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Collective Redress: Country reports

DFF Digital Freedom Fund

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INTRODUCTION

Systemic and transformative change happens when impacted people take collective action and collaborate with others to build power to challenge the root of their oppression. With this research, digiRISE will (co) create and share information, strategies and best practices designed to facilitate collective action for the protection of EU Charter of fundamental rights[1] in the digital sphere through strategic litigation.

Collective redress mechanisms to enforce the Charter in the digital sphere exist across a range of Member State jurisdictions and include national mechanisms as well as new mechanisms introduced through the Representative Actions Directive[2]. Information about the substantive and procedural requirements of different collective redress mechanisms can be key in strategic litigation, for example in developing cross-jurisdictional strategies.

Despite the EU Charter's considerable potential for protecting digital rights, and despite the CJEU's clear willingness to apply Charter rights in the digital sphere, there remains a tendency to default towards reliance on the less specific rights included in national constitutional or administrative laws or to the European Convention of Human Rights[3]. This reluctance results, at least partially, from a lack of knowledge about the judicial pathways that can be utilised for its enforcement. In many situations, the enforcement of individual rights that may be violated through activities ostensibly regulated by legal instruments with no available judicial remedy for individuals will depend on the availability of alternative judicial pathways to bring a case before the courts.

All of this points to a clear need to develop a mapping exercise and report with the following objectives:

> (1) to map collective redress mechanisms in order to reveal the similarities and divergencies between national collective redress systems vis-à-vis the Representative Actions Directive in a comprehensive Collective Redress Database and
>
> (2) to map, understand, and reveal alternative judicial pathways in different jurisdictions in using the EU Charter more efficiently on a national level.

[1] European Union, Official Journal of the European Union 'Charter of Fundamental Rights of the European Union' [2012] C83. Vol. 53. < https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT >.

[2] 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.

[3] Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Council of Europe Treaty Series 005 < https://www.echr.coe.int/documents/d/echr/convention_ENG >.

DEFINITION

We understand collective redress as a term referring to all types of procedural mechanisms enabling groups of individuals to act collectively to counter the effects of harm collectively suffered, to stop a practice violating their rights and to claim restitution such as damages. We prefer to use this general term, instead of the one used in the Directive (EU) 2020/1828 (the Representative Action Directive or RAD), i.e. 'representative action'. By this term, the EU legislator directly references a specific type of collective redress that is to be made available in all EU Member States. In short, a representative action is one tool available among other mechanisms whose objective is to achieve collective redress.

BELGIUM

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1. Does your country have a pre-existing collective redress system? If yes, what is the scope of application of this law? What were the reasons leading to its development?

Belgium has pre-existing collective redress systems.

First, since 2014, Title 2 of Book XVII of the **Code of Economic Law** has given a group of individuals the right to bring a collective action. An action for collective redress under this law is a civil law action and is brought before the Brussels Commercial Court. The law allows a representative of a group of consumers to seek compensation for damages suffered by the group as a result of a single cause of action. Associations may also seek collective address under this law, as long as they are defending consumer rights and otherwise meet the conditions of Article XVII.39 of the Code of Economic law. In either case, the claim must relate to a possible breach by a company of one of its contractual obligations or of certain European laws or regulations, such as the General Data Protection Regulation (GDPR). The aim of the action is to reach an amicable collective agreement or a court decision.

Second, Article 220 of the **Law of 30 July 201**8 allows data subjects, in the context of data protection disputes, to mandate a body, organisation, or non-profit association to lodge a complaint on their behalf with the **data protection authority** or the **police information control body**. These same associations are also empowered to lodge complaints with the Court of First Instance.

Third, since January 2019, legal persons defending human rights have been able to bring actions before Belgian courts and tribunals. **Article 17 of the Judicial Code** recognises that legal persons have an interest in bringing an action if they are pursuing a collective interest and provided certain conditions are met. This provision is used by legal persons defending human rights in actions for injunctive relief.

Fourth, while not formally a 'collective redress' system, actions for annulment can be brought before the **Constitutional Court** or the **Council of State** to challenge the legality of legislative or executive norms.

2. If you answered yes to the previous question, could you give us more information on the perceived efficacy and impact of the collective redress system applicable in your jurisdiction? Is collective redress frequently used in courts?

Although several associations have had the opportunity to do so (NOYB – European Center for Digital Rights, the *Ligue des familles*, etc.), only *Test-Achats* has used the Code of Economic Law to bring collective actions. These actions have lead to the following three decisions: *Affaire Test-Achat contre VW*, *Affaire Test-Achats contre Proximus*, and *Affaire Test-Achats contre Thomas Cook.*

NOYB regularly lodges complaints before the national data protection authority, and the Ligue des Droits Humains regularly brings cases before domestic courts and tribunals on the basis of Article 220 of the Law of 30 July 2018 or, more generally, on the basis of Article 17 of the Judicial Code.

Depending on the avenue chosen, claiming compensation may or may not be permitted. For example, in the context of an action for annulment before the Constitutional Court to challenge the legality of a legislative provision, the aim will often be to force a referral to the CJEU. The CJEU will then be in a position to annul a legal provision that is contrary to the fundamental rights. An action for annulment must be brought before the Constitutional Court within six months of the adoption of the contested legislative provision. This was the basis for the appeals against the laws implementing the Passenger Name Record Directive (Directive 2016/681) and the Data Retention Directive (Directive 2006/24). If the legality of an executive norm (e.g. a Royal Decree) is challenged, the action for annulment must be brought to the Council of State within 60 days of the adoption of the executive norm. The objective of actions for annulment is not financial compensation.

An action brought before the civil courts on the basis of Article 1382 of the Civil Code or on the basis of the Law of 30 July 2018 can have two aims. The primary aim will be to establish a fault of the Belgian State and to seek compensation for the damage caused. For material damages, each individual must seek compensation for their specific damage. There is no concept of damage to a general interest, even if there are individuals who have not brought claims but have suffered the same damage or violation of their fundamental rights. Legal persons defending human rights can obtain moral compensation for harm to the collective interest they are serving.

The secondary aim will be to establish the infringement of a provision covered by the Law of 30 July 2018 and, possibly, to obtain compensation for the damage caused (Article 216). In both cases, preliminary questions may be referred to the CJEU. This was the case, for example, in Case C-333/22, where the CJEU recognised that Belgium had incorrectly transposed the section of Directive 2016/680 dealing with data subjects' rights of access to data stored by the police.

If an offence is found to have been committed, an action may also be lodged with the criminal courts. All the provisions of Book I of the Criminal Code, including Chapter VII and Article 85, are applicable to such infringements. To our knowledge, no action has been brought on this basis.

3. Has the RAD been implemented in your jurisdiction? What is its scope of application in your jurisdiction? Does the scope change from the previous regime?

The RAD has not yet been implemented in Belgium, but it should be as soon as possible. A **Bill** that would amend Books I, XV, and XVII of the Code of Economic Law to bring them in line with the RAD has been approved by the Belgian Parliament but has not been published in the Official Journal and is therefore not yet in force. Although the Code of Economic Law already provides for the possibility of collective action, the scope of the RAD is broader. The RAD provides, for example, for the possibility of cross-border collective action, and it allows for the suspension of limitation periods for individual consumer claims during the course of collective redress actions.

4. Please describe if there are proposals for upcoming legislation on collective redress mechanisms. What is the legal gap that this legislation is trying to address and what is the intended scope?

Currently, the only proposed legislation is the aforementioned Bill that would amend Books I, XV, and XVII of the Code of Economic Law to bring it in line with the RAD.

5. Are there any references to personal data and/or digital rights regimes in the scope of application of the laws on collective redress? If so, please describe this regime and how it is embedded in the law.

Article XVII.37 of the Code of Economic Law expressly refers to data protection rules. Associations that meet the conditions in Article XVII.39 of the Code of Economic Law may use the law's consumer redress mechanism to obtain compensation for damage caused by the violation of data protection rules.

The Law of 30 July 2018, which allows data subjects to mandate a body, organisation, or non-profit association to lodge a complaint on their behalf, applies solely to data protection.

6. Please provide a brief overview of digital rights collective redress cases and case law in your jurisdiction, if any. If there are none, please give us an overview of any perceived challenges in bringing these collective redress cases to national courts.

On the basis of the provisions contained in the Code of Economic Law, only Test-Achats has brought collective actions to date. These actions have lead to the following three decisions.

First, the **Affaire Test-Achat contre VW** case. In 2016, *Test-Achats* filed a collective redress action against the VW group. The action concerned damage suffered by consumers who, on or after 1 September 2014, purchased cars equipped with an EA 189 engine and software that distorted the results of emission controls during testing. The result was that the cars failed to comply with harmful gas emission standards. The car brands in question were VW, Skoda, Seat, Audi, and Porsche. On 27 July 2023, the Brussels Court of First Instance ordered the German Volkswagen Group to pay damages to Belgian buyers who were victims of what became known as 'Dieselgate'.

Second, the **Affaire Test-Achats contre Proximus case**. In 2016, the company Proximus informed customers who had purchased a V3 decoder that, due to technical modifications, the decoder could not be used to access the Proximus TV service from January 2017. Proximus further informed customers that the V3 decoder could be replaced with a newer model for a rental fee of 8 euros per month. Customers were offered one year of free rental if a subscription was taken out within a specific timeframe. *Test-Achats* argued that Proximus had engaged in aggressive and misleading commercial practices by encouraging its customers to prematurely dispose of decoders that could be used at no extra cost until January 2017. The offer of one year's free rental was in actuality, therefore, only applicable to a six-month period. *Test-Achats* attempted to negotiate with Proximus to secure a full year's free rental for customers who had changed decoders. When the matter came before the Brussels Court of Appeal, the court rejected all of *Test-Achats*' claims and ruled that the appeal was generally unfounded.

Third, the **Affaire Test-Achats contre Thomas Cook** case. On 23 March 2015, a flight from Tenerife to Brussels operated by the Thomas Cook was delayed by eight hours due to a technical incident at Tenerife airport (Flight HQ 1509). In the event of a long flight delay, European Regulation 261/2004 on the Rights of Air Passengers guarantees the right to lump-sum compensation (Article 7). *Test-Achats* brought an action against Thomas Cook for collective compensation for the damage suffered by the passengers on this flight. This action was declared admissible by the Brussels Court of First Instance.

It is worth noting that in 2018, following the Cambridge Analytica scandal, Test-Achats brought a collective action against Facebook. However, the parties agreed to **terminate** the action. Following a decision on admissibility, but before a judge rules on the merits of a collective action, there is a negotiation phase. During this time, which is set by the judge for a period of between three and six months, the group representative and the company engage in compulsory negotiations aimed at reaching a collective redress agreement.

On the basis of Article 220 of the Law of 30 July 2018, the Ligue des Droits Humains brought an action before the Court of First Instance of Brussels in which it used one individual's situation to implicitly bring a collective action. It is worth noting that an association only requires a mandate under Article 220 when it represents an individual. When the *Ligue des Droits Humains* pursues a collective interest under Article 17 of the Judicial Code, it can do so without a mandate. This was the case, for example, in relation to access to data collected by the police.

On the basis of the Judicial Code, the *Ligue des Droits Humains* has also brought several 'collective' actions before the national courts. Most of these were actions for annulment brought before the Constitutional Court. Strictly speaking, this is not a collective action procedure as it concerns the legality of a national law. The *Ligue des Droits Humains* used the action for annulment to challenge the Law of 30 July 2013, the Law of 29 May 2016 on Data Retention, and the law of 25 December 2017 on Passenger Data on fundamental rights grounds.

7. Please describe the participation regimes in the collective redress system in your jurisdiction. How has the participation regime been modified (if at all) by the implementation of the RAD directive?

Under the current system set out in the Code of Economic Law, there are two approaches for establishing the victim group: the opt-in approach, whereby individuals must explicitly agree to be part of the victim group, or the opt-out approach, whereby individuals who have suffered the collective loss which is the subject of the action are included in the victim group unless they ask to be excluded. While it is the group representative who proposes the system to be applied in the action, it is up to the court judge to decide which system to apply.

Article XVII.58 of the Code of Economic Law sets out how individuals can apply to be included in a victim group for a collective action. The process for establishing the victim group is as follows. First, within a reasonable period of time, the liquidator draws up a provisional list of individuals who wish to claim compensation based on information provided by the clerk's office. If applicable, this list may be divided into sub-categories. The provisional list contains the details of those members of the group who have expressly made themselves known.

If the liquidator considers that a self-identified member of the group does not align with the description of the group (or, where applicable, of a sub-category), or otherwise does not comply with the prescribed terms and conditions, they shall take note of the objection to the individual's inclusion on the provisional list and state the reasons therefore.

As soon as the provisional list has been drawn up, the liquidator communicates it to the judge, the group representative, and the defendant. At the same time, and where applicable, the liquidator informs the group members they propose to exclude of the reasons for their exclusion. The list may be consulted at the clerk's office.

Thirty days after being notified of the provisional list (this period may be extended by the judge at the request of the liquidator or one of the parties), the class representative and the defendant may contest the inclusion or exclusion of a class member at the clerk's office, stating the reasons. If an exclusion or inclusion is contested, the clerk's office will inform both the group member concerned and the liquidator of this fact and provide the reasons for the contestation. This notification must be communicated no later than 14 days after the expiry of the 30-day time limit. The group representative, the defendant, the group members whose inclusion in the provisional list is contested, and the liquidator may then make their position known to the clerk's office.

Following this process, the judge convenes a hearing with the liquidator, the defendant, the group representative, and members of the group whose registration on the provisional list is contested, in order to rule on the definitive list. The clerk's office then communicates the final list the parties involved.

8. How are consumers informed about ongoing collective redress actions in your jurisdiction? Is there a national registry for collective redress cases? If so, what information is available there?

The only collective redress actions that must be published on the **FPS Economy website** are those that were brought under the Code of Economic Law and which are subject to a final decision by a judge.

Collective redress actions brought under other legislative provisions need not be listed unless they fall under the publication criteria set out in 2007. In accordance with these criteria, high-profile cases or cases that articulate or amend a rule of law are to be published on **JUPORTAL**.

9. Please briefly describe the rules identifying the court or the authority in charge of handling the collective redress action.

The rules of procedure are governed by the Code of Economic Law, the Judicial Code, the Law of 30 July 2018, and other specific laws. The applicable law depends on the nature of the dispute: consumer rights, civil liability, data protection, or constitutional law.

Depending on the nature of the dispute, the court with jurisdiction will be the Business Court, the Market Court (for appeals of decisions taken by the competent data protection authority), the Court of First Instance (for civil cases), the Constitutional Court, or the Council of State (for challenges to the legality of administrative acts).

10. Is the applicable collective redress mechanism regulated as a civil procedure process, as an administrative procedure one, or as a 'hybrid', 'parallel' procedure conducted both before civil courts and before a public administrative body? Is there a specialised court set up for the purpose of handling national collective redress actions? What was the motivation in making the choice between these different implementation pathways?

The issue at stake in the dispute will determine which court has jurisdiction. There is no specific jurisdiction for collective redress actions.

11. Please describe the legal standing rules in your jurisdiction for collective redress litigation. Who is entitled to bring such a case to the courts? What are the criteria for admissibility of collective redress cases in your jurisdiction?

First, the Code of Economic Law allows certain associations to bring a collective redress action defending the rights of consumers. In order to do so, the association must be acting as a representative of the group of consumers and must satisfy the requirements of Article XVII.39, paragraph 2, of the Code of Economic Law. In accordance with that article, the following types of associations are competent to act as representatives of consumer groups: consumer associations with legal personality that sit on the Special Consultative Commission on Consumption (for example, *Test-achats*, Ligue des familles, and Gezinsbond); associations that have been approved by the Minister of Economy (for example, Collectif Solidarité contre l'Exclusion and NOYB); the consumer ombudsman (only during the negotiation phase of a collective redress procedure); and a representative body approved by a member state of the European Union (EU) or the European Economic Area (EEA) that meets certain conditions.

For example, in 2020 **NOYB was formally recognized** as a 'qualified entity' able to file class actions in courts in Belgium. For more information, see **here**.

Under the Code of Economic Law, collective redress actions may only be brought against companies that fail to meet their contractual obligations or which disregard consumer rights.

An action for collective redress is admissible when three conditions are met: the company is alleged to have violated a contractual obligation, a European regulation, or one of the laws referred to in Article XVII.37 of the Code of Economic Law or their implementing decrees; the action is brought by a claimant who satisfies the requirements in Article XVII.39 and whose statutory object is directly related to the object of the action for collective redress; and recourse to an action for collective redress appears to be more efficient than an action under ordinary law.

Second, Article 220 of the Law of 30 July 2018 allows data subjects, in the context of data protection disputes, to mandate a body, organisation, or non-profit association to bring a claim and to exercise powers on their behalf. In this case, the association must be validly constituted in accordance with Belgian law, have legal personality, have public interest statutory objectives, and have been active in the field of protecting the rights and freedoms of data subjects in the context of personal data protection for at least three years. Under Article 220 of the Law of 30 July 2018, actions can be brought against private companies and public administrations.

Third, legal persons defending human rights may bring cases before courts and tribunals against private companies and public administrations. Article 17 of the Judicial Code states that for a legal person to bring a claim they must comply with the following: their social purpose must be specific in nature and distinct from the general interest, they must pursue their social purpose in a sustainable and effective manner, the legal action being taken must be designed to defend an interest related to that social purpose, and the legal action being taken must pursue a collective interest.

12. What about cross-border cases?

Under Article XVII.39 of the Code of Economic Law, a body authorised by a Member State of the EU or the EEA may act as a representative if it meets the conditions set out in paragraph 4 of Commission Recommendation 2013/396/EU of 11 June 2013 on common principles applicable to collective redress mechanisms for injunctions and damages in the Member States for violations of rights conferred by Union law.

Under the Law of 30 July 2018, Belgian courts and tribunals have jurisdiction over international cases brought under Article 220 when:

(a) A controller or processor is established in, or has an establishment on, Belgian territory and processes personal data in the course of the activities of that establishment, regardless of where the processing takes place;

(b) A controller or processor is not established, or does not have an establishment, on Belgian territory, but engages in processing that affects, or is directed in whole or in part, at data subjects residing on Belgian territory.

13. In the collective redress system in your jurisdiction, are there any specific mechanisms introduced to protect the position of the defendant, such as the obligation described in Recital 41 and Article 8(4) of the RAD? If applicable, please describe the obligation for a qualified entity that intends to bring a representative action for injunctive measures to undertake a prior consultation in order to give the trader concerned an opportunity to bring the infringement that would be the subject of the representative action to an end.

Under the Code of Economic Law, Article XVII.45 requires the group representative and the company to enter into compulsory negotiations aimed at reaching a collective redress agreement for a period of time set by the judge between three and six months (which may be extended once). If this fails, the normal procedure resumes.

14. Please describe the damages and available remedies in your jurisdiction as well as how these are regulated. Are there any remedies that go beyond compensating the harmed parties or stopping the unlawful practice, such as the introduction of unjust enrichment into the scope of damages as a deterrence factor? Please state any changes in the regime after the RAD implementation.

In Belgium, there are no remedies that go beyond compensating the harmed parties or stopping the unlawful practice. A basic principle of Belgian law is that damage should be compensated in full. The injured person must be returned to the position they would have been in had the injury not occurred. Punitive damages are therefore not permitted. Quantification of the actual loss suffered is calculated by the judge on the basis of the parties' submissions and, possibly, expert reports. The judge must further determine that there is no justification for relying on Article 1382 of the Civil Code, which provides a general basis for refusing to award moral damages in excess of one euro to an environmental association in the event of harm to the collective interest it is pursuing.

15. What do you see as the main issues or challenges when bringing efficient collective redress cases related to digital rights? (E.g. Public awareness on digital rights, quantification of damages, evidence gathering, costs, CSOs not obtaining qualified entity status, cross-border collaborations, etc.)

With regard specifically to the actions brought by the Ligue des Droits Humains, the main difficulties stemmed from a lack of human and financial resources.

Beyond this, the most critical challenge facing claimants when bringing a collective redress action before civil courts is justifying the claimant's 'interest in taking action' (intérêt à agir). Article 17 of the Judicial Code stipulates that an action cannot be admitted if the claimant does not have an interest in bringing the action. The claimant's interest must be specific and personal; acting in the general interest is not enough. In this sense, an action brought in the general interest or in the interest of the law, also known as an actio popularis, would not be admissible. Furthermore, in line with Article 18 of the Judicial Code, the interest must be existing and immediate, rather than contingent or hypothetical.

16. Please describe the funding regimes available in your jurisdiction to bring collective redress actions. What about provisions on funding of the representative actions by funders who are not party to these actions (i.e. third-party funding)?

Under the Code of Economic Law, collective redress actions may be financed by third parties. In order for such an arrangement to be approved, the association bringing the action must be independent and not financially influenced by financial backers. Article XVII.42 of the Code of Economic Law requires the group representative to indicate in the application for collective redress whether the action is financed by a third party. If it is, the group representative must identify the third party in their application.

Actions brought under the Law of 30 July 2018 and the Judicial Code are mostly self-financed. For example, the *Ligue des Droits Humains* has a 'pool' of lawyers willing to take legal action for a maximum fee of 500 EUR. Given the limited fee, some of the lawyers act pro bono.

17. Are there any restrictions in bringing collective redress claims in your jurisdiction in general? How are the admissibility requirements for collective claims interpreted based on case law in your jurisdiction? Who is assessing these requirements?

The most significant challenge facing claimants when bringing a collective redress action before civil courts is the need to establish their 'interest in taking action' (intérêt à agir). It is not enough to claim to act in the general interest, and the interest in question must be immediate and not hypothetical.

18. How are redress measures executed in your jurisdiction for any enforcement of injunctions? What if the injunction has to do with software modification. Who does it then?

For collective redress actions brought under the Code of Economic Law, the judge appoints a liquidator to ensure that the judicial decision is properly enforced. The liquidator must submit to the judge a quarterly report on the execution of their mandate. The defendant company carries out its obligation to pay compensation under the supervision of the liquidator, and the judge remains seized of the matter until all group members have been compensated.

19. How long do claimants have to come forward and receive a portion of damages? How are funds (re)distributed when consumers show little interest in compensation, especially when it is too small and the process connected with applying for a refund is not worthwhile?

This is not something that *Ligue des Droits Humains* can speak to, as we have not yet dealt with collective redress actions involving compensation.

20. Who administers the pay out (e.g. is it given in bulk to the lawyers who represent the class who then pay them out or each claimant needs to approach a State administration department?)

Most actions brought under the Law of 30 July 2018 and the Judicial Code are self-financed. For example, the *Ligue des Droits Humains* has a 'pool' of lawyers willing to take legal action for a maximum fee of 500 euros. Given the limited fee, some of the lawyers act pro bono.

21. How do they ensure that all members of the class receive any damages amount. What about if it is an opt-out class?

This is not something that *Ligue des Droits Humains* can speak to, as we have not yet dealt with collective redress actions involving compensation.

The Code of Economic Law contains the following provisions regarding this issue:

- **Article XVII.59. §2:** The defendant fulfils his obligation to make reparation in kind under the supervision of the liquidator and, in the case of reparation by equivalent, pays him the compensation fixed in accordance with the agreement homologated in accordance with Article XVII. 45, § 3, 6°, or in accordance with what has been fixed by the judge in accordance with Article XVII. 54, §1, 7°
- **Article XVII.60:** The judge remains seized until full performance of the reparation provided for by the homologated agreement or the decision on the merits for the benefit of all the members of the group who appear on the definitive list drawn up pursuant to Article XVII. 58, § 5.

22. Please describe any enforcement practices of collective redress decisions in your jurisdiction that you have not described above.

Article 446ter of the Belgian Judicial Code disallows contingency agreements pursuant to which the acting lawyer's fees depend exclusively on the outcome of the case to be litigated. However, it is generally accepted for Belgian lawyers to enter into contingency agreements, provided that the success fee is limited to a reasonable amount and that the agreement provides for baseline remuneration for the lawyer regardless of the outcome of the case.

23. Has your jurisdiction witnessed past or present collective litigation in the field of personal data and/or digital rights violations? If so, identify as much as possible the relevant cases and/or describe the trend: is there significant litigation? Are there any particular issues that slow down/obstruct the redress in any stage of the proceeding (e.g. from the admissibility to the calculation of damages)

Belgium has seen collective litigation in the field of personal data and/or digital rights violations. There have been three main cases.

In 2022, the Grand Chamber of the CJEU ruled on the Ligue des Droits Humains PNR case (ECJ – C-817/19). After confirming the validity of the Passenger Name Record (PNR) Directive, the court clarified certain points regarding the directive's interpretation. First, the court held that the Directive's list of objectives that can be pursued when processing PNR data is exhaustive. Therefore, national legislation which authorises the processing of PNR data for purposes other than the fight against terrorist offences and serious crime is not permitted. This includes national legislation that provides for the processing of PNR data for monitoring activities linked to intelligence and security services, and the use of the PNR Directive system for improving border controls and combating illegal immigration. PNR data retained pursuant to the PNR Directive must be stored in a database that can only be accessed for PNR Directive purposes.

Second, the CJEU elaborated on the PNR Directive's concept of an 'independent national authority'. Under the Directive, such an authority is competent to verify whether the conditions for the disclosure of PNR data–for the purposes of their subsequent assessment–are met and to approve such disclosure. In particular, the authority put in place as the Passenger Information Unit (PIU) cannot be classified as such since it is not a third party in relation to the authority which requests access to the data. Since the members of its staff may be agents seconded from the authorities entitled to request such access, the PIU appears necessarily linked to those requesting authorities.

Third, as regards the retention period of PNR data, the Court held that Article 12 of the PNR Directive, read in the light of Articles 7 and 8 of the Directive as well as Article 52(1) of the EU Charter, precludes national legislation which provides for a general retention period of five years applicable indiscriminately to all air passengers.

According to the CJEU, after the expiry of the initial retention period of six months, the retention of PNR data was not limited to what was strictly necessary. This was the case for air passengers with respect to whom, during the initial assessment period, no risk relating to terrorist offences or serious crime had been found. By contrast, the CJEU took the view that, during the initial period of six months, the retention of the PNR data of all air passengers under the terms of the PNR Directive did not, as a matter of principle, go beyond what was strictly necessary.

Fourth, the Court provided guidance on the possible application of the PNR Directive to other modes of transport carrying passengers within the EU. It held that the Directive, read in the light of Article 3(2) of the TEU, Article 67(2) of the TFEU, and Article 45 of the EU Charter, precludes the transfer and processing of the PNR data of all transport operations within the EU in the absence of a genuine and present or foreseeable terrorist threat. In such a situation, as in the case of intra-EU flights, the application of the system established by the PNR Directive must be limited to transport operations relating, inter alia, to certain routes, travel patterns, stations, or seaports for which there are indications of a threat. It is for the Member State concerned to select the transport operations for which there are such indications and to regularly review the application of the Directive system.

The next important case to discuss was the *Ligue des Droits Humains* – Access to police databases (ECJ – C-333/22) case. In 2016, BA sought security clearance from the *Autorité Nationale de Sécurité* (National Security Authority, Belgium). He was refused that clearance, inter alia, for reasons of State security and preservation of the constitutional democratic order, on account of his participation in demonstrations over the previous decade. The refusal was based on his personal data, processed by the Belgian police service. BA requested the *Organe de Contrôle de l'information Policière* (Supervisory Body for Police Information - OCIP), in its capacity as the supervisory authority, to identify the controllers responsible for processing his personal data and to order the controllers to grant him access to all the data concerning him, in order to enable him to exercise his rights. The OCIP verified the lawfulness of the processing of BA's personal data in the police data banks in accordance with Belgian law. Relying on domestic law, which does not allow the data subject direct access to his or her data, the OCIP informed BA that it had carried out the necessary verifications but did not grant him access to the data.

The decision of the CJEU in the Access to police databases case contains three main elements. First, the court held that when the OCIP carries out checks and informs an individual about the outcome of those checks, 'that person must have an effective judicial remedy against the decision of that authority to terminate the verification process'. Second, the person concerned must 'at least' be informed that all the necessary checks have been carried out. The court noted that, in cases where the public interest does not preclude it, more information than the minimum may be made available 'so that the data subject can defend his rights and decide, in full knowledge of the facts, whether it would be useful to bring the matter before the competent court.' Finally, the court specified that Member States must lay down rules enabling the competent court to take cognizance of all grounds for refusal and evidence.

The final case to discuss is the *IAB Europe c. Gegevensbeschermingsautoriteit* (ECJ - C-604/22) case. IAB Europe is responsible for drafting the Transparency & Consent Framework (TCF), a framework of rules intended to ensure that the processing of the personal data of a user of a website or application complies with the GDPR. The TCF promotes compliance with the GDPR when operators rely on the OpenRTB protocol, which is used for Real Time Bidding, an instant and automated online system for auctioning user profiles for the purpose of selling and purchasing advertising space on the internet.

The TCF facilitates the recording of user preferences, which are subsequently encoded and stored in a string composed of a combination of letters and characters referred to by IAB Europe as the Transparency and Consent String (TC String). That string is shared with personal data brokers and advertising platforms participating in the OpenRTB protocol, informing them of what the user has or has not consented to. Furthermore, a cookie is placed on the user's device that, when combined with the TC String, can be linked to that user's IP address. The CJEU held that a TC String, being a structured character string capturing a user's preferences, constitutes personal data.

The CJEU also addressed the question of whether a sectoral organisation standardising and prescribing the modalities for capturing and transmitting user preferences–such as IAB Europe–can be considered a controller in respect of the processing carried out in accordance with those modalities. The court answered in the affirmative on the basis that such an organisation influences the data processing operations involved in registering user consent preferences in a TC String, and determines, jointly with its members, both the purposes of these operations and the means behind them.

See also the **complaints** filled by NOYB with the data protection authority.

24. Is there anything that characterizes those proceedings that has not been asked so far?

Not applicable.

CROATIA

1. Does your country have a pre-existing collective redress system? If yes, what is the scope of application of this law? What were the reasons leading to its development?

Collective action was introduced in the Croatian legal system in 2003 with the enactment of the Consumer Protection Act. To our knowledge, the provisions regarding collective redress for consumers were not used until collective interest actions were introduced in the Civil Procedure Act (CPA) and the Anti-Discrimination Act.

In 2011, the CPA was amended to align with Directive 2011/7/EU on the fight against late payment in business transactions. These amendments involved the addition of several provisions on collective redress. While there have been several significant changes to act, these provisions remained in their original form.

The collective redress system in Croatia applies to associations, bodies, institutions, or other organisations which are established in accordance with the law and deal with protection of certain collective interests and rights of citizens as part of their registered scope of activities or as activities determined by a regulation. Such organisations may bring a claim for the protection of collective interests and rights protected by any law. The organisations must meet the following criteria set by Article 9(2) of the Act on Representative Actions for the Protection of Collective Interests and Consumer Rights (ARA):

- be registered in the Register of Associations and in the Register of Non-Profit Organisations;
- be established for the purpose of protecting one or more consumer rights identified in Annex I of the ARA (the specific consumer right and its protection must be identified in the organisation/association's statute);
- have been active for at least 12 months before bringing a representative claim;
- not have proceedings for the termination of existence initiated against them in accordance with the regulation on associations;
- conduct transparent financial operations in accordance with regulations on accounting of non-profit organisations;
- properly fulfil contractual obligations imposed by the state administration and other public law bodies in order to justify approved financial support
- properly fulfil tax obligations and other duties to the state budget and the budgets of local and regional self-government units;
- not have criminal proceedings instituted against the person or persons authorised to represent the organisation, for criminal offenses that are prosecuted ex officio;
- provide evidence of independence of action and absence of influence by persons who are not consumers, especially traders, who have an economic interest in bringing certain claims;

- provide organisational, personnel, spatial, and financial resources for the performance of basic activities in accordance with the financial plan and work plan of the association or organisation;
- be solvent;
- regularly, clearly, and comprehensively publish information from this paragraph on its website, together with information on sources of funding, its organisational and management structure, and membership structure.

To our knowledge, there are only two special laws with collective redress provisions: the CPA and the Anti-Discrimination Act.

The scope of interests which can be the subject of a collective action is clearly defined by the CPA. Under the CPA, a claimant may seek to: 1) establish that the collective interests and rights of persons protected by law have been violated or threatened by certain actions, including by omission, 2) prohibit such actions in the future, 3) order the defendant to reverse the harmful effects of their actions and reinstate the situation as it existed before the harmful action, and 4) publish collective action decision in the media.

Once a decision on a violation of these rights and interests is reached, it can be used as legal grounds for individual claims for damages from persons or consumers who were directly affected by the violation.

A provision on awarding 'remedial measures in accordance with the special act on representative actions for the protection of collective interest of consumers' was added to the CPA in 2022, reflecting the introduction of the RAD in the Croatian legal system.

The ARA was enacted in mid-2023, transposing the RAD into Croatian domestic law. The provisions on collective redress contained in the Consumer Protection Act have therefore ceased to have effect.

2. If you answered yes to the previous question, could you give us more information on the perceived efficacy and impact of the collective redress system applicable in your jurisdiction? Is collective redress frequently used in courts?

There are no official data or statistics on collective redress actions, making it difficult to gather information on actual cases. Furthermore, not all court decisions are publicly available or published at all, which makes the media the only source of information. According to publicly available information, the collective redress system has only been used successfully in Croatia once. The *Franak* Association and the Croatian Federation of Consumer Protection Associations brought a claim under the amended CPA immediately after the adoption of the collective redress system in 2011. The collective action was brought against the eight largest banks in Croatia, requesting that the provisions dealing with the currency clause in Swiss francs and variable interest rate are declared unfair, impermissible, and invalid for all consumer loan agreements with such a currency clause. According to the claim, the eight banks violated the collective interests and rights of consumers because they did not provide complete and sufficient information about the terms of the loan agreements. In 2014, the High Commercial Court of Croatia held that those loan agreement terms were unfair.

Based on this decision of the High Commercial Court, consumers who agreed to such loan agreements could bring private claims before the municipal courts and seek reimbursement for the (over)paid amounts.

Citing low trust in the Croatian judiciary and court system as the main reason, the NGOs that brought the collective action claim that only a third of all claimants filed a private claim. The public perception of the independence of the Croatian courts was then (and still is) among the lowest in the EU. There is no special regime for managing the large number of private claims that individuals need to bring following a decision in a collective action case. Due to court backlogs and low efficacy, decisions on private claims in the Franak case are still being handed down today, 10 or more years after the consumers entered into (or even paid off) their loans. According to the 2023 EU Justice Scoreboard and other reports, the court backlogs and length of proceedings remain among the most considerable in the EU.

The perceived efficacy of the collective redress system is mixed. While the two NGOs that brought the action (*Franak* and *Potrošač*) and their legal teams are praised for years of difficult legal battles, affected consumers still struggle to be reimbursed. Despite the decision of the High Commercial Court, even cases with legally clear situation and facts take several years to come to a conclusion, with the banks contesting each individual claim and with legal fees running high.

3. Has the RAD been implemented in your jurisdiction? What is its scope of application in your jurisdiction? Does the scope change from the previous regime?

The ARA implemented the RAD in Croatia in mid-2023. As indicated by the name of the act, the ARA applies to consumer protection only. Collective anti-discrimination claims can be brought under Croatian law, but these fall outside the scope of ARA.

4. Please describe if there are proposals for upcoming legislation on collective redress mechanisms. What is the legal gap that this legislation is trying to address and what is the intended scope?

There is no mention in either the official government legislation plan or in media articles of upcoming legislation on collective redress.

5. Are there any references to personal data and/or digital rights regimes in the scope of application of the laws on collective redress? If so, please describe this regime and how it is embedded in the law.

The ARA makes no mention of citizens, data subjects, or users, only of consumers (as defined by EU law). The term 'consumer' is defined by the Consumer Protection Act in line with EU law as any natural person who enters into a legal transaction or operates on the market outside of his trade, business, craft, or professional activity. The Consumer Protection Act also defines 'digital service', 'digital content', 'digital market', and 'interoperability', but only in a consumer context. The term 'users' is not a defined or commonly used term in Croatian legislation.

There are no references to personal data, digital rights, or any other specific rights in the laws that allow for collective redress actions. However, in Annex I of the ARA, the General Data Protection Regulation (GDPR) is listed as one of the EU laws (66 in total) that provide material rights whose violation constitutes legal grounds for collective redress.

6. Please provide a brief overview of digital rights collective redress cases and case law in your jurisdiction, if any. If there are none, please give us an overview of any perceived challenges in bringing these collective redress cases to national courts.

There have been no digital rights collective redress cases in Croatia.

The main reason appears to be the low trust in the judicial branch of the government and low awareness of digital rights among Croatian citizens. The opt-in model of the Croatian collective redress system is recognized as an additional challenge and barrier.

Litigation costs are also seen as an obstacle: the general rule is that the losing party reimburses the costs of the winning party. The costs include court fees, lawyer fees, and the cost of any experts that are required. The lawyer's fees are determined by the Croatian Lawyer's Tariff, and they generally depend on the value of the case. Given the average salary in Croatia (1,300 euros), lawyer fees seem high. As such, in addition to low trust, lengthy procedures, and uncertainty, there is the further risk that the claimant would have to pay the defendant's total costs.

7. Please describe the participation regimes in the collective redress system in your jurisdiction. How has the participation regime been modified (if at all) by the implementation of the RAD directive?

Collective redress actions in EU Member States work with either an opt-in or opt-out mechanism. Under the opt-in mechanism, consumers must take proactive steps to become part of the collective claim. Potential claimants who have not directly expressed their consent will not be members of the group of claimants and may not benefit directly from a favourable decision.

Under the opt-out mechanism, consumers must take active steps not to be part of the collective claim. In an opt-out procedure, a qualified entity may bring a claim on behalf of an entire group of claimants without their express consent or even knowledge of the action.

The participation regime in Croatia varies by claim type, as outlined in the ARA. The opt-out model is available for claims to establish a violation of listed regulations and orders to cease actions violating these regulations. The opt-in model must be used for claims for compensation of material/ immaterial damages or of unjust enrichment caused by such violations.

8. How are consumers informed about ongoing collective redress actions in your jurisdiction? Is there a national registry for collective redress cases? If so, what information is available there?

Bodies authorised to bring collective redress actions are obliged to share information regarding planned, ongoing, and finalised collective redress actions on their website or in other appropriate ways .

The defendant in a collective redress action must inform interested consumers about the ongoing action against them for compensation or damages. The manner of notification is not prescribed, but it is specified that the defendant must 'provide this notification in a way that will ensure that the notification reaches all potentially injured consumers in a timely manner' (Article 32 ARA).

In addition, the ARA requires the Ministry of Economy and Sustainable Development to publish information on authorised bodies and information on domestic and cross-border collective redress actions on its website. This information is submitted to the Ministry by the commercial courts. The ARA does not prescribe what specific information should be published, and since there are no such actions currently ongoing, we have yet to see what information will be made publicly available.

9. Please briefly describe the rules identifying the court or the authority in charge of handling the collective redress action.

The ARA stipulates that commercial courts have subject-matter jurisdiction over collective redress actions. As a general rule, the CPA sets out that the competent commercial court is determined by the registered seat of the defendant. However, in the case of a violation of the regulations in Annex I of the ARA, the ARA identifies the competent court according to where the violation did or could occur. In this way, the ARA allows for forum selection, meaning that the claimant can choose the court whose location best suits them.

10. Is the applicable collective redress mechanism regulated as a civil procedure process, as an administrative procedure one, or as a 'hybrid', 'parallel' procedure conducted both before civil courts and before a public administrative body? Is there a specialised court set up for the purpose of handling national collective redress actions? What was the motivation in making the choice between these different implementation pathways?

The collective redress mechanism is a civil procedure process. The ARA specifies that the provisions of civil procedure of commercial courts shall be applied to collective redress actions. The CPA sets out special rules for commercial disputes, including that most of the proceedings are carried out in written form, most evidence is tendered in written form, and the deadlines for the parties' actions are much shorter.

In the explanatory note that accompanied the proposed ARA, the Government clarified that the choice of process took into consideration the fact that the Consumer Protection Act already assigns representative consumer claims to the commercial courts, that representative claims typically fall under commercial court jurisdiction, and that representative claims are always against a trader or groups of merchants.

While commercial courts typically handle issues like unfair contract terms (as in the Franak case) effectively, the shortened procedure and reliance on written evidence seem inappropriate for cases involving human rights violations, such as privacy and digital rights. These types of cases are not expressly and directly described in the new regime. However, they are considered to be indirectly permitted, especially since digital services are defined in the Consumer Protection Act.

11. Please describe the legal standing rules in your jurisdiction for collective redress litigation. Who is entitled to bring such a case to the courts? What are the criteria for admissibility of collective redress cases in your jurisdiction?

Claims under the ARA can be brought against merchants, i.e. private companies and traders.

For a body to have capacity to bring a collective redress action under the ARA, they must satisfy several criteria. First, representative claims can only be brought by bodies included in the list of bodies authorised to initiate representative claims (List of Authorised Bodies).

A request to be included in the List of Authorised Bodies is submitted by an NGO (or an association another form of organisation of several NGOs) to the Ministry responsible for consumer protection affairs.

In order to be added to the List of Authorised Bodies, NGOs must meet the following conditions: have been active for at least one year, be registered in the Register of NGOs, be solvent, have adequate capacity, be independent, have as part of their registration the protection of relevant rights, fulfil their contractual obligations towards public bodies and legal obligations under relevant tax and non-profit accounting laws, not have criminal proceedings against them, and publish relevant information about the organisation on their website. NGOs which do not meet the minimal legal obligations prescribed by the Law on Non-Profits (e.g. submission of annual financial reports and regular meetings of the assembly), and/or have become inactive, are removed from the Register of NGOs.

The Ministry's decision to include a body in the List of Authorised Bodies will be published on the Ministry's website, and the Ministry will notify the European Commission of the updated list. The whole application process, with accompanying forms, is described in detail on the Ministry's website. Based on the available information, there are currently 10 bodies on the List of Authorised Bodies: seven public bodies (such as ministries and agencies) and three consumer protection associations.

A collective redress action may also be filed by a public body responsible for the protection of consumer rights covered in the regulations of Annex I of the ARA.

In exceptional cases, a claimant who has not been included in the List of Authorised Bodies can be recognised by a court has having capacity to bring a collective redress action under the ARA, but this recognition will only have effect within that single litigation.

With regards to admissibility, the CPA identifies two situations in which multiple individuals or entities can bring an action or have an action brought against them. First, if they constitute a legal community with regard to the subject matter of the dispute or if their rights or obligations arise from the same factual and legal basis. Second, if the claims and obligations in dispute are based on essentially the same factual and legal basis, and if the same court has subject-matter and geographical jurisdiction over each claim and each defendant. Which of these two situations applies depends on the specific circumstances of the case and the manner in which the claim is brought. The ARA does not provide for any specific rules in this regard.

For example, in the Franak case, the claim was brought on behalf of all consumers who had particular contractual provisions in their loan agreements; as such, it fell within the first situation on account of there being the same factual and legal basis for the claim.

12. What about cross-border cases?

Cross-border collective redress actions can also be brought by bodies authorised in other EU Member States to file such actions.

13. In the collective redress system in your jurisdiction, are there any specific mechanisms introduced to protect the position of the defendant, such as the obligation described in Recital 41 and Article 8(4) of the RAD? If applicable, please describe the obligation for a qualified entity that intends to bring a representative action for injunctive measures to undertake a prior consultation in order to give the trader concerned an opportunity to bring the infringement that would be the subject of the representative action to an end.

Before bringing a collective redress action to establish a violation and to prohibit certain conduct, the claimant must inform the merchant in writing that the action will be brought unless the illegal conduct is halted. The collective redress action cannot be brought until 30 days have passed since the delivery of the written warning.

The ARA provides for non-mandatory mediation. Before submitting a representative claim for damages, the parties may propose to resolve the dispute through mediation. This proposal for mediation should be submitted to one of the bodies designated for alternative resolution of consumer disputes, as specified by the relevant regulations.

The ARA stipulates that the court will inform the parties of the alternative dispute resolution possibilities and explain them in the preliminary hearing.

14. Please describe the damages and available remedies in your jurisdiction as well as how these are regulated. Are there any remedies that go beyond compensating the harmed parties or stopping the unlawful practice, such as the introduction of unjust enrichment into the scope of damages as a deterrence factor? Please state any changes in the regime after the RAD implementation.

Generally speaking, damages and compensation are governed by the Civil Obligations Act, which follows the *restitutio in integrum* principle. Under this principle, the aim of a remedy is to restore the situation to the condition as it was before the injury occurred (including the payment of interest accrued since the time of the injury, if requested by the claimant). There is no provision for punitive damages under Croatian law.

Compensation can be awarded to address the diminution of property (ordinary damage, material damage), the prevention of the increase of property (loss of profit, material damage), and the violation of personal rights (non-pecuniary damage, immaterial damage). Non-pecuniary damage refers to the violation of the personal rights of individuals, including the rights to life, physical integrity, freedom, honour, reputation, dignity, name, and privacy.

Non-pecuniary damages are commonly requested in actions against publishers (e.g. for damaging a person's reputation or in strategic lawsuits against public participation, also known as SLAPP lawsuits). In these cases, courts award monetary compensation for the violation of personal rights, regardless of material damage. When deciding on the amount of damages, the court takes into account the duration and intensity of the physical pain, mental anguish, and fear caused by the violation, as well as the purpose served by that compensation. The court also takes into account the fact that such actions must not be lucrative. These actions are often highly complex, and it is difficult to both prove the claims and to predict the final amount of damages that will be awarded.

It should be noted that an award of compensation for damages in an ARA representative action does not affect the possibility of realising material rights in another court procedure (i.e. with an individual claim), if those additional claims were not covered by the collective redress settlement.

The ARA briefly mentions unjust enrichment when listing the different kinds of collective redress actions.

Claims for compensatory damages and of unjust enrichment are both regular occurrences in Croatian legal practice, but the claims are brought separately. The novelty of the ARA is that it foresees that these two types of claims will, in practice, be executed jointly.

The defendant may be ordered to publish the court's decision establishing the existence of a violation and prohibiting certain activities, or to publish a statement setting out the established violations. The manner of publication will be indicated by the court.

One of the most criticised elements of the collective redress system in Croatia is the absence of a centralised procedure for damages claims by individual injured persons. Following a successful collective redress action, each affected individual must still bring a separate claim in order to be compensated. This will not change with the ARA, since several provisions included in the law imply that such individual claims will still be necessary: the ARA 'does not affect the possibility of realizing material rights in another court procedure', in case these rights were not encompassed by the claim or settlement . At the same time, during the collective redress action for damages, the injured parties included in the claim cannot be represented in other claims that have the same factual and legal basis and which were initiated against the same trader, nor can they file a claim independently based on the same factual and legal basis and against the same defendant. This provision leaves open the possibility for the claimants to bring individual claims for damages in another procedure, since the collective redress litigation could be a more complex and lengthy procedure than an individual claim. Additionally, these provisions put additional burden on the courts as well as claimants, who have to specify and prove the damages occurred in the claim. In certain situations, we could see the practice of claimants leaving out damages completely since it could significantly prolong the duration of all collective redress proceedings involving damages.

15. What do you see as the main issues or challenges when bringing efficient collective redress cases related to digital rights? (E.g. Public awareness on digital rights, quantification of damages, evidence gathering, costs, CSOs not obtaining qualified entity status, cross-border collaborations, etc.)

The main challenges are the low levels of public trust in the judicial branch of the government, low levels of awareness on digital rights among the general public, and the lack of experience in the courts in matters of privacy and personal data protection.

We expect the courts, given their limited experience with privacy and digital rights issues and the lack of case law, to have significant difficulties with the quantification of damages and with addressing unfamiliar concepts in the GDPR. The courts could look to the Croatian Data Protection Authority's (DPA) interpretation of the law, but the DPA publishes very few decisions. Decisions are published when they are final and binding, following extremely slow proceedings before the administrative court.

The Croatian judiciary is already ill equipped to handle the 'usual' consumer collective redress actions (as explained in response to question 2). Taking into consideration the complexity of digital and privacy rights, and the lack of court experience with these issues, it is possible that proceedings in digital rights cases will last longer than expected.

16. Please describe the funding regimes available in your jurisdiction to bring collective redress actions. What about provisions on funding of the representative actions by funders who are not party to these actions (i.e. third-party funding)?

There is no litigation funding system available under Croatian law. Associations and NGOs are usually funded via public calls for proposals.

The ARA requires that all third-party funding must be free of conflicts of interest and undue influence. The financial independence of the claimant is monitored *ex officio* by the courts, which can request a financial overview from the claimant listing its sources of funding.

17. Are there any restrictions in bringing collective redress claims in your jurisdiction in general? How are the admissibility requirements for collective claims interpreted based on case law in your jurisdiction? Who is assessing these requirements?

It is difficult to assess whether there are restrictions in bringing collective redress actions as there is very little publicly available data (except for the Franak case). The Franak case and the provisions of the CPA indicate that the main challenges for bringing a successful collective redress action are legal uncertainty, the duration of the court proceedings, the financial risks for individual consumers who have to bring individual claims for damages, and the duration of the individual claims for damages.

The admissibility requirements for a collective redress claim will be interpreted by the competent (commercial) court, and since the provisions on claimant capacity in the CPA are similar to those in the ARA regime, we expect a degree of legal certainty in the interpretation of those provisions. The ARA clearly identifies the conditions that the authorised claimants must meet (as explained in answer to question 11), and these are not seen as open to interpretation. While the legal certainty is positive, the downside of this approach is the additional red tape that needs to be handled by the claimant.

For an individual claim to be admissible, it must be based on the same facts and legal basis as the collective claim. Following a successful collective redress claim, an individual consumer can bring a claim and argue that the collective redress decision applies to their individual situation. This approach is considered to be more convenient for the courts, as they can make decisions on the collective case more quickly if they don't need to assess the admissibility of each individual claim at the same time. Given that this is a common practice, and given that the ARA left the door open for this practice to continue (as was explained in answer to question 14), we anticipate that it will be easier for claimants to bring cases without damages, as well for the courts to make timely decisions. In cases that involve damages and compensation, this bifurcated approach means that the court must decide on 1) the merits of the individual claim, and 2) on the amount of damages due to each individual claimant. It is worth noting that in the collective action for damages, the claim must specify the amount of damages of each individual claim, along with any proof of the defendant's intention or negligence. The court may decide that the claim is well founded with regards to some individual claimants, but unfounded for others (due to, for example, a lack of proof justifying the amount of damages claimed). Despite this adjudication of individual claims during the collective phase, individual claims for damages or material rights that were not covered in the claim must still be brought following a successful collective action.

18. How are redress measures executed in your jurisdiction for any enforcement of injunctions? What if the injunction has to do with software modification. Who does it then?

Redress measures are imposed by the court, which usually orders the defendant to perform or cease a specific activity. A final and enforceable judgment is enforced by a court, or, if the claim was for monetary compensation, is executed by the Financial Agency by seizing funds on the defendant's bank accounts.

By way of example, if the court orders a modification to software, the claimant can request that the judgment be enforced within a certain time period, and, in case of non-compliance, request the imposition of a daily monetary sanction until the defendant complies with the judgment. The claimant can request these measures in a separate claim or include the request in the original claim submitted to the court.

19. How long do claimants have to come forward and receive a portion of damages? How are funds (re)distributed when consumers show little interest in compensation, especially when it is too small and the process connected with applying for a refund is not worthwhile?

This is not prescribed by the ARA or the CPA. The general statute of limitations period is set by the Civil Obligations Act at five years, and this applies to collective redress actions unless otherwise provided. In general, limitation periods begin the day after the creditor had the right to demand fulfilment of the obligation.

If the consumers authorised the lawyer who represented them to receive the damages on their behalf, the pay out to the consumer depends on the agreement between the lawyer and the consumers (or the NGO).

20. Who administers the pay out (e.g. is it given in bulk to the lawyers who represent the class who then pay them out or each claimant needs to approach a State administration department?)

There are no special provisions governing the paying out of compensation in the ARA, and generally speaking, there is no official regulation of the pay-out process in civil litigation. The payout is usually handled by the parties themselves or their legal representatives. The claimant and the defendant's legal representatives can arrange for the payout to take place as they see fit–for example, if the individual claimants give their bank account numbers, funds can be directly transferred by the defendant.

21. How do they ensure that all members of the class receive any damages amount. What about if it is an opt-out class?

There is no regulation governing this issue, apart from the general provisions in the Civil Obligations Act and the Enforcement Act. The collective redress action for damages is exclusively opt-in in Croatia, and there is no prescribed system ensuring that all members of the class receive damages. As described above, payout methods are agreed by the claimants, lawyers, and the NGO.

22. Please describe any enforcement practices of collective redress decisions in your jurisdiction that you have not described above.

There are no specific provisions on the enforcement of decisions delivered in collective redress proceedings. An enforcement procedure is initiated by a proposal for enforcement by the creditor. The proposal for enforcement must include information on the debtor's (enforceable) assets and indicate the object of enforcement. When the enforcement order becomes final, most of the enforcement activities are carried out by the Financial Agency, which is responsible for enforcement over monetary assets.

In case of collective redress actions, members of the class-action have the option within the enforcement procedure to authorize their lawyer to receive the damages on their behalf. This makes the process more practical and expedient, since it does not require every member to file a separate enforcement claim.

As per the Croatian Lawyer Tariff, contingency fees are possible in property and civil cases. Lawyers and clients can agree on a fee that is a percentage of the total successful claim. The upper limit for such arrangements is 30% of the total achieved. The basis for calculating the award is the sum of the principal amount and the interest.

23. Has your jurisdiction witnessed past or present collective litigation in the field of personal data and/or digital rights violations? If so, identify as much as possible the relevant cases and/or describe the trend: is there significant litigation? Are there any particular issues that slow down/obstruct the redress in any stage of the proceeding (e.g. from the admissibility to the calculation of damages)

There is no past or ongoing collective litigation in the field of data protection, making it difficult to identify or foresee issues that could slow down or obstruct the redress. As mentioned before, the main issues are the courts' inexperience and lack of specialisation in the field of data protection and digital rights, lengthy court processes, high legal costs, and the described deficiencies of the Croatian judicial system.

24. Is there anything that characterizes those proceedings that has not been asked so far?

Not applicable.

FRANCE

1. Does your country have a pre-existing collective redress system? If yes, what is the scope of application of this law? What were the reasons leading to its development?

France does have a pre-existing collective redress system, but it is fragmented. In the 1980s, a French collective action was proposed by the consumer law commission, which was intended to introduce collective redress during the codification of consumer law in the 1990s.

The first collective action was provided for in the French Consumer Code (CC) in 1973 and was an action for compensation for damages caused to the collective interests of consumers. Under the CC, associations can claim compensation in consumers' collective interest. This action is available in various areas, such as under the Code of Criminal Procedure and Public Health Code. Law No 88-14 of 5 January 1988 allowed associations to bring actions for cessation. Then, in 1992, the legislator made actions en *représentation conjointe* available in, for example, environmental and financial matters. These actions had little success, however, due to the onerous requirement of a written mandate to be given by individuals who wanted to be represented and the prohibition on publicly requesting such mandates by the association with standing to bring the action.

Other collective redress techniques include the joint action or the co-mandate (*Ligues de défense*) brought by agents (associations) on behalf of its members.

After many years of debate, the law was reformed in 2014 with Law No 2014-344 (Hamon Law), which was governed by the CC. This represented the main introduction of collective action proceedings in France, which were extended to several areas of law in 2016. The reform came in the wake of an EU Recommendation encouraging a 'cross-cutting' system. Under the Hamon Law, compensation may be claimed before a civil court for individual damage suffered by consumers in similar or identical situations as a result of a violation of a legal or contractual obligation. Alternatively, in some areas of law, an action can be brought for the cessation of such violations. Only nationally authorised associations can bring these actions on behalf of consumers, not *ad hoc* organisations or individual claimants. Fifteen consumer organisations have so far been recognised as authorised associations.

The Hamon Law seeks to distinguish the French collective action from the American class action. Consumer and competition matters (which remain under the CC) became separate from the frameworks established for others areas of law, e.g., health regulated under Law no. 2016-41 of 26 January 2016 on the modernisation of the healthcare system; and Title V of Law No 2016-1547 of 18 November 2016 on the modernisation of justice for the 21st century and its implementing Decree No 2017-888 of 6 May 2017 aimed at achieving a common foundation for group action in discrimination, environmental issues or the protection of personal data, equality before the law and access to justice.

The effect of these separate pieces of legislation means that the applicable collective redress regime depends on the area of law; there is a 'multisectoral' approach. Despite the aim of a 'common foundation', the scope of the French collective action still does not cover all sectors and is not truly 'common.'

2. If you answered yes to the previous question, could you give us more information on the perceived efficacy and impact of the collective redress system applicable in your jurisdiction? Is collective redress frequently used in courts?

While the collective redress regime has been extended since 2016, relatively few collective actions have been brought. As of May 2024, the French Observatory of Class Actions has recorded, in total, 37 collective actions brought in France before the judiciary and the administrative courts since 2014. According to the website of the *Conseil d'Etat*, nine collective actions have been brought before the administrative courts and 62 actions for recognition of rights have been brought before administrative jurisdictions. Five of these actions are in progress, three have been rejected, and one has been withdrawn. Before the judiciary, four collective actions have been concluded by transaction, six have been rejected either at the admissibility stage or on substantive grounds, and one has resulted in a decision on the merits favourable to the claimant (in a health related sector).

The number of collective actions brought in France has been consistently low for the following reasons: sectoral scope; the restriction of standing to approved associations in certain sectors, or associations that have been duly registered for five years in others; no practice of third-party funding; and an opt-in system that is extremely costly and discourages associations from taking action. The opt-in system is onerous for several reasons. First, it requires that the amount of compensation *per capita* be high enough to justify the procedure, *de facto* excluding disputes involving negligible amounts (whereas the collective action was designed precisely to combat such abuses). Second, the victims must 'adhere to the procedure', which requires them to have kept proof of the violation (e.g. sales slips, contracts). Finally, there is no overall assessment or estimation of the amount of the loss, no determination of overall compensation, and no allocation of the remainder (the sum not claimed by consumers) to a cause or to an entity familiar with the disputed case, i.e., cy-près (distribution to achieve the purposes intended for the funds so far as possible, such as through a specialised consumer fund).

The collective redress system is widely considered to have too limited a scope, standing rules that are too strict, and inadequate availability of damages. Arguably, cessation and compensation for material, physical, and moral injuries should be available for a wider group of physical and legal persons in the French system. Furthermore, permitting third-party funding for collective actions would be a major step forward. Fluid recovery of compensation (or cy-près), which ensures aggregate damages go towards benefiting the class, and which is important for the effectiveness of collective actions, was not sufficiently accounted for by the legislator. As a final point, there are areas of law that would benefit from being included in the collective redress system but which are excluded, for example fundamental, social, and cultural rights. Indeed, one of the aims of introducing the collective action system was to effectively coordinate access to justice.

In 2020, Laurence Vichnievsky and Philippe Gosselin reported that there had been only 20 collective actions under consumer law (and this has not changed!). It was against this backdrop that, in 2022, they prepared legislative proposals that would significantly widen the scope of collective actions.

The procedure for collective actions is complex to implement because it remains small-scale. The limits on remedies for moral damage also affect the number of collective actions.

Even with the scope of collective action being extended to other areas of law, it remains necessary to consider a further extension that would increase the personal scope of the action. Collective action should further be extended so that it covers violations of fundamental rights, compensates broader harms, opens up the standing requirements, replaces the opt-in system with an opt-out system, and allows for the global assessment of damages with a rapid recovery system.

3. Has the RAD been implemented in your jurisdiction? What is its scope of application in your jurisdiction? Does the scope change from the previous regime?

The RAD has been partially transposed because many of the rules it contains were already in force.

The full transposition is still ongoing. The long-awaited draft law to implement the RAD was passed by the Assembly in 2023, but it goes beyond the scope of the RAD. The draft bill will enlarge the collective redress regime as it exists today in France and will create a truly trans-substantive mechanism that is broader than the RAD (which only covers consumer protection). Moreover, the collective action envisaged by the draft bill will be able to be brought on behalf of both natural and legal persons who have suffered damage as a result of the same violation or a violation of the same contractual obligations by professionals, be they private or public entities. The available remedies will be cessation, compensation, or both.

On 6 February 2024, the Senate introduced significant amendments to the draft bill. Under Article 1:

> **A group action is brought by a claimant referred to in Article 1er bis on behalf of several natural persons or legal entities, placed in a similar situation, resulting from the same breach or from a breach of the same nature of its legal or contractual obligations committed by any person acting in the exercise or on the occasion of his professional activity, by any legal entity under public law or by any organization under private law entrusted with the management of a public service". If the scope seems large enough to be considered transubstantive, Article 1 bis then adds restrictions which brings it closer to the current regime scope, namely of class actions in the health and employment domains. It states as follows: "I. - Notwithstanding Article 1er , where the complaint relates to a breach of legal or contractual obligations under the French Code of public health, group action may only be brought in respect of a breach of legal or contractual obligations by a producer or supplier of one of the products mentioned in II of Article L. 5311-1 of the same code, or by a service provider using one of these products. II. - By way of derogation from Article 1er , where the complaint relates to a breach of legal or contractual obligations under the French Labour Code, group action can only be brought to establish that several applicants for a job, an internship or a period of in-company training, or several employees, are being discriminated against, directly or indirectly, on the basis of a single ground listed in Article L. 1132-1 of the same code and attributable to the same employer.**

The amended draft also tightens the standing requirements and rejects of the use of a civil penalty in favour of the classic conception of civil liability, which prioritises compensation over deterrence.

In the 2023 draft, standing had initially been extended to several types of associations or entities (e.g. groups of small and medium-sized enterprises (SMEs), local authorities, or ad hoc associations of citizens). The new conservative approach to standing in the 2024 draft is a change from the previous draft, which adopted a fairly universal approach that covered all homogeneous individual rights. Under the 2024 draft there is a more classic system of approval, effectively giving some associations a monopoly over legal action.

The National Assembly and the Senate agreed on the use of the opt-in mechanism for collective actions and the provision of a public register for actions.

A Commission mixte paritaire–composed of members of the Assembly and the Senate–must now decide the matter and agree on a text. In both cases, the collective action is to be regulated in an autonomous law, that is to say, a specific statue which is not to be 'codified'. As such, it will apply to violations of other specific statutes, such as those regarding data protection (Loi informatique et libertés), the environment (Code de l'environment), health (Code de la santé pyblique), discrimination (Loi de lutte contre les discriminations and Code du travail), etc.

4. Please describe if there are proposals for upcoming legislation on collective redress mechanisms. What is the legal gap that this legislation is trying to address and what is the intended scope?

A bill proposed on 15 December 2022 was intended to comprehensively reform and, crucially, simplify the collective action system. The proposed bill contained important modifications to national law and aimed to improve access to collective actions in France, in light of the low number of actions brought to date. This original proposal is still undergoing amendments and must meet the conditions of the RAD if it is to achieve the EU Commission's aims for consumer redress.

Aside from the objective scope described in answer to question 3, the draft from 2023 extends the number of entities that will have standing to bring a collective action. In addition to the classic approved associations (those created in a regular way and which have existed for two years), *ad hoc* associations which represent at least 50 natural persons or five legal persons (either private or public), unions, and qualified entities listed by the European Commission will also be able to bring collective actions. It is proposed that the Public Prosecutor's Office may act as lead claimant in a collective action to put an end to a violation and will be able to intervene as an added party in any collective action.

The claimants bringing a collective action will need to produce a sworn statement from their legal representatives that they are pursuing a non-profit aim.

The rule on third-party funding was clumsily written, as it stipulated that the litigation funder may not have an economic interest in the initiation or outcome of the action (which a commercial entity would have) or be a competitor of the defendant. The rule of draft n°420 transmitted to the Senate 9 March 2023 (Article 1ter) stated as follows:

> **the claimants (...) who bring a group action must produce a sworn statement from their legal representatives to the effect that they are pursuing a non-profit-making aim and that the third parties who provide them with funding, except if they themselves suffer damage caused by the alleged breach by the defendant, do not have an economic interest in the initiation or outcome of the action and are not competitors of the defendant.**

A new provision in the draft relates to collective actions of a serious nature. In such cases, the judge may decide that costs resulting from the investigative measures they order shall be paid for, in whole or in part, by the State. Furthermore, if the claim is rejected and the action brought was neither reckless nor fraudulent, the judge will be able to order that the costs, in whole or in part, be borne by the State. If a French judge has justified doubts about compliance with Article 10(1) and (2) of the RAD on third-party funding, the judge may order a claimant to produce a financial overview listing the sources of funds used to support the action.

In the case of cross-border collective actions, authorisation to bring an action will be given by the minister responsible for consumer affairs to legal persons who comply with the requirements of the RAD (twelve months of actual public activity, a legitimate interest in protecting the interests of consumers, non-profit aims, not insolvent, independent and transparent).

According to the draft, in collective actions related to breaches of the Labour Code, a claimant would still be obliged to communicate an out-of-court request to the defendant before bringing the action (Article 1er *quater* A). Outside of this context, entities with standing to bring a collective action will also be able to engage in mediation on behalf of the group concerned. Any agreement that results from the mediation will need to be approved by a judge (Article 1er *quaterdecies* and *quindecies*).

Collective actions, according to the draft, must be brought before specially designated judicial tribunals.

In keeping with the current approach, collective action proceedings are to be structured in three phases: 1) admissibility and liability, 2) late opt-in (allowing victims to join if they want to benefit from a decision that is already final), and 3) enforcement.

Enforcement will take place through one of two available enforcement procedures: firstly, an individual procedure, whereby each victim addresses a request to the defendant (or to the claimant with a mandate) and the defendant must comply on an individual basis. Victims who are not compensated can seize the judge who handed down the liability decision. Secondly, a collective procedure for the liquidation of damages, whereby the judge allows the claimant to negotiate the enforcement of the decision with the defendant. Any resulting agreement is subject to approval by the judge, who scrutinises it to ensure it protects the interests of the victims. If no agreement is reached, the matter will be referred to the judge within the time limit set out in Article 1er *duodecies* for the liquidation of the remaining damages.

The creation of a national register of collective actions held by the Minister of Justice is proposed.

The same draft (no. 420) proposes to create a civil penalty for intentional misconduct causing serial damage. This would apply in situations where the author of the damage deliberately engages in misconduct with a view to obtaining an undue gain or saving, and the conduct causes damage to several natural or legal persons in a similar situation. The penalty, (a risk which cannot be insured against), should be proportionate to the seriousness of the misconduct and the profit that the defendant has derived from it. If the defendant is an individual, this amount may not exceed twice the profit made; if the defendant is a legal entity, this amount may not exceed 3% of average annual sales, excluding taxes, calculated over the three financial years prior to the one in which the misconduct was committed. When a civil penalty is liable to be combined with an administrative or criminal fine imposed for the same acts, the total amount of fines imposed should not exceed the highest legal maximum.

The 2024 draft (no. 64) as amended by the Senate on 6 February 2024 introduced significant amendments to the 2024 draft of the Assembly. The trend in the Senate's draft is towards the tightening of the standing requirements and scope of collective redress actions, principally in the health and employment sectors, and towards rejecting the use of a civil penalty. The legislator rejected the latter in favour of the classic conception of civil liability, prioritising compensation over deterrence.

The National Assembly and the Senate agreed on the use of the opt-in mechanism for collective actions and on provision for a public register of actions. The Senate has maintained the ability of associations to bring cross-border collective actions and the creation of specialised judicial tribunals to hear claims. The new proposal also maintains the French 'simplified procedure' and positively addresses third-party funding for collective actions. Associations may only receive such funding if the funding is not intended to (or in fact does) prejudicially influence the conduct of the claimant or the bringing of the action, and the funding is published according to the decree rules.

The draft No 64, at Article *1er quarter A*, also reinstates a lengthy formal notice requirement, applicable to all disputes. Notice must be addressed to the potential defendant, and the action cannot be commenced for four months following receipt.

Associations agréées would need to show: 1) 12 consecutive months of public activity (as opposed to the previously proposed requirement of two years for regularly created associations), 2) a statutory purpose of defence of infringed interests, 3) compliance with the criteria of transparency and independence, and 4) that it is not subject to insolvency proceedings. *Ad hoc* associations are not given the opportunity to bring collective actions. In addition to health matters, breaches of labour law under the Labour Code are excluded from the proposed unified regime, except for specific matters, such as discrimination at work.

5. Are there any references to personal data and/or digital rights regimes in the scope of application of the laws on collective redress? If so, please describe this regime and how it is embedded in the law.

Collective data privacy actions were included in the French Data Protection Act (DPA) (Article 43*ter*).

The 2014 'Hamon' Law regime was extended to personal data in 2016. The personal data collective action falls under the individual compensation procedure. Collective redress in matters of personal data protection was initially limited to measures for the cessation of a breach and was subsequently extended to include compensation for material and moral damages. In this area, the claim does not involve forming a 'group' of victims. This makes the mechanism different from the collective action procedure in other areas of the law in which a group must be established.

Provisions on the procedure and standing requirements regarding collective actions in data protection, '[W]here several natural persons placed in a similar situation suffer damage' caused by a breach of Regulation (EU) 2016/679 of the same nature, are codified in Article 37 of the French DPA. Members of Parliament have advocated for collective actions relating to personal data that would allow victims to claim compensation for their losses, both material and non-material. Allowing claims for compensation for both types of harm suffered was seen as more effective.

6. Please provide a brief overview of digital rights collective redress cases and case law in your jurisdiction, if any. If there are none, please give us an overview of any perceived challenges in bringing these collective redress cases to national courts.

Now that the GDPR has entered into force, and since France's extension of collective redress actions to data protection matters in the 2016 legislation, French data subjects are able to seek damages for violations in this field. In the data sector, three significant collective actions have been brought: 1) an action by the NGO Internet Society France, filed on 8 November 2018, against Facebook for non-compliance with the GDPR; 2) an action by the association *UFC-Que choisir*, filed on 26 June 2019, against Google on the grounds that users' consent for the collection and processing of personal data, in particular for targeted advertising purposes, was not obtained in compliance with the GDPR; and 3) pretrial procedures brought by Internet Society France against Facebook for several alleged failures on the part of Facebook regarding data security, cookies, use of sensitive data, and consent.

The preference for the opt-in system in France may have contributed to the relatively low number of digital rights actions. Approved non-profit entities that wish to bring a digital rights action need to demonstrate a statutory object that includes protection of personal data.

7. Please describe the participation regimes in the collective redress system in your jurisdiction. How has the participation regime been modified (if at all) by the implementation of the RAD directive?

The upcoming implementation of the RAD will not modify the current regime, which can be described as an opt-in regime with an exception for the simplified collective action procedure. The latter is provided for in the Consumer Code (CC) and can be used when consumers can be easily identified and the damages *per capita* are the same or very similar.

In the current regime, the period for opting in is decided in the judgment on the liability of the defendant. The judge decides the period for opting based on the range provided in each group action statute, if any. For instance, in the CC, consumers have two to six months to join the proceedings; in the health sector, the period for victims to join ranges from 6 months to 5 years. In the general system (Article 848 Code of Civil Procedure – (CCP), there is no indicated timeframe and the judge decides the period for opting in.

Under the 2023 Assembly draft, the opt-in applies and the simplified collective action is abolished. Under the 2024 Senate draft, nothing changes: both the opt-in regime and the simplified collective action remain.

8. How are consumers informed about ongoing collective redress actions in your jurisdiction? Is there a national registry for collective redress cases? If so, what information is available there?

According to the draft to implement the RAD (no. 64, at Article 1er *sexdecies*), there will be a French National Register of Class Actions kept and made available to the public by the Keeper of the Seals, Minister of Justice. The register will list group actions, actions for the recognition of rights, actions to cease illegal acts, actions to remove unfair clauses, and joint representation actions. The entry to each action will indicate whether the action is in progress, closed, or has been withdrawn. The register also includes a list of approved mediation agreements relating to the actions listed.

With respect to informing consumers, approved associations must 'by any appropriate means' make information accessible to the public on the collective actions they have decided to undertake, their progress, and the final result. Once the judgment on liability is no longer subject to appeal, the judge will decide on publicity measures the defendant must take to inform those affected by the decision. The costs of this information campaign are borne by the defendant. Decisions handed down under the simplified procedure will also include measures to inform affected individuals, enabling them to accept compensation.

Further, the draft indicates that when negotiated agreements are reached, the agreement must specify what publicity measures will be necessary to inform the public about the agreement itself and about the deadline for benefiting from the agreement.

9. Please briefly describe the rules identifying the court or the authority in charge of handling the collective redress action.

The law of 18 November 2016 on modernising justice for the 21st century provided a framework for the procedure before the judicial and administrative judge.

Article 849 of the Code of Civil Procedure (CCP) provides that the court with jurisdiction is the civil court of the defendant's domicile or, if the defendant is not in France, the Paris Civil Court.

The procedural regime applicable to collective actions brought before administrative courts is currently found in the Code of Administrative Justice. Collective action proceedings fall under the general rules applicable to proceedings before the *Tribunal de grande instance*, where the case will be managed by a *juge de la mise en état*, a specialist pre-trial judge. The *juge de la mise en état* has jurisdiction to make preliminary decisions on substantive issues and pleas of non-dismissal.

The draft to reform the collective action regime indicates that 'at least two specially designated courts' will have exclusive jurisdiction to hear collective actions brought under the new law.

10. Is the applicable collective redress mechanism regulated as a civil procedure process, as an administrative procedure one, or as a 'hybrid', 'parallel' procedure conducted both before civil courts and before a public administrative body? Is there a specialised court set up for the purpose of handling national collective redress actions? What was the motivation in making the choice between these different implementation pathways?

The procedural regime, known as the 'common legal framework', is codified in the Code of Civil Procedure (CCP) which governs all collective actions with the exception of consumer collective actions.

11. Please describe the legal standing rules in your jurisdiction for collective redress litigation. Who is entitled to bring such a case to the courts? What are the criteria for admissibility of collective redress cases in your jurisdiction?

Under the Consumer Code (CC), collective actions can only be brought by consumers who are natural persons; SMEs and other legal entities that are victims of anti-competitive are not be able to join and benefit from a collective action. Legal persons will also not be able to take action directly, through associations created ad hoc (which do not have standing), or through associations that have been in existence for five years. Associations must be representative at the national level and comply with the following conditions (set out in Article R.811-1 and seq. CC): have been in existence of at least one year, have evidence of effective and public activity with a view to the protection of consumer interests, and reach a threshold of individual members.

Under the proposed law implementing the RAD, associations agréées would need to show: 1) 12 consecutive months of public activity (as opposed to the previously proposed requirement of 2 years for regularly created associations), 2) a statutory purpose of defence of infringed interests, 3) compliance with the criteria of transparency and independence (including that it has adopted written procedures for preventing and managing conflicts of interest), 4) that it is not subject to insolvency proceedings, and 5) that it has informed the public, 'by any appropriate means,' of its statutory purpose, activities, main sources of funding, and of its organisation. The latest amendments adopt a qualified entity-only approach, which means that ad hoc associations are not given the opportunity to bring collective actions.

12. What about cross-border cases?

The current French collective redress system does not explicitly recognise foreign consumer associations or their right to bring actions in France. The European Commission has indicated that EU Member States

should ensure that where a dispute concerns natural or legal persons from several Member States, a single collective action in a single forum is not prevented by national rules on admissibility or standing of the foreign groups of claimants or the representative entities originating from other national legal systems.

Given the RAD's acknowledgment of cross-border collective actions and of the standing of qualified entities designated by the European Commission, the French drafts include the possibility of cross-border actions.

Under the new draft, an *agrément* (authorisation) can be issued to allow associations to bring cross-border collective actions in accordance with the RAD. This requires, *inter alia*, that the association demonstrates 12 months of actual public activity in the protection of consumer interests, a statutory purpose demonstrating that they have a legitimate interest in protecting consumer interests, a non-profit-making character, that they are independent and are not influenced by persons other than consumers, and that the association makes certain information publicly available, such as their sources of funding. These criteria reflect the general domestic standing rules.

13. In the collective redress system in your jurisdiction, are there any specific mechanisms introduced to protect the position of the defendant, such as the obligation described in Recital 41 and Article 8(4) of the RAD? If applicable, please describe the obligation for a qualified entity that intends to bring a representative action for injunctive measures to undertake a prior consultation in order to give the trader concerned an opportunity to bring the infringement that would be the subject of the representative action to an end.

The 2024 draft, no. 64, requires that the potential defendant be given formal notice of the action. The claimant must wait four months following the defendant's receipt of the notice to bring an action (Article *1er quater A*). This provides the defendant with sufficient time to respond or to cease the unlawful conduct.

To avoid conflicts of interest, third-party funders of an action cannot be competitors of the defendant.

Provisions providing for negotiations between the claimant and defendant for compensation for the damage are also a positive development (Articles *1er sexies* (2) and 1er *undecies* (2)). Engaging in negotiations would allow the defendant a greater role in establishing the level of compensation, after which the judge would decide on the damage that can be claimed.

14. Please describe the damages and available remedies in your jurisdiction as well as how these are regulated. Are there any remedies that go beyond compensating the harmed parties or stopping the unlawful practice, such as the introduction of unjust enrichment into the scope of damages as a deterrence factor? Please state any changes in the regime after the RAD implementation.

Injunctive and compensatory relief are both available in collective actions. The group may be granted both cessation of the violation and compensation for bodily injuries and material losses resulting from the damage, unless the action is a data protection matter. For environmental damage, only the losses sustained by individuals or legal entities that result from the damage caused to the environment can be compensated.

The legislator has established that the type of damage that can be compensated depends on the area of law in question. In collective actions under consumer and competition law, for example, damages can only be awarded for pecuniary losses resulting from property damage.I In consumer law, the judge may grant compensation in kind if they consider it appropriate. Discrimination collective actions may involve either an injunction or compensation for damages. Moral prejudice cannot be compensated through a collective action, and punitive damages are prohibited.

The damage suffered must be caused by the same person and have as its common cause a violation of the same kind. In its decision on the liability of the defendant, the court identifies the nature of the compensation to be awarded and how it will be distributed, whether 'in kind' or in money. It is standard procedure that consumers are compensated individually. The level of compensation is determined by the court once the individual provides proof of the damage. The compensation may differ between group members but should, in any case, correspond exactly to the damage. Claims brought using the 'simplified' procedure involve identical harm and therefore the same compensation is awarded to all. Courts have the authority to order the defendant to compensate affected consumers directly and individually.

The judge may also order the cessation of the harmful practice and take the appropriate steps to achieve this. A fine or periodic penalty payments can be imposed in cases where the defendant delays performance, which will be paid to the French Treasury. The judge can also hold the defendant liable towards the group. Any conditions attached to the compensation are specified in the declaratory liability judgment. If a practice is deemed harmful, the defendant can be ordered to cease the practice. It may be necessary for the court to appoint a third party to assist with taking the necessary measures to put an end to the breach.

Under the French proposal for the implementation of the RAD, claims can be brought either for the cessation of the breach of a relevant obligation, or for compensation for the damage, whatever its nature, suffered as a result of this breach. In some cases, both cessation and compensation can be requested. When the collective action involves a claim for compensation for the damage suffered, the claimant must present at least two individual cases in support of the claims. According to the recent draft, in actions for cessation, the claimant is not required to prove harm to the members of the group, and the defendant's intention or negligence does not have to be established. The 'deterrence factor' introduced by way of a civil fine has now been abandoned.

15. What do you see as the main issues or challenges when bringing efficient collective redress cases related to digital rights? (E.g. Public awareness on digital rights, quantification of damages, evidence gathering, costs, CSOs not obtaining qualified entity status, cross-border collaborations, etc.)

Not applicable.

16. Please describe the funding regimes available in your jurisdiction to bring collective redress actions. What about provisions on funding of the representative actions by funders who are not party to these actions (i.e. third-party funding)?

There has so far been no specific regulation of funding for collective actions, but it is not prohibited. The Supreme Court implicitly allowed third-party funding when ruling on a funding matter. The acceptance of third-party funding is subject to need to prevent conflicts of interests with funders, and professional privilege cannot be violated. Contingency fees are acceptable in France and part of the fees may be made conditional on the success of the action.

The newest draft transposing the RAD allows qualified entities to receive funds from third parties to support the bringing of collective actions for damages. It is necessary, however, that the funding not affect or influence the bringing of the collective action or be likely to prejudice the interests of the persons involved. The proposals for third-party funding in the newest draft are more developed than in previous drafts. The newest draft states that associations may only receive third-party funding if the funding is not intended to (or in fact does) prejudicially influence the conduct of the claimant or the bringing of the action, and the funding is published according to the decree rules.

A somewhat problematic provision related to third-party funding that may be difficult to interpret is the requirement that the litigation funder not have an economic interest in the initiation or outcome of the action, and that the funder not be a competitor of the defendant. An exception would apply in cases where the litigation funder themselves suffered damage as a result of the defendant's alleged violation. Whilst not-for-profit litigation funding does exist, one cannot imagine that the legislator intended to refer to that situation in the draft provisions. Instead, it is hoped that the ambiguous wording encompasses for-profit third-party funders who, as set out in the RAD, are not competitors of, nor dependent on, the defendant.

17. Are there any restrictions in bringing collective redress claims in your jurisdiction in general? How are the admissibility requirements for collective claims interpreted based on case law in your jurisdiction? Who is assessing these requirements?

A collective action is not admissible if it is based on the same facts, the same breaches, and the same damage as those which have already been judged in a previous collective action or approved settlement.

Moreover, to be admissible, a collective action must not be time-barred. There is no special time limit for collective actions, but they are subject to any specialised limitation rules. Therefore, if an action concerns a tort with a special time limit, that limit will apply. Otherwise, collective actions are subject to the default five-year time limit as stated in the Civil Code (**Article 2224**). The five-year period runs from the day 'when the holder of a right knew or should have known the facts enabling him to exercise it'.

Unlike class actions and other forms of collective action when compared with other jurisdictions, there is no certification stage in French collective actions. When class actions were first introduced, admissibility was checked in the first phase of the proceedings and decided upon at the same time as the merits. As a result, the proceedings could continue right up to the judgment on the merits, only to be declared inadmissible on grounds that could have been detected earlier. In consumer collective actions, the claim must be accompanied by a copy of the association's approval order (*agrément*), demonstrating that it is authorised to act as a 'registered association' or '*association agréée*'.

Duly authorised associations have a right to act in accordance with their articles of association, even without legislative authorisation. This is enshrined in case law. For these actions to be admissible, the judges hearing the case must check in detail whether there is a sufficient link between the corporate purpose and the interests at issue.

Under the draft, a case will be declared inadmissible if the proposed formal notice to the defendant has not been delivered and/or the necessary timeframe of four months has not lapsed. The judge may also declare an action inadmissible if they identify conflicts of interest.

18. How are redress measures executed in your jurisdiction for any enforcement of injunctions? What if the injunction has to do with software modification. Who does it then?

The judge is empowered to issue injunctions to put an end to a violation that has been established by the court, and the defendant must take all necessary measures to execute the order.

In the case of injunctions, the judge can put in place an advance payment, which may be adjusted during the course of the procedure. If obstacles arise in a case where a third-party is assisting with the cessation of a breach, the third party will prepare a report addressed to the judge and the parties for their comments, and the court can issue a writ of execution.

Where applicable, a fine ordered by the judge will be liquidated for the benefit of the Treasury in order to avoid the unjust enrichment of the claimant, who is not necessarily a victim (Article 65 Law No 2016-1547, 18 November 2016).

19. How long do claimants have to come forward and receive a portion of damages? How are funds (re)distributed when consumers show little interest in compensation, especially when it is too small and the process connected with applying for a refund is not worthwhile?

An initial deadline is set by the judge, by which compensation must be paid to harmed consumers. In cases where the defendant has not complied with the judgment, the judge who ruled on liability will set a period within which consumers may come forward with claims regarding the distribution of compensation (Article L623-11 Consumer Code).

20. Who administers the pay out (e.g. is it given in bulk to the lawyers who represent the class who then pay them out or each claimant needs to approach a State administration department?)

During the final stage of the French collective action procedure, the court may deal with any obstacles linked to the distribution of compensation, if necessary.

The procedure in the draft law requires that compensation for injured parties who are members of the group be immediately paid into an account with the *Caisse des dépôts et consignations*. This money can only be used for the settlement of the affair which led to the deposit. The *Caisse* handling the fund is a public sector (State-owned) financial institution.

With respect to a settlement agreement between the parties, in the absence of a total agreement, the matter shall be referred to the court within [a] time limit set for the purpose of liquidating the remaining damages. In the latter case, the court shall rule within the limits set by the judgment ordering collective proceedings for the liquidation of damages (Draft No 420, Article *1er duodecies*).

21. How do they ensure that all members of the class receive any damages amount. What about if it is an opt-out class?

The judge will only order that the decision be made public if liability is established, so that victims can then opt into the procedure. Depending on the field and/or type of procedure, compensation is paid either consensually (out-of-court) or by way of judicial liquidation, directly to the victims or via the claimant or a third party.

Once victims have joined the group, the decision on the level of compensation becomes binding.

22. Please describe any enforcement practices of collective redress decisions in your jurisdiction that you have not described above.

If, following the decision on liability, members of the group have not been compensated, duly authorised associations may bring an action before the same court to enforce the decision and the compensation of individual damages.

As the supervisory authority, the Directorate-General for Competition, Consumer Affairs and Fraud Prevention has powers conferred on it by law to identify infringements or breaches of the provisions of the Consumer Code and to require that action be taken. This procedure is governed by special provisions which vary according to whether the group action is for an injunction or compensation.

23. Has your jurisdiction witnessed past or present collective litigation in the field of personal data and/or digital rights violations? If so, identify as much as possible the relevant cases and/or describe the trend: is there significant litigation? Are there any particular issues that slow down/obstruct the redress in any stage of the proceeding (e.g. from the admissibility to the calculation of damages)

See the **answer to question 6** above.

So far, there have been a number of important challenges. First, the collective action system has a limited material scope that is sectoral rather than trans-substantive. Second, the system has a limited subjective scope, as only approved registered associations can bring collective actions under consumer law. In discrimination law, unions can also bring collective actions. Under the general collective redress system (which applies to data breaches), associations that have been registered for five years can bring collective actions.

Third, there are differences in the types of damages that can be claimed in collective actions depending on the area of law involved. In consumer law, only material damages can be claimed, in environmental law material and moral damages are available, and in health-related fields, compensation for bodily injuries can be claimed.

Fourth, the opt-in system is problematic because it renders collective actions risky from the point of view of the claimant, given that it is difficult to foresee how many individuals will ultimately opt in. Fifth, it is difficult for associations to assess the quantification of damages *per capita*. This is especially so because third-party litigation funding is not a common practice in collective actions and therefore associations do not have economic experts to advise them on this type of issue.

Finally, it is difficult to acquire evidence, as there is no discovery and the *référé* procedure from Article 145 of the Code of Civil Procedure can be lengthy and does not allow for the further investigation of the defendant's practices.

24. Is there anything that characterizes those proceedings that has not been asked so far?

Not applicable.

GERMANY

1. Does your country have a pre-existing collective redress system? If yes, what is the scope of application of this law? What were the reasons leading to its development?

Germany has collective redress systems for different issues areas, including **environmental protection**, **nature conversation**, **equal treatment** (specifically people with disabilities), **consumer protection**, and **competition law**. Collective redress in consumer and competition law has been shaped by the introduction of the so-called *Musterfeststellungsklage* (model declaratory action or MDA) in 2018. The MDA has been dubbed 'Lex Volkswagen' because it was introduced shortly before the expiry of the limitation period for many of the consumer claims against Volkswagen in the diesel scandal (which involved claims for compensation for cars fitted with illegal emissions software). An MDA can only be brought by organisations which consist of at least 10 consumer associations or 350 individuals and which have been registered for at least four years in an official register. The procedural scope of an MDA is limited to claims for declaratory judgment. The judgment is binding on the parties and all consumers who opted into the proceedings. An MDA judgment does not determine the amount of damages to be awarded; instead, following a declaratory judgment in favour of the registered consumers, each consumer must file an individual action to claim their respective individual damages.

An overview of the collective redress systems in place in Germany until October 2019 can be found **here**. The scope of application of collective redress in Germany is fragmented, since most actions are triggered by international treaty obligations or developments under EU law. While Germany has implemented these international obligations in domestic law, there is limited legislation that goes beyond the minimal requirements or which harmonizes the legal framework beyond these requirements.

2. If you answered yes to the previous question, could you give us more information on the perceived efficacy and impact of the collective redress system applicable in your jurisdiction? Is collective redress frequently used in courts?

To our knowledge, there is no comprehensive empirical research on the perceived efficacy and impact of the collective redress system in Germany. Collective redress systems have frequently been used in the areas of environmental protection and nature conservation. Prominent examples are the cases initiated by Environmental Action Germany (**Deutsche Umwelthilfe e.V. - DUH**) and German Federation for the Environment and Nature Conservation (**Bund für Umwelt und Naturschutz Deutschland - BUND**). These organisations have effectively used collective redress in, *inter alia*, clean air protection cases, which have led to bans on diesel cars in several German cities. However, the associations stress that legal proceeding are measures of last resort. Consumer protection organisations have also been active and effective in bringing collective redress cases. One prominent example is a case brought against Volkswagen, in which the Federation of German Consumer Organisations (*Verbraucherzentrale Bundesverband – VZBV*) **represented 200,000 consumers**. Another is a case filed by the *DMB Mieterverein München* (Munich Tenants Association) concerning the apportionment of costs for modernisation works in an apartment complex. More recently, following the Russian invasion of Ukraine, cases were bought by the consumer protection organisations *Hessen* and VZBV against energy suppliers to challenge price increases during the energy crisis. The possibility of proceedings being initiated has, in some cases, been a sufficient deterrent. Consumer organisations are known to follow warning letters with legal action in every case.

3. Has the RAD been implemented in your jurisdiction? What is its scope of application in your jurisdiction? Does the scope change from the previous regime?

The RAD has been **implemented** in Germany. Previously, German civil procedure law only formally provided for injunctive relief and two so-called model proceedings for aggrieved investors and consumer associations. In these model proceedings, however, no action for damages was permissible, and it was only possible to resolve preliminary questions. The claimants, in absence of a settlement, had to pursue damages through their own proceedings.

The material scope of the law implementing the RAD (*Verbraucherrechtedurchsetzungsgesetz*, Consumer Rights Enforcement Act or CREA) covers all civil law disputes regarding claims and legal relationships involving multiple consumers. As a result of the implementation of the RAD, the number of consumer laws listed in the law on injunctive relief (*Unterlassungsklagengesetz*, UKlaG) has been extended from 14 to 57, and the General Data Protection Regulation (GDPR) is now explicitly mentioned in the UKlaG (§ 2 Sec. 2 No. 13). The personal scope of application of the UKlaG has also been broadened, with lower thresholds for registration as a qualified entity in domestic cases.

4. Please describe if there are proposals for upcoming legislation on collective redress mechanisms. What is the legal gap that this legislation is trying to address and what is the intended scope?

There are no plans to introduce further collective redress mechanisms.

5. Are there any references to personal data and/or digital rights regimes in the scope of application of the laws on collective redress? If so, please describe this regime and how it is embedded in the law.

As a result of the implementation of the RAD, violations of consumer rights under the GDPR and the Digital Services Act (DSA) have been added to the UKlaG.

6. Please provide a brief overview of digital rights collective redress cases and case law in your jurisdiction, if any. If there are none, please give us an overview of any perceived challenges in bringing these collective redress cases to national courts.

There have been a number of cases related to digital rights, mostly brought by consumer protection organisations for violations of competition law. A comprehensive overview of cases is not available, and as such we can only provide examples here.

In preliminary proceedings, the consumer protection organisation of North Rhine-Westphalia (*Verbraucherzentrale* NRW) successfully brought a claim against Meta for injunctive relief because of insufficient data protection in Meta's recently introduced paid, ad-free service (OLG Düsseldorf, 8 February 2024, **Az. I-20 UKl- 4/23**).

The VZBV brought an action for injunctive relief against Meta Platforms for digital rights violations. The association made use of a collective redress mechanism under competition law. The case was referred to the CJEU, which ruled that use of the collective redress mechanism under competition law is not precluded by the GDPR (**CJEU - C-319/20**).

VZBV brought an action for injunctive relief against Apple Inc. for the use of unlawful privacy policy clauses. The Regional Court of Berlin held that privacy policy clauses may fall under the scope of the civil law regime for terms and conditions (**LG Berlin vom 30.04.2013 (15 O 92/12)**).

VZBV has also begun to initiate cases for violations of consumer rights under the DSA and has issued warning letters against online platforms **Shein** and **Temu**.

7. Please describe the participation regimes in the collective redress system in your jurisdiction. How has the participation regime been modified (if at all) by the implementation of the RAD directive?

The participation regime has only been slightly modified by the implementation of the RAD. For all claims except those for injunctive relief, participation is based on an opt-in model. Consumers must actively join actions for redress by registering their claims in a public register kept by the Federal Office of Justice (*Bundesamt für Justiz*). The deadline for registration was changed several times in the legislative process. For proceedings filed under the CREA, consumers can opt in up to three weeks after the end of the first instance oral hearing (§ 46(1) sentence 1 CREA). This is a major improvement over the MDA procedure, where an opt-in was required, at the latest, one day before the hearing. Since a judgment cannot be issued until six weeks after the end of the oral hearing (§ 13(4) CREA), consumers must always register before a judgment is given. Consumers do not need to participate in claims for injunctive relief, as they can invoke the decisions without formal registration.

8. How are consumers informed about ongoing collective redress actions in your jurisdiction? Is there a national registry for collective redress cases? If so, what information is available there?

The Federal Office of Justice **publishes a list** of ongoing collective redress cases (both under the CREA as well as pending MDA cases) on its website. The list contains information on the type of lawsuit, date of announcement, the claimant, the defendant, before which court the case is pending, file number, the subject of the claim, a short description of the facts of the case, the statutes applicable to the procedure, and several forms, including forms to join the action.

9. Please briefly describe the rules identifying the court or the authority in charge of handling the collective redress action.

The higher regional courts have jurisdiction for collective redress actions, both for cases filed under the CREA as well as pending MDA cases and actions for injunctive relief under the UKlaG. For actions for injunctive relief pursuant to § 6 of the UKlaG and actions for redress pursuant to § 3 (1) of the CREA, the local jurisdiction is determined by the registered office or residence of the defendant in Germany. In both cases, the Federal Court of Justice (BGH) is the court of appeal.

10. Is the applicable collective redress mechanism regulated as a civil procedure process, as an administrative procedure one, or as a 'hybrid', 'parallel' procedure conducted both before civil courts and before a public administrative body? Is there a specialised court set up for the purpose of handling national collective redress actions? What was the motivation in making the choice between these different implementation pathways?

Collective redress actions in the field of consumer law are governed by civil procedure law as long as no special collective redress provision applies. A special provision applies, for example, in collective redress actions brought under the Landesantidisrkiminierungsgesetz (Berlin **Anti-Discrimination Act** or LADG). These actions are subject to administrative procedure law as the LADG only applies in cases where public authorities are accused of discrimination.

Civil procedure law has been amended to accommodate the RAD. For example, German civil procedure law only allows courts to consider a party's failure to disclose requested evidence when evaluating the facts of the case. Courts can now (threaten to) impose fines of up to 250,000 euros if requested evidence is not provided. The legal remedies in collective redress actions are subject to the Code of Civil Procedure because they can be used to pursue consumers' rights under private law against businesses (see p. **68 here**).

11. Please describe the legal standing rules in your jurisdiction for collective redress litigation. Who is entitled to bring such a case to the courts? What are the criteria for admissibility of collective redress cases in your jurisdiction?

The eligibility requirements for bringing a collective redress action differ for cross-border and domestic actions: 'qualified consumer associations' can bring domestic actions and 'qualified entities' can bring cross-border representative actions. A list of the latter, published by the Commission, is accessible **here** and is referred to in § 4d(1) of the UKlaG. The notion of 'qualified entities' for cross-border cases was introduced by the implementation of the RAD. The criteria of admissibility correspond fully with the criteria in the RAD.

For domestic cases, organisations can apply to be 'qualified consumer associations' with the Federal Office of Justice. The requirements are laid down in § 4d Sec. 2 of the UKlaG and are stricter than those for cross-border actions. The requirements include, among other things: that the institutions' statutory purpose be the protection of consumer interests; that it have at least 75 members or represent at least three associations; that the institution must have been publicly active in the field of consumer protection for at least one year prior to the application; that the institution must ensure, through internal procedures, that it is not under the influence of persons other than consumers; that the institution must publish clear and comprehensible information on its legal form, statutory purpose, membership and organisational structure, activities, and funding.

12. What about cross-border cases?

See the **answer to question 11**.

13. In the collective redress system in your jurisdiction, are there any specific mechanisms introduced to protect the position of the defendant, such as the obligation described in Recital 41 and Article 8(4) of the RAD? If applicable, please describe the obligation for a qualified entity that intends to bring a representative action for injunctive measures to undertake a prior consultation in order to give the trader concerned an opportunity to bring the infringement that would be the subject of the representative action to an end.

Pursuant to § 12(1) No. 1 of the CREA, qualified entities and qualified consumer associations are obliged to provide information on their website about collective redress actions that they intend to bring in the future. There is, however, no deadline for the announcement of intended collective redress actions.

Pursuant to § 17(1) of the CREA, after the court reviews the case and assesses the plausibility of the claimant's submission, the court will request that the parties enter into settlement negotiations.

14. Please describe the damages and available remedies in your jurisdiction as well as how these are regulated. Are there any remedies that go beyond compensating the harmed parties or stopping the unlawful practice, such as the introduction of unjust enrichment into the scope of damages as a deterrence factor? Please state any changes in the regime after the RAD implementation.

The available enforceable remedies are injunctive relief, judicial declaration, and damages. Punitive damages are not possible. German damages law has an almost exclusively compensatory function. The relevant law on damages has not changed as a result of the implementation of the RAD.

15. What do you see as the main issues or challenges when bringing efficient collective redress cases related to digital rights? (E.g. Public awareness on digital rights, quantification of damages, evidence gathering, costs, CSOs not obtaining qualified entity status, cross-border collaborations, etc.)

Collective redress in the field of digital rights has in the past been exclusively used by consumer organisations, with a focus on the commercial interests of consumers rather than on digital rights. The threshold for registration as a qualified entity is very high for CSOs other than consumer organisations, with the result that there is little institutional knowledge or first-hand experience with collective redress outside the consumer organisations context. Furthermore, German courts have been very hesitant in dealing with claims for non-financial damages under the GDPR. Therefore, the major challenges for bringing effective collective redress actions are poor awareness of the possibilities of collective redress, difficulties registering as a qualified entity, and restrictive case law on damages.

16. Please describe the funding regimes available in your jurisdiction to bring collective redress actions. What about provisions on funding of the representative actions by funders who are not party to these actions (i.e. third-party funding)?

Third-party funding is generally permissible. However, pursuant to § 4(2) of the CREA, a collective action is inadmissible in the following situations: if it is financed by a third party who is a competitor of the defendant or who is dependent on the defendant, if the funder's success fee exceeds 10% of the sum to be paid by the defendant, or if the funder is likely to influence the claimant's conduct, including regarding decisions on settlements, to the detriment of consumers. The claimant must disclose the sources of the funding they are using for an action, as well as the financing agreement, to the court pursuant to § 4(3) of the CREA.

17. Are there any restrictions in bringing collective redress claims in your jurisdiction in general? How are the admissibility requirements for collective claims interpreted based on case law in your jurisdiction? Who is assessing these requirements?

The action for collective redress must be brought by an eligible association (see the answer to question 11). The Federal Office of Justice assesses the requirements. We do not know of any cases where this assessment has been challenged in court.

In addition, claims brought for damages or judicial declaration are only admissible if the claimant can plausibly demonstrate that the action affects the claims of at least 50 consumers. This restriction does not apply to actions for injunctive relief (§ 4(1) CREA). According to § 15(1) of the CREA, an action for collective redress is only admissible if the consumer claims are of a similar nature. Consumer claims are considered similar if they are: 1) based on the same facts or on a series of comparable facts and, 2) the same questions of fact and law are relevant to their adjudication. These requirements are assessed by the competent court.

18. How are redress measures executed in your jurisdiction for any enforcement of injunctions? What if the injunction has to do with software modification. Who does it then?

In order to enforce a claim for injunctive relief, the court first threatens the defendant with the imposition of a fine and/or detention in the event of non-compliance. This threat may be included in the enforcement order or it may be issued separately by the court at the request of the claimant. If the injunction is violated, the defendant will be sentenced to a fine by the court at the claimant's request. In special cases, the imposition of an arrest order may also be considered. The fine is paid to the public treasury rather than the claimant. The maximum fine that may be imposed is 250,000 euros. Detention may be imposed for up to six months per violation, up to a total of two years. In the case of legal entities, detention is imposed on a legal representative. There are no special rules in place for software modification, and the defendant is responsible for modification of non-compliant software.

19. How long do claimants have to come forward and receive a portion of damages? How are funds (re)distributed when consumers show little interest in compensation, especially when it is too small and the process connected with applying for a refund is not worthwhile?

Consumers must have registered for the action in due time in order to receive damages (see discussion of the opt-in deadline in answer to question 7). According to § 27 No. 4 of the CREA, after a favourable decision a court-appointed trustee may set deadlines for consumers to provide proof of individual eligibility. If the provisional total amount awarded is not fully utilised, the individual awards will not be increased and the excess will be refunded to the defendant (§ 37 of the CREA).

20. Who administers the pay out (e.g. is it given in bulk to the lawyers who represent the class who then pay them out or each claimant needs to approach a State administration department?)

If in the first stage the court determines that the claimant's case is plausible, and if a settlement is then reached between the parties, the enforcement procedure is determined by the settlement (§ 17(1) CREA). If the settlement negotiations fail, the court will issue a final judgement, and this judgement will initiate the formal enforcement procedure (§ 18(1) No. 1 CREA). This procedure includes the appointment of a trustee (§ 23(1) CREA). The total amount provisionally awarded is paid to this trustee and they administer the payout to eligible consumers (§ 27 No. 9 CREA. The trustee will reach out to the members of the class (§ 27 Nr. 4 CREA).

21. How do they ensure that all members of the class receive any damages amount. What about if it is an opt-out class?

The trustee is legally obliged to ensure all members of the class receive a damages amount, in accordance with § 27 No. 9 of the CREA. The trustee is subject to judicial supervision, and in cases of non-compliance, the court can impose fines on the trustee (§ 30(1) and (3) CREA). At the end of the payout procedure, the trustee must submit a written report to the court which includes information on payments made and on rejected consumer claims. Consumers can appeal and lodge legal complaints against decisions made by the trustee (§ 28(2) CREA). The trustee is liable if they violate obligations that serve to protect consumer interests (§ 31 No. 1 CREA). There are no opt-out classes.

22. Please describe any enforcement practices of collective redress decisions in your jurisdiction that you have not described above.

A trustee can request that a defendant comply with a consumer's request for an action other than payment or for a non-fungible action. If the defendant does not comply in due time, the trustee can request the court to order the defendant to pay a fine and, if this is not complied with, to order detention (§ 29 Sec. 1 CREA).

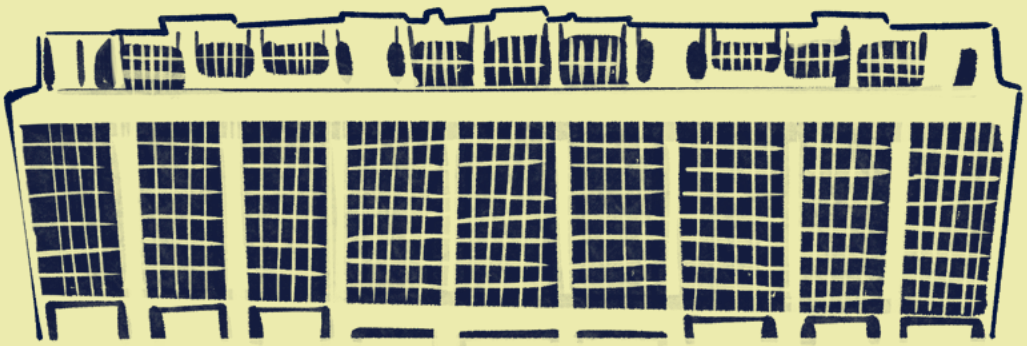
23. Has your jurisdiction witnessed past or present collective litigation in the field of personal data and/or digital rights violations? If so, identify as much as possible the relevant cases and/or describe the trend: is there significant litigation? Are there any particular issues that slow down/obstruct the redress in any stage of the proceeding (e.g. from the admissibility to the calculation of damages)

German courts assume that the EU Charter is directly applicable in situations involving the implementation of EU law. As such, individuals and organisations can invoke Charter rights in proceedings based fully or partially on EU law (for example, GDPR cases). Both administrative and civil courts must take Charter rights into account in all instances.

24. Is there anything that characterizes those proceedings that has not been asked so far?

First instance courts are often reluctant to base their decisions on fundamental rights and rather rely on an interpretation of national law. This does not apply to higher courts, which have frequently issued decisions based on the EU Charter and/or referred cases to the CJEU. A major deterrent for individual claimants and CSOs is the duration of proceedings, since it usually takes several years for a final decision to be reached in a case.

GREECE



1. Does your country have a pre-existing collective redress system? If yes, what is the scope of application of this law? What were the reasons leading to its development?

Greece does have a pre-existing collective redress system. Collective redress actions are provided for in the Greek Consumer Protection Law (Law **2251/1994** - CPL) which replaced Law 1961/1991. Article 10 of the CPL introduced the possibility for consumer associations to bring collective actions under specific conditions. According to Article 10(15) of the CPL, every consumer association has the right to pursue the legal protection of its members before courts and administrative authorities. In particular, consumer organisations have the right to bring a court action, to apply for interim measures, to apply for the annulment or repeal of administrative acts, and to be a civil party to court proceedings. Furthermore, every consumer association has the right to intervene in ongoing proceedings involving its members in order to support the rights of consumers. Overall, in practice, there have been few collective redress actions in Greece.

The relevant legal framework was amended when Law 5019/2023 was enacted in order to transpose the RAD into Greek domestic law. Law 5019/2023 includes provisions regulating 'representative actions' and entered into force on 26 June 2023. The purpose of this law is to modernise the system for the collective protection of consumers by updating the relevant section of the CPL and by introducing a new, stronger mechanism of collective redress.

The previous collective redress framework differed from the new framework. Under the previous framework, the term (art. 10, par.1, Law 2251/1994) 'collective action', was used to cover two types of action: 1) 'group actions', which can be brought jointly by those claiming to have suffered, and 2) 'collective redress mechanisms', which are brought by a qualified representative entity on behalf of consumers in all cases where rights have been violated, seeking collective injunctive relief and collective compensatory redress. Compensation is to be understood in a broad sense and is not limited to monetary compensation.

Under the new Law 5019/2023, a consumer association may bring an action for the protection of the general interests of consumers if they are duly registered in the registry of collective redress actions and have been designated as a qualified entity by the Ministry of Development for at least one year. The action must involve illegal behaviour that infringes upon the rights of at least 30 consumers (without distinguishing between members and non-members of the association).

Under the previous collective redress framework, consumer associations could request the cessation of the unlawful actions against consumer rights, the satisfaction of moral damages suffered by consumers, and the ordering of provisional measures. With the new framework, consumer associations are entitled to request injunctive or redress measures. Injunctive measures include orders to cease a practice that is infringing consumer rights, and redress measures include remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid.

The aim of Law 5019/2023 is to transpose the RAD into Greek Law and to modernise the legislative framework for the protection of the collective interests of consumers. By transposing the Directive, the aim is to provide protection for consumers from practices that violate their rights through updates to the CPL.

2. If you answered yes to the previous question, could you give us more information on the perceived efficacy and impact of the collective redress system applicable in your jurisdiction? Is collective redress frequently used in courts?

Greece's collective redress system has been governed by the CPL since 1994. Collective redress only exists within the remits of consumer law. The CPL has been amended several times and covers legal areas such as general terms and conditions of consumer contracts, unfair contract terms, distance selling, doorstep selling, misleading and comparative advertising, product liability, and distance marketing of consumer financial services.

Collective actions may be divided into three basic categories according to their subject matter: abusive general terms and conditions (mostly regarding banking and insurance contracts), product liability, misleading advertising, and violations of other provisions of the CPL.

Most collective redress actions relate to general terms and conditions in banking and insurance contracts and cases of misleading advertising. Recently, collective actions have been brought in relation to increasing prices in the energy sector.

The CPL empowers consumer associations to represent consumers in court and to bring collective redress actions in the interest of consumers. It also introduced an opt-out horizontal injunctive redress mechanism which can result in being restricted only to injunctive relief collective redress. This type of injunctive relief does not include compensation. So, in case of compensation with the old regime, the consumer must bring a separate individual action for damages based on each case (e.g. specific expenses, extra charges). There are two steps in this model: first, a qualified entity brings an action for a declaratory judgment, and second, if that action was successful, consumers must then bring their own individual actions for damages based on the declaratory judgment.

The consumer association **EKPIZO** 'The Quality of Life', established in 1988, has been successful in bringing a total of 62 collective redress actions. These actions were related to general terms and conditions of consumer contracts, bank commissions, misleading advertisements, unfair commercial practices, violations of the CPL, advertising of children's toys, and unfair practices by energy providers. The average total length of the collective redress proceedings, including all three judicial levels, was four to six years. The most important cases were heard before the Supreme Court, which is the highest court in Greece.

Collective redress actions have helped to make consumer associations and their work better known, as all collective actions have received a lot of publicity.

3. Has the RAD been implemented in your jurisdiction? What is its scope of application in your jurisdiction? Does the scope change from the previous regime?

Law 5019/2023 modernizes the legislative framework for the protection of the collective interests of consumers. The law applies to collective actions brought in relation to violations of the legislative provisions listed in Annex II of Law 5019/2023 that harm or may harm the collective interests of consumers; and to domestic and cross-border violations, including violations which ceased before the filing of the collective action.

Consumers will benefit from Law 5019/2023 because they can avoid the direct costs of commencing an individual case against a defendant. Instead, consumers will be able to participate in a court action at a modest fee by supporting the consumer association that is prepared to act on their behalf.

4. Please describe if there are proposals for upcoming legislation on collective redress mechanisms. What is the legal gap that this legislation is trying to address and what is the intended scope?

Collective redress actions are not frequently used in Greece. The main reasons are the lack of consumer awareness, the length of judicial proceedings, and the low compensation amounts awarded by the courts for moral harm.

Consumer associations are able to seek two types of measure: 1) the suspension or prohibition of the unlawful conduct of defendants, even before it occurs, when the conduct consists of an infringement of Annex II and the conduct would harm the collective interests of consumers; and 2) on a case-by-case basis, compensation for damage, repair, replacement, reduction of price, termination of the contract, or reimbursement of the price paid.

The RAD requires EU Member States, by June 2023, to have in place at least one procedural mechanism which meets minimum standards set out in the RAD. This mechanism must allow consumers to seek collective redress when they claim to have been harmed by a business as a result of breaches of certain European consumer laws. The policy areas covered by these laws are wide-ranging, and include data protection, financial services, travel and tourism, energy and telecommunications, as well as general consumer law such as rules on unfair contract terms and misleading advertising. These areas of law are included in Annex II of the domestic law implementing the RAD.

Finally, organisations designated as qualified entities by other EU Member States for the purpose of bringing cross-border representative actions can bring such actions before the Greek courts. In the event that consumers in another Member State are affected by violations of the laws in Annex II of Law 5019/2023 occurring within Greek jurisdiction, a cross-border representative action can be brought before the Greek courts. Cross-border actions can be brought jointly by several qualified entities from different Member States in order to protect the collective interests of consumers in different Member States.

5. Are there any references to personal data and/or digital rights regimes in the scope of application of the laws on collective redress? If so, please describe this regime and how it is embedded in the law.

Article 10a, par.1a&b of Law 5019/2023 covers collective actions against defendants for violations of a number of provisions and legislation, listed in Annex II. The areas of law listed include the CPL, the protection of consumers who are minors, liability of a producer when damage is caused by a defect in the product instructions and technical support after sale, advertising, air carrier liability, personal data, unfair commercial practices, consumer health and safety, rights of rail passengers, and liability of maritime transport operators. Violations of these laws must result in harm to the collective interests of consumers. Law 5019/2023 further covers domestic and cross-border violations, including where those violations have ceased before the collective action has started or before the collective action has concluded.

6. Please provide a brief overview of digital rights collective redress cases and case law in your jurisdiction, if any. If there are none, please give us an overview of any perceived challenges in bringing these collective redress cases to national courts.

There are no digital rights collective redress cases in Greece. As a result of the RAD's recent entry into force, new collective redress mechanisms are available that will enhance both collective power and strategic litigation. This will promote and implement rights in all areas of digital life. The European Commission has proposed changes in the various enforcement pathways to facilitate redress for consumers and to improve traders' compliance with EU law.

In Ekpizo's view, it is important to link the different enforcement pathways and to ensure the RAD and the Alternative Dispute Resolution ADR/Online Dispute Resolution ODR strengthen one another. However, when and how the different enforcement pathways may be linked is an open question. Establishing connections and bridges between the different pillars is needed in order to improve the resolution of collective harm situations in a cost-effective and efficient manner. For instance, commitments agreed to or common positions established in cross-border cases on the GDPR could be used to support subsequent collective actions. Data collected by consumer associations on systemic problems and market patterns could be of relevance for authorities when performing their market monitoring roles. In the past, BEUC (*Bureau Européen des Unions de Consommateurs*) member consumer organisations that were involved in several coordinated actions experienced slightly different handling of their complaints. This can create uncertainty about the rules and procedures for handling complaints.

Further issues arise as a result of differences at the EU level in rules governing the burden of proof, in the application of limitation/prescription periods, and in the quantification of damages in the digital environment. Quantifying damages in a digital context is difficult, particularly, for instance, in cases involving damage caused by dark patterns (see DSA-Digital Services Act Regulation and CJEU - Court of Justice of the European Union case law on moral damage relating to GDPR- General Data Protection Regulation violations).

7. Please describe the participation regimes in the collective redress system in your jurisdiction. How has the participation regime been modified (if at all) by the implementation of the RAD directive?

Collective actions may be brought for violations of both the general provisions of the CPL as well as provisions of legislation covering individual sectors of the economy.

Collective actions can be brought by qualified entities (Article 10c Law 5019/2023), which can be domestic consumer organisations or entities designated by other EU Member States (Article 10g).

For a consumer association to be designated as a qualified entity, it must have a website, not be subject to insolvency proceedings or have been declared insolvent, be independent and not influenced by persons other than consumers (especially potential defendants), keep books, and be able to demonstrate 12 months of public activity in the protection of consumer interests prior to its request for designation. The association must also make information available that demonstrates its compliance with these requirements and about its funding, statutory purpose, and organisational, management, and membership structure.

Consumer associations may represent individuals from several EU Member States.

In the case of domestic or cross-border collective actions in another EU Member State, consumer associations can be recognised as qualified entities if they are listed in the registry of collective redress actions and have been designated as qualified by the Ministry of Development.

In the case of cross-border collective actions in Greece by another EU Member State, consumer associations or other bodies (including public bodies) can be recognised as qualified entities if they represent the interests of consumers and are designated as qualified in that Member State.

Under Law 5019/2023, both injunctive (article 8, Injunctive measures DIRECTIVE (EU) 2020/1828) and redress actions (Article 9, Redress measures DIRECTIVE (EU) 2020/1828) are possible. In an action for redress, it is not necessary to identify the individual consumers entitled to benefit from legal protection. Rather, it is sufficient to describe the group of consumers. The General Secretariat for Trade of the Ministry of Development and Investment is granted specific functions, such as informing consumers of proceedings and reviewing the list of qualified entities.

As of 26 June 2023, a mixed system of opt-out (injunctive measures, Article 10i Law 5019/2023) and opt-in (redress measures, Article 10i(a), par.3 Law 5019/2023) is applied in collective redress actions.

In line with the RAD, applications for injunctive measures are brought by qualified entities against defendants on the basis of an opt-out mechanism (Article10i, par. 3 Law 5019/2023). The injunction can take the form of provisional or definitive measures requiring the cessation or prohibition of a practice that constitutes an infringement. A definitive measure may include a judgment ruling that the practice constitutes an infringement of Annex II of Law 5019/2023 and an obligation to publish the judgment or a corrective statement, in full or in part, in a form the court considers appropriate. The qualified entity may additionally request payment of compensation as a civil penalty. For an injunction to be awarded, the qualified entity is not required to prove the actual loss or damage incurred by individual consumers or the intent or negligence of the supplier.

Should an action requesting payment of a civil penalty be irrevocably dismissed as being manifestly unsubstantiated, the defendant may file an action within six months for compensation or moral damages. This action can be brought against the consumer association, as well personally against the board members who resolved to file the original action against the supplier, who are deemed severally liable.

Collective actions for redress measures follow the opt-in system. Individual consumers must explicitly consent to being represented in a collective action and are bound by the outcome of the claim once the qualified entity has filed its statement of claim. The filing must be completed within 90 days of the end of the 30-day deadline for serving the defendant with the action, and qualified entities must submit the individual consumers' declarations of consent. The introductory court document containing the action for redress is sufficient to describe the group of consumers asserting eligibility to benefit from these remedies.

A later opportunity for opt in is also available. If a final judgment is issued in a collective redress action in favour of the claimant, individual consumers can opt in to benefit from the remedies awarded, even if they did not consent to being represented at an earlier point in time. The procedure for an opt in of this type is as follows: 1) individual consumers must notify the defendant of their claim in writing within a period specified by the court; 2) if, within 30 days of the notification, the individual consumers are not satisfied, they can file an application with the General Secretariat of Commerce; 3) for consumers who can demonstrate that they are entitled to benefit from the redress awarded, the competent body of the Ministry of Development can issue a decision inviting the defendant to fulfil the redress measure within 5 days; and 4) if the defendant fails to comply within the 5 days, the Ministry will impose sanctions.

Funds that are not claimed by consumers within the time frame set by the court are passed to the consumer association. This applies where a period of 60 days has passed since the consumer association sent consumers an invitation to receive their redress funds (Article 10(ia) par. 7 Law 5019/2023).

8. How are consumers informed about ongoing collective redress actions in your jurisdiction? Is there a national registry for collective redress cases? If so, what information is available there?

Qualified entities must publish information (in particular on their website) about the collective actions they plan to bring, the legal status of their ongoing collective actions, and the legal effects of these planned and ongoing collective actions.

The General Secretariat for Trade of the Ministry of Development is competent to designate consumer associations as qualified entities and maintains the public register of consumer associations. This register comprises two sub-registries. The first contains a list of qualified entities, and the second is a list of consumer associations that operate legally in Greece. The Secretariat notifies the European Commission when there are changes to the list of qualified entities and reviews the list every two years to ensure the listed qualified entities still fulfil the criteria.

9. Please briefly describe the rules identifying the court or the authority in charge of handling the collective redress action.

Pursuant to Law 5019/2023, the court with jurisdiction to hear a collective redress action is the first instance multi-member court of the place of residence or registered offices of the defendant. If the collective action concerns a commercial ad broadcasted on the radio and/or television, the multi-member court of the seat of the radio or television station has jurisdiction.

Qualified entities are entitled to request an injunction against a defendant to prevent conduct that would constitute an violation of Annex II of Law 5019/2023, and which would harm the collective interests of consumers. Qualified entities can request redress in the form of compensation, repair, replacement, price reduction, contract termination, or reimbursement of the price paid.

Injunctive actions must be brought within one year of the most recent occurrence of the unlawful conduct (Article 10ib, par. 2 Law 5019/2023). This is instead of the shorter period of six months provided for by the previous rules.

Greek law has mixed opt-in and opt-out regime for regulating actions for damages (see answer to question 7). A judgment for damages can be enforced by any affected consumer, even if they did not participate in the proceedings (Article 10Ib, par. 7 Law 5019/2023). A judgment recognising the existence of an unlawful activity that is harmful to consumer interests may be used by any claimant as proof according to the rules of the Greek Civil Code of Procedure (CCP).

10. Is the applicable collective redress mechanism regulated as a civil procedure process, as an administrative procedure one, or as a 'hybrid', 'parallel' procedure conducted both before civil courts and before a public administrative body? Is there a specialised court set up for the purpose of handling national collective redress actions? What was the motivation in making the choice between these different implementation pathways?

The collective redress mechanism is regulated as a civil procedure process.

An interesting tool that has been recently introduced in the Greek legal system is the concept of pilot trials (**Article 20A** CPP). Essentially, when a novel and complex matter of legal interpretation arises with the potential to impact a wide group of people, any claim or appeal brought before a civil court can be referred to the plenary session of the Supreme Court. A referral is made by a three-member committee of the Supreme Court upon the request of any litigant or of the court. The resulting Supreme Court judgment signals to the rest of the courts how to adjudicate cases of a similar nature.

11. Please describe the legal standing rules in your jurisdiction for collective redress litigation. Who is entitled to bring such a case to the courts? What are the criteria for admissibility of collective redress cases in your jurisdiction?

A consumer association which is listed in the registry of qualified entities may file a collective action provided it can prove 12 months of public activity in the protection of consumer interests. The consumer association must publish information about its public activity in plain and intelligible language, preferably on its website.

Collective actions for redress measures follow the opt-in system. Individuals can opt in before the procedure begins by registering with the qualified entity bringing the action, or at a later time and once a favourable court decision has been issued. Collective actions for injunctive measures follow the opt-out system, whereby individual consumers are not required to register with the qualified entity. See the answer to question 7 above.

12. What about cross-border cases?

In the case of domestic or cross-border collective actions in another EU Member State, consumer associations can be recognised as qualified entities if they are listed in the Register of Qualified Entities for the Exercise of Representative Actions (Article 10d -Law 5019/2023) and have been designated as qualified by the Ministry of Development.

In the case of cross-border collective actions in Greece by another EU Member State, consumer associations or other bodies (including public bodies) can be recognised as qualified entities if they represent the interests of consumers and are designated as qualified in that Member State.

13. In the collective redress system in your jurisdiction, are there any specific mechanisms introduced to protect the position of the defendant, such as the obligation described in Recital 41 and Article 8(4) of the RAD? If applicable, please describe the obligation for a qualified entity that intends to bring a representative action for injunctive measures to undertake a prior consultation in order to give the trader concerned an opportunity to bring the infringement that would be the subject of the representative action to an end.

Civil claims are generally freely disposable and therefore subject to settlement. A settlement is made by means of a declaration before the court, the presiding judge, or a notary, and results in the automatic termination of the claim proceedings.

In line with the RAD and Article10ig of Law 5019/2023, the qualified entity and the defendant may jointly propose a settlement to the court containing redress measures in favour of the represented consumers. The content of the settlement is subject to analysis by the court and should the court refuse to approve it on fairness grounds, the court will proceed to hear the collective action. Approved settlements are binding on the qualified entity, the defendant, and individual consumers. Individual consumers can choose to accept or refuse to be bound by the settlement within a certain time limit. A forthcoming decision by the Minister of Development will set out the procedure to be applied in these cases.

14. Please describe the damages and available remedies in your jurisdiction as well as how these are regulated. Are there any remedies that go beyond compensating the harmed parties or stopping the unlawful practice, such as the introduction of unjust enrichment into the scope of damages as a deterrence factor? Please state any changes in the regime after the RAD implementation.

As of 26 June 2023, collective actions can be brought by consumers seeking either injunctive measures (measures to cease or prohibit an unlawful practice) or redress measures (measures awarding remedies such as compensation, repair, replacement, price reduction, contract termination, or reimbursement of the price paid).

Injunctive measures can take the form of interim or definitive measures to cease or prohibit a practice which infringes a provision listed in Annex II of Law 5019/2023. Annex II provides a list of legislative actions and provisions whose breach could lead to the filing of a collective action, such as the CPL, laws on the rights of persons with disabilities, the GDPR, laws on the protection of free competition, and more.

A definitive injunctive measure may include a judgment ruling that the practice constitutes an infringement of Annex II of Law 5019/2023 and an obligation to publish the judgment or a corrective statement, in full or in part, in a form the court considers appropriate.

15. What do you see as the main issues or challenges when bringing efficient collective redress cases related to digital rights? (E.g. Public awareness on digital rights, quantification of damages, evidence gathering, costs, CSOs not obtaining qualified entity status, cross-border collaborations, etc.)

It is crucial to ensure that consumers can exercise their rights in a fair, effective, and affordable way. The European Commission should compile a list of best practices based on EU Member States' national procedural rules that allow data subjects, and the organisations representing them, to effectively exercise their digital rights.

It is important to underline that the GDPR is a fundamental rights instrument under Article 16 of the TFEU. The GDPR is not an internal market instrument and the rights of data subjects and the organisations representing them should be effectively exercised and preserved in line with Articles 8 and 41 of the EU Charter.

Enforcement is about cooperating and working hand-in-hand with Member States, specialised authorities such as consumer or data protection authorities, competition and regulatory authorities, NGOs, businesses, and the public. For the system to function effectively, it relies on guiding principles developed in the context of thematic workshops on topics of digital interests. Strengthening cooperation between public authorities is also fundamental. For instance, giving procedural rights to external stakeholders such as consumer associations could fuel and support their initiatives.

Finally, there is a crucial need for greater horizontal and cross-sectorial cooperation. An increasing number of violations are cross-cutting (especially those happening in the digital area) and must be assessed not only from a consumer law perspective, but also from the perspective of data protection and competition law, among others.

The new approach to enforcement should therefore consider multiple fields of legal practice. There is an increasing need for exchanges between the various enforcement networks. At the national level, some authorities have concluded cooperation agreements to improve and facilitate their work with other authorities and to conduct joint investigations.

16. Please describe the funding regimes available in your jurisdiction to bring collective redress actions. What about provisions on funding of the representative actions by funders who are not party to these actions (i.e. third-party funding)?

The Greek Legislator did not make use of the discretion provided for in the RAD regarding third-party funding of collective redress actions. Law 5019/2023 expressly prohibits any kind of third-party funding for collective actions.

In particular, according to Article 10c, par. 4 of Law 5019/2023:

> **The financial resources of the consumer association come exclusively from: a) the registration membership, subscriptions and voluntary contributions of its members, b) the income from the estate development, c) inheritances and legacies, d) the subsidies or concessions from the Greek government that will be granted to the associations that have been designated as qualified entities, in accordance with Article 10f, e) the grants from local government agencies of the first and second degree, f) grants from the European Union, international organizations and international consumer associations, as well as donations, sponsorships, support from scientific bodies, institutions and legal entities with a social or public benefit purpose, g) the receipts from the distribution of forms and from the conduct of public events, seminars, researches and reports, h) the limited fees collected from consumers by expressing the their will to be represented in a specific representative action for remedies and/or other measures by the consumer association designated as a legal entity in accordance with Article 10f, i) the amount awarded according to par. 4 of Article 10j (the measures taken to bring about the cessation or the prohibition of the unlawful conduct of the suppliers).**

17. Are there any restrictions in bringing collective redress claims in your jurisdiction in general? How are the admissibility requirements for collective claims interpreted based on case law in your jurisdiction? Who is assessing these requirements?

Article 10i, par. 4 of Law 5019/2023 includes several restrictions on bringing collective actions.

In domestic collective actions for injunctions, the qualified entity may additionally request the payment of compensation as a civil penalty for the demonstrated anti-consumer behaviour. In order to determine this civil penalty, account shall be taken of the intensity of the violation, the defendant's size and annual turnover, and the need for general and specific deterrence. Only one civil penalty can be imposed for a single violation. If the claimant's action for a civil penalty is dismissed as manifestly unfounded, the defendant may file an action within six months for compensation or moral damages. This action can be brought against the consumer association as well personally against the board members who resolved to file the original action against the defendant, who are deemed severally liable.

As of 26 June 2023, collective injunctive actions must be brought within one year of the most recent occurrence of the unlawful conduct (Article 10ib, par. 2 Law 5019/2023). This is instead of the shorter period of six months provided for by the previous rules.

18. How are redress measures executed in your jurisdiction for any enforcement of injunctions? What if the injunction has to do with software modification. Who does it then?

A collective action for an injunction will be adjudicated in accordance with the non-contentious jurisdiction procedure at the earliest possible moment. The court may order the interim execution of the judgement. The legal effects arising from this decision apply to everyone, even if they are not parties to the action (art.19ib, par.4, Law 5019/2023).

19. How long do claimants have to come forward and receive a portion of damages? How are funds (re)distributed when consumers show little interest in compensation, especially when it is too small and the process connected with applying for a refund is not worthwhile?

According to Article10ia, par.6 of Law 5019/2023, if the court upholds an action, an individual consumer who had not expressed their intention to participate in the collective action–either at the time when the suit was brought, or by submitting additional pleadings–may benefit from the remedies awarded within the deadline set by the court decision. The procedure for an opt in of this type are as follows: 1) individual consumers must notify the defendant of their claim in writing within a period specified by the court; 2) if, within 30 days of the notification, the individual consumers are not satisfied, they can file an application with the General Secretariat of Commerce; 3) for consumers who can demonstrate that they are entitled to benefit from the redress awarded, the competent body of the Ministry of Development can issue a decision inviting the defendant to fulfil the redress measure within 5 days; and 4) if the defendant fails to comply within the 5 days, the Ministry will impose sanctions.

For claims brought before 25 June 2023, there were four main types of relief available in collectives actions under the CPL: 1) interim injunctive measures to secure consumers' interests until a court decision was issued on the merits of a claim; 2) prevention and cessation of unlawful behaviour; 3) declaration of the right of consumers to damages for harm suffered as a result of the defendant's unlawful conduct; or 4) reparations for moral harm. In the case of moral harm, the court took into consideration the extent to which public order was harmed by the unlawful conduct, the size and annual turnover of the defendant's business, and the need for general and specific deterrence of such behaviour.

As of 26 June 2023, collective actions can be brought by consumers seeking either injunctive measures (measures to cease or prohibit unlawful conduct) or redress measures (measures awarding remedies such as compensation, repair, replacement, price reduction, contract termination, or reimbursement of the price paid).

On that case we will examine it bringing a claim in court, since it haven't been legally binding, according to the previous legislation.

20. Who administers the pay out (e.g. is it given in bulk to the lawyers who represent the class who then pay them out or each claimant needs to approach a State administration department?)

According to Article10ist of Law 5019/2023, the qualified entities engaging in domestic and cross-border collective actions shall provide information, preferably on their website, regarding the pay out of compensation. The information must cover the collective actions the entity plans to bring, the legal status of ongoing collective actions, the outcome of concluded collective actions, and any relevant pay outs.

In specific circumstances, the court may also order the defendant to inform the consumers.

21. How do they ensure that all members of the class receive any damages amount. What about if it is an opt-out class?

The consumer association may claim satisfaction for the moral damages suffered by consumers. In collective actions, the one-off moral harm award is calculated by taking into account the extent of the violation at issue, the financial status of the defendant (especially its turnover), and the need for general and special deterrence (Article10i, par.4, Law 5019/2023).

Funds that are not claimed by consumers within the timeframe set by the court are passed to the consumer association. This applies where a period of 60 days has passed since the consumer association sent consumers an invitation to receive their redress funds (Article 10(ia) par. 7 Law 5019/2023). Unclaimed funds are retained by the consumer association.

To bring an action for redress and/or rehabilitation, individual consumers must express their explicit wish to be represented by the qualified entity and are committed to the result of the action. According to Article 10Ia, par.1, Law 5019/2023 'the qualified entity requests the supplier to provide to the consumers the remedies available, such as compensation or compensation for non-material harm, repair, replacement, price reduction, termination of the contract or reimbursement of the purchase price'.

22. Please describe any enforcement practices of collective redress decisions in your jurisdiction that you have not described above.

Individual consumers affected by a collective action for redress measures are not required to pay court fees unless these resulted from their own fault or negligence (Article10ie Law 5019/2023).

23. Has your jurisdiction witnessed past or present collective litigation in the field of personal data and/or digital rights violations? If so, identify as much as possible the relevant cases and/or describe the trend: is there significant litigation? Are there any particular issues that slow down/obstruct the redress in any stage of the proceeding (e.g. from the admissibility to the calculation of damages)

We have not yet witnessed collective litigation in the field of personal data and/or digital rights.

Annex II, Law 5019/2023 provides a list of legislative actions and provisions whose breach could lead to the filing of a collective action, including the CPL, laws on the rights of persons with disabilities, the GDPR, laws on the protection of free competition, and more. The Annex could be amended by decision of the Minister of Development.

Collective action proceedings and collective claims are governed by a specific legal framework. Certain provisions of the legislation require specific criteria to be met, and these criteria should be respected. In that regard, collective redress will only be allowed where the law particularly provides for such proceedings.

24. Is there anything that characterizes those proceedings that has not been asked so far?

The European Data Protection Board (EDPB) sets out priorities for 2024-2027 and clarifies how the law should be interpreted in order to achieve a consistent application and effective enforcement of the law (and associated redress mechanisms). A new aspect of the EDPB's strategy is the focus on the interplay between the collective redress system and the new regulatory digital framework. New digital laws, such as the **Digital Markets Act** or the **DSA (Digital Services Act)**, have an impact on data protection and privacy, as well as on the challenges raised by new technologies, such as AI. However, it appears that the international dimension of collective redress has yet to be homogeneously and thoroughly addressed.

IRELAND

1. Does your country have a pre-existing collective redress system? If yes, what is the scope of application of this law? What were the reasons leading to its development?

Irish law does not recognise class or group actions and did not have a pre-existing general collective redress system before the RAD. It does, however, have some narrower mechanisms which cover some of the same ground.

First, it is possible to bring a type of collective redress action before the High Court. This is the main court of first instance with jurisdiction over all constitutional matters and civil damages claims in excess of 75,000 euro (60,000 euro in personal injury claim cases). Actions before the High Court are governed by the Rules of the Superior Courts, which provide for a very narrow form of collective redress action under **Order 15 Rule 9**. This states that '[w]here there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the Court to defend, in such cause or matter, on behalf, or for the benefit, of all persons so interested.'

However, Order 15 Rule 9, does not, in practice, operate to provide effective collective redress. Actions brought under this provision have the following limitations: each claim must be essentially identical; damages are not available (only injunctions or declaratory relief); legal aid is not available; and, for the claim to be brought, every possible individual member of the class must provide authoritsation, making it difficult if not practically impossible to use for large group claims.

Second, where multiple claimants bring similar claims against one defendant or a small group of defendants, it is common for the parties to informally agree to treat one claim or a sample of claims as a test case. The intention is to reduce duplicative litigation by resolving the common issues in one case. This has been used in relation to cases such as faulty breast implants, faulty hip implants, and mis-selling of financial products.

Technically, the outcome of the test case is not binding on either side in the remaining cases. In practice though, the doctrine of precedent means that the initial decision is likely to be followed in later cases, and the remaining cases will usually settle on the basis of the test case. This is not, however, an effective mechanism for collective redress as there are no formal rules in this area, and it relies entirely on the good faith and cooperation of the parties.

Third, in a very small number of cases, organisations have been permitted by the High Court to bring litigation on what is effectively a representative basis by relaxing the ordinary rules of *locus standi*. The rules of locus standi do not have a statutory basis, giving the courts a degree of flexibility in determining when a body has *locus standi*. These cases have involved situations where constitutional rights are engaged, where special factors mean that affected individuals are unlikely to bring an action, and where it is in the interests of justice that the issue be litigated.

For example, in ***Irish Penal Reform Trust v Minister for Justice, Equality and Law Reform*** the High Court held that an NGO advocating for prisoners' rights had locus standi to bring a constitutional case regarding the treatment of prisoners with psychiatric illness. In that case, the court held that the prisoners themselves were not in a position to adequately assert their constitutional rights and, without the action brought by the NGO, would not be able to effectively present these issues to the court.

However, cases such as the *Irish Penal Reform Trust* case are exceptionally rare, and a recent decision of the Supreme Court has raised questions as to whether these cases would be followed in future.

Finally, it should be noted that Directive 2009/22/EC (the Injunctions Directive) did not provide for collective redress. The transposition of Article 3 (entities qualified to bring an action) was limited to statutory bodies and did not permit action by private entities.

2. If you answered yes to the previous question, could you give us more information on the perceived efficacy and impact of the collective redress system applicable in your jurisdiction? Is collective redress frequently used in courts?

Not applicable.

3. Has the RAD been implemented in your jurisdiction? What is its scope of application in your jurisdiction? Does the scope change from the previous regime?

The RAD has been transposed by the **Representative Actions for the Protection of the Collective Interests of Consumers Act 2023** (the 2023 Act). However, the 2023 Act has not yet been brought into force.

The scope of application of the 2023 Act is the same as that of the RAD itself. The 2023 Act applies to an infringement of a 'relevant enactment', defined to mean:

> **(a)** a European act or a provision of a European act specified in Annex I to the Directive [the RAD],
>
> **(b)** an Act of the Oireachtas specified in Part 1 of the Schedule or an instrument under such an Act of the Oireachtas,
>
> **(c)** a provision of an Act of the Oireachtas specified in Part 2 of the Schedule,
>
> **(d)** a statutory instrument specified in Part 3 of the Schedule, or
>
> **(e)** a provision of a statutory instrument specified in Part 4 of the Schedule.

The provisions of national law referred to in the Schedule are those which transpose or give effect to the EU laws specified in Annex 1 to the Directive–for example, the Data Protection Act 2018 in relation to the General Data Protection Regulation (GDPR).

Under the 2023 Act, actions may be brought by consumers (defined as 'an individual who acts for purposes that are outside that individual's trade, business, craft or profession') against traders (defined as 'any natural person, or any legal person irrespective of whether privately or publicly owned, that acts, including through another person acting in that person's name or on that person's behalf, for purposes relating to that person's trade, business, craft or profession'). This definition of traders appears to mean that the 2023 Act is not available for collective redress against public bodies, except where those bodies are acting in a commercial capacity.

There is no provision in Irish law regarding the minimum value or size of the claim which may be brought under the 2023 Act.

The scope has not changed from the previous regime.

4. Please describe if there are proposals for upcoming legislation on collective redress mechanisms. What is the legal gap that this legislation is trying to address and what is the intended scope?

There are no legislative proposals for collective redress mechanisms.

5. Are there any references to personal data and/or digital rights regimes in the scope of application of the laws on collective redress? If so, please describe this regime and how it is embedded in the law.

The 2023 Act includes in its scope the GDPR and the (domestic) Data Protection Act 2018, and Articles 4-8 and 13 of the ePrivacy Directive and its domestic transposing measure.

These are within the definition of 'relevant enactments' which qualified entities can enforce through representative actions.

There are no special rules in relation to these rights.

6. Please provide a brief overview of digital rights collective redress cases and case law in your jurisdiction, if any. If there are none, please give us an overview of any perceived challenges in bringing these collective redress cases to national courts.

As discussed in answer to question 3 above, collective redress actions brought under the 2023 Act can only be brought against 'traders', which are typically private companies but can also be public bodies that are acting in a commercial capacity. However, as the 2023 Act has yet to enter into force, there have so far been no such cases.

Digital Rights Ireland Ltd. v Minister for Communication and others is an example of a case brought under relaxed *locus standi* rules. The High Court accepted that the plaintiff NGO had standing to bring a challenge to Irish data retention law on behalf of affected individuals, summarising the factors involved by saying that: '(i) The Plaintiff is a sincere and serious litigant–it is not a vexatious litigant or a crank; (ii) This case raises important constitutional questions; (iii) The impugned provisions affect almost all of the population; (iv) It would be an effective way to bring the action–individual owners of mobile phones would be unlikely to litigate the matter; (v) The Plaintiff's right of access to the Court, and the Court's duty to uphold the Constitution and ensure that suspect actions are scrutinised; (vi) The public good which is being sought to be protected.'

In that case, the High Court therefore permitted Digital Rights Ireland to bring what the Court described as an *actio popularis*; eventually securing the invalidation of the Data Retention Directive. More recent cases, however, have generally rejected the notion of an *actio popularis* in Irish law, and the Supreme Court has questioned the reasoning in *Digital Rights Ireland Ltd. v Minister for Communication and others* regarding the entitlement of a group to bring an action on behalf of others.

Article 80(1) of the GDPR provides for a limited collective redress mechanism in that it allows civil litigation to be brought on behalf of data subjects by qualified not-for-profit bodies. The data subject must grant a mandate to the not-for-profit body, and the body must be active in the field of data protection rights and have statutory objectives in the public interest. The litigation may be brought in the same way as litigation brought by the data subject themselves. In the Irish context, this means that mandated actions may be brought either before the Circuit Court (for injunctive/declaratory relief, or damages of up to 75,000 euro) or the High Court (for injunctive/declaratory relief and unlimited damages).

So far, there appears to have been only one Article 80(1) GDPR action in the Irish courts. In *Digital Rights Ireland CLG v Discord Inc*., the claimant NGO brought an action in relation to a Discord channel which was used to post sexual images of Irish women without their consent. Six women affected by this mandated Digital Rights Ireland under Article 80(1) GDPR to bring an action against those responsible. The first step in that action was to seek to identify the administrators of the channel, and in October 2023, the High Court granted an order to Digital Rights Ireland requiring Discord to disclose information which could identify those responsible for the channel.

Ireland has not taken the option under Article 80(2) GDPR of legislating to allow qualified not-for-profit bodies to bring representative actions independently of a data subject's mandate, so these actions cannot be brought.

The main challenge to bringing collective redress cases under Irish law is the very high cost of litigation. A retired High Court judge recently commented that only 'paupers and multimillionaires' can afford to sue in the Irish courts. The main factors contributing to this are the high level of legal fees, the length and complexity of litigation, and the 'loser pays' rule which means that a party which loses an action must generally pay the legal fees of the other side as well as their own.

Prior to the enactment of the GDPR, locus standi was also a significant restriction; however, this is significantly less important now that mandated actions can be taken under Article 80(1) GDPR.

7. Please describe the participation regimes in the collective redress system in your jurisdiction. How has the participation regime been modified (if at all) by the implementation of the RAD directive?

The 2023 Act provides for an opt-in regime. Consumers must provide the qualified entity with a notification asking to be represented. Consumers can opt-in only until the point when the case is declared admissible by the High Court; they cannot opt-in thereafter. Consumers who do not opt-in are not entitled to any redress (such as damages) from the litigation and are not bound by its outcome. However, an injunction requiring a trader to cease a practice will apply in respect of all consumers, whether or not they have opted into the action.

8. How are consumers informed about ongoing collective redress actions in your jurisdiction? Is there a national registry for collective redress cases? If so, what information is available there?

The 2023 Act requires qualified entities to publish information on their website relating to collective redress actions that the qualified entity has brought, the status of those collective redress actions, and the outcomes of those collective redress actions.

The 2023 Act does not provide for a national registry for collective redress cases.

During pre-legislative scrutiny, the Joint Committee on Enterprise, Trade and Employment recommended that there should be a national electronic database to track collective redress actions and provide monitoring and transparency. The Department of Justice has stated that this will be addressed as part of the implementation arrangements when the 2023 Act is brought into force. At the time of writing, however, it is unclear how this will be done.

9. Please briefly describe the rules identifying the court or the authority in charge of handling the collective redress action.

The 2023 Act provides that all collective redress actions under the 2023 Act must be brought before the High Court.

10. Is the applicable collective redress mechanism regulated as a civil procedure process, as an administrative procedure one, or as a 'hybrid', 'parallel' procedure conducted both before civil courts and before a public administrative body? Is there a specialised court set up for the purpose of handling national collective redress actions? What was the motivation in making the choice between these different implementation pathways?

The collective redress mechanism is purely based on civil proceedings before the High Court. There is no administrative procedure or hybrid/ parallel procedure under the 2023 Act.

There is no a specialised court set up for the purpose of handling national collective redress actions. All collective redress actions under the 2023 Act must be brought before the High Court which is a court of general jurisdiction.

The procedure established by the 2023 Act is aligned as closely as possible to normal civil litigation. This was done with the intention of minimising the need for new bespoke court rules or practices and procedures, and means that the defendant is in essentially the same position as if they were being sued by an individual consumer in the ordinary way.

11. Please describe the legal standing rules in your jurisdiction for collective redress litigation. Who is entitled to bring such a case to the courts? What are the criteria for admissibility of collective redress cases in your jurisdiction?

The 2023 Act permits 'qualified entities' to bring collective redress litigation.

A qualified entity may be either a legal person or a public body representing consumers' interests.

To be designated as a qualified entity for domestic or cross-border cases, a body must apply to the Minister for Enterprise, Trade and Employment and must meet the following criteria:

(a) be a legal person and have 12 months of actual public activity in the protection of consumer interests,

(b) have a legitimate interest in protecting consumer interests provided for in a relevant enactment,

(c) be not for profit,

(d) not be the subject of insolvency proceedings,

(e) be independent and not influenced by persons other than consumers and have established procedures to prevent such influence and to prevent conflicts of interest between itself, its funding providers, and the interests of consumers, and

(f) publish information that demonstrates that it complies with these requirements, information about the sources of its funding, its organisational, management and membership structure, its statutory purpose (if any), and its activities.

Note that the requirement for '12 months of actual public activity in the protection of consumer interests prior to the application' precludes the creation of ad hoc bodies to deal with particular issues or disputes.

The criteria for admissibility are set out in the answer to question 3 above. To repeat the relevant discussion, the 2023 Act applies to an infringement of a 'relevant enactment', defined to mean:

(a) a European act or a provision of a European act specified in Annex I to the Directive [the RAD],

(b) an Act of the Oireachtas specified in Part 1 of the Schedule or an instrument under such an Act of the Oireachtas,

(c) a provision of an Act of the Oireachtas specified in Part 2 of the Schedule,

(d) a statutory instrument specified in Part 3 of the Schedule, or **(e)** a provision of a statutory instrument specified in Part 4 of the Schedule.

The provisions of national law referred to in the Schedule are those which transpose or give effect to the EU laws specified in Annex 1 to the Directive–for example the Data Protection Act 2018 in relation to the GDPR.

Under the 2023 Act, actions may be brought by consumers (defined as 'an individual who acts for purposes that are outside that individual's trade, business, craft or profession') against traders (defined as 'any natural person, or any legal person irrespective of whether privately or publicly owned, that acts, including through another person acting in that person's name or on that person's behalf, for purposes relating to that person's trade, business, craft or profession').

This definition of traders appears to mean that the 2023 Act is not available for collective redress against public bodies, except where those bodies are acting in a commercial capacity.

There is no provision in Irish law regarding the minimum value or size of the claim which may be brought under the 2023 Act.

12. What about cross-border cases?

Where another Member State has designated a body as a qualified entity under the RAD, that designation is automatically recognised in Ireland.

13. In the collective redress system in your jurisdiction, are there any specific mechanisms introduced to protect the position of the defendant, such as the obligation described in Recital 41 and Article 8(4) of the RAD? If applicable, please describe the obligation for a qualified entity that intends to bring a representative action for injunctive measures to undertake a prior consultation in order to give the trader concerned an opportunity to bring the infringement that would be the subject of the representative action to an end.

Recital 41 and Article 8**(4)** of the RAD are transposed essentially verbatim by section 21 of the 2023 Act, which provides as follows:

21. **(1)** Proceedings shall not be brought in respect of a representative action seeking an injunction under section 23 **(1)(b)**, unless and until the qualified entity has engaged in prior consultations with the trader who is the subject of the proposed representative action in order to provide the trader concerned with an opportunity to cease the infringement that would be the subject of the proposed representative action.

(2) Before a qualified entity makes an application to bring a representative action before the Court seeking an injunction under section 23 **(1)(b),** the qualified entity shall—

(a) request the trader concerned to cease the infringement specified in the request,

(b) request the trader concerned to enter into consultations with the qualified entity concerning the proposed representative action, or

(c) enter into consultations with the trader concerned with the aim of having the trader cease the infringement the subject of the proposed representative action.

(3) Where a qualified entity and a trader have entered into consultations in accordance with subsection **(2),** they may mutually agree to extend the period referred to in subsection **(4)(b)** if it is considered that such an extension would assist in successfully resolving the infringement by the trader concerned.

(4) Where, after consultation or reasonable efforts are made to enter into consultations in accordance with subsection **(2),** or where the trader has refused to participate in such consultations—

(a) the qualified entity is of the opinion that the trader has continued to act in a manner that constitutes an infringement, and

(b) a period of 2 weeks has elapsed since the request under subsection **(2)(b)** was received by such trader,

the qualified entity may, for the purposes of protecting the collective interests of consumers, make an application to bring a representative action before the Court seeking an injunction under section 23.

14. Please describe the damages and available remedies in your jurisdiction as well as how these are regulated. Are there any remedies that go beyond compensating the harmed parties or stopping the unlawful practice, such as the introduction of unjust enrichment into the scope of damages as a deterrence factor? Please state any changes in the regime after the RAD implementation.

The 2023 Act provides that in collective redress actions the High Court may issue an injunction and/or may award compensation, repair, replacement, price reduction, contract termination, or reimbursement of price paid.

There has been some doubt as to whether the RAD prohibits Member States from providing for punitive damages in collective redress actions. Recitals 10 and 42 of the RAD indicate that punitive damages should be avoided, however, these provisions appear to permit Member States to maintain punitive damages if domestic law so provides.

It is not entirely clear whether punitive damages are permissible under the 2023 Act, but the better view seems to be that they are. The 2023 Act appears to maintain the general power of the Irish courts to provide for such damages by stating that the listed remedies are ´[w]ithout prejudice to a discretionary power the Court may have in relation to redress´. This provision seems to preserve the general power of the Irish courts to award punitive damages, which in Irish law are classified as either aggravated or exemplary damages.

In Irish law, the term 'aggravated damages' refers to damages which are raised to reflect some 'added hurt or insult' resulting from particularly serious wrongdoing on the part of the defendant. These damages are defined in the leading case, *Conway v Irish National Teachers Organisation*, as:

compensatory damages, increased by reason of:

(a) the manner in which the wrong is committed involving such elements as oppressiveness, arrogance or outrage, or

(b) the conduct of the wrongdoer after the commission of the wrong, such as a refusal to apologise or to ameliorate the harm done or the making of threats to repeat the wrong, or

(c) conduct of the wrongdoer and/or his representatives in the defence of the claim of the wronged plaintiff up to and including the trial of the action.

Exemplary damages in Irish law (also referred to as punitive damages) are defined in Conway v Irish National Teachers Organisation as follows:

> **Punitive or exemplary damages arising from the nature of the wrong which has been committed and/or the manner of its commission which are intended to mark the Court's particular disapproval of the defendant's conduct in all the circumstances of the case and its decision that it should publicly be seen to have punished the defendant for such conduct by awarding such damages, quite apart from its obligation where it may exist in the same case to compensate the plaintiff for the damage which he or she has suffered.**

Exemplary damages can be granted by the courts in cases where the defendant has set out to profit from breaking the law–i.e. where a defendant has calculated that the cost of paying compensation will be less than the cost of complying with a legislative requirement.

The 2023 Act does not provide for unjust enrichment as a remedy. While Irish law does recognise unjust enrichment as a cause of action in its own right, it is not included in the list of claims which qualified entities may bring. Consequently, it appears unlikely that unjust enrichment may be sought in representative claims.

15. What do you see as the main issues or challenges when bringing efficient collective redress cases related to digital rights? (E.g. Public awareness on digital rights, quantification of damages, evidence gathering, costs, CSOs not obtaining qualified entity status, cross-border collaborations, etc.)

This question is difficult to answer given the lack of Irish litigation in this area. In our experience, the main issues are the litigation costs (see answer to question 6 above), length of litigation, difficulties in securing funding, and the difficulty of gathering evidence. The starting point for any digital rights case is likely to be a subject access request; however, it is our experience that in Ireland such requests are often answered inadequately, and the Data Protection Commission is not necessarily helpful in ensuring full disclosure by data controllers.

16. Please describe the funding regimes available in your jurisdiction to bring collective redress actions. What about provisions on funding of the representative actions by funders who are not party to these actions (i.e. third-party funding)?

Irish law does not provide for a funding regime in relation to collective redress actions, except insofar as section 27 of the 2023 Act transposes Article 10 of the RAD on conflicts of interest essentially *verbatim*.

There do not appear to be any measures in Irish law giving effect to Article 20**(1)** and **(2)** of the RAD. Article 20**(1)** requires that 'Member States shall take measures aiming to ensure that the costs of the proceedings related to representative actions do not prevent qualified entities from effectively exercising their right to seek the measures referred to in Article 7.'

As a general rule, Irish law prohibits third party funding of litigation, with relatively narrow exceptions. The law in this area was recently confirmed by the Supreme Court in *Persona Digital Telephony Limited and Another v Minister for Public Enterprise, Ireland and Others*. In that case, the Court held that the ancient common law doctrines of maintenance and champerty continue in effect, and that litigation funding arrangements entered into with third parties with no *bona fide* connection to the litigation are prohibited (and indeed may constitute a crime). The parameters of this rule are unclear, but in practice it has been interpreted to permit funding of public interest litigation on a charitable basis where the donor will not benefit. This may permit such funding for individual representative actions under the 2023 Act, but the lack of clarity is a serious deterrent.

This is an area of ongoing controversy in Irish law, particularly given its effect on the constitutional right of access to justice, and this area of law is currently under review by the Law Reform Commission.

Article 20 of the RAD is transposed by section 29 of the 2023 Act, which provides that qualified entities may charge consumers only a 'modest fee' in relation to participation in a collective redress action. The legislation itself does not define a modest fee, but the Minister for Enterprise, Trade and Employment may set maximum fees for 'different classes of representative actions and different classes of consumers', which 'shall not discourage a consumer from seeking to be represented in a representative action'.

Irish law does not permit contingency fees in the American sense–that is, where a lawyer receives a percentage of a monetary award received by a claimant. In Irish practice, the term contingency fee refers to a 'no win/ no fee' or 'no foal/no fee' agreement where the lawyer agrees to waive their professional fee if the case is ultimately unsuccessful in court.

17. Are there any restrictions in bringing collective redress claims in your jurisdiction in general? How are the admissibility requirements for collective claims interpreted based on case law in your jurisdiction? Who is assessing these requirements?

As discussed above, the only collective redress system in Irish law is that created by the transposition of the RAD by the 2023 Act, and there are no restrictions for bringing a collective redress claim bar those already mentioned or provided for in the RAD itself. There is no caselaw on admissibility. Admissibility is assessed by the High Court at the outset of an action. The 2023 Act does not specifically define what is meant by admissibility, but section 18 suggests that admissibility shall be determined by reference to the following factors: whether the applicant is a qualified entity; whether the main purpose of the qualified entity justifies the qualified entity bringing a representative action in the particular case; whether the qualified entity complies with the designation criteria (where a defendant trader raises justified concerns on this point); the sources of funding of the representative action; the nature of the claim; the class or classes of consumers affected; and whether the action appears to be manifestly unfounded.

The 2023 Act does not impose any further criteria in relation to matters such as the homogeneity or commonality of the rights involved.

18. How are redress measures executed in your jurisdiction for any enforcement of injunctions? What if the injunction has to do with software modification. Who does it then?

There is no special provision in the 2023 Act regarding the enforcement of injunctions. In principle, injunctions are enforced in the ordinary way–that is, if a defendant trader does not comply with an injunction, the qualified entity can apply to the court for a finding that the defendant is in breach and seek to have the defendant held in contempt. The courts have wide powers to sanction entities found in contempt, for example through the imposition of fines (including periodic fines). We are not aware of any injunction requiring software modification having been granted in Ireland. Injunctions are a discretionary remedy and, in general, the Irish courts are reluctant to grant mandatory injunctions–i.e. those that require the defendant to take a positive step to do something–due to the difficulty of supervising their implementation.

19. How long do claimants have to come forward and receive a portion of damages? How are funds (re)distributed when consumers show little interest in compensation, especially when it is too small and the process connected with applying for a refund is not worthwhile?

The High Court may set a time limit for claimants to come forward and receive a portion of damages awarded.

The 2023 Act does not address the point of how funds are (re)distributed when consumers show little interest in compensation. Section 26 of the Act appears to envisage that consumers will contact the trader directly for compensation rather than the trader paying a lump sum to another entity.

20. Who administers the pay out (e.g. is it given in bulk to the lawyers who represent the class who then pay them out or each claimant needs to approach a State administration department?)

The 2023 Act does not address this point explicitly. Section 26(2) provides that 'the Court may, in respect of a representative action before it, require a trader who is a defendant in the action to provide a consumer with one or more of the following remedies'. This language seems to envisage that the trader will provide each consumer with their remedy directly, especially as the possible remedies include repair, replacement, and contract termination. The implication is that any payout will be administered by the trader rather than the trader paying a lump sum to some other entity.

21. How do they ensure that all members of the class receive any damages amount. What about if it is an opt-out class?

There is no provision in the 2023 Act to ensure that all members of the class receive damages, and the 2023 Act does not provide for opt-out litigation.

22. Please describe any enforcement practices of collective redress decisions in your jurisdiction that you have not described above.

Not applicable.

23. Has your jurisdiction witnessed past or present collective litigation in the field of personal data and/or digital rights violations? If so, identify as much as possible the relevant cases and/or describe the trend: is there significant litigation? Are there any particular issues that slow down/obstruct the redress in any stage of the proceeding (e.g. from the admissibility to the calculation of damages)

See **answer to question 6** above.

There has not been any collective litigation in this area other than the two Digital Rights Ireland cases mentioned under question 6. There are some other public interest digital rights cases such as **Ryan v. DPC**, but these were not collective cases, even if they aim to have wide effect.

24. Is there anything that characterizes those proceedings that has not been asked so far?

Not applicable.

ITALY

1. Does your country have a pre-existing collective redress system? If yes, what is the scope of application of this law? What were the reasons leading to its development?

Until 2019, Italy had no general collective redress procedure, but instead featured two regime-specific actions (*azione inibitoria and azione di classe*) regulated by Articles 139 to 140bis of the consumer code (**D.lgs. 206/2005** - C-CON).

The 'old' *azione inibitoria*, regulated by Articles 139-140 of the C-CON, allowed consumer associations registered according to Article 137 of the C-CON to bring an action for an injunction against conduct interfering with the general interests of consumers. It also allowed consumer organisations to request measures to remedy or eliminate the harmful consequences of such violations (see questions below for a detailed description).

The *azione di classe*, regulated by Article 140*bis* of the C-CON, was first introduced by Law **L. 244/2007** and applied to violations that occurred after 15 August 2009. This tool allowed each member of a class of harmed consumers, or an association mandated with the power to bring the claim, to bring an action for damages and restitution against a private corporation. A claim could be brought when the private corporation had violated the homogeneous rights of consumers through breach of contract, unfair or anticompetitive practices, or product or service liability (see questions below for a detailed description). In line with the objectives of procedural economy and uniformity of judgments, the 'old' *azione di classe* allowed for the simultaneous treatment of multiple compensation requests connected to the same violation.

The 'old' *azione inibitoria* and 'old' the *azione di classe* have been superseded by **L. 31/2019**, which introduced a general system of collective redress. This general system is regulated through the 'Collective Proceedings' title of the Civil Procedure Code (**Royal Decree, r.d. 1443/1940** - CPC). This instrument applies to wrongs that occurred after 19 May 2021.

The new procedure aims to address the limitations and inefficiencies of the previous system, widening the objective and subjective scope of application of collective redress and improving the design of collective action. It consists of a 'new' *azione di classe* (Article 840*bis* and following CPC) and a 'new' *azione inibitoria collettiva* (Article 840*sexiesdecies* CPC).

According to Article 840*bis* of the CPC, a non-profit organisation or association registered in a special national registry, whose statutory objectives include the protection of homogenous individual rights, can claim compensation and restitutions from private companies or public bodies for harms caused when carrying out their respective activities. Such a claim can also be brought by each class member. Other subjects can opt-in at several moments during the proceedings (see questions below for a detailed description).

Pursuant to Article 840*sexiesdecies* of the CPC, anyone with an interest in stopping harmful conduct affecting multiple individuals or entities can request an injunction to cease or prevent such conduct. Non-profit organisations or associations focused on protecting the affected interests of multiple individuals whose statutory objectives include the protection of homogenous individual rights can also bring an *azione inibitoria collettiva*, provided that they are listed in the registered under Article 840*bis*(2). This action can be taken against companies or entities managing public services or utilities for actions taken during their activities.

Following the adoption of the RAD, legislative decree **D.lgs. 28/2023** nce again introduced a sector-specific collective redress regime, adding a Title II.1 on 'Representative Actions for the Protection of Consumers' Collective Interests' to the C-CON. Accordingly, qualified entities can bring, nationally or across borders, an *azione rappresentativa* regulated by Art. 140*ter* and following of the C-CON to request (alternatively or in combination), compensatory or injunctive measures for the protection of consumers' interests or reparation for harm to these interests caused by specifically identified wrongs committed by private companies (see below for a detailed description). This instrument applies to wrongs that occurred after 7 May 2023.

In summary, Italy currently offers two alternative venues of collective redress: 1) the general *azione di classe* and *azione inibitoria collettiva*, regulated by the civil procedure code; and 2) the sector-specific azione rappresentativa for reparation and injunctive relief, regulated by the consumer code. Additionally, the old consumer law collective action still applies to wrongs that occurred before the entry into force of the general *azione di* classe.

In addition to those 'proper' forms of collective redress, other procedural mechanisms have the effect of adding a 'collective' dimension to judicial protection, whether civil, criminal, or administrative. They are briefly described below and further referred to throughout the report whenever relevant.

First, individual claims can be aggregated by 'joining' connected claims (e.g. Article 274 CPC), filing civil actions within criminal proceedings (Articles 74-83 Criminal Procedure Code, **Decree 447/1988** - CPP), and combining individual claims (for example the right to compensation arising from a traffic accident) which have been assigned or sold to a specific entity (e.g. a law firm), following Article 1260 of the Civil Code (**r.d. 262/1942** - CC) on the transferability of credits. Although there is no statistical data on such a professional assignment or purchase of claims and the connected 'aggregated' litigation in Italy, there is some evidence of its existence, particularly in the area of antitrust damages.

Second, **D.lgs. 198/2009** established an administrative redress mechanism allowing groups of consumers or their representatives to file petitions with the Administrative Tribunal against violations or omissions by Italian public administrations, including government entities and other public or private bodies providing public services (*Ricorso per l'efficienza delle amministrazioni e dei concessionari di servizi pubblici*). This mechanism covers issues such as breaches of quality standards, lack of supervision or control, or failure to enact administrative measures. While the Tribunal can compel the public administration to rectify the situation, it does not have the authority to award compensation to individual members of the affected class.

Finally, Italian law envisages some venues and forms of representation for the protection of diffuse interests (i.e., interests shared by a broad, often indeterminate group), and for specific categories of individuals, such as workers, through trade union actions.

2. If you answered yes to the previous question, could you give us more information on the perceived efficacy and impact of the collective redress system applicable in your jurisdiction? Is collective redress frequently used in courts?

Despite being a powerful instrument in theory, the *azione inibitoria* under Article 139 of the C-CON proved problematic in terms of its enforcement (as is often the case with claims for injunctions or orders to remedy or eliminate the harmful consequences of violations.).

Likewise, the old *azione di classe* under Article 140bis of the C-CON had limited efficacy, mostly due to its restricted scope of application, strict standing and mandate requirements, and limited participation regime. The efficacy was also affected by the requirement of acting for the protection of 'identical rights' – later substituted by a still not-so-easy-to-prove requirement of protecting 'homogeneous rights', the opt-in mechanism, the short timeframe for joining the action, the high costs associated with the proceedings, and the limited material scope. While there are neither official statistics nor a proper register collecting the claims filed, around 70 actions seem to have been brought, with a surge in cases following the Dieselgate scandals. Many actions were considered inadmissible or not decided on the merits. On this matter, academic studies show how the combination of an opt-in system and general consumer apathy seem to have proven particularly cumbersome for the development of an efficient system of collective redress in Italy.

The Appeal for the efficiency of administrations and providers of public services (*Ricorso per l'efficienza delle amministrazioni e dei concessionari di servizi pubblici*) was scarcely used in practice and rarely resulted in a favourable decision. This was due to several factors. First, the need to objectively and formally identify qualitative and economic benchmarks for assessing the contested violation or omission. Second, the weight given to the administration's (limited) resources in deciding whether the administration should be compelled to rectify the problem. Third, the degree of discretion left to the administration in the rectification phase.

The two regimes introduced in 2019 and 2023 are considered a positive innovation, especially thanks to their broadened scope of application. However, many commentators have highlighted several problems, particularly the new regimes' limited *locus standi* (see answer to question 10). This seems confirmed by the slow start which characterized both actions. According to the data available in the **Official Register**, around 40 actions have been filed, of which approximately one quarter are consumer law claims.

3. Has the RAD been implemented in your jurisdiction? What is its scope of application in your jurisdiction? Does the scope change from the previous regime?

The RAD was implemented by **D.lgs. 28/2023** and resulted in the introduction of a new *azione rappresentativa a tutela degli interessi dei consumatori* (see the answer to question 1), which can be brought to claim both compensatory and injunctive provisions. This new action is alternative to the general collective redress actions (*azione di classe* and *azione inibitoria collettiva*) provided for in the CPC. The latter were not directly modified by the implementation of the RAD.

According to Article 140ter(2), the *azione rappresentativa* can be filed against violations:

- committed by a 'professional' (defined by Article 3(1)(c) C-CON as 'a natural or legal person acting in the exercise of his or her business, trade, craft or profession, or an intermediary thereof');
- of the provisions listed in **Annex II septies** of the C-CON transposing Annex I of the RAD;
- harming, or potentially harming, 'collective consumer interests'.

In practice, defining the material scope of the *azione rappresentativa* is complicated due to the somewhat inaccurate transposition of Annex I of the RAD by the Italian legislator (see answer to question 5), as well as due to the framing of the RAD, also in relation to the difficult definition of 'collective consumer interests' (see answer to question 5).

However, the scope of application of the new *azione rappresentativa* is wider than the old class action under Article 140bis of the C-CON. This action only covered violations of contract law, product/service liability, fair commercial practices, and competition law, committed by professionals or enterprises, harming homogeneous individual rights of consumers and users, whereas the new one includes (as mandated by the Annex I of the RAD) violations related to, for instance, product liability, unfair contractual terms and practices, air carrier liability for passengers and baggage, consumer protection on product pricing, e-commerce, and data protection.

4. Please describe if there are proposals for upcoming legislation on collective redress mechanisms. What is the legal gap that this legislation is trying to address and what is the intended scope?

There are no proposals for upcoming legislation.

5. Are there any references to personal data and/or digital rights regimes in the scope of application of the laws on collective redress? If so, please describe this regime and how it is embedded in the law.

The collective redress actions in the CPC have general application and can theoretically be used to challenge violations of all personal data/ digital rights.

The consumer-specific azione rappresentativa, instead, has a narrower scope of application and requires a violation of the provisions listed in Annex II *septies* of the C-CON which harms the 'collective interests of consumers', many of which may also take the form of violations of personal data/ digital rights. Indeed, Annex II *septies* mentions several provisions related to digital rights, including the national rules implementing the E-privacy Directive (**Directive 2002/58**) and the GDPR. For instance, consumer-specific *azione rappresentativa* may be used by consumer associations willing to file cases connected to the violation of both consumer law and data protection law by the Meta's pay-or-consent model, which is currently under the scrutiny of several national and European regulators, and has been at least partially criticized by the European Data Protection Board in its **opinion 8/2024**.

However, as mentioned in answer to question 3, the transposition of Annex I of the RAD into Italian law has not been without problems. In particular, the national law refers to violations of **D.lgs. 101/2018** (which amends the Italian Privacy Code in light of the GDPR) rather than the GDPR itself, as is the case in Annex I of the RAD. To avoid inconsistency with the RAD, Annex II *septies* should either be amended to explicitly include the GDPR or be interpreted broadly to encompass it. This issue could arise in domestic cases where a judge may be asked either to interpret national provisions in a manner consistent with EU law or to disregard national provisions that are found to be in conflict with Annex I of the RAD.

As for the inclusion of digital rights in the 'collective interest of consumers', Italian law reflects the formulation of Article 3 of the RAD, which defines the collective interest of consumers as 'the general interest of consumers and, in particular for the purposes of redress measures, the interests of a group of consumers'. Proposals at the national and European levels suggest that the 'collective interest of consumers' should be interpreted to include data protection and group privacy.

6. Please provide a brief overview of digital rights collective redress cases and case law in your jurisdiction, if any. If there are none, please give us an overview of any perceived challenges in bringing these collective redress cases to national courts.

The actions brought under the old regime in Article 140bis of the C-CON did not cover cases with a strong ‘digital’ dimension. A notable exception is the action initiated by *Altroconsumo*, together with other European consumer associations, against Facebook in the aftermath of the Cambridge Analytica scandal. The claim was settled and established a triannual partnership with Facebook for the improvement of users’ protection. The new systems show, at the present time, a similar trend of not covering cases with a strong digital dimension. Notable exceptions are the cases *Verbraucherzentrale Südtirol v Nexi* (for the violation of the requirement to carry out two-factors costumers authentication, pursuant to the European Payment Services Directive, which allegedly led to phishing practices; case was settled), *Colferai v Binance* (for the violation of the relevant regulatory standards; case dismissed for lack of jurisdiction), and *NIdiL CGIL v Uber Eats* (for the decision to discontinue its service in Italy; case is pending).

7. Please describe the participation regimes in the collective redress system in your jurisdiction. How has the participation regime been modified (if at all) by the implementation of the RAD directive?

The 'old' *azione di classe* (Article 140*bis* C-CON, repealed), required the consumer or consumer association to have a mandate and opt-in was allowed only within the strict timeframe set by the judge after the admissibility order, which the claimant had then to advertise in national newspapers. With the introduction of the general *azione di classe* (Article 840*bis* CPC) and the consumer-specific *azione rappresentativa* (Article 140*ter* C-CON), the participation regime has been simplified and made more accessible. Participation to the consumer-specific collective action has also been made cheaper, since claimants are no longer required to advertise the admissibility decision in the public media (a requirement which had proven extremely costly in the past) and can now choose freely how to advertise the collective action (which, in any case, is additional to the publication in the national telematic portal).

Both actions are still based on an opt-in system, but qualified entities can file claims without prior mandate.

For the general *azione di classe*, the process for joining the class is described by Article 840*quinquies* and *septies* of the CPC.

Class members may opt-in within the court-established timeframe (between 60 and 150 days), following (i) the publication of the admissibility ruling, or (ii) the decision on the merits. Class members can join an action through the Ministry's online portal. In order to do so, individuals must verify their identity by providing personal details, including a certified email, the claim details (i.e. the object and justifying facts), the evidence presented (if any), an IBAN, the redress sought, and a declaration of truthfulness. The individual must furthermore confer power of attorney to a class representative and pay the required financial contribution set by the judge in the admissibility decision (Article 840*sexies* CPC). Joining the class has the same effect as filing a claim and can be done without a lawyer's aid. Members of the class can digitally access claim documentation and manage specific actions, including submitting integrations and observations, revoking power of attorney, agreeing to or contesting settlement agreements, and revoking the representative's power to sign agreements post-judgment.

These provisions can also be used to regulate the adhesion procedure of the consumer-specific *azione rappresentativa*, as long as the rules prescrived therein prove compatible with the requirements imposed by RAD (Articles 140*novies* C-CON, which states that, when compensatory orders are requested, Articles 840*quater* to 840*terdecies* and 840*quinquiesdecies* should be used as long as they do not contradict Article 140-*septies*). In other words, the judge will adjudicate on a case-by-case basis whether the general collective action rules may integrate with or otherwise complement the RAD rules.

There is no formal participation regime for injunctive actions, both in the general and in the consumer specific regime. If the injunction is successful, it benefits all subjects affected by the contested practice.

8. How are consumers informed about ongoing collective redress actions in your jurisdiction? Is there a national registry for collective redress cases? If so, what information is available there?

Collective redress actions are published in the **Official Register**, and, for the consumer specific *azione rappresentativa* information is also published on the webpage of the ***Ministero delle Imprese e del Made in Italy***. Claimants further advertise the actions brought to encourage opt-in.

9. Please briefly describe the rules identifying the court or the authority in charge of handling the collective redress action.

All collective redress actions (*azione di classe, azione inibitoria collettiva, azione rappresentativa*) must be filed before the court where the respondent's headquarters are located (Article 840*ter*(1) and Article 840*sexiesdecies*(3) CPC, as well as 140*septies*(4) C-CON).

If the respondent has no legal headquarters in Italy but operates there, jurisdiction is determined by **Regulation 1215/2012**, and Italian jurisdiction applies if the violation took place in Italy.

10. Is the applicable collective redress mechanism regulated as a civil procedure process, as an administrative procedure one, or as a 'hybrid', 'parallel' procedure conducted both before civil courts and before a public administrative body? Is there a specialised court set up for the purpose of handling national collective redress actions? What was the motivation in making the choice between these different implementation pathways?

All collective actions under the general and consumer-specific regimes are regulated as civil procedures. Competence is given to the *sezione specializzata in materia di impresa* of the territorially competent tribunal. However, in both collective redress actions , the court may suspend the judgment when there is an ongoing investigation before an independent authority or a proceeding before the administrative judge regarding the relevant facts of the decision (Article 840*ter*(3) CPC and 140*septies*(7) C-CON). This does not affect the specific rules in **D.lgs. 3/2017** regarding compensation for a violation of EU antitrust law. In that case, a final decision by national competition authorities or appeal courts in the EU serves as evidence against the defendant, and the investigation suspends the limitation period.

11. Please describe the legal standing rules in your jurisdiction for collective redress litigation. Who is entitled to bring such a case to the courts? What are the criteria for admissibility of collective redress cases in your jurisdiction?

The general *azione di classe* under the CPC may be filed by class members or non-profit organisations or associations. The organisation or association must be registered in the Ministry of Justice's public list, and their statutory objectives must include protecting the individual homogeneous rights concerned (Article 840*bis* CPC).

The *azione inibitoria collettiva* can be brought by any person who has an interest in stopping unlawful conducts when they are detrimental to multiple individuals or entities, or by non-profit organisations or associations registered in the abovementioned public list. The organisation or association must have as a statutory objective the protection of interests adversely affected by the detrimental conduct (Article 840*sexiesdecies* CPC).

In line with newly introduced Article 196*ter* of the implementing provisions of the CPC (r.d. **1386/1941**), Ministerial Decree **27/2022** (DM 27/2022) established a list of associations and organisations eligible to be included in the Ministry of Justice's public list.

Pursuant to Article 2 of DM 27/2022, the list includes the nationally representative consumer and user associations that, at the time of the entry into force of DM 27/2022, were already registered under Article 137 of the C-CON. Other than those, the definition made by Article 1(2)(c) of the DM of 'associations' as those identified in Article 4 of **D.lgs. 117/2017** (Code of the Third Sector) whose statutory objectives include protecting homogeneous individual rights, thus de facto making only those organizations eligible to be included in the register, in addition to the consumer and users associations already registered under Article 137 of the C-CON. Moreover, according to Article 3 of DM 27/2022, an eligible organisation must: (a) have been established for at least two years before applying; (b) be based in Italy or an EU Member State; c) have the (non-exclusive) objective the not-for-profit protection of homogeneous individual rights; d) operate democratically with annual member meetings; e) have continuous, adequate, and stable statutory activities; f) collect funding according to the Code of the Third Sector; g) ensure the honourability of members, directors, or representatives in accordance with Article 13 of **d.lgs. 58/1998**; and h) ensure administrative and accounting transparency, including the annual publication of audited financial statements.

Such restrictive provisions–especially the references to the Code of Third Sector–significantly limit the list of claimants.

The DM was challenged by the trade unions–who were *de facto* excluded from the list–before the Lazio Regional Administrative Tribunal. The Tribunal annulled Article 1(2)(c) and 3(1)(f) of DM 27/2022. It held that the provisions were unreasonable and unjustified, that they contradicted the law's intent to expand collective action rights, and that they created irrational disparities with consumer associations, which did not need to be third-sector entities.

The list of associations and organisations is available on the **Ministry website**. At the time of writing, the list does not include entities specialised in digital rights.

As a result of implementing the RAD, different rules apply for the consumer-specific *azioni rappresentative* (see also answer to question 12).

Entities that can qualify to bring national actions are consumer associations listed in the register referred to in Article 137 of the C-CON and independent national public bodies referred to in Article 3, n. 6, of **Regulation 2917/2394** (Article 140*quater* C-CON).

The criteria for registration in the Register provided for Article 137 C-CON are quite stringent, even for Italian associations. In particular, associations must have been established through a public deed or authenticated private agreement for at least three years, and have a democratic structure with a non-profit purpose centred on consumer protection. The association is required to maintain an updated list of members, recording annual fee payments related to statutory purposes. It must represent at least 0.5 per thousand of the national population, be active in at least five regions or autonomous provinces, with no less than 0.2 per thousand of the population in each area, certified by its legal representative. Additionally, it needs to prepare an annual financial report and keep accounting records in accordance with regulations for unrecognized associations. Continuous activity over the previous three years is necessary, and its legal representatives must not have any final convictions related to the association's activities or hold positions in production or service companies within the same sectors. Finally, consumer and user associations are prohibited from engaging in promotional or commercial advertising for third-party goods or services, and they must avoid any conflicts of interest with production or distribution companies.

12. What about cross-border cases?

With the general *azione di classe* and the *azione inibitoria collettiva*, the CPC does not regulate cross-border cases, which instead follow ordinary rules of private international law.

By contrast, for the consumer specific *azione rappresentativa* the C-CON provides that cross-border actions may be brought before an Italian court by qualified entities listed in the Commission's official registry (Article 140*quater* C-CON) or before a foreign court by entities listed in a specialised section of Article 137 of the C-CON (Article 140*quinquies* C-CON). To be listed, associations must meet specific criteria: they must be established by a public deed or authenticated private agreement, demonstrate actual public activity in protecting consumer interests in the twelve months prior to the court action, have a statute aimed at consumer protection without profit purposes, not be subject to insolvency proceedings, include in their statute rules ensuring the association's independence, provide for a supervisory body, and publish their statute and information about their activities and funding sources on their website. Independent national public bodies can also be authorised to bring collective actions. The Minister of Enterprises and Made in Italy is tasked with publicising this section, communicating the list to the Commission, and managing the procedures for registration and verification (Article 140*sexies* C-CON).

The specialised section established by Article 140*quinquies* is regulated by a Ministerial Decree (**DM 26/2023**). This decree also identifies procedures for registration requests, verification, cancellations, and communication regarding authorisation for national representative actions. Special section registration forms for associations, entities, and independent public bodies are available at the following **link**.

Access to the Article 137 of the C-CON special section is straightforward for nationally qualified entities. By contrast, foreign associations may face practical challenges.

13. In the collective redress system in your jurisdiction, are there any specific mechanisms introduced to protect the position of the defendant, such as the obligation described in Recital 41 and Article 8(4) of the RAD? If applicable, please describe the obligation for a qualified entity that intends to bring a representative action for injunctive measures to undertake a prior consultation in order to give the trader concerned an opportunity to bring the infringement that would be the subject of the representative action to an end.

The domestic implementation of the RAD does not create an obligation to notify the defendant prior to bringing a collective redress action. By contrast, when an injunctive action is brought, prior notification is required (Article 140*octies*(8) C-CON). The qualified entity bringing the claim must request, by registered letter with acknowledgement of receipt, or by certified electronic mail or other qualified certified electronic delivery service, the cessation of the harmful behaviour affecting the interests of consumers and users. An action can only be brought 15 days after this request to the defendant has been communicated.

14. Please describe the damages and available remedies in your jurisdiction as well as how these are regulated. Are there any remedies that go beyond compensating the harmed parties or stopping the unlawful practice, such as the introduction of unjust enrichment into the scope of damages as a deterrence factor? Please state any changes in the regime after the RAD implementation.

Under the general collective redress regime, different actions can be used to request different remedies.

The *azione di classe* can be used to request liability determination, damages, and restitution. These remedies are governed by the general civil code rules (Articles 840*bis*, 840*sexies*, 840*octies*(5) CPC).

The *azione inibitoria collettiva* can be used to request the cessation or prevention of harmful conduct affecting multiple individuals (Article 840*sexiesdecies* CPC). In addition, the court may, upon the request of a party or the public prosecutor, impose fines for non-compliance pursuant to Article 614*bis* of the CPC, (even beyond the usual scope of application of Article 614*bis* of the CPC, as expressly stated by Article 840*sexiesdecies* CPC), order the defendant to eliminate or reduce the effects of the violations, and order the public dissemination of decisions.

Using the consumer-specific azione rappresentativa, qualified entities may request the imposition of injunctive measures in line with Article 140*octies* of the C-CON, and/or compensatory measures in line with Article 140*novies* of the C-CON. When granting an injunctive measure, the court may order the cessation or prohibition of a practice violating Annex II *septies*, and/or mandate the publication of the order or a rectification in newspapers as a corrective measure

For urgent cases, an interim injunctive measure may be issued.

When the court decide on the injunction, it sets a compliance deadline and can impose fines of between 1,000 to 5,000 euros per non-compliance or day of delay. Additionally, the court may order the defendant to eliminate or reduce the violation's effects and require publication of the decision within a set timeframe.

Under Article 140*ter*(1)(h) of the C-CON, a compensatory measure aims at remedying the injury suffered by the consumer, including through the payment of a sum of money, repair, replacement, price reduction, termination of the contract, or refund of the price paid, as provided for in the provisions of Annex II *septies*.

The wording of the provision creates doubt as to whether the only available remedies are those provided for in the legislative acts mentioned in Annex II *septies*, or whether it is possible to rely on all general civil law remedies. The question becomes relevant when there is a violation of an act listed in Annex-II *septies*, but the remedies for a violation of this type are governed by the general national rules, e.g., on restitution and damages. In the literature, it is argued that national legislation should allow actions to be based both on a legislative act listed in Annex II *septies* and on the general national rules on remedies. This approach ensures the effectiveness of collective redress actions and maintains consistency with EU law.

For what is not specified in the various collective redress actions, the available remedies depend on the applicable substantive law (e.g. consumer law, general civil law).

Under Italian law, liability is primarily governed by the Civil Code along with special provisions regulating specific types of liability (such as product liability, regulated in the C-CON).

Under contract law, the injured party may request specific performance and compensation for direct losses caused by the breach of contract (Article 1218 CC). Damages are compensatory, aiming to put the injured party in the position they would have been in had the contract been performed (Articles 1223 to 1229 CC).

Under tort law, anyone who causes unjust damage to another, intentionally or negligently, must compensate the injured party (Article 2043 CC). In certain cases, strict or semi-strict liability is also envisaged. Compensation aims to restore the injured party to the position they were in before the damage occurred, and covers both material and non-material damage. The latter, however, are recoverable only in cases of criminal offences, violations of a legal provision which specifically allows for their recovery, or when a constitutionally protected right has been infringed (Article 2059 CC).

Punitive damages are not allowed. They may exceptionally be awarded through the application of foreign law, but not if this would lead to a violation of public order.

In line with standard evidentiary rules, the claimant must prove the facts underlying their claim (Article 2697 CC). As such, claimants in contractual and tortious actions must demonstrate the wrong and the damage suffered–including its economic quantification–as well as the causal link between the two. However, under Article 1218 of the CC, a defendant is liable for not fulfilling an obligation unless they can show the failure was due to reasons beyond their control. This means that the claimant only needs to prove the wrong and the resulting damage; they do not need to prove the defendant's failure or intent, these are presumed, hence Article 1218 simplifies the claimant's task by focusing on proving the connection between the breach and the financial harm. On the contrary, in torts, generally, claimants must prove the fault of the wrongdoer.

Both in tortious and contractual liability cases, the judge can grant 'equitable' damages where it has been demonstrated that damage occurred, but it is impossible to accurately quantify it (Article 1226 CC, recalled by Article 2056 CC).

In the Italian collective redress system, the court has significant discretion in gathering evidence and can determine the defendant's liability using statistical data and rebuttable presumptions. At the claimant's request, the court can require the defendant to present evidence supporting the claim. The court must specify which evidence or categories of evidence need to be disclosed. If the evidence involves confidential information or documents, the court can implement measures to protect this confidentiality. Such measures may include non-disclosure agreements, redacting confidential parts of documents, holding closed hearings, and restricting document access. Non-compliance with the court's disclosure order can result in a fine ranging from 10,000 to 100,000 euros (Articles 840*quinquies*(4) and 840*sexiesdecies*(5) CPC; Articles 140*octies*(3) and 140-*novies*(2) C-CON)

With respect to unjust enrichment, Article 2041 of the CC stipulates that anyone who unjustly enriches themselves at another's expense must compensate for the resulting loss. Unlike actions focused on the disgorgement of profits (available in some common law jurisdictions), redress in an unjust enrichment action is calculated with reference to the enrichment of the defendant and the impoverishment of the claimant. For instance, the unjust enrichment action could theoretically be used to by data subjects whose data have been unlawfully processed to claim against the data controller. However, to succeed, they would need to prove that their data constituted a profitable economic resource and that the unauthorised use caused them financial harm.

Unjust enrichment is a general and residual action, applicable when no other legal remedy is available (Article 2042 CC). The precise definition of what constitutes 'residual', and whether the action is available when there are concurrent contractual or tortious claims, is still debated. This issue has recently been brought before the Grand Chamber of the Supreme Court, which may provide further guidance on the application of this remedy, including in the context of digital rights.

15. What do you see as the main issues or challenges when bringing efficient collective redress cases related to digital rights? (E.g. Public awareness on digital rights, quantification of damages, evidence gathering, costs, CSOs not obtaining qualified entity status, cross-border collaborations, etc.)

The major challenges and issues facing an effective collective redress system in digital rights are: the opt-in mechanism (see question 2), the apathy of consumers and legal subjects (see question 2), the limited and complex legal standing rules (see question 11), the narrow scope of application of the implementation of the RAD (see question 5), the difficulty in proving the existence and quantification of–especially non-material–damages (see question 14), the unclear role of statistical data for evidentiary purposes (see question 14), and the high costs of proceedings coupled with the limited possibility to rely on third-party funding (**see question 16**).

16. Please describe the funding regimes available in your jurisdiction to bring collective redress actions. What about provisions on funding of the representative actions by funders who are not party to these actions (i.e. third-party funding)?

In Italy, proceedings are lengthy and costly. The loser pays principle applies. Contingency fees for lawyers are prohibited.

Individuals with annual incomes below 12,838.01 euros in 2024 can access public litigation funding (Article 119 of Presidential Decree **D.p.r. 2002/115**). Aid is also available to non-profit organisations or associations not engaging in economic activities if they fall below the income limits and can demonstrate that their claims are not manifestly unfounded. In deciding on eligibility for aid, administrative judges consider various factors beyond what would strictly be defined as 'income' (e.g. assets, membership fees, and extraordinary contributions). Given the current standing requirements (see answer to question 10), associations able to bring collective actions are unlikely to qualify for legal aid.

The Italian system of collective redress has only limited provisions on funding, and these often concern broader questions of costs, fees, remuneration, admissibility, and legal standing.

In the general *azione di classe*, members of the class contribute with a court-determined amount to cover litigation expenses, although the management of these contributions remains uncertain. The judge may order the defendant to pay a fee to the collective representative of the class, calculated as a percentage of the total amount owed to all class members. The percentage varies depending on the number of class members (from 9% for 1-500 members, to 0.5% for over 1,000,000 members), can be adjusted up to 50% of the amounts provided (Article 840*novies* CPC). The appointed judge also orders the respondent to pay the attorney who represented the petitioner an additional amount as a bonus fee, calculated according to the same criteria identified for the fee in favour of the representative of the class.

An action is inadmissible if the claimant has a conflict of interest with the defendant (Article 840*ter*(4) CPC).

Financing is not regulated in the consumer-specific *azione rappresentativa*, with only indirect references connected to standing requirements. For instance, consumer and user associations are prohibited from engaging in commercial promotion or advertising activities related to goods or services produced by third parties, and from having any connection to production or distribution enterprises (Article 137(3) C-CON). In addition, claims are deemed inadmissible if there is a conflict of interest, especially if the entity financing the action is a competitor of, or dependent on, the defendant (Article140*septies*(8)(e) C-CON). The court must raise this issue *ex officio* and provide the claimant with a deadline to reject or modify the financing. These rules align with Article 4(3)(e) of the RAD on the independence of qualified entities.

The market for third-party collective action funding is underdeveloped. This is due, at least in part, to the legal uncertainties around these funding contracts. While they are allowed in principle, they are mostly unregulated and are disincentivised by the prohibition on contingency fees, the length of Italian court proceedings, and the absence of a principle of *stare decisis*, which make it difficult to predict the costs and outcome of proceedings.

17. Are there any restrictions in bringing collective redress claims in your jurisdiction in general? How are the admissibility requirements for collective claims interpreted based on case law in your jurisdiction? Who is assessing these requirements?

In the *azione di classe*, the admissibility phase involves a summary assessment based on the parties' statements and an oral hearing to be held within 30 days. Actions are declared inadmissible (possibly requiring the claimant to cover fees and costs) if: **a)** the claim is manifestly unfounded, **b)** the rights claimed are not homogenous, **c)** the representative has a conflict of interest with the defendant, or **d)** the representative appears incapable of adequately protecting the individual rights of the members of the class (840*ter* CPC).

The admissibility decision can be appealed to the Court of Appeal, but an appeal against a decision in favour of admissibility does not halt the proceedings.

With regard to consumer-specific *azione rappresentativa*, the claim is inadmissible when: **a)** it is manifestly unfounded, **b)** it lacks the necessary information to identify the group of consumers affected by the action, **c)** the court does not consider that the individual rights for which the compensatory measures under Article 140*novies* are homogenous; **d)** the claimant does not meet the standing requirements, **e)** there is a conflict of interest, or **f)** the qualified entity's statutory purpose does not justify the exercise of the action (Article 140*septies* C-CON). An allegation of conflict of interest will be particularly relevant if it appears that the entity funding the action is a competitor of the defendant or dependent on the defendant (in this case, the judge raises the issue *ex officio* and gives the claimant a deadline to reject or modify the funding).

18. How are redress measures executed in your jurisdiction for any enforcement of injunctions? What if the injunction has to do with software modification. Who does it then?

The general collective redress procedure provides for measures to deal with non-compliance (**see answer** to question 14).

According to Article 140*terdecies* of the C-CON, when the judge renders a decision in line with Article 140*octies* of the C-CON, the judge shall set a deadline for the fulfilment of the decision. The court, also in case of request of the claimant, can order the payment of sums for non-compliance ranging from 1,000 to 5,000 euros for each breach or day of delay, proportionate to the seriousness of the offence. These funds are paid into a specific chapter of the State's budget (50% to the Ministry of Justice for strengthening offices and institutional services, and 50% to the Ministry of Enterprises and Made in Italy for improving the activities of the section established by Article 140*quinquies*).

These provisions are an implementation of the RAD.

There is discussion surrounding the possibility for a judge to order software modifications. Both the general actions for injunctive relief and the injunctive relief action brought in when the RAD was implemented allow a judge to order a defendant to eliminate or reduce the effect of a violation (**see answer** to question 14). Software modification would constitute a typical 'obligation to act', and therefore the provisions on the enforcement of obligations to act under Article 2931 of the CC seem applicable. In this case, a petition would be made to an enforcement judge (Article 612 CPC).

It is moreover worth noting that **Council of State decision 2270/2019** ruled that software used by the Public Administration for taking administrative decisions must be 1) transparent with regard to its authors, the procedures used for its creation, and the decision mechanism; and 2) be subject to judicial review, including its informatic rules.

19. How long do claimants have to come forward and receive a portion of damages? How are funds (re)distributed when consumers show little interest in compensation, especially when it is too small and the process connected with applying for a refund is not worthwhile?

The timeframe during which individuals can join a collective redress action is between 60 and 150 days following the publication of the admissibility ruling, or 60 and 150 days following the decision on the merit (Article 840*quinquies* and 840*sexies* CPC). Individuals with homogeneous rights can join the action by paying any required contributions (whose payment is a condition for the validity of the adhesion according to Article 840*septies* CPC). A delegated judge and a collective representative for the class members oversee this process. Once the timeframe for joining the collective action ends, the liquidation procedure starts. The defendant presents its defence arguments, with uncontested facts considered proven. Subsequently, the collective representative, possibly with expert assistance, prepares a report detailing the individual rights of the class members, addressing any contradictory facts, and complying with the burden of proof principles. Both parties can submit written observations and documentary evidence. The collective representative then finalises the report and files it electronically. The delegated judge reviews the report and issues a decision to accept or reject it. If accepted, the decree becomes final and enforceable, and the defendant must pay the specified amounts due to each member of the class (**see answer** to question 20) (Article 840*octies*).

20. Who administers the pay out (e.g. is it given in bulk to the lawyers who represent the class who then pay them out or each claimant needs to approach a State administration department?)

When the defendant voluntarily pays the amounts established by the decree under Article 840*octies*(5) of the CPC, the sums are deposited into a bank or postal account held in the procedure's name and subject to the court's order. The collective representative promptly submits a distribution plan, and the delegated judge orders the payment of the amounts due to each class member (840*duodecies* CPC). If the defendant does not comply voluntarily, the collective representative initiates a procedure to enforce the decree and handles all related actions, including opposition proceedings. Only the collective representative can enforce the action, not the other parties (840*terdecies* CPC).

21. How do they ensure that all members of the class receive any damages amount. What about if it is an opt-out class?

See the answers to questions 19 and 20.

Moreover, according to Article 840*quinquiesdecies*, the adhesion procedure closes when:

a) the distributions made to participants by the common representative fully satisfy their claims; **b)** it becomes evident during the procedure that it is not possible to reasonably meet participants' claims, considering the necessary costs.

After the adhesion procedure closes, participants regain the right to pursue their claims against the debtor for the unsatisfied portion of their credits.

22. Please describe any enforcement practices of collective redress decisions in your jurisdiction that you have not described above.

Not applicable.

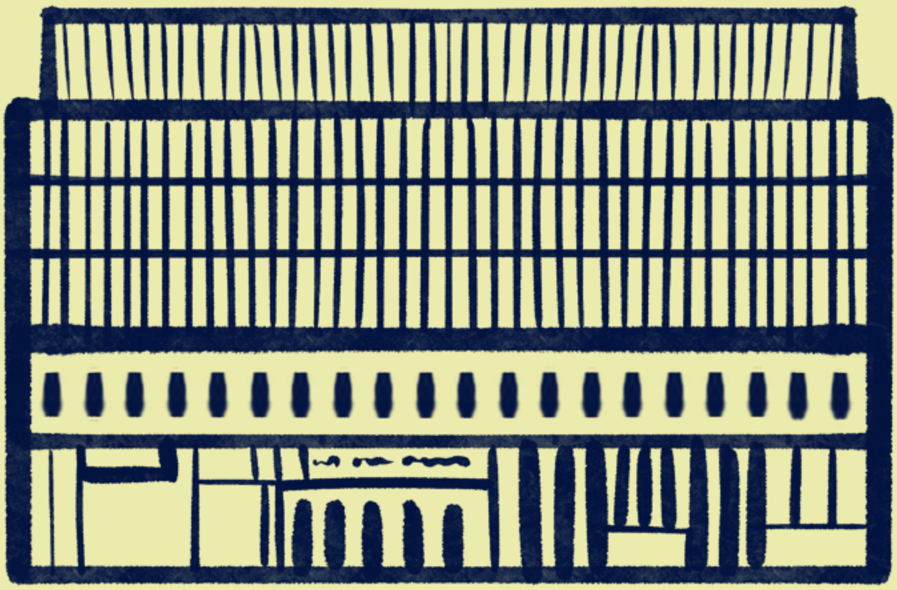
23. Has your jurisdiction witnessed past or present collective litigation in the field of personal data and/or digital rights violations? If so, identify as much as possible the relevant cases and/or describe the trend: is there significant litigation? Are there any particular issues that slow down/obstruct the redress in any stage of the proceeding (e.g. from the admissibility to the calculation of damages)

See the answer to question 6.

24. Is there anything that characterizes those proceedings that has not been asked so far?

No.

NETHERLANDS



1. Does your country have a pre-existing collective redress system? If yes, what is the scope of application of this law? What were the reasons leading to its development?

The Netherlands has a pre-existing collective redress system. The legal framework for this system is set out in the Act on the Resolution of Mass Claims in Collective Action (**WAMCA**), which came into effect on 1 January 2020. The development of the WAMCA was driven by the need to address the increasing complexity and volume of collective claims, particularly those involving large groups of individuals affected by similar issues (such as consumer law cases). WAMCA aims to enhance efficiency in handling collective claims and to improve access to justice for individuals who might otherwise find it difficult to pursue individual claims.

The WAMCA permits collective redress for a wide range of claims, including damages, declaratory judgments, and injunctive relief. These claims encompass a considerable number of areas, including consumer protection, competition law, environmental protection, and, notably, data protection under the GDPR. The WAMCA represents the third significant advancement in the field of collective redress, following the Act on Collective Actions (WCA, 1994) and Act on Settlement of Mass Claims (**WCAM**, (2005). The WCA was the earliest form of collective redress in the Netherlands, allowing organisations to initiate collective actions on behalf of groups of individuals. This law primarily provided for declaratory judgments and injunctive relief and did not allow claims for monetary compensation. The WCAM introduced a mechanism for the collective settlement of mass damages, which could, with court approval, become binding on all affected parties unless they opted out.

When the WAMCA was drafted, lawmakers recognised that the strict requirements outlined in Article 3:305a of the Civil Code (DCC) could be excessively burdensome for interest groups pursuing legal action with an idealistic objective. Consequently, a new paragraph 6 was added to Article 3:305a of the DCC, granting judges discretionary power to provide a partial exemption from the admissibility requirements. However, interest groups with idealistic purposes must still comply with the representativeness requirement, have a non-profit purpose, and adhere to the scope rule (see answer to question 6 below for further explanation of the scope rule). Monetary damages cannot be claimed under this lighter regime. In February 2023, a motion was passed which called for an exploration of the whether further requirements for representativeness should be set for interest groups with an idealistic purpose (**Parliamentary documents II 2022/23, 36169, nr. 37**), but no changes have been made so far.

S1. **Object of the Law**

2. If you answered yes to the previous question, could you give us more information on the perceived efficacy and impact of the collective redress system applicable in your jurisdiction? Is collective redress frequently used in courts?

The number of collective redress actions has increased significantly in recent years, particularly since the introduction of the WAMCA in 2020. The collective redress system has been employed to address a diverse range of issues, including data privacy concerns (e.g. The Privacy Collective vs. Oracle and Salesforce; see question 6 below for an overview), consumer rights violations (e.g. the diesel emissions scandal), and financial disputes (e.g. investment product mis-selling). The **central registry of collective claims** shows a steady rise in the number of completed and ongoing cases. The involvement of commercial litigation funders is one of the factors contributing to this increase.

Nevertheless, significant obstacles remain, particularly in meeting the representation and governance criteria and in securing adequate funding. The preliminary court proceedings, which assess the admissibility of claims, can be lengthy and complex. This can slow down the resolution of cases and impose significant burdens on claimant organisations. Furthermore, calculating damages, especially for non-material harm, remains a complicated and unresolved issue and can have an impact on the possibility of bundling claims (see e.g. the TikTok case listed below).

3. Has the RAD been implemented in your jurisdiction? What is its scope of application in your jurisdiction? Does the scope change from the previous regime?

The RAD has been implemented in the Netherlands. This was done through the ***Implementatiewet Richtlijn Representatieve Vorderingen voor Consumenten***, which primarily incorporated the RAD into the existing WAMCA framework. Because the Netherlands already had a generally available collective redress procedure in the WAMCA, the Netherlands did not need to create new legislation to implement the Directive. The WAMCA regime is also meant for, but not limited to, consumers, and meets most of the requirements of the RAD. Only where the RAD has additional rules for claims falling within its scope was an adjustment of the WAMCA necessary. There were only a few special rules that required a relatively limited adjustment of Dutch law.

Compared to the previous regime, the scope of collective redress has not changed significantly. One notable change is the prohibition on the application of an opt-out regime to consumer claimants residing outside of the Netherlands (Article 1018f(6) Code of Civil Procedure - DCCP). The WAMCA does allow an opt-out regime to be applied to foreign claimants, but not by default and only with court approval (Article 1018f(5) DCCP).

Another difference is that the RAD works with a list of qualified representative organisations, whereas the WAMCA only works with general (though rather strict) admissibility criteria in each case. The requirements that organisations must meet under the Directive are almost the same as the requirements that organisations must meet under the WAMCA.

Therefore, the Netherlands can apply the WAMCA's requirements to Dutch organisations that want to be on the list of qualified representative organisations. The additional requirements imposed by the RAD have now been implemented in Dutch law, including provisions for transparent communication about collective claims. Another change is that the Netherlands must now accept the standing of foreign organisations included in the RAD's list and cannot subject them to the WAMCA requirements.

A further small modification that resulted from the implementation of the RAD is that the rules on third party litigation funding are now somewhat more detailed than in the pre-existing regime under the WAMCA.

4. Please describe if there are proposals for upcoming legislation on collective redress mechanisms. What is the legal gap that this legislation is trying to address and what is the intended scope?

There are currently no specific proposals for new legislation on collective redress mechanisms, beyond the recent implementation of the RAD. However, an interim evaluation of the WAMCA (including in legal scholarship) has prompted debate about fine-tuning the existing WAMCA framework. The debated possible changes would address the practical challenges that have arisen during the WAMCA's first years of operation. Examples of such practical challenges include improving access to funding for claimant organisations and clarifying representation requirements to streamline the admissibility phase. There is also a focus on reducing the length of preliminary hearings and improving the efficiency of the judicial process to ensure timely justice for claimants. Furthermore, the current government coalition has expressed the political wish to investigate whether the admissibility requirements for actions with idealistic purposes could be made stricter, but no concrete proposals have been published so far.

5. Are there any references to personal data and/or digital rights regimes in the scope of application of the laws on collective redress? If so, please describe this regime and how it is embedded in the law.

The explanatory memorandum that accompanies the implementation of the RAD underscores that the GDPR is listed in Annex I of the Directive. As the memorandum states, the inclusion of the GDPR in Annex I is intended to clarify that collective damages may also be claimed for violations of the GDPR (with reference to Article 82 GDPR). With this, it seems clear that Article 80 of the GDPR does not stand in the way of collective damages claims (although there is still some discussion on this). The Dutch act implementing the GDPR (***Uitvoeringswet Algemene Verordening Gegevensbescherming***), stipulates that the data subject can object to representation in collective and administrative proceedings (Article 37), which in practice would amount to an opt-out.

6. Please provide a brief overview of digital rights collective redress cases and case law in your jurisdiction, if any. If there are none, please give us an overview of any perceived challenges in bringing these collective redress cases to national courts.

Of the 10 WAMCA cases about the GDPR currently pending, five cases concern litigation against big-tech companies for the unlawful commercial use of data (advertising, surveillance of users, predicting behaviour, etc.). The cases are against Meta (brought by ***Stichting Onderzoek Marktinformatie*** and **Data Privacy *Stichting***), Google (brought by ***Stichting Privacybelangen*** and ***Stichting Massaschade & Consument***), Twitter (brought by ***Stichting Data Bescherming Nederland***), TikTok (brought by ***Stichting* Take Back your Privacy**, ***Stichting Massaschade & Consument*** and ***Stichting Onderzoek Marktinformatie*** against two (interim) judgments of the Amsterdam District Court) and Amazon (summons of ***Stichting Data Bescherming Nederland***).

Two cases specifically concern litigation against online data management platforms: *Stichting Data Bescherming Nederland v. Adobe Inc. en Adobe Systems Software Irl. Ltd*. (**13-12-2023**) and The Privacy Collective *tegen Oracle en Salesforce* (**28-3-2022**). The predecessor of the latter case, *Collectieve vordering tegen Oracle Nederland B.V., SFDC Netherlands B.V., Oracle Corporation, Oracle America, Inc. en Salesforce. com, Inc.* (**17-8-2020**), resulted in an interim judgment of the Amsterdam Court of Appeal. This interim judgment concerned, *inter alia*, admissibility and was favourable for the claimant.

Two cases concern the sharing of personal health data: *Stichting ICAM tegen de Staat der Nederlanden* (**28-3-2023**) and *Cliënten and beroepsbeoefenaren in de GGZ tegen Nederlandse Zorgautoriteit* (**19-7-2023**). The latter case resulted in an interim judgment of the Midden-Nederland District Court. Most recently, there was a case against an anti-virus and security software provider: *Stichting CUIC tegen Avast Software sro c.s* (**27-3-2024**).

A few cases concerning the GDPR have already been adjudicated (under the WAMCA and/or the previous regime). In *Stichting Expertisebureau Online Kindermisbruik tegen Hammy Media Ltd* and Stop Online Shaming *en Expertisebureau Online Kindermisbruik tegen vagina.nl*, the district courts ruled that the defendants must be able to demonstrate that individuals who can be recognised in the images or footage published on the websites have given their consent. In *Stichting* Privacy First *tegen de Staat der Nederlanden*, the district court rejected a claim regarding the UBO-register, and in *Collectieve vordering tegen Stichting Slachtoffers Iatrogene Nalatigheid Nederland (zwartelijstartsen.com)*, the district court ruled that the website's practice of blacklisting doctors was unlawful and violated the GDPR.

In addition, a number of other collective actions are currently in progress that address a range of digital rights issues in a general sense. Two cases concern alleged abuse of a dominant position on the distribution services market: *Stichting* Right to Consumer Justice / *Stichting Consumenten* Competition Claims / *Stichting* App Stores Claims against *Apple c.s*. (4-10-2021) (which resulted in an interim judgment of the Amsterdam

District Court) and *Collectieve vordering* against *Alphabet Inc. en Google LLC c.s.* (**18-10-2022**) (which has resulted in an interim judgment of the Amsterdam District Court). One case concerns intellectual property infringements on an online platform: *Stichting Namaakbestirjding React* against *Sara Mart Limited* e.a. (**27-5-2024**)

7. Please describe the participation regimes in the collective redress system in your jurisdiction. How has the participation regime been modified (if at all) by the implementation of the RAD directive?

The participation regime in the WAMCA is as follows. Only non-profit organisations with adequate governance and financial stability can initiate collective actions. These entities must demonstrate that they represent the group's interests. The criteria for sufficient representativity are not crystal clear. The WAMCA allows actions on opt-out basis (except for foreign claimants, see answer to question 3), but the representative organisation has to demonstrate the support of a significant portion of claimants. What proportion suffices depends on the circumstances of the case. Generalising somewhat, it seems that the smaller the group, the higher the percentage of support that is needed. For a very large group, percentages in the single digits or even below may suffice.

The WAMCA has a system of exclusive representation. If only one organisation initiates the case and meets the criteria, that organisation is appointed as the exclusive representative. If more organisations claim to represent the group, a 'beauty contest' takes place and the court will appoint the most suitable organisation as the exclusive representative. The court can also appoint two or more organisations to act together or appoint different organisations for different parts of the claim. The factors that the court takes into account when appointing an exclusive representative are (per Article 1018e(1) DCCP): the size of the group of persons on whose behalf the claimant acts; the magnitude of the financial interest represented by this group; other activities undertaken by the claimant on behalf of the group members, whether in or out of court; and any previous activities or collective claims brought by the claimant.

The representative organisation must inform the group of the action being brought by publishing information on a website. The information provided on the website should include, but not be limited to, updates on the procedure, transparency on organisation governance, how to join the action, etc. (Article 3:305a(2)(d) DCC).

As detailed above in answer to question 3, the WAMCA regime has not significantly changed as a result of the implementation of the RAD. This applies equally to the participation mechanism. As also detailed above, one change is that in consumer actions the opt-out regime is no longer available for foreign members of the group (Article 1018f(6) DCCP).

8. How are consumers informed about ongoing collective redress actions in your jurisdiction? Is there a national registry for collective redress cases? If so, what information is available there?

The judiciary maintains a **central registry of collective claims**. The main purpose of this digital environment is to provide lawyers, stakeholders, and interested parties with information on collective claims that have been brought. The register contains the details of the parties involved, the nature of the claims, and the current status of each case, enabling interested parties to determine whether they also wish to bring a collective claim for the same event(s).

Consumers are also informed about ongoing collective redress actions through public notices published in widely accessible media such as newspapers, online platforms, and official websites. Opt-in collective actions require consumers to actively register to participate. This can usually be done through an online portal or by submitting a form provided by the claimant organisation. The RAD also facilitates the participation of consumers from other EU Member States in cross-border collective actions. The number of consumers opting in plays a crucial role in demonstrating the representativeness of the claimant organisation. A higher number of participants can strengthen the mandate of the organisation and support the legitimacy of the collective action.

9. Please briefly describe the rules identifying the court or the authority in charge of handling the collective redress action.

District courts have jurisdiction over collective redress cases. There is no specialised court that deals exclusively with collective redress actions; instead, these cases are heard within the general civil court system.

There is a specific rule that, in practice, limits international jurisdiction in collective redress cases, although the rule is disguised as a rule on admissibility. This rule, laid down in Article 3:305a(3)(b) Dutch Civil Code, is known as the 'scope-rule' and stipulates that the international claim must have a sufficiently close connection with the Dutch legal sphere. A sufficiently close connection with the Dutch legal sphere exists when:

1) the legal entity sufficiently demonstrates that the majority of the persons whose interests the legal claim seeks to protect have their habitual residence in the Netherlands; or

2) the person against whom the legal claim is directed has their domicile in the Netherlands, and additional circumstances indicate sufficient connectedness with the Dutch legal sphere; or

3) the event or events to which the legal claim pertains have taken place in the Netherlands.

For settlements under the WCAM, the Amsterdam Court of Appeal plays a significant role in approving collective settlements.

10. Is the applicable collective redress mechanism regulated as a civil procedure process, as an administrative procedure one, or as a 'hybrid', 'parallel' procedure conducted both before civil courts and before a public administrative body? Is there a specialised court set up for the purpose of handling national collective redress actions? What was the motivation in making the choice between these different implementation pathways?

In the Netherlands, collective redress is regulated as a civil procedure under the WAMCA. No specific court exists for the purpose of hearing collective redress actions, and the district courts address these cases as part of their broader civil jurisdiction. The integration of collective redress actions into the civil court system makes use of the existing infrastructure and expertise of the judiciary, thereby ensuring consistency and uniformity in the handling of collective redress actions. This approach avoids the necessity to establish new, specialised courts, which could prove resource intensive.

11. Please describe the legal standing rules in your jurisdiction for collective redress litigation. Who is entitled to bring such a case to the courts? What are the criteria for admissibility of collective redress cases in your jurisdiction?

The admissibility criteria for claimant organisations can be found in both the DCC and the DCCP. Under Article 3:305a**(1)** DCC, an organisation with full legal capacity can bring an action aimed at protecting the interests of other persons as long as it does so in accordance with its articles of association. The rights of the individual claimants in the (sub)groups involved have to be suitable for bundling. The claimant organisation must be sufficiently representative in terms of constituency and the number of the claims represented (Article 3:305a**(2)**), and they must meet certain governance requirements, including the existence of a supervisory body and the availability of sufficient funds (Article 3:305a**(2)(c)**), as well as have sufficient experience and expertise. In addition, the claimant organisation must not have a profit motive, and the legal action must have a sufficiently close connection with the Dutch legal sphere (the 'scope rule' of Article 3:305a sub 3 **(a)** and **(b)**). Finally, before bringing an action, the claimant organisation should consult with the defendant (Article 3:305a sub 3 **(c)**). As discussed above, actions with idealistic purposes enjoy a lighter admissibility regime, but no monetary damages can be claimed in such actions.

12. What about cross-border cases?

Cross-border collective actions are possible and are subject to the general private international law rules on jurisdiction and applicable law. The Brussels I *bis* Regulation is the most important source of law governing jurisdiction in cross-border cases. As discussed above in answer to question 6, the scope rule (Article 3:305a**(3)(b)**) contains a practical limitation on cross-border cases because it requires that the claim have a sufficiently close connection with the Dutch legal sphere.

The Dutch collective redress system provides for an opt-out regime. For foreign members of the represented group, the application of an opt-out regime is not the default but can be approved by the court (Article 1018f**(5)** DCCP). The option to request the application of an opt-out regime for foreign members of the group is not available if the action falls under the scope of the RAD, because the RAD does not allow opt-out regimes for foreign consumers (Article 1018f**(6)** DCC).

13. In the collective redress system in your jurisdiction, are there any specific mechanisms introduced to protect the position of the defendant, such as the obligation described in Recital 41 and Article 8(4) of the RAD? If applicable, please describe the obligation for a qualified entity that intends to bring a representative action for injunctive measures to undertake a prior consultation in order to give the trader concerned an opportunity to bring the infringement that would be the subject of the representative action to an end.

The overarching objective of the WAMCA is to achieve a balance between the interests of aggrieved parties in the realisation of their rights and the interests of defendant parties in protection from unsubstantiated or frivolous collective claims. The criteria identified in answer to question 8 serve to safeguard the rights of the defendant. For instance, as set out in Article 8**(4)** of the RAD and Article 3:305a**(3)(c)** DCC, prior to initiating a collective redress action, the claimant organisation is obliged to consult with the defendant. Furthermore, the court will only consider the merits of a claim if it can be demonstrated that collective action is more efficient and effective than bringing an individual action and that the claim is not evidently without merit (Article 1018c**(5)(b)** and **(c)** DCCP). Finally, claimant organisations must disclose their funding sources and demonstrate financial independence. This is to ensure that defendants are not unfairly pressured by entities driven by profit motives or external financial interests.

14. Please describe the damages and available remedies in your jurisdiction as well as how these are regulated. Are there any remedies that go beyond compensating the harmed parties or stopping the unlawful practice, such as the introduction of unjust enrichment into the scope of damages as a deterrence factor? Please state any changes in the regime after the RAD implementation.

In the Netherlands, the remedies available in collective redress actions include compensatory damages, injunctive relief, declaratory judgment, and constitutive judgment.

Compensatory damages are intended to compensate the harmed parties for both material and non-material damage (Article 6:95**(1)** DCC). Material damage includes losses suffered and foregone profits (Article 6:96**(1)** DCC). Non-material damage, such as emotional distress or loss of privacy, can also be claimed (Article 6:106 DCC) but the possibilities to do so are limited and the compensation is usually relatively low. Following a request by the claimant, the court can calculate the material damages with reference to the profits enjoyed by the liable party in connection with the failure to perform or unlawful act at issue (Article 6:104 DCC).

Courts can issue injunctions to stop unlawful practices and prevent further harm. These may include orders to cease data processing activities and orders to delete unlawfully obtained data.

Declaratory judgments establish the rights and obligations of parties without awarding damages or ordering specific performance. They are often used to clarify legal issues and set precedents for future cases.

A constitutive judgment creates, changes, or terminates a legal relationship. In cases involving the annulment of a (consumer) contract, the court's decision has the effect of terminating the contract and restoring the parties to their positions before the contract was made, insofar as possible. A constitutive judgement can also annul the general terms and conditions of a contract.

Dutch law recognises the concept of unjust enrichment (Article 6:212 DCC), which constitutes a legal ground for a claim. The principle of unjust enrichment seeks to restore fairness by requiring the enriched party to compensate the impoverished party, provided that the enrichment is unjust.

15. What do you see as the main issues or challenges when bringing efficient collective redress cases related to digital rights? (E.g. Public awareness on digital rights, quantification of damages, evidence gathering, costs, CSOs not obtaining qualified entity status, cross-border collaborations, etc.)

The majority of WAMCA cases that concern alleged GDPR violations are still in the admissibility phase, indicating that there is ongoing tension between the WAMCA's objective of enhancing the efficient and effective resolution of collective claims and the need to uphold procedural safeguards that are in place to protect both stakeholders and defendants. Some claimant organisations and lawyers have expressed the view that the preliminary proceedings are too laborious and lengthy.

Another issue is funding. In order to be eligible to bring a claim, the claimant organisation must demonstrate that it has sufficient resources and, in the case of third-party funding, sufficient control over the proceedings. Furthermore, the designation of an exclusive representative presents a challenge for claimant organisations, as it is necessary to demonstrate that they represent a significant constituency of class members. It is questionable whether claimant organisations should compete with each other in this respect. There is a conflict between the need for the effective enforcement of GDPR rights (including the awarding of damages) and the complexity of combining GDPR-based claims, for civil damages, particularly in the case of non-material damage.

Other issues include whether Article 80 of the GDPR presents an obstacle to the implementation of an opt-out collective action for damages, how Article 82 of the GDPR relates to the case law of the Dutch Supreme Court on (the threshold for) non-material damage, and in terms of remedies, whether compensation can be awarded in the form of profit disgorgement and how this should be calculated.

It remains to be seen how future awards or settlements will play out, for example when it comes to contacting stakeholders and distributing damages.

16. Please describe the funding regimes available in your jurisdiction to bring collective redress actions. What about provisions on funding of the representative actions by funders who are not party to these actions (i.e. third-party funding)?

Third party litigation funding is allowed within the Dutch collective action regime, subject to conditions. The litigation funder should not have substantial influence over the procedure and the success fee should not be excessive. In other words, it has to be established that the claimant is sufficiently independent in relation to the litigation funder (and the lawyers working for it) and thus that the interests of the persons the claimant represents are adequately safeguarded. In a judgment in the Salesforce & Oracle case, the Amsterdam Court of Appeal interpreted this requirement lightly and held it was not necessary to review the litigation financing agreement in the early stages of the proceedings because the court did not have any indications that the interests of the litigation funder diverged from the group represented in the case.

The acceptable percentage of compensation that can be paid to the funder as a fee will depend on the amount of compensation awarded and the number of individuals who are expected to claim it. While a percentage point of 25% has been accepted in the case law, depending on the circumstances the limit could be lower or higher. It is justifiable for litigation funders to receive appropriate compensation given the risks they take, but this must be reasonably proportionate to the amount they have financed. In other words, what is acceptable as a percentage depends on the circumstances of the case. In a case against TikTok, the court suggested that the funder should not receive more than five times the investment it made. It is unclear whether this takes account of inflation and the risk-free rate of return in the market, which is relevant because payouts often take many years. The fivefold ceiling is not a general rule.

In situations involving more than one representative organisation, fee payment for litigation funders is complicated. At the admissibility stage, one claimant will be designated as the exclusive representative, and the other claimants may remain as litigants in the claim. There is no experience with how to manage the payment of litigation funders in these cases.

Dutch law before the RAD was already mostly in line with the stipulations of the RAD on litigation funding. The law implementing the RAD made one small change, implemented in Article 3:305a**(2)(f)** of the DCC, which stipulates that, for consumers claims, litigation funding cannot be provided by a competitor of the defendant.

17. Are there any restrictions in bringing collective redress claims in your jurisdiction in general? How are the admissibility requirements for collective claims interpreted based on case law in your jurisdiction? Who is assessing these requirements?

For a comprehensive overview of the admissibility requirements, please **see the answer** to question 8. The district courts are responsible for determining the admissibility of collective claims during preliminary hearings. This process ensures that only well-founded and representative claims proceed to trial. Dutch case law places great emphasis on strict adherence to admissibility criteria.

18. How are redress measures executed in your jurisdiction for any enforcement of injunctions? What if the injunction has to do with software modification. Who does it then?

Courts may appoint independent monitors or experts to oversee the implementation of injunctions and ensure compliance. If an injunction involves software modification, the defendant is responsible for making the necessary changes. Courts may require technical documentation and regular reporting to verify compliance. Courts can appoint third-party experts to audit the modifications and certify that the software meets the requirements specified in the injunction. This ensures that the technical aspects of a decision are properly addressed and that the modifications are effective.

19. How long do claimants have to come forward and receive a portion of damages? How are funds (re)distributed when consumers show little interest in compensation, especially when it is too small and the process connected with applying for a refund is not worthwhile?

The information below is provided in answer to questions 16, 17 and 18, all of which relate to how payouts are distributed.

How damage awards are distributed in collective actions is so far unclear. The WAMCA is relatively new and there have not yet been any large awards for collective damages. There is no detailed statutory arrangement and no case law. The representative organisation will make a proposal and the court will approve, or amend and approve, this proposal.

In the TikTok case, the claimants requested that the compensation be paid to them as a lump sum for them to distribute among the injured parties. They further requested that the court grant them the compensation not claimed by the interested parties. According to the Amsterdam District Court, such an arrangement is contrary to the principle of Dutch law that injured parties should receive full compensation for their damage and that those who caused the damage should not pay more than the actual damage. In that case, the first case in which these questions were contemplated, the court also made some general findings:

-First, the interested parties who had already registered with a representative claimant organisation must apply to that claimant organisation to receive compensation, and the contractually agreed compensation for the litigation funder will be deducted from their compensation, provided that it does not exceed a maximum percentage to be determined by the court. That percentage will be determined based on the amount of the awarded compensation and the size of the group of people who can claim it. The determination will take into account past experience which shows that only a portion of those entitled to compensation will actually claim it. The percentage is set so that litigation funders can expect to receive up to five times the amount invested.

-Second, interested parties who have not registered with a foundation can claim the same compensation as those who have. The compensation paid to non-registered parties should not be more (or less) than that received by injured parties who pay the highest percentage to the foundation they are affiliated with. Otherwise, not registering with a reorganisation would lead to a better pay out.

-Third, a system for the distribution of compensation will be required to ensure that injured parties receive the compensation they are entitled to in full (after the deductions mentioned above). Such a system should also ensure that the defendant does not pay in excess of the compensation actually claimed and that they cover the costs incurred in paying out the compensation. This can involve working with advance payments.

The Amsterdam District Court thus does not seem to allow lump sum payment of damages to the claimant organisation (also know as ‘cy press’ damages), based on the principle that damages should be compensatory. The RAD does allow for cy press, but leaves the choice up to Member States (Article 9**(7)** RAD). The legislator has, in the act implementing the RAD, postponed a choice on whether cy press is allowed, indicating that it will await further research on this point.

20. Who administers the pay out (e.g. is it given in bulk to the lawyers who represent the class who then pay them out or each claimant needs to approach a State administration department?)

See the answer to question 16. The representative organisation will make a proposal to the court. The most likely arrangement is that either the representative organisation itself will manage the payout, or a third party claims servicer will be employed to do so by the representative organisation.

21. How do they ensure that all members of the class receive any damages amount. What about if it is an opt-out class?

As noted in answer to question 16, this remains unclear under Dutch law. The representative organisation will have to make a proposal for the court to approve.

22. Please describe any enforcement practices of collective redress decisions in your jurisdiction that you have not described above.

See the answer to question 15.

23. Has your jurisdiction witnessed past or present collective litigation in the field of personal data and/or digital rights violations? If so, identify as much as possible the relevant cases and/or describe the trend: is there significant litigation? Are there any particular issues that slow down/obstruct the redress in any stage of the proceeding (e.g. from the admissibility to the calculation of damages)

See the answer to question 6 for the currently pending WAMCA cases about the GDPR and see the answer to question 12 for the main bottlenecks.

24. Is there anything that characterizes those proceedings that has not been asked so far?

Legal issues that are not specific to the WAMCA–such as international jurisdiction–will not be discussed here; this does not mean they are not relevant in the context of collective private enforcement of the GDPR.

It is worth noting that there are overlaps with other areas of law, in particular consumer law and telecommunications law, and that unjust enrichment is also a cause of action.

PORTUGAL

1. Does your country have a pre-existing collective redress system? If yes, what is the scope of application of this law? What were the reasons leading to its development?

Portugal is one of the few EU jurisdictions to have a previous collective action regime (**Law n.º 83/95 - Popular Action Act** - PAA). This Act created a regime in which individuals/legal entities are automatically included in an action and represented by the claimant unless they opt out (Article 14 PAA). Since the PAA was passed, collective redress actions have been used to protect diffuse, collective, or individual homogeneous interests.

The PAA came into force in 1995 with the purpose of implementing a provision of the Constitution of the Portuguese Republic.

2. If you answered yes to the previous question, could you give us more information on the perceived efficacy and impact of the collective redress system applicable in your jurisdiction? Is collective redress frequently used in courts?

The history of the private enforcement of antitrust in Portugal, in both law and practice, can be divided into two phases: before 2018 and after 2018, the year when the Antitrust Damages Directive was transposed into domestic law. One of the main reasons for the difference was that after 2018 exclusive competence to hear antitrust cases was awarded to the Competition Court.

Before the transposal of the **Antitrust Damages Directive**, collective redress was not frequently used. Since then, three or four consumer associations have been very active in bringing follow-on and stand-alone claims. However, the lack of collective redress actions before 2018 means that it is still not possible to have a well-formed understanding of the impact and effectiveness of the system. In addition to this, most of collective redress actions that have been brought are still pending.

3. Has the RAD been implemented in your jurisdiction? What is its scope of application in your jurisdiction? Does the scope change from the previous regime?

The RAD was implemented in Portugal by **Law-Decree n. 114-A/2023** of December 5 (LD 2023). The law applies to national and cross-border collective actions for the protection of consumers' rights and interests brought on the grounds of violations by traders of the provisions of Annex I to the Directive. The violations must harm or be likely to harm the collective interests of consumers and can include those which have ceased before the action was brought or before its conclusion.

One of the primary changes that resulted from the new law was the regulation of third-party funding for collective redress actions. Until LD 2023 came into effect, third-party funding was not expressly addressed in the Portuguese legal framework. LD 2023 established specific requirements and criteria to be met in collective actions involving third-party funding, and so defined a *modus operandi* that benefits both stakeholders and courts.

Another important change that resulted from LD 2023 was the introduction of rules allowing for cross-border actions. Qualified entities can now initiate proceedings not only within national boundaries but also across other EU Member States.

4. Please describe if there are proposals for upcoming legislation on collective redress mechanisms. What is the legal gap that this legislation is trying to address and what is the intended scope?

There are currently no proposals for forthcoming legislation.

5. Are there any references to personal data and/or digital rights regimes in the scope of application of the laws on collective redress? If so, please describe this regime and how it is embedded in the law.

The protection of data and digital rights is included in the scope of the PAA and LD 2023 when the rights holders act as consumers.

There is an indirect interaction between the Portuguese Consumer Law (CL) and the PAA Articles 3(f), 13(b), and 18(l) of the CL essentially set out the conditions under which consumers and consumer organisations can bring collective actions.

In the same vein, the Portuguese Human Rights in the Digital Era Law (**Law no 27/2021**) also states that: 'To defend the provisions of this law, everyone is entitled to the rights provided for in the legislation on popular action, duly adapted to the reality of the digital environment' (Article 21(1)).

6. Please provide a brief overview of digital rights collective redress cases and case law in your jurisdiction, if any. If there are none, please give us an overview of any perceived challenges in bringing these collective redress cases to national courts.

There are currently ongoing digital rights cases against **TikTok** and **FloHealth**, albeit in the very early stages. As a result, there is not currently a body of established case law or a significant understanding of the challenges that may arise from collective redress actions in the digital rights context.

However, in the context of other collective redress actions, access to evidence has been an important difficulty. When evidence is held by the opposing party, we have experienced numerous discussions and challenges regarding access to the documents necessary to prove the violations. Further challenges concern damages determination, proof, and quantification.

7. Please describe the participation regimes in the collective redress system in your jurisdiction. How has the participation regime been modified (if at all) by the implementation of the RAD directive?

As mentioned in the previous section, the PAA established an opt-out participation regime. However, in some circumstances, an opt-in regime applies. Consumers with a stake in the collective action who do not have their habitual residence in Portugal at the time of the notice (informing that the action as been filled) must expressly communicate their wish to be represented in the collective action. Therefore, for this category of stakeholders, an opt-in regime applies.

8. How are consumers informed about ongoing collective redress actions in your jurisdiction? Is there a national registry for collective redress cases? If so, what information is available there?

The filling of collective redress actions is published on social media and, typically, in an advertisement in two national newspapers (Article 5 PAA). The advertisements must include the main features of the claim and its potential effects.

LD 2023 also establishes that claimants in collective actions are required to disclose on their website certain information regarding actions initiated by them, including: the details of the claim, identification of the parties and the court, and the current procedural stage (Article 19).

The national register for collective redress cases is expected to be implemented within the regulatory framework established by LD 2023. In accordance with Articles 4 and 20, the competent authority will be responsible for providing the public with information regarding ongoing and concluded collective actions. This information does not include public invitations to join the action. According to the relevant article (Article 8 of Decree-Law 114-A/2023), the competent authority will be responsible for publishing, on its website and through the Single Service Portal, information on the qualified entities capable of bringing cross-border collective actions and ongoing and concluded collective actions.

9. Please briefly describe the rules identifying the court or the authority in charge of handling the collective redress action.

In Portugal, the court with jurisdiction depends on the scope of the claim.

Actions under antitrust law fall within the exclusive jurisdiction of the specialised Competition, Regulation, and Supervision Court, based in Santarém.

For other types of collective redress actions, the general rule is that the court with jurisdiction is determined by the residence of the defendants; when the defendants are foreigners, the court with jurisdiction is determined by the residence of the claimant.

10. Is the applicable collective redress mechanism regulated as a civil procedure process, as an administrative procedure one, or as a 'hybrid', 'parallel' procedure conducted both before civil courts and before a public administrative body? Is there a specialised court set up for the purpose of handling national collective redress actions? What was the motivation in making the choice between these different implementation pathways?

There is no specialised court exclusively dedicated to handling collective redress actions. Collective redress actions are regulated as a civil procedure process. For antitrust claims, the specialised Competition, Regulation, and Supervision Court has exclusive jurisdiction.

11. Please describe the legal standing rules in your jurisdiction for collective redress litigation. Who is entitled to bring such a case to the courts? What are the criteria for admissibility of collective redress cases in your jurisdiction?

Under the PAA, consumers can be represented in a collective action by the claimant (an individual or an association) without a mandate or express authorisation.

LD 2023 outlines the legal standing requirements for associations, foundations, and municipalities to bring collective actions (Article 5 and 6), as well as the criteria for designating a legal entity as a qualified national entity for cross-border collective redress claims (Article 7).

To have legal standing, associations and foundations must have **1)** legal personality; **2)** the express inclusion in their statutory objectives of the defence of the interests in question in the type of action in question; **c)** an absence of any type of professional activity in competition with companies or liberal professionals; and **d)** independence. Independence is understood as an absence of influence by persons other than consumers, in particular professionals, who have an economic interest in bringing a collective action. This is particularly so when a collective action is financed by third parties, in which case associations and foundations must have in place procedures to prevent undue influence and to prevent conflicts of interest between themselves, their financiers, and the interests of consumers. Independence further requires that the association or foundation be exclusively responsible for taking decisions to bring, withdraw from, or settle a collective action, with the defence of consumer interests as its guiding principle.

12. What about cross-border cases?

To bring a cross-border claim, the claimant must have been previously designated as a qualified entity.

In order to be recognised as a qualified entity, in addition to meeting the criteria mentioned above, the claimant must provide information demonstrating compliance with the legal standing requirements, as well as information about its sources of funding, organisational, management, and participation structure, its social object, and its activities (Article 7 LD 2023). The information must be provided in clear and intelligible language, and be made available on the claimant's website or through another means widely and easily accessible to all interested parties.

13. In the collective redress system in your jurisdiction, are there any specific mechanisms introduced to protect the position of the defendant, such as the obligation described in Recital 41 and Article 8(4) of the RAD? If applicable, please describe the obligation for a qualified entity that intends to bring a representative action for injunctive measures to undertake a prior consultation in order to give the trader concerned an opportunity to bring the infringement that would be the subject of the representative action to an end.

Permanent injunctions aimed at stopping or, where appropriate, identifying and prohibiting an unlawful practice that violates laws for the protection of consumer rights and interests, can only be requested after a prior consultation process with the defendant.

Prior consultation takes place by means of a registered letter to the defendant with acknowledgement of receipt. The communication must include: a) a description of the conduct or facts whose practice must cease, or which may have caused damage to consumers; and b) the rules of consumer protection legislation that have been violated.

If the defendant does not put an end to the violating within two weeks of receiving the communication, the claimant may request an injunction (Article 11 of LD 2023).

14. Please describe the damages and available remedies in your jurisdiction as well as how these are regulated. Are there any remedies that go beyond compensating the harmed parties or stopping the unlawful practice, such as the introduction of unjust enrichment into the scope of damages as a deterrence factor? Please state any changes in the regime after the RAD implementation.

Collective redress actions can result in moral and patrimonial damages compensation.

Claimants can also bring an action on the basis of unjust enrichment. Unjust enrichment is a traditional legal fixture of the Portuguese Civil Code allowing a harmed party to request damages. Article 473 of the Civil Code provides that:

> **1.** Anyone who, without justification, enriches themselves at the expense of others is obliged to return what they have unjustly profited from.
>
> **2.** The obligation to make restitution for unjust enrichment has as its object, in particular, what has been unduly received, or what has been received by virtue of a cause that no longer exists or in view of an effect that has not occurred.

15. What do you see as the main issues or challenges when bringing efficient collective redress cases related to digital rights? (E.g. Public awareness on digital rights, quantification of damages, evidence gathering, costs, CSOs not obtaining qualified entity status, cross-border collaborations, etc.)

From our perspective, proof, determination and quantification of damages, and evidence gathering are the most notable difficulties. As in any judicial process, there is an inherent difficulty in trying to gather evidence from defendants or others entities, which could make it difficult to prove the violation. An example of this risk could be the destruction of documents (e.g. **Bank Cartel case**).

16. Please describe the funding regimes available in your jurisdiction to bring collective redress actions. What about provisions on funding of the representative actions by funders who are not party to these actions (i.e. third-party funding)?

There were no legal obstacles in the previous framework to using third-party funding, but this has changed following the transposition of the RAD. LD 2023 expressly regulates the use of third-party funding in collective redress actions in order to prevent the negative effects that it might have on collective claims, as well as to prevent conflicts of interest between claimants, their funders, and the interests of consumers.

The present framework for third-party funding requires a copy of the funding agreement to be provided to the court. This agreement must be drafted clearly, comprehensibly, and in Portuguese.

The agreements must include a financial summary listing the sources of funding used to support the collective action, as well as the various costs and expenses to be borne by the third-party funder (Article 10**(1)** **(a)** and **(b)** LD 2023). Furthermore, the claimant and the funder must remain independent of one another. This means that collective actions financed by third-party funding are inadmissible when at least one of the defendants in the action is a competitor of the litigation funder or is an entity on which the funder depends.

Public funding has so far not been available for collective actions, although the existing legal framework does allow for it if the Government chooses to institute public funding. According to Article 16 of LD 2023, damages that are not paid to consumers (e.g. because of statutes of limitations or because the right holders cannot be identified) are directed to two different public entities/funds, and can be re-used to fund collective redress actions. Specifically, Article 16 states that remaining damages that have not been allocated to the payment of the claimant's costs, fees, and expenses under the terms of paragraph 5 shall be directed to the Fund for the Promotion of Consumer Rights (60 euros per year) and the Institute for Financial Management and Justice Equipment (40%.).

17. Are there any restrictions in bringing collective redress claims in your jurisdiction in general? How are the admissibility requirements for collective claims interpreted based on case law in your jurisdiction? Who is assessing these requirements?

Admissibility requirements are assessed by the court, which will only dismiss a claim when it is manifestly unfounded or inadmissible. The standing of the claimant and the homogeneity of the represented class are requirements for the claim's admissibility.

18. How are redress measures executed in your jurisdiction for any enforcement of injunctions? What if the injunction has to do with software modification. Who does it then?

Collective redress measures will be executed as ordered by the court. The full range of remedies available under the Code of Civil Procedure is also available in collective actions. This includes compensatory damages, injunctive orders, and declaratory judgments. However, punitive or non-compensatory damages cannot be claimed.

Civil liability for compensatory damages may be based on fault, but compensation can also be awarded without fault, such as in cases involving dangerous activities.

Under Article 22 of Law 83/95 of 31 August, group members have the right to seek compensation according to general liability rules within three years of the judgment, with any unclaimed amounts reverting to the Ministry of Justice. Interim remedies are likewise available under the Code of Civil Procedure.

Furthermore, Article 25 of Law 83/95 of 31 August allows the claimant in a collective action to file a claim with the Public Prosecutor (*Ministério Público*) and to join criminal proceedings against the defendant.

19. How long do claimants have to come forward and receive a portion of damages? How are funds (re)distributed when consumers show little interest in compensation, especially when it is too small and the process connected with applying for a refund is not worthwhile?

This has never been tested in practice, but the court can designate an entity responsible for the individual distribution of the compensation.

20. Who administers the pay out (e.g. is it given in bulk to the lawyers who represent the class who then pay them out or each claimant needs to approach a State administration department?)

This has never been tested in practice, but the payout should be distributed by an entity designated by the court, notably a public entity. The criteria for distribution are determined by the Court, and given that no case has yet reached completion, there is no case law on the distribution criteria and no entity has yet been named as competent to manage the compensation fund.

21. How do they ensure that all members of the class receive any damages amount. What about if it is an opt-out class?

This has never been tested in practice, but widespread dissemination of information on the pay-out proceedings should be ordered and controlled by the court. According to the applicable law (i.e., PAA), claimants in collective actions are obliged to publish the following information on their website for each collective action they bring: a) the identification of the collective action in question, with reference to the identification of the parties, the claim in question, the case number, and the court; b) the procedural stage the collective action is in; c) the outcome of the action, including the overall compensation and the method of distributing the compensation to the defendants, where applicable; and d) the court's decision.

The applicable law further requires that the competent authority communicate the following information to the European Commission on an annual basis: a) the number and type of collective actions finalised before national courts; b) the type of violations involved in the actions; c) the parties involved in the actions; and d) the outcome of the actions.

Finally, the law requires that the courts before which collective actions have been brought send the competent authority the notice of summons of the consumers represented, for dissemination in accordance with Article 20. The courts must also send a copy of the judgment within 30 days of handing it down.

22. Please describe any enforcement practices of collective redress decisions in your jurisdiction that you have not described above.

Not applicable.

23. Has your jurisdiction witnessed past or present collective litigation in the field of personal data and/or digital rights violations? If so, identify as much as possible the relevant cases and/or describe the trend: is there significant litigation? Are there any particular issues that slow down/obstruct the redress in any stage of the proceeding (e.g. from the admissibility to the calculation of damages)

Litigation in cases against digital platforms and networks is just starting, with cases pending against TikTok, FloHealth, and **Pubmatic**. It therefore remains to be seen which issues will arise to slow down and obstruct the redress.

The fact that these cases are untested means that there is a large amount of uncertainty and little-to-no precedent for judges or claimants. An important challenge to mention is the denial of access to ongoing judicial proceedings.

24. Is there anything that characterizes those proceedings that has not been asked so far?

Not applicable.

SPAIN

1. Does your country have a pre-existing collective redress system? If yes, what is the scope of application of this law? What were the reasons leading to its development?

Spain has a limited pre-existing collective redress system established by Article 53 of the Spanish **General Consumer Law** (LGDC). Article 53 regulates injunctions and the last paragraph allows for an injunctive relief claim to be joined to a declaratory action or an action for cessation, termination, and/or compensation for damages.

This must be read jointly with Article 11 of the Spanish **Civil Procedural Law** (LEC) on legal standing in the defence of consumers. The current regulation does not allow for collective redress in cases where consumers cannot be individually identified, since the LGDC seems to require a previous contractual relation between the consumer and the defendant (though scholarship has been critical in this regard). This limitation on collective redress stems from an interpretation of Article 53 of the LGDC which requires damages claims to be joined to other contractual liability actions, such as injunctions against abusive clauses. Even in cases foreseen in the LGDC and LEC, where consumers can be individually identified, collective redress has only been partially effective in situations where affected consumers join the judicial action individually (Article 11(2) LEC). The procedural rules also allow for pre-trial investigation proceedings to determine the members of the affected consumer group (Article 256.1.6º LEC).

Standing to bring collective redress actions extends to consumer associations and certain qualified public entities. Individual consumers do not have legal standing to bring actions in the defence of a consumer collective. Unlike in other legal systems, a consumer cannot be considered a "class representative". In the case of consumer associations, the standing requirements depend on whether the affected consumers are identifiable and to what extent; if consumers cannot be individually identified, the standing requirements are stricter. The term 'diffuse interests' is used to describe the situation when affected consumers are not individually identifiable due to the nature of the damage (such as environmental damages, that can have an unquantifiable and varied effect on human health).

To defend diffuse interests, consumer associations must be part of the Consumer Council (*Consejo de Consumidores y Usuarios*), a public entity supervised by the Ministry of Consumer Protection. To be a member, a consumer association must be in the National Consumer Associations' Register (*Registro estatal de asociaciones de consumidores y usuarios*). The requirements to register are established in **Royal Decree** 448/2023, and include, among others, the need to have at least 3,000 members (Article 2) and a minimum annual budget of 90,000 euros. There is no requirement for the association to have been established for a certain period of time.

Once registered, a consumer association is represented by the Consumer Council and is eligible to join the board of the Council. There are currently nine board members (known as '*vocales*', decision appointing the members available **here**), each from different consumer associations. There can be up to 15 board members, according to Article 3 of **Royal Decree 894/2005** on the internal Regulations of the Consumer Council.

The reason for the development of this system was the transposition into Spanish law of **Directive 98/27/EC** on injunctions for the protection of consumers' interests. Actions for compensation were not foreseen in the Directive, and instead were voluntarily introduced by the Spanish legislator.

2. If you answered yes to the previous question, could you give us more information on the perceived efficacy and impact of the collective redress system applicable in your jurisdiction? Is collective redress frequently used in courts?

Despite the Spanish legislator having introduced provisions on collective redress, the collective redress system has proven to be faulty and insufficient. Joinders to injunctive relief actions have not been a common practice in our courts.

The main difficulty has been the need to join collective redress actions to principal main injunction proceeding. Damage claims must be homogenous in order to be joined, but the LEC does not mention this possibility, nor does it establish any requirements in this regard. The homogeneity requirement also applies to injunctions, though courts regard it mostly for collective redress cases.

While joining claims could work for small cases, Spanish courts have been reticent to recognise the homogeneity of damage caused to a collective. Especially in banking cases, such as multi-currency mortgages, compensation was calculated on a case-by-case basis, and it was impossible to claim equal damage for all. It has been common practice for consumer associations to assist each affected consumer individually in court.

Collective injunctive actions have been successful, whilst collective redress actions have been more troublesome. In a judgment from November 2018, the Madrid Court of Appeal admitted the damage claim joined to the injunction, but left individual redress to be claimed through enforcement proceedings, in line with Article 519 of the LEC. This provision governs enforcement actions by consumers and users in cases without an individual determination of the beneficiaries (nor quantification of the damages).

The Barcelona Appeal of Court has concluded in a series of cases that commercial courts are competent to deal with injunctive actions, as well as with the damage claims joined to them. As the RAD is on the verge of being transposed into Spanish law, it is likely that the courts will postpone these proceedings until the Draft Bill is passed, and continue with the proceeding accordingly.

The CJEU, in a judgment from 4 July 2024 on a preliminary ruling from a Spanish court in a banking collective action, widened the interpretation of how homogeneous claims should be in order to be part of a collective proceeding. The CJEU stated the following:

> **it is precisely the heterogeneity of the public concerned, as a result of which it is impossible to examine the individual perception of all the individuals making up that public, which makes it necessary to have recourse to the legal fiction of the average consumer, which entails understanding the latter as being a single abstract entity whose overall perception is relevant for the purposes of its examination. [52]**

3. Has the RAD been implemented in your jurisdiction? What is its scope of application in your jurisdiction? Does the scope change from the previous regime?

The RAD has not yet been implemented, though it is expected that the law transposing the RAD will be passed at the end of 2024. There is currently a **Draft Bill** that is pending for discussion in Congress.

Even though the RAD has been implemented in other parts of Europe and the deadline for transposition has passed, the Directive is not currently applicable in Spanish law. There are arguments pending before the courts for the vertical application of the RAD, or at least for the interpretation of the current law in light of the Directive. These arguments make reference to the judicial disclosure requests made by the Portuguese consumer association Ius Omnibus.

However, previous experience arguing for the vertical application of the Damages Directive in cases relating to the truck cartel indicates that these arguments will be difficult to make.

4. Please describe if there are proposals for upcoming legislation on collective redress mechanisms. What is the legal gap that this legislation is trying to address and what is the intended scope?

At the time of the writing of this report (August 2024), the Spanish Government has proposed a draft bill that is on its first reading in Congress, to be followed by its formal discussion. This draft bill (Draft Bill) is the second proposal for the transposition of the RAD. Amendments to the draft were delayed pending the outcome of the regional and European elections and other political events to use as leverage. The Draft Bill for transposing the RAD will require the amendment of a number of Spanish laws, including a high-level law on the judiciary system. The parliamentary process is likely to be long due to political disagreements about the choice between an opt-in or op-out system and attempts to amend the bill in its entirety.

In what refers to collective actions, the Draft Bill will mostly amend the LEC and other laws (such as the LGDC, or the Unfair Competition Law). There will not be a separate collective actions act.

As it is currently drafted, the Draft Bill significantly improves consumer protection and introduces an opt-out collective redress system. The Draft Bill is limited to consumer protection. Outside this field, companies or consumers can seek collective redress through the assignment model, in which a professional claimant brings bundled claims for damages by means of assignments from affected companies. This is common in the case of competition law infringements.

5. Are there any references to personal data and/or digital rights regimes in the scope of application of the laws on collective redress? If so, please describe this regime and how it is embedded in the law.

There is no specific mention of personal data or digital rights in the collective redress system. One would expect that these rights were at least be mentioned (as is the case in Recital 13 of the RAD: 'The consumer market has also evolved in the area of digital services, and there is an increased need for more efficient enforcement of consumer law, including as regards data protection.'), but this is not the case. The only mention of these rights is made on the electronic platform for the management of the procedure (per Article 849 LEC, as intended to be introduced by the Draft Bill), which will have to gather affected consumers' personal data in accordance with the applicable law.

6. Please provide a brief overview of digital rights collective redress cases and case law in your jurisdiction, if any. If there are none, please give us an overview of any perceived challenges in bringing these collective redress cases to national courts.

There are no relevant digital rights collective redress precedents. Compensation in the context of data protection has not been implemented collectively. Where digital rights have been litigated, the redress achieved does not correspond to the redress provided for in the RAD. Case law on digital rights is very limited and is normally linked to labour law rather than civil tort law. In a collective labour law case decided by the Supreme Court, the court examined a company policy that warned workers that they 'should have no expectations of privacy' in personal communications made from their work devices. The Court declared the monitoring policy null and void on the basis that it 'seriously infringes worker's right to privacy and dignity'. However, the Court did not discuss whether workers suffered any non-material damage, nor did the union federation representing the workers file an action in this regard.

The Spanish legal system protects privacy through an Organic Law (the highest-level law), and the scope of this law includes digital rights. Beyond digital rights, the law is broad enough to cover a range of issues, including honour. If there is a violation of the Organic Law on privacy, compensation can be awarded. Moral damage is assumed in such cases. It is uncertain how courts will handle proceedings under the Organic Law on privacy once a collective redress dimension is introduced.

There are non-collective cases where infringements of the right to privacy resulted in damages being awarded. In a Supreme Court judgment from May 2021 dealing with geo-tracking (where a GPS device was placed in a vehicle), the affected person was awarded 1,500 euros. However, there is no jurisprudence in this regard in relation to digital rights.

7. Please describe the participation regimes in the collective redress system in your jurisdiction. How has the participation regime been modified (if at all) by the implementation of the RAD directive?

Under the current regime, consumers can initiate a claim with a consumer association or join another claim that is under discussion. The consumer only will be able to perform procedural acts that have not been precluded (Article 15(2) LEC) and must follow the procedural rules on joining a claim. Consumers can be prompted to join a claim as a result of an information campaign launched by a qualified claimant to find affected consumers, though this is a previous phase of the judicial proceeding.

Under the Draft Bill, once the action is certified, the court can use the support of an electronic platform to find affected consumers and transmit information to those concerned, and ensure that the information obtained can be reliably used by the court or by the claimant qualified entity. In the case of an opt-out proceeding, previously unidentified consumers can claim compensation based on the judgment. This system is completely novel under Spanish law. Exceptions to the default opt-out regime will be explained in answer to question 24.

8. How are consumers informed about ongoing collective redress actions in your jurisdiction? Is there a national registry for collective redress cases? If so, what information is available there?

Spain currently lacks a general mechanism for informing consumers of ongoing collective actions. Consumer associations must identify affected consumers themselves using their own resources. As mentioned in answer to question 1, the LEC allows for pre-trial proceedings oriented towards fixing the members of the affected consumer group (Article 256.1.6º), though this is limited in scope and does not create a general tool that all consumers can check.

The Draft Bill includes a proposal for a register where all ongoing collective actions will be listed, including judgments from previous actions. To that end, an existing register on general terms and conditions will be renewed to give greater publicity to cases potentially affecting consumer interests. Then, the consumer will be able to check whether he or she is affected and could be represented in any collective proceeding.

9. Please briefly describe the rules identifying the court or the authority in charge of handling the collective redress action.

Until 2022, the commercial courts had competence to hear actions for injunctions and other collective redress actions. Now, first instance courts are competent to hear actions for injunctions of all sorts, including data protection and privacy-related actions. Regarding territorial competence, according to Article 52(1)16º of the LEC:

> **In proceedings in which an action for injunctive relief is brought in defence of the collective and diffuse interests of consumers and users, the Court of the place where the defendant has an establishment or, in the absence thereof, that of their domicile shall have jurisdiction; if they have no domicile in Spanish territory, that of the place where the plaintiff is domiciled shall have jurisdiction.**

According to Article 834(3) of the Draft Bill:

> **notwithstanding the rules of the European Union or conventions regulating the matter, the competent Court with territorial jurisdiction shall be that of the place where the defendant has his domicile and, in its absence, an establishment; if he lacks domicile and establishment in Spanish territory, the Court of the place where the conduct infringing the rights of consumers and users has been carried out or has produced or could produce its effects, at the choice of the plaintiff.**

Despite the above, the designation of a competent court is expected to work differently. As stated in Article 834(2) of the Draft Bill:

> **The General Council of the Judiciary shall agree, under the terms established in the Organic Law of the Judiciary, that one or more Courts of First Instance in the same province, whether or not they are in the same judicial district and after delimitation of the scope of territorial jurisdiction in the latter case, shall assume exclusive jurisdiction over proceedings in which collective actions are brought for the protection and defence of the rights and interests of consumers and users.**

As such, it is likely that each provincial capital will have a court section specialising in collective actions. In larger cities (e.g. Madrid, Barcelona, Valencia, etc.), there may be more than one specialised court.

10. Is the applicable collective redress mechanism regulated as a civil procedure process, as an administrative procedure one, or as a 'hybrid', 'parallel' procedure conducted both before civil courts and before a public administrative body? Is there a specialised court set up for the purpose of handling national collective redress actions? What was the motivation in making the choice between these different implementation pathways?

There are no administrative bodies competent to decide on collective actions brought in defence of consumers. There can be resort to administrative bodies for consumer issues in individual cases, and in some situations it is mandatory to take this avenue before going to court, but no provision on this exists for collective cases. The current administrative mechanisms are mostly regional or are linked on the province where the consumer resides. The National Consumer Arbitration Board has very limited competence, which might have influenced the exclusion of administrative consumer bodies from the Draft Bill.

The current Draft Bill does not envisage the establishment of a specialised court for handling collective redress actions. Competence will rest with the first instance courts, though some argue that the commercial courts would be better prepared for and specialised in collective actions, especially in the context of redress and damage quantification. There may be changes in the final draft of the law in this regard.

Given the impossibility of fitting the collective redress procedure into ordinary legal proceedings or the abbreviated (verbal) trial, a special procedure has been designed. Precisely, the Draft Bill will amend the LEC to introduce a new chapter regulating all aspects of the new collective proceeding (both for injunctions and redress measures). The main difference compared to the ordinary procedure will be the introduction of a certification phase. Once the action is certified, the defendant will answer the claim and a time limit will be set for consumers to opt out of the collective action.

Specific rules will also be introduced regarding enforcement, such as in cases where the consumers seeking redress are not given beneficiary status, or if the company does not pay the quantity set in the judgement. Finally, in cases where the parties reach an extra-judicial settlement, special rules are envisaged to ensure that the settlement is neither harmful to consumers nor onerous for the litigation funder.

11. Please describe the legal standing rules in your jurisdiction for collective redress litigation. Who is entitled to bring such a case to the courts? What are the criteria for admissibility of collective redress cases in your jurisdiction?

The legal standing requirements for consumer associations are eased in the Draft Bill. The current legislation (Article 24(2) LGDC) limits standing to bring actions for injunctions to consumer associations with the most representativeness. According to Article 24(2), the consumer associations considered to be most representative will be those which are part of the Consumer Council, a public body dependent on the Ministry that only includes nine members.

However, the Draft Bill will give legal standing to qualified entities (excluding individual consumers) for all sorts of collective actions, according to the general regime in Article 54 of the LGDC. Thus, designation as a qualified entity will no longer be restricted to those consumer associations registered in the **State Register of Consumers and Users Associations** (currently 22 members), but will also be open to other public bodies, namely: **1)** the National Consumer Affairs Institute and the corresponding bodies or entities of the autonomous communities and local corporations competent in the defence of consumers and users; **2)** consumer associations that fulfil the requirements established in the law, or, where applicable, in the autonomic consumer legislation; **3)** the Public Prosecutor's Office; and **4)** entities of other EU Member States constituted for the protection of the collective and diffuse interests of the consumers that are listed in the Official Journal of the European Communities.

There are also rules on admissibility derived from previous cases that finished with a judgment, approved settlement, or non-certification.

Admissibility will be based on objective criteria, such as legal standing as a qualified entity, previous communication with the company in the case of injunctions (Article 840 Draft Bill), and meeting the formal requirements of the claim. These formal requirements require the claimant to identify **(i)** the unlawful conduct, **(ii)** the consumers affected, **(iii)** the causal link between the conduct and the damage suffered, **(iv)** the homogeneity of claims among affected consumers, **(v)** a concrete damage claim, **(vi)** and an explanation on funding sources for the collective action (Article 844 Draft Bill).

The criteria regarding homogeneity and funding sources are the novel aspects the Draft Bill. Future case law and doctrine must be devoted to developing and interpreting these aspects. It is yet to be seen how the Courts will handle homogeneity and third-party funding, and whether the experience from other countries with a longer tradition in collective actions, such as the UK, the Netherlands, Portugal, or even the U.S, will prove useful in the Spanish case.

Regarding passive legal standing, Article 828 of the Draft Bill grants legal standing to challenge ‘conducts by entrepreneurs or professionals which infringe the rights and interests of consumers and users’.

12. What about cross-border cases?

Under Article 55 of the LGDC, besides the public bodes listed in previous questions, only the nine consumer associations that are part of the Consumer Council are qualified to bring cross-border injunctions. The Draft Bill intends to amend this Article and open it for all consumer associations listed in the National Register (22). Regional domestic consumer associations are also given this possibility under the Draft Bill.

Rules regarding the legal standing in Spain of foreign qualified entities do not differ from the RAD. Article 56ter of the Draft Bill gives the courts the power to double check the qualification of a foreign entity intending to take part in a cross-border proceeding.

13. In the collective redress system in your jurisdiction, are there any specific mechanisms introduced to protect the position of the defendant, such as the obligation described in Recital 41 and Article 8(4) of the RAD? If applicable, please describe the obligation for a qualified entity that intends to bring a representative action for injunctive measures to undertake a prior consultation in order to give the trader concerned an opportunity to bring the infringement that would be the subject of the representative action to an end.

Article 840 of the Draft Bill requires that a claimant request that the defendant cease the harmful conduct at least one month before bringing a collective redress action. This is a pre-requisite for admissibility. The request shall be made in such a way that there is a reliable record of its date, receipt, and content. The Spanish legislator has established a one-month period instead of the two weeks required by the RAD (Article 8(4)). The RAD, in Whereas 41 establishes that mandatory prior consultation (either by the qualified entity, or jointly with an independent designated public body) can also be introduced by Member States in cases of collective redress. However, the Draft Bill has not included this provision, and collective redress actions do not need of a prior consultation to the company (it is not mandatory, but it can still be done, the Draft Bill does not prohibit it).

14. Please describe the damages and available remedies in your jurisdiction as well as how these are regulated. Are there any remedies that go beyond compensating the harmed parties or stopping the unlawful practice, such as the introduction of unjust enrichment into the scope of damages as a deterrence factor? Please state any changes in the regime after the RAD implementation.

Spanish tort law is compensatory in nature. Compensation must retore the affected party to the situation it was in prior to suffering the harm. As such, the damages awarded by Spanish courts involve monetary sums equivalent to the harm caused to the claimant. Other kinds of damages, such as punitive or exemplary damages, are not applied in the Spanish legal system.

The current legal system allows redress to be sought through injunctive, retraction, and declaratory actions (Article 53 LGDC and Article 12 of the **General Terms and Conditions Law**).

A judgment may contain an order requiring the defendant to publish the judgment in a nationwide newspaper at its own expense (Article 221(2) LEC). or that a statement of rectification be issued.

The Draft Bill establishes the possibility to bring injunctive collective actions. The goal of the injunctive action is twofold: **1)** to have unlawful conduct cease and prohibit its repetition, and **2)** to establish that the conduct in question is contrary to consumer and user protection rules.

A judgment upholding a collective action for injunctive relief can involve a fine ranging from 600 to 60,000 euros per day of delay in complying with the court decision within the period specified in the judgment. The level of fine will depend on the nature and importance of the infringement and its consequences, as well as on the economic capacity of the defendant and the damage their conduct caused to each of the beneficiaries (see Article 711(2) LEC and Article 843(1) Draft Bill).

A claimant may seek, *inter alia*, an order for the payment of compensation, the repair or replacement of goods purchased by consumers, or the reimbursement of the price paid by consumers. They may also seek the termination of the contract connected to the harmful conduct or a reduction in the price of the goods or services affected by the conduct (Articles 830 and 831 Draft Bill).

15. What do you see as the main issues or challenges when bringing efficient collective redress cases related to digital rights? (E.g. Public awareness on digital rights, quantification of damages, evidence gathering, costs, CSOs not obtaining qualified entity status, cross-border collaborations, etc.)

There are four key challenges. First, there is low public awareness of digital rights. Second, it is difficult to quantify damages in collective actions, and it will be important for future case law and doctrine to develop and interpret the law on this issue. Third, according to the Draft Bill, organisations designated in other EU Member States as qualified entities for the exercise of cross-border collective actions are entitled to bring such actions on the condition that they were listed as qualified entities prior to the harmful conduct. Fourth, the Draft Bill requires that compensation funds that have not been distributed during the enforcement of a collective redress judgment should be returned to the defendant. The Draft Bill does not explain why the funds would not be distributed fully. Some authors argue that as punitive damages are not allowed in the Spanish system, any compensation amount that is not distributed to consumers cannot be used for other purposes. This is not the correct approach in our opinion.

16. Please describe the funding regimes available in your jurisdiction to bring collective redress actions. What about provisions on funding of the representative actions by funders who are not party to these actions (i.e. third-party funding)?

Currently, third-party funding is not regulated under Spanish law. However, the Draft Bill foresees third-party funding for collective redress actions and provides that the action must include a complete statement of the sources of funding (Article 11 RAD). The judge may ask to see the funding contract in order to assess whether its terms affect consumers; if it does, a hearing would be held attended by the parties and the litigation funder. The court will refuse third party funding if there is a conflict of interest, or if the litigation funder has an economic interest in the exercise or outcome of the action such that the action would cease to be for the protection and defence of consumers and users (Articles 844(1)(f) and 850 Draft Bill). Third-party funding has created high expectations among certain scholars, who see it as a boost to access to justice for consumers.

Contingency fees are allowed under Spanish law. The Draft Bill has no specific regulation regarding what fees could be considered harmful to consumers, it is only mentioned that the court can consider the terms of the litigation funding agreement to be disproportionate to consumers. Case law is needed to determine what level of contingency fees is deemed reasonable and whether contingency fees should be a percentage of the damages awarded (which in some cases could be a considerable amount of money) or whether it should be a multiple of the amount invested.

17. Are there any restrictions in bringing collective redress claims in your jurisdiction in general? How are the admissibility requirements for collective claims interpreted based on case law in your jurisdiction? Who is assessing these requirements?

Legal standing is the only prerequisite for bringing a collective redress claim under the LEC. According to Article 11 of the LEC, legal standing can exist for individual affected parties, legally established consumer and user associations whose purpose is the defence or protection of consumer interests, and the Public Prosecutor's Office.

For collective injunctive actions to be admissible, Article 840 of the Draft Bill requires that a claimant request that the defendant cease the harmful conduct at least one month before bringing a collective redress action (see question 13).

For collective compensation actions to be admissible, Article 844 of the Draft Bill requires that the action include information about the harmful conduct, the consumers affected, the causal link between the conduct attributed to the defendant and the harm suffered by consumers and users, the existence of homogeneity between the claims of the consumers and users, the concrete request, and a summary of the sources of the financing.

With respect to homogeneity, Article 847 of the Draft Bill establishes that homogeneity will exist when it is possible to determine **1)** the concurrence of the infringing conduct, **2)** the collective damage for which compensation is sought, and **3)** the causal link between the two. It is not necessary to take into consideration factual or legal issues that are particular to individual consumers and users affected by the action.

Future case law and doctrine must be devoted to developing and interpreting the concept of homogeneity. It has yet to be seen how the courts will handle homogeneity, and whether the experience from other countries with a longer tradition of collective actions will prove useful in the Spanish case.

18. How are redress measures executed in your jurisdiction for any enforcement of injunctions? What if the injunction has to do with software modification. Who does it then?

This is decided on a case-by-case basis, either by the company itself with the supervision of the enforcement authority or by the enforcement authority.

19. How long do claimants have to come forward and receive a portion of damages? How are funds (re)distributed when consumers show little interest in compensation, especially when it is too small and the process connected with applying for a refund is not worthwhile?

The LEC does not contain rules regulating how damages should be distributed, nor does it foresee the creation of a common fund.

According to the Draft Bill, consumers and users can use an electronic platform to opt in or opt out of a collective action. The court can order the claimant to make this electronic platform available. This period for opting in or out may not be less than two months or more than six months from the date of publication of the certification order (Articles 856 and 848(5) Draft Bill).

In the event that it is not possible to individually identify affected consumers or users, the court shall set out the characteristics and requirements that consumers must meet in order to be considered beneficiaries of the judgment and/or of the compensation agreement (Article 848(1) of the Draft Bill).

In cases where it is not possible to individually identify affected consumers or users, the defendant will be required to pay the compensation amount, including where appropriate a provision for costs, into the deposit and consignment account of the court that heard the proceedings at first instance (see Article 875 Draft Bill).

20. Who administers the pay out (e.g. is it given in bulk to the lawyers who represent the class who then pay them out or each claimant needs to approach a State administration department?)

As regards the enforcement of judgments, the Draft Bill distinguishes between cases where all beneficiaries are identified and cases where not all beneficiaries are or can identified. In the former scenario, the defendant will require the beneficiaries to provide the necessary information, or take the necessary steps, if any, to execute the payment. See Article 873(2) of the Draft Bill.

In cases where not all beneficiaries have been identified, the defendant will place the compensation amount in the deposit and consignment account of the court which heard the claim in the first instance. The funds are then at the disposal of a liquidator.

Where possible, the liquidator will pay the amount directly to those beneficiaries who are identified in the judgment. Beneficiaries who are not identified in the judgment will have to prove to the liquidator that they meet the necessary characteristics and requirements (Article 878(3) and (4) Draft Bill). The non-distributed amount will go back to the defendant according to the current Draft Bill.

If the number of beneficiaries cannot be determined, the court shall fix in the judgment the maximum amount to be paid (Article 860(4) Draft Bill). There are no specifications or case-law on this point. The Draft Bill only states that 'the court will fix in the judgment the amount which, according to its estimates, should be the maximum amount of the sums to be paid to the consumers and users concerned'.

Article 877 of the Draft Bill establishes the requirements for the appointment of the liquidator, who must be a professional expert in accounting matters with at least ten years experience, chosen by agreement of the parties or, failing this, by the professional association of the place where the court has its seat, in accordance with criteria predetermined by the association to which he belongs.

21. How do they ensure that all members of the class receive any damages amount. What about if it is an opt-out class?

Under the current legal system, where it is not possible to identify all affected consumers, the judgment shall include the details, characteristics, and requirements that consumers must meet to be considered beneficiaries of the collective action judgment (Article 221(1)(1) LEC). The Draft Bill maintains this same formula.

For cases where all those affected are identified, a beneficiary who has not obtained, in whole or in part, payment of the amount due within the time limit specified shall bring the matter to the attention of the court which heard the case at first instance. This request may be made on a form approved by the Ministry of Justice–without the need for a procurator and a lawyer–or through the claimant entity (Article 874 of the Draft Bill).

Alternatively, where not all beneficiaries have been identified, the defendant shall, within the time limit laid down in the judgment, pay the amount ordered–including, where appropriate, a provision for costs–into the deposit account of the court that heard the claim in the first instance. If the time limit fixed in the judgment has elapsed without payment having been made, enforcement shall be ordered ex officio at the request of the claimant, the Public Prosecutor's Office, or any of the beneficiaries. In such cases the court may impose a fine.

22. Please describe any enforcement practices of collective redress decisions in your jurisdiction that you have not described above.

Individual claimants who have not participated in the collective action may still rely on the collective action judgment to seek enforcement if the collective action was successful. In this regard, Article 519 of the LEC allows consumers allegedly affected by the harmful conduct to request recognition as a beneficiary from the court. This request must be made within one year from of the judgment becoming final. The court will decide on this request and, where appropriate, establish the amount of compensation due. If the payment of the compensation is not made voluntarily, the party concerned may apply for enforcement.

23. Has your jurisdiction witnessed past or present collective litigation in the field of personal data and/or digital rights violations? If so, identify as much as possible the relevant cases and/or describe the trend: is there significant litigation? Are there any particular issues that slow down/obstruct the redress in any stage of the proceeding (e.g. from the admissibility to the calculation of damages)

Most of the collective actions before the Spanish courts concern financial or banking services.

The Spanish Organisation of Users and Consumers (OCU) filed a **claim against Facebook** before the Commercial Court No. 5 of Madrid and it was admitted for processing in July 2019. Initially, the OCU called for all Facebook users to receive at least 200 euros in compensation for moral damages. Similar actions have been filed in a coordinated manner in other jurisdictions. The action was subsequently halted in 2021 after OCU and the other consumer organisations in the *Euroconsumers* group (comprising associations from Italy, Spain, Belgium and Portugal) reached a three-year collaboration agreement (partnership) with Facebook to improve user protection, especially regarding sustainability, scams, and digital empowering, so that consumers can take part in the digital society safely.

Because of the limitations posed by the current legal framework on collective redress actions, most complaints concerning data protection breaches have been filed before the Spanish Data Protection Agency (AEPD), which is the authority with disciplinary powers in this area in Spain. The AEPD may sanction the defendant with an economic fine, but these complaints have no economic redress possibility for consumers.

24. Is there anything that characterizes those proceedings that has not been asked so far?

Unlike the current collective redress system (that only recognises an opt-in regime), the Draft Bill establishes a default opt-out system, but allows the judge to, exceptionally, change a given proceeding to an opt-in system (Article 848(3)). It is not known how this mechanism will be used, or if it will be implemented at all. Given that damages in digital environments are often diffuse, it cannot be discarded that the opt-in will always be applied in these cases.

Credits

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