



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)).

Name(s):	Justin Carty
Organisation:	HealthTech Ireland Association
Please briefly describe your interest in this Directive:	We don't think Class Actions are appropriate or necessary to gain access to civil justice for consumers in Europe, existing legislation is sufficient.
Email address:	justin.carty@healthtechireland.ie
Telephone number:	██████████

## 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:** **CCPC** (Competition and Consumer Protection Commission) is the obvious public institution set up to protect consumer interests.

**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:** **Yes**, the criteria set out in paragraph 3 of Article 4 are already very reasonable and objectively easy to comply with for any legitimate qualified entity, while providing some essential safeguards to avoid abusive litigation.

**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:** **No**, it's unnecessary, consumers already have appropriate access to obtain redress.

**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:** **Yes**, CCPC, as mentioned above, has already been specifically set up to protect consumer interests.

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

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*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: Yes,** Ireland should enable qualified entities to seek the measures referred to. While there is currently no legislative framework or legal procedure in Ireland to allow for collective redress or class actions, analogous procedures by way of representative actions and test cases do exist.

**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: Yes**, provided a court grants an injunction with an obligation to publicly disclose the findings.

**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: Yes**, every effort to resolve possible infringements should be availed of, in order to seek a speedy resolution and to avoid unnecessary, lengthy, complex and costly litigation.

We have no suggestions on what form the provisions should take.

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

## 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:** We favour an 'opt-in' procedure as recommended in the Kelly Review Group Report, which advocated against an 'opt-out' procedure being appropriate in Ireland.

The decision to opt-in or -out should be taken at the outset of any legal action.

**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:** Yes, not an issue if Ireland adopts an 'opt-in' mechanism.

**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: Yes,** the court must ensure that the settlement is fair to guarantee that consumers receive a level of redress that is proportionate to the damage suffered. Not an issue if Ireland adopts an 'opt-in' mechanism.

**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: No,** not an issue if Ireland adopts an 'opt-in' mechanism.

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

*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:** Yes, not an issue if Ireland adopts an 'opt-in' mechanism.

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



*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:** Yes, a register should be set up under the auspices of the Department of Justice.

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

## 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:** We have nothing further to add to the recommendations in the Kelly Review Group Report which highlights this particularly complex area for the Irish legislature.

**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: Yes,** not an issue if Ireland adopts an 'opt-in' mechanism. Qualified entities should be required to enter a modest fee, save for in exceptional circumstances, to deter disingenuous claimants.

**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*

<b>General comments on the Directive:</b>
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