Winds of change after the implementation of the Directive on Representative Actions?

A Comparative Analysis of Current Developments

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This contribution assesses the evolving implementation of the Representative Actions Directive (RAD) across the European Union. Although transposition remains incomplete in two Member States, the Directive has achieved a historic milestone by ensuring the existence of consumer compensatory collective mechanisms in all EU jurisdictions. The RAD has stimulated legislative progress in traditionally inactive systems, while enabling the emergence of cross-border representative actions conducted by European-listed qualified entities. However, despite this structural advancement, practical consumer redress remains limited and unevenly distributed, with longstanding frontrunner jurisdictions maintaining their dominance. The article compares Member State implementations, examining the types of laws transposing the Directive, scope, standing and procedures. It shows that Member States are reluctant to exceed minimum standards. Significant differences remain regarding participation requirements and opt-in versus opt-out regimes, undermining economic viability. Indeed, key procedural features — particularly opt-out models, aggregated damages, and allocation of residual funds — remain optional, undermining the overall effectiveness and deterrent function of collective enforcement. Significant sectors, including competition and labour, continue to lack guaranteed representative mechanisms. Looking ahead, the RAD's fitness check will be pivotal in determining whether greater harmonisation, enhanced funding models, coordinated jurisdictional rules, and pan-European enforcement structures are required for collective redress to meet the demands of EU-wide infringements.

1. Introduction

The Directive 2020/1828 on representative actions for the collective interests of consumers ("**RAD**")[2] was adopted on 25 November 2020, with Member States ("**MS**") required to transpose it by 25 December 2022 and implement measures by 25 June 2023. Significant delays prompted formal notices from the European Commission to multiple states.[3] As of November 2025, the transposition of the RAD is substantially complete across the European Union: 25 MS have achieved full transposition,[4] whilst two (Bulgaria and Spain) have notified only partial measures.[5]

This milestone presents an opportunity to assess whether the RAD is producing meaningful change in the collective redress landscape[6] and this is the fundamental question this article aims to answer.

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   The implementation texts in this paper are quoted only once and then referred to with name of the corresponding country to facilitate the reading and to comply with the extension requirements.
2. Directive 2020/1828 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22 [2020] OJ L 409/1. MJ Azar-Baud, 'La directive européenne sur les actions représentatives: un texte mi-figue, mi-raisin' (2020) n°51 JCP E 1542. Id. 'The Effects of the Directive on Representative Actions for the Protection of the Collective Interest of Consumers in the French Group Action regime' (2020) Revista Ítalo-Española de Derecho Procesal 111.
3. On 27 January 2023, the European Commission advised that several MS would be sent formal notices of default for incomplete or only partial transposition. They were given two months to comply and, failing compliance, were at risk of receiving a reasoned opinion from the Commission.
4. Luxembourg's Bill No 7650 on 30 October 2025, marking the final state to take transposition measures among the 27 MS.
5. Bulgaria and Spain, with draft bills.
6. For a state of play before the Proposal of 2018 see E Lein et al, *State of Collective Redress in the EU in the Context of The Implementation of the Commission Recommendation JUST/2016/JCOO/FW/CIVI/0099* (The British Institute of International and Comparative Law, 2017); MJ Azar-Baud et al, *Collective redress in the MS of the European Union*, Policy Department for Citizens' Rights and Constitutional Affairs (2018).

Through comparative analysis of implementation texts across MS, it identifies patterns of convergence and divergence. The analysis reveals that whilst mandatory provisions have been uniformly adopted, MS have exercised discretion conservatively in areas left open by the Directive. This includes critical design choices affecting namely participation requirements, adhesion regimes, funding mechanisms and allocation of unclaimed funds. The study employs extensive review of official legislative implementation measures notified to the European Commission[7] and relies on official English translations where available; otherwise, machine translations were used. Readers should note this approach has inherent limitations that may result in inaccuracies.

The article proceeds as follows. Section 2 examines substantive implementation choices, analysing legislative vehicles, scope decisions[8] and access to justice rhetoric. Section 3 reorganises procedural analysis according to litigation phases: Pre-trial and Admissibility (3.1), Funding of Representative Actions (Private third-party funding and other forms of funding (3.2), Parallel Actions (3.3), Group Structure and Adhesion Regimes: Opt-in, Opt-out, Hybrid Models (3.4), Redress Measures and Distribution (3.5). These assessments contribute to understanding of the hurdles that remain to achieve both domestic and cross-border justice for widespread consumer harms, in the aftermath of the RAD's soft and minimum harmonisation approach. Section 4 brings together concluding remarks summarising the core contributions of this research and identifying the outstanding challenges that continue to shape the EU's collective redress landscape.

2. Implementation Landscape

2.1. Means by which the transposition has taken place

The heterogeneity of legislative vehicles and structural models adopted by MS underscores that the Directive has been applied in diverse procedural landscapes. Whether through amendments to consumer law, civil procedure codes, or the enactment of freestanding statutes, national choices reveal distinct normative preferences regarding the integration — or insulation — of collective redress within existing legal frameworks.

The majority of MS opted to modify existing legislation, yet there is wide variation in the scope and nature of these amendments. Some pursued narrow adjustments confined mainly to consumer statutes (Latvia,[9] Hungary[10]), whereas others carried out broad procedural reforms (Czech Republic,[11] Romania[12]), and several revised both simultaneously (France,[13] Lithuania,[14] Malta[15]). By contrast, Ireland's adoption of a comprehensive, autonomous legislative architecture exemplifies a maximalist approach, reconstituting collective procedure outside pre-existing codes and signalling a deliberate reset of national policy on representative litigation.[16] Belgium integrated provisions into its Code of Economic Law[17] and Finland took two corresponding measures: amending its Class Action Law whilst creating an autonomous statute on qualified entities and injunctive actions.[18] Slovenia amended both its 2017 Collective Actions Act and Consumer Protection Act.[19]

Luxembourg and France represent prominent examples of MS that used the transposition process to rationalise previously fragmented collective-action regimes. Luxembourg's introduction of a dedicated Livre 5 into its Consumer Code — accompa-

7. The measures can be found at: eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX.
8. Exclusively consumer-related, multisectoral or transsubstantive.
9. Law of 14 September 2023 amending the Consumer Rights Protection Law, Latvijas Vestnesis No 190 of 2 October 2023.
10. Hungary's adopted implementation Act, Act LXI of 2022 amending certain laws for the purposes of active consumer protection.
11. Act No 179/2024 Coll., on collective civil court proceedings.
12. Law 414/2023 on conducting representative actions for the protection of consumers' collective interests.
13. Loi n°2025-391 du 30 avril 2025 portant diverses dispositions d'adaptation au droit de l'Union européenne en matière économique, financière, environnementale, énergétique, de transport, de santé et de circulation des personnes, JORF n°0103 (DDADUE); MJ Azar-Baud, 'Le renouveau de l'action de groupe : entre ambitions réformatrices et échecs structurels: Regards critiques et comparatistes' (2025) n°12 Droit Social.
14. Law Implementing European Union and International Legislation on Civil Procedure, Teisės aktų registras No 2023-22106.
15. Representative Actions (Consumers) Act, 2022, Gazetta tal-Gvern ta No 21,064.
16. Representative Actions for the Protection of the Collective Interests of Consumers Act 2023, Act No 22 of 2023.
17. Bill 55K3895 amending Books I, XV and XVII of the Code of Economic Law, Belgisch Staatsblad No C–2024/005024.
18. Act on Representative Actions for Injunctive Measures (1101/2022), SK No 1101/2022; Act amending the Class Action Act (1103/2022), SK No 444/2007.
19. Act Amending the Collective Actions Act (ZKolT-A), Uradni list RS No 133/2023.
20. In its original version: Loi du 20 novembre 2025 portant modification : 1° du Code de la consommation ; 2° de la loi modifiée du 11 avril 1983 portant réglementation de la mise sur le marché et de la publicité des spécialités pharmaceutiques et des médicaments préfabriqués ; 3° de la loi modifiée du 27 juillet 1991 sur les médias électroniques ; 4° de la loi modifiée du 27 juillet 1997 sur le contrat d'assurance ; 5° de la loi modifiée du 14 août 2000 relative au commerce électronique ; 6° de la loi modifiée du 24 mai 2011 relative aux services dans le marché intérieur ; 7° de la loi modifiée du 23 décembre 2016 sur les ventes en soldes et sur trottoir et la publicité trompeuse et comparative ; 8° de la loi du 26 juin 2019 relative à certaines modalités d'application et à la sanction du règlement (UE) 2018/302 du Parlement européen et du Conseil du 28

nied by amendments to seven additional statutes — reflects a conscious policy of alignment with established continental models.[20] France's consolidation of sector-specific actions into a unified, horizontal framework, coupled with the introduction of novel civil penalties, demonstrates a parallel commitment to systematic coherence and enhanced deterrence.[21]

On the contrary, minimalist transpositions took place in mature collective redress systems. The adjustments required for the legal regimes of the Netherlands and Portugal to achieve compliance with the RAD were only modest, with both possessing advanced pre-existing mechanisms. The Dutch WAMCA (Act on Redress of Mass Damages in Collective Action) regime already met the Directive's structural requirements, necessitating only clarificatory amendments.[22] Portugal's reforms, while minor in scope, illustrate a proactive orientation by exceeding minimum standards — curtailing individual standing, which was allowed under the previous regime, recognising third-party funding, and strengthening judicial control over compensation distribution.[23]

Pending transpositions, notably in Spain and Bulgaria, show that some MS have used the Directive as an opportunity for broader procedural recalibration. Spain's draft proposes an extensive restructuring of its civil procedure law and related regulatory statutes, while Bulgaria's draft introduces a new procedural chapter, integrating representative actions across multiple sectoral regimes, simultaneously implementing Regulation (EU) 2023/988 alongside the Directive. It appears to shift from its existing formally opt-out framework to an express opt-in system for damages claims, a choice generating ongoing debate. These developments suggest that the Directive continues to shape national procedural landscapes in real time.

The type of implementation texts is also related to the divergent procedural architectures for managing representative actions. While most MS have confined collective redress to judicial proceedings, others — such as France and Malta — adopt hybrid frameworks combining administrative and judicial components. These divergences reflect structural differences in administrative capacity and judicial culture, and they indicate that MS continue to negotiate the appropriate institutional locus for collective enforcement.

As we can see, the transposition of the Directive reveals significant disparity in legislative technique, institutional design, and procedural integration. Nevertheless, certain patterns of convergence are discernible: an increasing movement toward consolidation, the refinement of governance structures around qualified entities, and the gradual systematisation of collective redress regimes. Despite these trends, the overall landscape remains uneven, raising questions regarding the long-term consistency and interoperability of representative action mechanisms across the Union.

2.2. Scope: Minimum Harmonisation Versus Expansion

The RAD employs minimum harmonisation, prescribing a closed list of approximately 70 EU legislative instruments in its Annex. This expands 'consumer' and 'consumer relationships' beyond most pre-existing national legal constructs,[24] now encompassing data protection, digital services, financial services, travel, energy, telecommunications, environment, health, transport passenger rights, and recently the Digital Markets Act,[25] Digital Service Act[26] and Artificial Intelligence Act.[27] A number of MS have embraced scopes exceeding the RAD baseline.[28]

The RAD being of minimum harmonisation, all MS have naturally followed at least the Directive's closed referral technique. MS that had already adopted

février 2018 visant à contrer le blocage géographique injustifié et d'autres formes de discrimination fondée sur la nationalité, le lieu de résidence ou le lieu d'établissement des clients dans le marché intérieur, et modifiant les règlements (CE) n° 2006/2004 et (UE) 2017/2394 et la directive 2009/22/CE, en vue de la transposition de la directive (UE) 2020/1828 du Parlement européen et du Conseil du 25 novembre 2020 relative aux actions représentatives visant à protéger les intérêts collectifs des consommateurs et abrogeant la directive 2009/22/CE, Journal officiel du Grand-Duché de Luxembourg – Mémorial A, n° 507, 21 novembre 2025. For a comment of the preliminary draft, see MJ Azar-Baud, 'Regards comparatistes sur l'introduction d'un recours collectif luxembourgeois' in A Engel, *Annales du Droit Luxembourgeois*, Vol.30 2020 (Brussels: Bruylant, 2021), pp 327–364.

21. The addition of Art 1254 into the French Civil Code (Art 16, Ch V, DDADUE) allows courts, upon request of the Public Prosecutor, to order a civil penalty in the event of fraudulent misconduct causing serial damage. This applies where the author of the damage has deliberately committed an infringement with a profit motive, causing similar harm to multiple persons. The fine is limited to twice the profit made if the offender is a natural person and five times the amount of profit if the offender is a legal entity. Additionally, a civil fine of up to 50,000 euros "*may be imposed on the claimant or defendant in the proceedings where the latter has, in a dilatory or abusive manner, obstructed the conclusion of an agreement on the basis of the judgment ordering the collective proceedings for the liquidation of damages*" under Art 16(III)(B)(2)(b) DDADUE.
22. Implementation Act for Directive on representative actions for consumers, Staatsblad 2022 No 459.
23. Decree-Law No 114-A/2023, Diaro da Republica I, No 234/202 of 5 December 2023.
24. We called this phenomenon 'the planned obsolescence of the RAD': MJ Azar-Baud, 'L'obsolescence programmée d'une action collective limitée au droit de la consommation' (2023) 2 REDC 429.
25. Regulation 2022/1925 on contestable and fair markets in the digital sector [2022] OJ L265/1.
26. Regulation 2022/2065 on a Single Market for Digital Services [2022] OJ L277/1.
27. Regulation 2024/1689 laying down harmonised rules on artificial intelligence [2024] OJ L1689/1.
28. Namely France, Belgium, Germany, Greece, Croatia, Ireland, Latvia, the Netherlands and Slovenia. Slovakia, Austria and Estonia adopt a general material scope covering all areas, but without covering specific additional areas.

a mechanism going beyond the consumer-related one of the RAD, maintained it. Three scope models emerge from analysis of the implementation: strict transposition, multisectoral expansion and trans-substantive systems.

Strict Transposition. Eleven MS have transposed the RAD strictly, that is, without any further extension.[29] Austria exemplifies strict adherence, limiting representative actions to natural persons acting as consumers in the ordinary sense.[30] Hungary similarly restricts scope, excluding activities of organisations supervised by the Hungarian National Bank unless relating to consumer protection.

Multisectoral Expansion. The scope in several states is broader than that of Annex I, extending coverage to specific additional legal domains.[31] Further, some MS, while limiting the protection to consumers, do consider the latter more broadly than the RAD (see below), hence encompassing other areas of law such as tax, late payment, etc. Examples of this category are Ireland, Belgium, Germany, Greece, Croatia and Slovenia (including competition). Spain's proposal, for instance, covers any infringement harming the collective rights of consumers and 'users', including health products and tax regulation violations.[32]

Trans-substantive systems. A select group adopted a comprehensive scope covering any infringement causing group damage, regardless of legal domain.[33] The Netherlands maintains this approach, and France transitioned from its previous multisectoral model to trans-substantive coverage, extending compensable damages to all types, 'regardless of nature', with a few exceptions.[34] As a consequence, only MS adopting trans-substantive approaches permit representative actions vindicating fundamental rights broadly, violations of competition law and labour rights (when citizens act in non-consumer capacities), whereas these domains remain largely excluded from the RAD framework, perpetuating fragmentation in collective redress availability.

Subjective Scope: Representation of Natural and/or Legal Persons. Departing from the 2013 Commission Recommendation, which encompassed both natural and legal persons,[35] the RAD defines consumers as natural persons acting outside trade, business, craft or profession. Consequently, most MS protect exclusively individuals.[36] Portugal illustrates this divide, as its pre-existing popular action regime and Antitrust Private Enforcement Act remain applicable to undertakings, but RAD implementation applies strictly to consumers, hence natural persons. France also extends protection to legal persons generally.[37]

Other MS, like Belgium[38] and the Czech Republic,[39] extend the collective mechanism to *certain* businesses; that is also the case in Germany, encompassing small and medium-sized enterprises, with fewer than 10 employees and an annual turnover below €2 million.[40] In a similar situation, Hungary[41] permits certain legal persons to qualify as consumers under specific circumstances (unfair terms, unfair practices, electronic contracts, tacit renewal challenges).

2.3. Access to Justice: Rhetoric Versus Implementation Reality

A striking paradox characterises the RAD: access to justice, widely considered collective redress's core justification, appears only twice in the Directive's text, in recital 10 and Article 1's final phrase.[42] Article 1's syntax reveals priorities: it 'sets out rules' ensuring representative action availability, 'whilst providing appropriate safeguards to avoid abusive litigation'. The purpose, through the achievement of a high level of consumer protection, seems to be 'to contribute to the proper functioning of the internal market' by approximating national laws. Only subordinately does the Directive 'also aim to improve consumers' access to justice'.

This rhetorical structure may suggest that avoiding abusive litigation and internal market harmonisation, more than rights vindication, could have driven the legislative agenda. Safeguards against abuse receive prominence whilst access to justice features as

29. Cyprus, Denmark, Finland, Hungary, Italy, Lithuania, Malta, Poland, Portugal, Romania and Sweden.
30. Austria is one of the States that more strictly follows the framework of the RAD; Federal law enacting a Qualified Entities Act (QEG), BGBl. I, 85/2024.
31. Belgium, the Czech Republic, Germany, Estonia, Greece, Croatia Ireland, Latvia, the Netherlands and Slovenia.
32. Explanatory Memorandum of the Spanish draft Bill, p 22.
33. The Netherlands, Slovenia, France, Estonia, Belgium, and Portugal in its previous regime.
34. See MJ Azar-Baud, 'Le renouveau de l'action de groupe : entre ambitions réformatrices et échecs structurels: Regards critiques et comparatistes' (2025) n°12 Droit Social.
35. Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms [2013] OJ L201/60.
36. Italy serves as an example. Under Italian Legislative Decree No 28 of 10 March 2023, Gazzetta Ufficiale della Repubblica Italiana, No 70 of 24 March 2023, a consumer is a natural person.
37. Article 16(I)(A) DDADUE.
38. Belgium provides for the protection of small to medium-sized enterprises (SMEs) alongside consumers.
39. 'Micro-enterprises' or small businesses (defined as entrepreneurs who employ fewer than 10 people and whose annual turnover does not exceed CZK 50 million) benefit.
40. Germany is notable for the protection of small businesses offered by its implementing Act; the national Injunctions Act (as amended) covers wide-ranging consumer protection laws.
41. The Hungarian law covers civil claims raised by consumers against traders within the framework of public interest actions, including not only natural persons, but also other entities and companies: existing Act CLV of 1997 on Consumer Protection (1997. évi CLV. törvény a fogyasztóvédelemről) maintained in the transposition.
42. MJ Azar-Baud and M Sousa Ferro, 'Directive on Consumer Representative Actions: A Sheep in Wolf's Clothing?' (2020) Op-Ed EU Law Live.

an ancillary objective. The representative actions' goals, effectiveness of substantive rights, judicial efficiency, and deterrence,[43] remain implicit rather than explicit in the RAD.

Theoretical Foundations versus Political Reality. In general three core objectives are acknowledged for collective actions: facilitating access to justice by overcoming rational apathy and economic barriers; promoting judicial efficiency by consolidating dispersed claims; and enhancing deterrence by internalising the costs of unlawful practices. Yet the RAD's commitment to these aims is uneven.

Only a few MS — such as Romania, Slovenia and the Bulgarian draft — explicitly embed access to justice in their transposition texts. Luxembourg is exceptional: its initial draft expressly framed 'efficient access to justice' as a legislative purpose, signalling interpretive guidance and a pragmatic orientation.[44] Elsewhere, parliamentary debates frequently invoke access to justice, but statutory language remains silent. Belgium, the Czech Republic, Italy and Latvia highlight the concept in explanatory memoranda without embedding it normatively. This disparity between political rhetoric and enacted law raises doubts about the depth of MS' commitment to expanding access.

The tension becomes clearer when examining design choices. Most MS adopt minimally compliant frameworks in areas crucial to economic viability by choosing opt-in rather than opt-out systems, and some impose tight constraints on third-party funding, allowing unclaimed funds to revert to defendants; or imposing participation thresholds. Such features constrain rather than broaden access to justice, despite formal implementation of the Directive.

Overall, the gap between justificatory discourse and practical architecture suggests that the RAD operates more as symbolic than transformative legislation. It succeeds in establishing a uniform collective redress infrastructure but does so conservatively, prioritising defendant safeguards and judicial control over claimant empowerment. Whether this reflects an appropriate equilibrium or a missed opportunity remains contested.

3. Procedural Frameworks by Litigation Phase

3.1. Pre-trial and Admissibility

3.1.1. Standing: Exclusivity of QEs versus Expansion

Although the Directive establishes qualified entities as the central gateway to representative standing, MS exhibit substantial divergence in their transposition choices. The resulting landscape reveals multiple standing models — exclusive, shared, and pluralistic — that reflect deeply rooted national approaches to collective redress and public-interest litigation.

Few MS, such as Luxembourg,[45] Czech Republic, Greece and Ireland, adopt a strictly exclusive approach according to the specific criteria laid down in Article 4 RAD, confining standing to qualified entities.[46]

A significant group of MS extends standing to public authorities,[47] ad hoc entities,[48] and, in some cases, individuals. This expansion suggests an understanding that effective collective enforcement may require a multiplicity of actors, particularly in legal systems with strong administrative-law traditions or with experience in public-interest actions, while it simultaneously highlights an ongoing tension between ensuring access to justice and preventing strategic misuse of representative procedures.

Prominent Role of Public Authorities in Safeguarding Collective Interests. The empowerment of public entities, supervisory agencies, and specialised authorities signals a robust commitment to state-backed enforcement. Public entities authorised to bring representative actions[49] include public prosecutors,[50] general attorneys,[51] chambers[52] and institutions such as the ombudsman.[53] Jurisdictions such as Portugal, Finland and Poland demonstrate a model in which public oversight is embedded within collective litigation architecture. This approach enhances the legitimacy and stability of representative

43. We had engaged in this discussion in MJ Azar-Baud, 'The Effects of the Directive on Representative Actions for the Protection of the Collective Interest of Consumers in the French Group Action regime' (2020) Revista Ítalo-Española de Derecho Procesal 111 and MJ Azar-Baud, 'Regards comparatistes sur l'introduction d'un recours collectif luxembourgeois' in A Engel, *Annales du Droit Luxembourgeois*, Vol.30 2020 (Brussels: Bruylant, 2021), pp 327–364.
44. No 7650 submitted 14 August 2020, 'Exposé des motifs'.
45. This marks a clear departure from an earlier legislative Luxembourgish proposal and reflects a policy choice favouring institutionalised, highly regulated claimants over more diffuse forms of representation.
46. Whether under art. 4(7) RAD or within the meaning of art. 3 of Directive 2009/22/EC.
47. Belgium (initiation of representative actions but without QE designation), Cyprus, Germany (for injunctive actions), Denmark, Estonia, Croatia, Hungary, Italy, Lithuania, Malta, Poland, Portugal, Romania, Sweden, Slovenia, and Slovakia; Austria and Finland following art. 3 of Directive 2009/22/EC.
48. Belgium, Estonia, Croatia, Hungary, Latvia, Malta, the Netherlands, Romania and Slovenia.
49. Article 4(7) RAD.
50. Croatia. Actions may be filed by an 'authorised prosecutor' on behalf of the consumer.
51. Slovenia. The Higher State Attorney/State Attorney's Office has standing.
52. Austria grants standing to the Austrian Federal Economic Chamber, Federal Chamber of Labour, Trade Union Federation, and Association for Consumer Information.
53. The Danish Consumer Ombudsman, Polish Financial Ombudsman, or Finnish Consumer Ombudsman.

actions but may raise questions regarding institutional impartiality and prioritisation of regulatory over compensatory objectives. In France, the Public Prosecutor's Office may be 'the principal party' in cessation group actions and may intervene in compensatory group actions.

Widespread Acceptance of Ad Hoc and Special-Purpose Vehicles. Many MS — the Netherlands, Croatia, Belgium, Hungary, Romania, Estonia, Slovenia, Malta and Latvia — permit ad hoc entities to act as claimants. France grants standing to designated associations, trade unions in specific fields, and qualified entities listed in the Official Journal,[54] but the decree regulating this '*special agrément*' has not yet been adopted (for the time being, associations that had an 'agrément' maintain it for two years). This represents an alternative paradigm that prioritises flexibility, responsiveness, and the ability to assemble expertise tailored to the dispute. However, such openness also necessitates robust governance requirements to prevent opportunistic litigation and to ensure that consumer or collective interests remain paramount.

Residual Space for Individual Standing in Certain Regimes. Although the Directive seeks to channel representative actions primarily through qualified entities, some MS — such as Denmark, and those retaining domestic preexisting 'popular action' traditions (Portugal, Italy) — continue (under their previous regimes) to allow individuals to initiate proceedings on behalf of collective interests. This persistence of individual standing underscores the heterogeneity of MS' procedural traditions and indicates that, despite the Directive, private enforcement models have not been fully harmonised.

The above-mentioned disparities reveal an EU-wide architecture of standing that remains fundamentally pluralistic. It illustrates the Directive's flexibility but also its potential to generate significant disparities in access to representative redress across the Union. While qualified entities constitute the Directive's harmonised core, the coexistence of public enforcers, ad hoc bodies, and individual actors demonstrates that MS continue to tailor their regimes to national procedural cultures. This divergence raises important questions for the future coherence of cross-border representative actions and suggests that further EU-level guidance — whether through judicial interpretation, soft law, or legislative refinement — may be required to achieve a more consistent and predictable model of standing in collective redress.

3.1.2. Requirements: number and commonality

Beyond representativeness requirements through the designation as a qualified entity, several MS require minimum consumer numbers to initiate proceedings or pass certification. Five individuals are required in Latvia, 10 in Poland,[55] and 20 in Lithuania and Slovakia for consumer contract litigation seeking redress. Germany and Austria require at least 50 consumers' claims that must be 'essentially similar', that is, based on the same or essentially comparable facts and essentially identical questions of fact and law are relevant.[56] Belgium requires courts to be satisfied that actions would prove more effective than individual proceedings.

Member States' implementations may allow subclass categorisation within required consumer groups (Article 9(5) RAD requires a description of the 'group' entitled to redress). Latvia, Belgium, Luxembourg and Slovenia explicitly provide for unifying claims within subgroups. Poland's Act intentionally excludes this for general consumer interest infringements, reasoning that consolidation can disadvantage class members.[57]

Requirements worded as 'commonality' (France and the Netherlands), claim homogeneity and a common factual basis (Poland), similar features of claims (Czech Republic) and the concept of 'a similar factual and legal basis' come up in several implementation texts. Spain's draft stipulates that there must not be claimant-specific factual or legal questions regarding conduct, damages and causal links; all matters must be related. It establishes certification hearings requiring homogeneity in affected consumers' requests.

3.2. Funding of Representative Actions: Private Third-Party Funding and Other Forms of Funding

According to the RAD, MS should retain or take measures aiming to ensure that qualified entities are not prevented from bringing representative actions under this Directive due to the costs associated with the procedures. However, Member States should not be required to finance representative actions (Recital 70). Hence, the RAD acknowledges various models of funding a representative action which may coexist.

3.2.1. Private Third-Party Funding

Third-party funding availability facilitates effective, widespread access to justice and is, sometimes, the only avenue to fund and run a case. Its potential to enable access to justice is seen in the Dutch regime,

54. Article 16(I)(C) DDADUE.
55. Article 1 s.1 of the Act on pursuing claims in group proceedings.
56. France's earlier draft proposed that ad hoc entities representing 50 natural persons could initiate actions, but this was not adopted.
57. 'Justification' of the Draft, on art.1 point 3.

since it had formed part of consumer collective action processes for years prior to the RAD.[58]

Therefore, the RAD acknowledges private third-party funding without making MS acceptance mandatory. It imposes safeguards of independence, transparency and absence of conflict of interest for qualified entities benefiting from it. MS must ensure that where representative actions for redress measures are funded by third parties, funding does not divert the action away from protecting collective consumer interests.
Greece and Ireland remain outliers in prohibiting third-party funding in collective actions. Ireland's prohibition — grounded in the doctrines of maintenance and champerty — continues to constrain access to justice despite mounting calls for reform, including from the Law Reform Commission. The Irish Act's forward-looking safeguards suggest a legislative awareness that eventual liberalisation may become necessary.[59]

Aside from those two MS, third-party funding remains largely accepted and lightly regulated, with provisions based on the same key conditions imposed. While most of the MS enacted that Litigation Funding Agreements (LFAs) must comply with RAD principles (transparency and disclosure obligations, conflict of interest prevention and management, prohibition on funding an action against a competitor), some have gone beyond and adopted further features and/or requirements for third-party funding.

Varied Oversight Mechanisms and Differentiated Degrees of Control. The scrutiny of LFAs across the European Union remains markedly fragmented in the implementations. Member States have adopted divergent supervisory models — judicial, administrative, and hybrid — reflecting distinct national conceptions of procedural fairness, consumer protection, and market regulation. Revealing differing institutional preferences regarding the appropriate balance between facilitating private enforcement and safeguarding the integrity of collective redress, MS employ a spectrum of oversight devices: ex ante administrative vetting (e.g., Hungary[60]), hybrid solutions for disclosure obligations (e.g., Austria and Germany[61]), and ex officio or defendant-triggered judicial review (e.g., in the Czech Republic[62]). For MS in which disclosure and conflict of interest requirements now exist, authors claim that greater certainty would help third-party funding to flourish.[63]

Transparency: From Disclosure as an Emerging Baseline to Enhanced Due-Diligence Requirements in Certain Jurisdictions. The disclosure obligation exemplifies the Directive's dual commitment to facilitating access to justice through alternative funding mechanisms whilst simultaneously imposing procedural transparency requirements designed to prevent abusive litigation. The verification of funding arrangements at the admissibility stage thus serves as a gatekeeping function, encompassing broader EU principles of judicial effectiveness and consumer protection by ensuring that representative actions remain aligned with their protective purpose rather than being driven by commercial interests.

Thus, transparency obligations are becoming foundational, even though implementation texts have chosen different ways of imposing disclosure of LFAs: mandatory *ex lege* (ex. Germany) or if requested by the judge, for instance when third-party finding is challenged by the defendant. Illustrating the latter, in the Netherlands, courts demonstrate a clear willingness to scrutinise arrangements with funders, for example, thus demonstrating the interrelationship between third-party funding, governance structures within claimant entities and the obligation to act in the best interests of the group.[64]

Informational duties, notwithstanding the absence of uniform minimum standards under Union law, sometimes also come up in the transposition texts:

58. The Dutch Claim Code of 2019 provided principles on this matter, and courts are particularly aware of access to justice considerations.
59. Greece's text states the prohibition outright (Article 8 of Law 5019/2023 (addition of art.10(n) to Pt 8 of National Law No 2251/1994).) Ireland qualifies the ban by making it dependent on national law: third-party funding is allowed 'insofar as permitted in accordance with the law' (Act No 22 of 2023, art.27(1). However, third-party funding is indeed prohibited in Ireland. Express prohibition was confirmed by the Supreme Court in 2017 based on the connection with maintenance and champerty torts (A Sweeney, 'Class actions in Ireland: a perspective from the business sector' *Houthoff Class Action Survey* (2024), pp 99–100.). This is a debated matter with major calls for reform from the Irish Law Reform Committee (Irish Law Reform Commission, *Consultation Paper: Third Party Litigation Funding* (2023)). Third-party funding may therefore be used in future if proposed reforms are accepted, and the Irish Act foresees several precautions. (The Minister responsible for consumer protection will verify compliance of funding arrangements with conditions including absence of undue funder influence and publicly available funding source information).
60. Hungary requires a financial overview submission to the Minister responsible for consumer protection. Ministers have the power to revoke qualified entities' rights based on their assessments. §8 (38/E. §2(b)).
61. At s.3. Funding contracts may be submitted to the Federal Cartel Prosecutor. Whilst courts and defendants are not given oversight, courts can submit concerns to initiate reviews of the funding arrangement. It is apparent that Austrian legislators preferred a private, autonomous funding contract design. Section 1, §3(2). In Germany, under the implementation text, QEs must disclose the LFAs to the court ; under Section X of UWG, the Federal Office of justice needs to agree on the LFA.
62. Chapter IV §57.
63. G Lorenzo, 'Litigation funding: a catalyst for collective actions' in *Houthoff Class Action Survey* (2024), p 134.
64. Amsterdam Court, 25 October 2023,*SOMI, STBYP and SMC v TikTok Ireland, TikTok UK, TikTok Inc, TikTok Pte, Bytedance, Beijing Bytedance and TikTok Ltd*; Joined cases *Stichting Investor Loss Compensation (SILC) v Hermann-Josef Michael Lamberti et al (Airbus)*, Case C/09/623288 and *Airbus Investors Recovery Stichting (AIRS) v Airbus SE*, Case C/09/627583 (District Court of the Hague), Judgment 20 September 2023.

Sweden requires clear notification to class members of the existence of TPF and the remuneration thereof.

Some MS, most notably the Czech Republic, impose particularly stringent verification obligations extending to beneficial ownership of funders. Additionally, the possibility for courts to request inventories of claimants' financing sources reflects a concern with mitigating risks associated with opaque financial structures and potential conflicts of interest.

Profit-Cap Regimes as Instruments of Consumer Protection. The adoption of statutory profit caps — such as Germany's 10% limit[65] and Estonia's[66] and Poland's[67] 30% ceilings — demonstrates a policy choice favouring access to justice while curbing the risk of exploitative funding structures. However, such caps remain exceptional.

Most of the MS do not impose an upper limit on profit sharing, but the absence of this is counterbalanced by judicial control of proportionality and adequacy. That is the case in Portugal, whereby the transposition required courts to control remuneration adequacy and proportionality. Its text states that plaintiffs should remain 'solely responsible for decisions to bring, withdraw from or settle collective actions'.[68] Under the Swedish regime, if legal representation is used,[69] a 'risk agreement' allows fees to the lawyer to be set depending on the level of success of the claim.

Increasing Reliance on Governance-Based and Structural Safeguards. Several regimes incorporate structural checks aimed at limiting funder influence on strategic litigation decisions. Portugal expressly safeguards claimant autonomy in decisions to initiate, withdraw, or settle collective actions.

This trend aligns with the European Law Institute's Core Principles, which identify the allocation of control rights and funder fees as central to preventing distortive litigation practices. The 12 comprehensive core principles enunciated by the European Law Institute on third-party litigation funding are being followed with great interest.[70]

The Dutch Claims Code,[71] a soft regulatory instrument, similarly incorporates safeguards relevant to RAD principles. It promotes non-profit operation, transparent and independent funding arrangements, and claimant control over strategic litigation decisions, aligning with RAD objectives on transparency, funder independence, and protection of represented parties. Dutch associations demonstrate compliance with key safeguards by operating on a non-profit basis, maintaining transparent and independent funding arrangements, ensuring claimant control over strategic litigation decisions, and implementing governance and remuneration policies that prevent conflicts of interest.

Consequences of Non-Compliance and Remedial Flexibility. Legal consequences for defective funding arrangements vary significantly. Some systems impose strict sanctions, such as denial of admissibility (Estonia, Germany, Hungary and the Spanish draft). Many others adopt a corrective approach by permitting amendments to funding agreements within fixed time frames (e.g., Portugal, Luxembourg), with Portugal introducing the exceptional possibility of substituting the Public Prosecutor's Office to preserve the action. These divergences highlight fundamentally different conceptions of the proportionality of sanctions in the collective-redress context.

The comparative landscape reveals that third-party funding in collective redress is at a transitional moment towards principled regulation. Although the RAD has indirectly encouraged the development of national frameworks, MS practices remain heterogeneous. The growing emphasis on transparency, proportionality, and governance — coupled with the influence of the ELI Principles — suggests an emerging European consensus on the need for principled, but not overly restrictive, regulation. Yet significant obstacles remain, including prohibitions in certain jurisdictions, inconsistent oversight standards, and the absence of Union-level harmonisation. While these divergences continue to impede legal certainty and the uniform effectiveness of representative actions across the internal market, the Report of the High-Level Forum on Justice for Growth expresses scepticism about the need to regulate third-party funding at this stage, considering there is '*no demonstrated need for action at the EU level*' and instead priority should be "*to gain experience by monitoring the application of the* [Representative Actions Directive] *in the field of consumer collective redress and possibly assessing the issue again after that*."[72]

65. §4(2)(3). A representative action is inadmissible if a funder is entitled to more than 10% of the amount paid by the defendant.
66. K Sein, 'Representative Actions for the Protection of the Collective Interests of Consumers: Estonian Experiences' (2024) 2 REDC 211.
67. Macedo opines that 'an arbitrary hard cap on funders' recovery could make it uneconomical for funders to support smaller cases'. L Macedo, 'Portugal has all it takes' in *Houthoff Class Action Survey* (2024), p 225.
68. Article 6(2) on the independence and active legitimacy of associations and foundations.
69. Administrative representative actions do not require representation by a lawyer.
70. S Cockerill et al, 'Principles Governing the Third Party Funding of Litigation' (European Law Institute 2024), p 44.
71. www.derclaim.nl/wp-content/uploads/2023/08/CO2020.pdf
72. https://commission.europa.eu/high-level-fora-justice-growth-and-future-eu-criminal-justice_en

3.2.2. Other forms of funding: Public Funds, Structural Support of QEs, Direct Contributions from Members, Incentives to QEs

In line with Article 20(2) and Recital 70 of the Directive, MS have acknowledged means of public funding in such forms as public funds (e.g., Romania), legal aid, reductions (e.g., Malta, Austria, Slovakia, Sweden, Latvia, Italy) or exemption of fees (Czech Republic) and costs (in Poland, QEs are exempted from costs for public announcements) and other structural means of support of QEs.

Public Funding Channels, including Cy-près, and Structural Support Play an Increasingly Significant Role. Several jurisdictions demonstrate a renewed reliance on public or quasi-public funding to sustain qualified entities and promote consistent access to collective redress. Germany and Austria exemplify this trend by funding prominent consumer organisations and presuming their compliance with neutrality and independence requirements. Germany's non-governmental, non-profit umbrella organisation *Verbraucherzentrale Bundesverband* is state-funded, as are consumer advice centres and other associations meeting QE requirements, while the Federal Office of Justice may approve expenses financed through commercial litigation funders, provided prior approval is obtained.[73] Most MS provide public funding channels to *structurally support* qualified entities in collective actions, for example, Austria and Italy, although a number of states, such as Ireland and the Netherlands, have opted not to offer such support.

Cy-près Funds and Funds composed of procedural penalties and/or civil fines. Several MS (e.g., Belgium) also allow the reallocation of *outstanding redress funds* not claimed by consumers, through *cy-près* mechanisms, to be allocated for public benefit (Art. 9(7), Art. 12, and Art. 20 1-2 RAD).

Few MS (France and Luxembourg) have adopted other public-benefit measures such as fines for non-execution of judicial interim orders or delay, in accordance with Articles 9(7) and 19 RAD. In the former, a proportionate civil fine is applied for faults deliberately committed by the defendant with a profit motive for serial damage (which also serves as a strong deterrent device). The proceeds are then allocated to a fund for the financing of group actions.

Legal Aid. Other States provide reductions in court fees, access to state budgets, or eligibility for reimbursement of reasonable litigation expenses. Support includes reduced or waived court registry fees in Malta, and coverage of action-related expenses from state budgets in Latvia. These forms of structural support indicate an acknowledgement that, without public intervention, collective redress mechanisms may struggle to function effectively, particularly for consumer organisations with limited resources.

Cost Allocation and Loser-Pays Principle. Most MS maintain the loser-pays principle, albeit with consumer-protective modifications. Some regimes (Netherlands, Poland and Germany) explicitly shield consumers from adverse costs when actions rely on third-party funding, while others place full financial responsibility on qualified entities. In the Czech model, non-profit entities absorb adverse costs and assume all procedural liability, paying the other party's costs if unsuccessful. Nonetheless, they are allowed to receive success-based remuneration (receiving fees set at 16% of awards if successful), exemplifying a structure intended to promote responsible litigation conduct by claimants' representatives while preserving consumer insulation.

While Hungary applies the rule strictly, the Netherlands ensures consumers do not bear costs and Italy and France allow exceptions to the loser-pays rule, if consumers are responsible for adding burden to the procedures by negligence.

Specific regimes illustrate the diversity of approaches: in Romania, consumers bear no costs when actions are funded by third parties; in Luxembourg, costs of the court-appointed liquidator managing claims and compensation distribution are borne by the defendant. Divergences in cost-allocation models reflect deeper differences in national attitudes toward risk distribution and judicial gatekeeping.

Consumer Participation Fees as a Supplementary but Limited Funding Tool. The Directive's allowance for modest consumer participation fees has been implemented unevenly. Pursuant to Article 20(3), in addition, some MS (e.g., Denmark and Italy) permit collective actions to be funded directly by consumers through modest entry fees or similar measures. In others (France and Sweden), this option is not available or is even prohibited explicitly.

Jurisdictions such as Ireland and Poland impose strict financial caps on the level of financial participation that can be claimed from consumers, reflecting a desire to balance claimant affordability with the sustainability of qualified entities' operations. Yet these low ceilings raise doubts regarding the practical ability of participation fees to materially and fully support representative actions. The modest financial expectations placed on consumers signal an underlying policy judgment that funding burdens should not fall on represented individuals but remain distributed among public sources, qualified entities, and third-party funders.

Financial Incentives to Qualified Entities and the Interaction Between Funding and Lawyer Remuneration. Going beyond the RAD, some MS employ

73. It will be approved if the intended legal action is not abusive and the expenses for the litigation financier are customary and appropriate.

incentive mechanisms that intersect with, or substitute for, third-party funding. In the Czech Republic,[74] successful plaintiffs are entitled to fees up to 16% of awards or up to CZK 2.5 million and can claim compensation for costs, including lawyers' fees.[75] The Italian regime[76] establishes percentage-based statutory payments to the common representative for the class but also provides statutory lawyer fee incentives, as courts award an additional amount directly to the lawyer who represented the claimant. The delegated judge 'condemns the respondent to pay directly to the lawyer who defended the appellant until the pronouncement of the sentence (...) an additional amount compared to the sums due to each member by way of compensation and restitution'. However, the final amount may be determined at the court's discretion.

Financial incentives for claimant entities most commonly arise through cost-allocation rules and forms of state financial support. Several MS permit exceptions to the loser-pays principle (e.g., restricting it only to bad-faith lawsuits), easing the financial exposure of associations, while a smaller number apply it strictly. Illustrative approaches show a range of incentives: in the Czech Republic, non-profit entities carry full procedural liability, covering opposing costs if unsuccessful but receiving a fixed percentage of awards, or 'monetary relief' against the defendant trader when they prevail; in Luxembourg, the trader must pay the costs of the court-appointed liquidator administering the action. Additional forms of support also exist, such as reduced or waived court registry fees (see supra). These measures collectively lower the financial risks of collective redress and help ensure that qualified entities can initiate actions without undue cost-based deterrents.

The diverse national approaches to participation models, consumer fees, cost-allocation rules, and public assistance create a patchwork that, while compliant with the Directive's minimum standards, risks diminishing the uniform effectiveness of representative actions across the internal market. Differences in financial exposure, participation thresholds, and substantive cost rules may impede cross-border representativeness and limit the functional interoperability of collective mechanisms. The resulting landscape is one of partially aligned but structurally heterogeneous systems, reflecting the Directive's minimal harmonisation approach.

3.3. Parallel Actions

Member States have adopted varied approaches to prevent parallel proceedings and consumers receiving double compensation. Austria assigns jurisdiction over all representative actions to a single court to avoid fragmentation; at the same time, the defendantis allowed to object during the execution period if consumers have already been compensated. The Czech Republic employs registers listing participating consumers, enabling courts to monitor ongoing proceedings and stay later proceedings until final decisions are reached, with blocking effects remaining in place even after conclusion. Ireland mandates that consumers declare they are not receiving compensation from other actions arising from the same infringement, whilst qualified entities must provide traders with information on which consumers have opted in.
The Netherlands appoints an exclusive representative (who can be seconded by other representatives) and thus precluding dual representation. Slovenia maintains a Register of Representative Actions through the Supreme Court, tracking all current and past collective actions. Such measures protect against duplicative redress from parallel opt-out and opt-in actions brought by different qualified entities across MS, which would run contrary to the Directive's objectives.

3.4. Group Structure and Adhesion Regimes: Opt-in, Opt-out, Hybrid Models

The implementation of participation regimes under the Directive reveals a marked preference among MS for opt-in systems, particularly for compensatory redress.[77] Only a small minority have adopted opt-out frameworks — Cyprus,[78] Hungary, the Netherlands and Portugal[79] — and some employ hybrid models — Slovenia and Luxembourg followed by the Spanish draft — by using opt-out in specific circumstances. In the Spanish draft, affected consumers are involved by default, though they can disassociate themselves. Courts may permit opt-in if claims per consumer exceed €3,000, and it is considered more efficient. If consumers bring individual actions or ADR proceedings on the same subject, this constitutes opting out. Slovenia foresees mandatory opt-in when at least 10% of group members request over €2,000 each. Outside of this context, courts choose between opt-in and opt-out when assessing class actions for approval. In Luxembourg, opt-out is possible depending on the nature of the action; the court takes the decision as to which mechanism, yet for personal injury or non-pecuniary damage compensation, opt-in is mandatory.

This divergence underscores the persistence of national procedural traditions and political caution surrounding expansive collective redress. The complexity and variability of opt-in timeframes — ranging from early pre-filing periods to extended post-judgment windows — further demonstrates the ab-

74. §65 of the Act.
75. §67 of the Act.
76. Article 840-novies.
77. Following the RAD, most MS have prohibited opt-in in the context of injunction actions.
78. Initially, opt-in was used, with the caveat that the court could allow opt-out in exceptional circumstances.
79. Law No 83/95 of 31 August 1995 as amended by Decree-law No 214-G/2015, Diário da República No 201/1995.

sence of a unified European approach and points to uneven levels of procedural ambition in facilitating mass participation.

Limited use of opt-out does reflect cautious legal policy and concerns about procedural fairness and MS' reluctance to adopt opt-out mechanisms aligns with a longstanding European preference for individual consent and judicial control. Although the abovementioned jurisdictions embrace opt-out as an instrument of effective consumer protection, others restrict it to narrowly circumscribed contexts, often linked to claim size, consumer location, or the nature of the harm. These targeted opt-out models illustrate a compromise between enhancing the efficiency of large-scale redress and maintaining perceived safeguards for autonomy, due process, and proportionality.

This topic unveils a persistent tension between rhetorical commitment to access to justice and conservative procedural designs. While the Directive encourages access to justice through consumer participation, many MS adopt procedural filters — extended opt-in windows, differentiated thresholds, residency-based distinctions, or opt-out exclusions for non-pecuniary harms — that ultimately moderate the reach of collective actions. The continued reliance on opt-in structures, despite their known limitations in achieving high consumer participation, suggests a cautious regulatory approach prioritising judicial manageability and limiting exposure for defendants over expansive access to justice.

Last, opt-in is mandatory for non-residents of the court or administrative authority before which a representative action (Art. 9(3) RAD).

Overall, MS practices indicate a gradual movement toward a principles-based regulatory environment anchored in proportionality, consumer protection, and procedural transparency. Yet the coexistence of expansive frameworks in some jurisdictions and cautious, restrictive models in others reveals that collective redress remains politically sensitive. The long-term coherence and accessibility of representative actions may depend on whether future EU-level reforms pursue deeper harmonisation or continue to rely on the current model of decentralised, nationally tailored implementations.

3.5. Redress Measures and Distribution

Judicial supervision of the compensation stage serves several functions to ensure fair, efficient and transparent distribution of compensation to injured consumers. Initially, there must be clarity regarding how redress is distributed, and secondly, a decision on which procedures will be used for that distribution. Adequacy of representation of the group, established earlier during the admissibility stage, is also essential in ensuring effective redress distribution to the correct group(s). Oversight may continue even after the conclusion of the distribution phase to address the allocation of any unclaimed funds.

There are few mandatory rules in Art. 9 RAD. First and foremost, MS shall ensure that qualified entities are able to bring representative actions for a redress measure and the latter includes remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under Union or national law. Second, the judgment must either specify individual consumers entitled to benefit from remedies or at least describe the group of consumers entitled to benefit from those remedies. Third, to benefit from the remedies provided by a redress measure, MS must ensure that consumers do not need to bring a separate action but can retain rules on time limits for individual consumers to benefit from redress. Fourth, it should not be necessary for a court or administrative authority to have previously established an infringement. Last, the remedies provided by redress measures within a representative action shall be without prejudice to any additional remedies available to consumers under Union or national law which were not the subject of that representative action.

The said rules being mandatory, MS have either adopted them explicitly or implicitly (by not stating anything contrary to the said provisions). Aside from those, there are some differences to note.

3.6. Unclaimed Funds and Cy-Près Solutions

MS have addressed the use of uncollected sums differently, as the Directive does not prescribe mandatory rules.[80] Whilst only a handful of MS have included specific provisions on this, some important points can be noted. At times, defendants are the beneficiaries of leftover amounts. At others, it is states, specialised consumer organisations or cy-près entities making use of the funds, for the benefit of consumers. Legislatures are provided leeway as to whether the *reliquat* (remainder) of funds, not claimed, should revert to traders, as in Germany and the Spanish implementation proposal (potentially undermining deterrence), go to QEs, as is possible in Sweden, or be distributed *cy-près*.

Reversionary models. In Germany, fund administrators reimburse remaining amounts to the defendant (reversionary method) if collective total sums have not been fully paid out at the end of the implementation process, or if provisional amounts exceed the final implementation costs.[81] Procedures operate similarly in the Spanish draft text; lump sums

80. Article 9(7) RAD leaves this to MS.

81. Act of 8 October 2023 implementing Directive 2020/1828 and amending the Capital Markets Model Case Act, BGBl. 2023 I No 272, §37.

are deposited by defendants for distribution by liquidators, and once liquidation is complete, liquidators must submit reports to courts concerning beneficiaries and payments made.[82] Lump sums include a proportion for legal costs. Defendants obtain remnant sums from amounts awarded if not all beneficiaries have been identified.[83] Initially, drafts designated qualified entities as the fund distributors, but this was amended in favour of a mutually appointed liquidator.

Escheat. In Slovakia and Portugal, the state is entitled to benefit from uncollected compensation funds. In the former, three years must pass since final rulings before funds become available to the state.[84]

In Portugal, the mechanism for distribution is left to the discretion of the courts. The judgment shall indicate the entity responsible for receiving, managing and paying the compensation due to injured consumers who are not individually identified, and the plaintiff or one or more injured consumers identified in the action may be designated for this purpose. The judgment also specifies whether there shall be direct payment by the *defendant* to consumers if they are its customers. Compensation not claimed, in whole or in part, by injured parties within reasonable periods set by judges is used to settle all charges, fees and other expenses incurred by plaintiffs, including funding costs;[85] funders' fees are held to be 'expenses incurred by claimants for unclaimed compensation allocation purposes'.[86] Damages remaining undistributed after the statutory limitation, not allocated to the claimant expense payment, are handed over to the state for the purposes of justice and consumer protection. Specifically, 60% reverts to the Fund for the Promotion of Consumer Rights, whilst 40% is destined for the *Instituto de Gestão Financeira e Equipamentos da Justiça*.[87] In Luxembourg, the state Consignment Office holds any remaining funds for their rightful beneficial owner.

Discretion to the courts and allocation to the QE. Alternatively, unclaimed funds may 'accrue to authorised entities' under the new Swedish regime, but only after sharing remaining funds among group members, if the amounts exceed 100 SEK per member.[88] Qualified entities are also responsible for setting time limits and retrieving information required to pay funds to beneficiaries, which class members may claim within a minimum three-month period.[89]

Luxembourg's text provides that courts are responsible for appointing a liquidator to monitor the implementation of the liability judgment.[90] Liquidator reports, provided to the court at least once every three months, also play a role in the process.[91] If applicable, these set out any difficulties in compensating or paying consumers or a failure to compensate consumers. In the preliminary draft, it was stated that unclaimed compensation reverted to the State.

4. Concluding Remarks

The transposition of the Directive on representative actions for the protection of the collective interests of consumers has been a lengthy process, which remains in progress. It is awaiting completion in two MS. While some MS have chosen to implement the RAD within procedural codes, others have done so in specific statutes, whether pre-existing or newly enacted.

In the analysed texts, promising areas of convergence emerge most clearly in the RAD's mandatory provisions, ensuring minimum harmonisation levels between MS. Undoubtedly, the most important is the existence of collective compensatory devices for consumers in all EU MS, which must be welcomed. Therefore, in response to the question posed at the outset regarding the Directive's ability to achieve its goals, a substantive overview of implementation processes demonstrates the fact that the RAD is a milestone text representing progress in the EU panorama. Since its adoption, the comparatist 'EU collective redress puzzle' is being filled in an unprecedented but somewhat expected manner. Regardless of whether the material and subjective scopes are transposed in a fully harmonised fashion, the Directive was meant to ensure that compensatory devices exist for consumers, and it has embraced the area broadly. Such an ambitious first step wholly deserves recognition.

Owing to the implementation, some jurisdictions appear to be more active than they were in the past, thanks to the activity of domestic qualified entities (e.g., Italy and, more recently, there is some activity in Eastern European countries). Another important novelty comes from the emergence of cross-border representative actions. European-qualified entities (those included in a list held by the European Commission) have started to bring actions in MS other than where they were designated. This is the case for an Austrian qualified entity bringing an action in Germany[92] and for a Dutch qualified entity bringing three cross-border representative actions in Belgium and in Germany.[93]

82. Act No 272, art.880 ('Accountability and liability').
83. Draft No 121/000016, art.881 ('Destination of the remainder').
84. Act No 261/2023 Coll. on Actions for the Protection of Collective Interests of Consumers, §17(12), (13)(1).
85. Decree-Law No 114-A/2023, art.16(6).
86. M Soares David and S Vaz Sampaio, 'The importance of balance' in*Houthoff Class Action Survey* (2024), p 228.
87. Decree-Law No 114-A/2023, art.16(8).
88. Law No 2023:730 on collective actions for the protection of consumers' collective interests, §28.
89. Law No 2023:730, §27.
90. Consumer Code (as amended), art. L. 524-1.
91. Article L. 524-15.
92. Case 11 VKl 1/25, *VSV (Austrian Consumer Protection Association) v Meta* (Hanseatic Higher Regional Court, Hamburg).
93. *Stichting Onderzoek Marktinformatie (SOMI) vTikTok* (Brussels Enterprise Court), *SOMI v Meta* (Brussels En-

However, in terms of concrete redress for consumers, since the implementation process was worryingly delayed, so far little has changed in the European landscape: practice in countries wherein collective redress was dormant remains rather undeveloped, whereas European hubs for collective actions confirm their roles as frontrunners. Aside from a few collective settlements, there have been only a few judgments (e.g., in France) which have not yet reached the distribution phase.

Moreover, because of the limited scope of the RAD, remaining fields are still awaiting a representative mechanism. That is the case for competition law, labour law and fundamental rights, including some digital rights of citizens when not acting exclusively as consumers, which do not yet benefit from representative actions. The competition sector is poised at the starting block. Although competition is a key sector regarding collective redress and was one of the oldest at the heart of European debates, antitrust infringements have been left aside in the RAD.[94] The later inclusion of the DMA[95] and DSA[96] within the RAD Annex should create some opportunity for collective redress under the Directive in anticompetitive matters. Currently, competition infringements can only be the object of representative actions in MS that have adopted a trans-substantive or multisectoral scope, encompassing the said area explicitly (e.g., France, albeit only for consumers, that is, natural persons). This is to the detriment of consumers and SMEs of other MS, wherein the RAD has been transposed according to minimum standards. Commentators on the German position, for instance, remark that, from claimants' perspectives, the country's transposing text has failed to have the expected impact in competition litigation because of restrictions on applicable business types.[97]

Nevertheless, discrepancies will remain because of procedural gaps in MS due to the soft law nature of many RAD provisions. Most notable are the areas of opt-out, funding solutions, the absence of damage assessment on an aggregated basis and allocation of undistributed funds through fluid recovery mechanisms, whether cy-près, through public authorities or funds. The lack of such key provisions indicates an aversion to imposing rules ensuring economic viability. In a European text targeting rights effectiveness through private enforcement, judicial efficiencies and deterrent effects, they should be mandatory. The majority of MS that have transposed the RAD up to now have remained true to the minimum mandatory thresholds imposed by the RAD. This minimum is not sufficient to trigger the change in the status quo that the RAD should have addressed. Existing and sometimes dramatic disparities will seemingly not disappear in the short term, and undeniably, they influence representative action effectiveness and success. Such divergencies in implementation processes imply that the evolution at play in the 27 MS' legislatures will not mean a revolution in practice.[98]

Looking ahead, the fitness check announced in the RAD[99] will play a central role in assessing qualified entity compliance. The answer as to whether EU ombudsmen will be needed will depend on qualified entities' capacity to bring cross-border actions, which in turn will be contingent on funding agreements and other public aid solutions. On the occasion of the RAD review, there should be an opportunity to advocate for and seek EU-wide solutions to EU-wide problems.

First and foremost, one should appraise the definition of the cross-border representative action. As defined in the RAD, it only relates to plaintiff actions in one MS against defendants in another MS. Conversely, true cross-border representative actions should target litigation whereby qualified entities seek representation of consumers of multiple MS. They may even seek truly pan-European initiatives, encompassing de facto victims of all European countries where infringements occurred. Such a consideration also requires addressing applicable law issues to avoid a myriad of national substantive rules that may be relevant. To smooth out justice delivery missions, jurisdictional matters must be reconsidered to avoid forum shopping and congested domestic tribunals of the handful of MS currently adjudicating collective actions. For cross-border representative actions to achieve their purposes, it is of the utmost importance to achieve coordination of European entities, thus enhancing European judges' networks and the flow of litigation related to the same infringement.

Additionally, there are two non-mandatory (soft-law-type) provisions in the RAD which are crucial for the actual viability of carrying out representative actions. First, the option is left to MS to adopt opt-in or opt-out. Nonetheless, the regime chosen determines the attractiveness of each country for qualified entities carrying out representative litigation, thus leaving citizens of opt-in systems behind; hybrid systems could constitute a means to cope step-by-step with cultural obstacles against opt-out. Second, irrespective of the decision for opt-in/out or mixed regimes, for representative actions to be worth the

terprise Court) and *SOMI v TikTok and X* (Federal Office of Justice, Bonn).

94. See eg Green Paper of 19 December 2005, 'Damages actions for breach of the EC antitrust rules' COM(2005) 672 final.
95. Article 42; see also para.48 Annex I RAD.
96. Article 90, referring to its inclusion at para.68 of Annex I RAD.
97. T Makatsch and R Stieglitz, 'Collective enforcement of claims in competition antitrust damages cases' in*Houthoff Class Action Survey* (2024), p 73.
98. A Biard, 'Thunder Road: The Implementation of the Representative Actions Directive in Europe' (2024) Emory Int'l L Rev 751, 757 and following; MJ Azar-Baud, 'We should not expect a revolution' *Houthoff Class Action Survey* (2024), p 48 and following.
99. Article 5(3) of the RAD.

cost, resources, complexity and efforts, it is indispensable to assess harms on a global basis, that is, regarding whole groups of victims. Therefore, discretion left to MS to regulate uncollected sums needs replacement by mandatory rules adopting cy-près solutions. Only then can representative actions be meaningful and deterrent devices against illegality. Indeed, whereas only a handful of MS have included specific provisions on the topic, some have not hesitated to adopt the inconceivable and unfortunate solution of conferring residual funds on defendants. For plaintiffs, this legitimises the risk of unjust enrichment.

In sum, '*one forges the path by walking*' (Machado) and there is still quite a walk ahead for representative actions to achieve their fundamental objectives.[100] These are access to justice / effectiveness of rights, efficiency of the judiciary and deterrence. Therefore, at domestic level, the main hurdles to overcome relate to participation regimes, overall assessment of the damages and cy-près solutions. At a European level, cross-border infringements require cross-border solutions, as consequences of global infringements require global justice considerations.[101] Such basic consideration should likely lead the European Commission to consider the need for European jurisdictional bodies capable of effectively dealing with Europe-wide harms.

100. MJ Azar-Baud, 'Le renouveau de l'action de groupe : entre ambitions réformatrices et échecs structurels: Regards critiques et comparatistes' (2025) n°12 Droit Social.

101. MJ Azar-Baud, 'Plaidoyer pour le raisonnement comparatif dans les décisions de justice' Mélanges en l'honneur de M le Pr Loïc Cadiet (Lexis Nexis, 2023), p 67.