



An Roinn Fiontar,  
Trádála agus Fostaíochta  
Department of Enterprise,  
Trade and Employment

# **Public Consultation on the Transposition of 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**

## **Response Template**

March 2021

As set out in the consultation, the Department of Enterprise, Trade and Employment is specifically seeking views on the Member State options in the Directive.

Respondents have the opportunity to comment generally on the Directive at the end of the template and express any views on other specific articles of the Directive should they wish.

Please include your response in the space underneath the relevant option, to set out/ explain your views on each. Completing the template will assist with achieving a consistent approach in responses returned and facilitate collation of responses.

When responding please indicate whether you are providing views as an individual or representing the views of an organisation.

Respondents are requested to return their completed templates by email to [conspol@enterprise.gov.ie](mailto:conspol@enterprise.gov.ie) by the closing date of **Friday 7 May 2021**. Hardcopy submissions are not being received at this time due to remote working. Please clearly mark your submission as 'Public Consultation on the Transposition of Directive (EU) 2020/1828'.

Any queries in relation to the consultation can be directed to the Competition and Consumer Policy Section of the Department at the following contact points:

- Aedín Doyle at Tel. 087 1489785 (or at [Aedin.Doyle@enterprise.gov.ie](mailto:Aedin.Doyle@enterprise.gov.ie))
- Paul Brennan at Tel. 087 7434526 (or at [Paul.Brennan@enterprise.gov.ie](mailto:Paul.Brennan@enterprise.gov.ie)).

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|--|--|
| Name(s):   | Bernice Evoy   |
| Organisation:  | Banking & Payments Federation Ireland (BPFI)   |
| Please briefly describe your interest in this Directive: | BPFI represents over 100 domestic and international member institutions. We mobilise industry's collective resources to represent a collective position in relation to matters and proposals which may impact on members, consumers and the economy.<br><br>BPFI welcomes the opportunity to contribute members' views on DETE's Public Consultation |
| Email address:   | Bernice.evoy@bpfi.ie   |
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## Article 4

### Qualified entities

**Question:**

1. Which body(ies)/organisation(s) in your view should deal with the application and designation process for:

- qualified entities bringing domestic representative actions, and
- qualified entities bringing cross border representative actions?

Please provide reasons for your answer.

**Response:****Question:**

5. Should Ireland avail of this option and apply the criteria specified in paragraph 3 to qualified entities seeking designation to bring domestic actions? Please provide reasons for your answer.

**Response:**

Members are of the view that Ireland should avail of this option and apply the criteria listed in Article 4.3 of the Directive, to the designation of qualified entities, for the purpose of bringing domestic representative actions. This will ensure consistency of qualified entities regardless of whether they are bringing cross-border or domestic representative actions. It also provides safeguards to ensure qualified entities act in the best interests of consumers, maintaining the integrity and transparency of the representative actions system.

**Question:**

6. Should Ireland avail of this option and allow qualified entities to be designated on an ad hoc basis in order to bring a specific domestic action? Please provide reasons for your answer.

**Response:**

Members are of the view that Ireland should avail of the option to designate an entity as a qualified entity on an ad hoc basis for the purpose of bringing a particular domestic representative action, if it complies with the criteria for designation as a qualified entity as provided for by Irish law. In this regard, ( as per previous comment) the criteria listed in Article 4.3 of the Directive should be applied to the designation of qualified entities.

**Question:**

7. Should Ireland avail of this option and as part of the transposition process designate specific public bodies for the purposes of bringing both domestic and cross border actions? Please provide the name of such bodies and the reasons for your answer.

**Response:**

Members are of the view that Ireland should avail of the option to designate public bodies as qualified entities for the purposes of bringing representative actions and to provide that public bodies already designated as qualified entities within the meaning of Article 3 of Directive 2009/22/EC are to remain designated as qualified entities for the purposes of this Directive i.e., CCPC.

**Please indicate any other general comments or recommendations you may have on Article 4:**

*Article 7*

**Representative actions**

**Question:**

5. Should Ireland take the option to allow qualified entities to seek these measures within a single representative action and for a single final decision? Please provide reasons for your answer.

**Response:**

Members are of the view that Ireland should take the option to enable qualified entities seek injunctive and redress measures within a single representative action and, where appropriate, provide that those measures are to be contained in a single decision. This streamlines the representative action process and ensures qualified entities and Courts' resources are used efficiently.

**Please indicate any other general comments or recommendations you may have on Article 7:**

*Article 8*

**Injunction measures**

**Question:**

2. Should Ireland avail of the options in paragraph 2? Please provide reasons for your answer in each case.

**Response:**

**Question:**

4. Should Ireland introduce or maintain provisions of national law where the qualified entity is only able to seek the injunction measures in paragraph 1(b) after it has attempted to achieve the cessation of the infringement in consultation with the trader?

If Ireland was to introduce such provisions what form should they take and should a third party be required to facilitate it?

If applicable, indicate any such provisions currently in national law?

Please provide reasons for your answers.

**Response:**

Members are of the view that Ireland should introduce provisions where the qualified entity is only allowed to seek the injunctive measures after it has entered into consultation with the trader concerned, with the aim of having that trader cease the infringement. This encourages communication between qualified entities and traders, and ensures qualified entities and Courts' resources are used efficiently.

**Please indicate any other general comments or recommendations you may have on Article 8:**

Article 8.4 provides that if the trader does not cease the infringement within two weeks of receiving a request for consultation, the qualified entity may immediately bring a representative action for an injunctive measure. Members are of the view, (noting the two week period is prescribed in the Directive) that this timeframe is a very tight timeframe for traders to comply with.

Article 8.4 - Members would welcome clarity as to whether the reference to infringements relates to an alleged infringement or an actual infringement.

## Article 9

### Redress measures

**Question:**

2. and Recital (43) Should Ireland introduce an opt-in or opt-out mechanism, or a combination of both bearing in mind that an opt-in system automatically applies to individual consumers who are not habitually resident in the Member State of the court or administrative authority before which a representative action has been brought?

At what stage of the proceedings should individual consumers be able to exercise their right to opt in to or out of a representative action?

Please provide reasons for your answers.

**Response:****Question:**

2. and Recital (43) Should Ireland introduce an opt-in or opt-out mechanism, or a combination of both bearing in mind that an opt-in system automatically applies to individual consumers who are not habitually resident in the Member State of the court or administrative authority before which a representative action has been brought?

At what stage of the proceedings should individual consumers be able to exercise their right to opt in to or out of a representative action?

Please provide reasons for your answers.

**Response:**

Members do not have a preference for the opt-in or opt-out mechanism, however they are of the view that only one such mechanism be adopted and not a combination. Adopting one mechanism ensures certainty for consumers, qualified entities and traders.

Article 9.2 references consumers also opting to be bound or not by the outcome of the representative action. Members are of the view, that once a qualified entity is representing a consumer in an action, then consumers should be bound by the outcome of the representative action. This ensures certainty for both consumers and traders, and maintains the integrity of the representative actions system.

**Question:**

7. Should Ireland avail of this option and, if so, where should such outstanding funds be directed? Please provide reasons for your answer.

**Response:**

Members are of the view that Ireland should lay down rules on the destination of any outstanding redress funds that are not recovered within the established time limits.

This would ensure consistency and clarity on the destination for these funds. Members consider that these funds could initially be held by traders for a certain period of time in the event that, consumers who had previously been unidentified, take a related representative action. Following that period, these funds could be directed to an appropriate charity; and/or to qualified entities which would assist the taking of representative actions and lower the cost burden on the State.

**Please indicate any other general comments or recommendations you may have on Article 9:**

*Article 11*

**Redress settlements**

**Question:**

2. Should Ireland allow for the court not to approve settlements that are unfair? Please provide reasons for your answer.

**Response:**

Members are of the view that Ireland should not lay down rules to allow the Courts to refuse to approve a settlement on the grounds that the settlement is unfair. The concept of unfairness is subjective and the application of the Courts of such a test could lead to uncertainty and delays. In addition, if both parties are willing to agree to a settlement this should be sufficient, negating the requirement for a Court to determine its fairness, particularly as the qualified entity acts in the best interests of the consumers.

**Question:**

4. Should Ireland lay down rules that allow for consumers who are part of the representative action to accept or refuse to be bound by settlements referred to in paragraph 1? Please provide reasons for your answer.

**Response:**

Members are of the view that Ireland should lay down rules that individual consumers concerned by a representative action and by the subsequent settlement must be bound by the settlement, once the qualified entity is representing them in an action. This will ensure certainty for all parties involved, avoids duplication of work, ensures efficient use of resources for all parties, and ensures the integrity of the representative actions system.

**Please indicate any other general comments or recommendations you may have on Article 11:**

Article 11.2 Members would welcome clarity on the reference to administrative authority, particularly in the context of Question 11.2 referring only to a Court and not to an administrative authority.



## Article 13

### Information on representative actions

**Question:**

3. Should Ireland avail of this option and allow for traders to provide this information only if requested by qualified entities? Please provide reasons for your answer.

**Response:**

Members are of the view that Ireland should not avail of this option where traders would only be required to provide information of final decisions and any approved settlements if required to do so by qualified entities. Members are of the view that they should provide this information to all consumers concerned by representative actions in all representative actions, and not just limited to when requested to do so by qualified entities. This ensures transparency for consumers and maintains the integrity of the representative actions system.

**Please indicate any other general comments or recommendations you may have on Article 13:**

Members would welcome clarity on whether the reference to 'consumers concerned by the representative action' referred to in Article 7.3 means only consumers represented by the qualified entity or whether it includes those consumers who had opted not to be represented by the qualified entity.

Members would also welcome clarity on the reference to 'final decisions providing for the measures' as to whether this includes decisions both where the qualified entity was successful in the representative action, and unsuccessful.

*Article 14*

**Electronic databases**

**Question:**

1. Should Ireland set up such databases and what form should they take? Please provide reasons for your answer.

**Response:**

**Please indicate any other general comments or recommendations you may have on Article 14:**

Members are of the view that Ireland should set up such a publicly accessible national electronic database as it would assist consumers wishing to take part in representative actions, to have all the information publicly available in one source.

*Article 20*

**Assistance for qualified entities**

**Question:**

1., 2. And Recital (70) What measures should Ireland take to implement these provisions and in what circumstances do you think a qualified entity should merit consideration for these measures?

Which measures do you think would be most appropriate for a qualified entity seeking to launch a representative action in Ireland and should there be distinctions made between a domestic qualified entity and a cross border qualified entity seeking to launch a representative action in relation to what type and level of support they could seek?

What conditions should be placed on such an organisation to ensure it acts in the best interests of its clients and fulfils its duties?

Please provide reasons for your answers.

**Response:**

**Question:**

3. Should Ireland avail of this option and allow for qualified entities to require consumers to pay a modest entry fee?

If so, what amount should be charged and in what circumstances?

Should there be a waiver for consumers in certain circumstances?

Please provide reasons for your answers.

**Response:**

**Please indicate any other general comments or recommendations you may have on Article 20:**

*General comments on the Directive or on other specific articles of the Directive*

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|---|
| <b>General comments on the Directive:</b> |
| <b>Article:</b><br><b>Comments:</b>       |
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