



EU Directive introducing Class Actions and US Chamber Institute for Legal Reform recommendations.

The concept of class actions is widely known in the USA and is essentially a claim that consist of a group of claimants that have suffered the same damage or have been affected in the same manner or by the same conduct.

This specific concept is finally becoming a reality for all European Union countries with the EU Directive (EU)2020/1828, which was published in the Official Journal of the European Union on 04/12/2020. Prior to the Directive, only a few member states had in place a mechanism for class actions. Under the new Directive, member states are obliged to transpose its provisions into their national legislation within 24 months.

The Directive's aim is to introduce a common framework for representative action in all member states which guarantees a high level of consumer protection and improves the consumers' access to justice, hence, it provides for class actions brought by consumers against traders in a number of areas, including data protection, financial services, travel and tourism, energy and telecommunications. It

Based on the provisions of the Directive, a representative action, either domestic or cross border, can only be brought by a Qualified Entity, provided it fulfills certain conditions to be designated as such. These conditions include that it must be a registered legal person, that it must have demonstrated at least 12 months of actual public activity in the protection of consumer interests, that its statutory purposes demonstrate that it has a legitimate interest in protecting consumer interests, it must be of a non-profit-making character and it must be independent and not influenced by third parties.

Also, the Directive provides that such Class Actions can only be brought regarding consumers' claims and the available remedies must at least be injunctive and redress measures. The Directive also provides for the possibility of such Actions to be settled; however, it is specifically stated that any such settlement must be approved by the Court.

Furthermore, the Directive provides that such actions are applicable to both infringements that ceased either before the class action was brought and to infringements that ceased before that class action was concluded.

Following the publication of the Directive, the U. S. Chamber Institute for Legal Reform in November 2020 issued twelve recommendations for the implementation of the Directive. These recommendations touch upon basic issues of the Directive that could potentially become responsible for the project going south and issues that could elevate and improve its functionality.

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These recommendations briefly address such key issues, as for example that the criteria required by Qualified Entities to be able to bring cross-border actions should be equally fulfilled when such an entity is to bring a domestic action; that member states should insist in opt-in mechanisms whereby consumers explicitly express their will to be represented within a representative action; that such disputes should not be exclusively resolved via court proceedings but on the contrary, that other resolution mechanisms should be included and put into place.

The U.S. Chamber Institute for Legal Reform, in having extensive experience dealing with Class Actions, has issued this set of recommendations to allocate their experience and further assist the EU member states in effectively applying this Directive. The Class Action notion might be an innovation for most European member states but is certainly not in the U.S., thereby rendering the said recommendation an invaluable tool that should most definitely be taken into consideration.

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