



PRODUCT LIABILITY BULLETIN

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Agreement Reached on EU Collective Redress

On 22nd June, political agreement was reached on the first EU-wide rules on collective redress – a form of class action. This is a significant step towards a new EU directive, which will mean that each country in the EU must implement a rule allowing a form of class action known as representative actions.

Businesses should be aware of this development and prepare for a possible increase in cases over time. The scope of the new rule is broad since it would cover actions in, for example, data protection, financial services, travel and tourism, energy, telecommunications, environment, health, passenger rights and general consumer law.

Although all the details have yet to be released, the main features of the new rule will be:

- Consumer organisations or public bodies (“qualified entities”) will have standing to launch actions on behalf of groups of consumers.
- There are criteria for qualified entities to have standing. These criteria are stricter if the action is cross-border than in cases that are domestic (that is, brought in the member state where the organization is based). For cross-border cases, the organisation must (i) have been protecting consumers’ interests for at least a year, (ii) be not-for-profit and (iii) be independent from third parties whose “economic interests oppose the consumer interest”.
- For domestic actions, member states will be left to set criteria “consistent with the directive”. Concerns have been raised by businesses about multiple ad-hoc and single-issue groups being able to bring claims. Such groups may have links to

QUESTIONS FORWARD TO COLLEAGUE

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plaintiff law firms and third-party funders. The extent to which safeguards are built in to these criteria will now be a debate at national level.

- In order to “strike a balance between access to justice and protecting businesses from abusive lawsuits”, the “loser pays principle” (cost shifting) will apply so that the defeated party pays the costs of the proceedings of the successful party.
- Also in an attempt to curtail cases that have no merit, courts will be allowed to dismiss “manifestly unfounded” cases at the earliest possible stage of the proceedings in accordance with national law. It is not clear how this will work in practice and whether a certification process will be mandated or left to national legislators. Concerns have been voiced from the business community regarding the possible absence of a certification stage and clear admissibility criteria. Specifically, if a country implements a rule without these requirements, it may encourage forum shopping.

Next Steps

The EU Parliament as a whole and the EU Council will now have to approve the political agreement that has been reached. Once approved, the directive will enter into force 20 days following its publication in the Official Journal of the EU. Member states will then have 24 months to transpose the directive into their national laws, and an additional six months to apply it.

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