in the Portuguese Competition Court. Is the funding by third parties diverting the representative actions away from the protection of the collective interests of consumers?

6. The Directive aims to protect the **collective interests of consumers in many areas of law and economic sectors**, such as data protection, financial services, travel and tourism, energy, telecommunications, and unlawful practices by traders (for example, consumer protection, medicinal products for human use, product safety, etc.). Will Portugal decide to apply the mechanism of representative actions provided by the Representative Actions Directive in other areas of law?
7. Member States shall adopt and publish, by 25 December 2022, the laws necessary to comply with this Directive. They shall apply those measures from **25 June 2023**. The European Commission started an **infringement procedure against Portugal for late transposition of this new directive on representative actions**.