

Ireland:
Commencement Order and Regulations for full RAD transposition
Representative Actions for the Protection of the Collective Interests of Consumers Act 2023
(Act 22 of 2023)

On 30 April 2024, by means of the ‘Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 (Commencement) Order 2024’, Ireland’s implementation of the Representative Actions Directive was made complete. Ireland’s Act had first been published in March 2023, and subsequently signed by the President in July. Despite it being among the first EU Member States to notify the Commission of the RAD’s implementation, the law has been awaiting the final commencement order and regulations for its operation.

The newly enacted Maximum Fee Regulations in Ireland provide that the ‘modest’ fee that Qualified Entities (QEs) may charge for consumers to join a representative action will be capped at €25 per consumer per representative action. This is one of the three statutory instruments published under the main Act effected on 30 April this year. The instruments also include ‘Prescribed Forms’ Regulations 2024’, which include several forms to be used in connection with the administration of specific sections of the Act (for application for Designation as a QE, request of a review of refusal of designation or revocation of designation, or notification by a consumer to be no longer represented by a QE for redress measures, for example).

The Minister of Enterprise, Trade and Employment will now be able to designate non-profit entities as QEs within the meaning of the Act. In addition, a Register of QEs and a Register of Representative Actions have been published on the website of the Department of Enterprise, Trade and Employment, in anticipation of forthcoming proceedings.

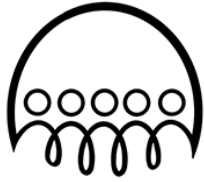
As we had previously stated (see post of the Observatoire dated 22 December 2023), to be classed as a QE, an association must demonstrate specific qualities, such as 12 months of actual public activity protecting consumer interests and a non-profit making character, for example. A QE’s *main* purpose 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.

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If required by the QE, the consumer must pay the 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. 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.

Official texts can be found at:

https://www.irishstatutebook.ie/eli/isbc/2023_22.html;
<https://www.oireachtas.ie/en/bills/bill/2023/21/?tab=bill-text>

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