



OBSERVATOIRE DES ACTIONS DE GROUPE  
et autres Actions Collectives

*Irish implementation of the Representative Actions Directive*

Representative Actions for the Protection of the Collective Interests of Consumers Act 2023

(Act No 22 of 2023)

Following pre-legislative scrutiny, the Irish Protection of the Collective Interests of Consumers Act 2023 was signed into law by the President on 11/07/2023 to transpose the Representative Actions Directive into the national collective redress framework. The Act does this by creating a procedure for class actions through a new civil litigation mechanism, for both national and cross-border level actions. It is due to apply to infringements occurring on or after 25/06/2023 and represents a rather significant departure from the existing position in Ireland. The State has previously been an ‘outlier’ within the EU, lacking a legislative class action framework and compensatory collective redress procedure.

The Irish Act enables a ‘qualified entity’ (QE) to bring representative actions. In order to be classed as a QE, an association must demonstrate specific qualities, such as 12 months of actual public activity protecting consumer interests and a non-profit making character, for example. However, the Irish Act’s criteria go further than those of the Directive, in effect making access to the procedure more onerous than strictly required: a QE’s *main purpose* must be an interest in the protection of consumer rights, instead of needing to demonstrate this interest generally. Additionally, the QE’s engagement in prior consultations with the trader is a prerequisite, before resorting to (injunctive) litigation.

In respect of redress measures, the Act applies on an *opt-in* basis. This means consumers will need to join the group at an early stage (before admissibility is established by the court). However, for actions seeking injunctive relief, *opt-out* is the position, as QEs need not represent individual claimants. Nor do they need to show actual loss or damage on their behalf, or the trader’s intent or negligence. Once an injunction is ordered, the defendant must cease its harmful conduct entirely.

*Only if required* by the QE, the consumer must pay a ‘modest’ entry fee within a specified period to participate in a redress action. Otherwise, they cannot be represented and are not entitled to benefit from any remedies ordered. The maximum fee is specified by the Minister for Enterprise, Trade and Employment. This does not apply to injunctive actions.

The Act’s scope is wide-ranging, including consumer issues under financial services, data protection, product safety and telecommunications sectors, among others. Importantly, however, the Act refers to the current Irish legal position for third party funding, which means it is effectively prohibited. This will impact on entities’ ability to effectively represent consumers, if they face a lack of funding. This seems not to be in accordance with the EU’s intentions. Nonetheless, it is a topic under discussion by the Irish Law Reform Committee.

For official texts: <https://www.oireachtas.ie/en/bills/bill/2023/21/>; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=NIM:202304353>