

International Workshop

“The implementation of the Representative Actions Directive in the Member States”

15 and 16 June 2023

Senatssaal, Carl von Ossietzky University of Oldenburg

Thursday, 15.6.2023

13.30 Registration and welcome

14.00 – 15.00 Introduction

Chair: Geraint Howells (Univ. Galway)

Peter Rott (Oldenburg), The Representative Actions Directive – What is new?

Petra Leupold (Univ. Linz / VKI), Implementation in Austria

15.00 Coffee Break

15.30 – 17.30

Chair: Peter Rott (Univ. Oldenburg)

Charlotte Pavillon (Univ. Groningen), Amending the French group action (2014): third time’s a charm?

Jagna Mucha (Univ. Warsaw) and Monika Namysłowska (Univ. Łódź), Sipping the Enforcement Cocktail: Poland's Misadventures in Implementing the Representative Actions Directive

Karin Sein (Univ. Tartu), Implementation in Estonia

Clement Salung Pedersen (Univ. Copenhagen), Implementation in Denmark

19.00 Dinner

Friday, 16.6.2023

9.00 – 10.30

Chair: Karin Sein (Univ. Tartu)

Laura Bugatti (Univ. Brescia), Implementation in Italy

Geraint Howells (Univ. Galway), Implementation in Ireland and Experience from the UK

Axel Halfmeier (Univ. Lüneburg), Prescription

10.30 – 11.00 Coffee

11.00 – 12.00

Chair: Charlotte Pavillon (Univ. Groningen)

Reinhard Steennot (Univ. Gent), Implementation in Belgium

Franziska Weber (Univ. Rotterdam), Implementation in the Netherlands

12.00 – 13.00 Lunch

13.00 – 14.30

Chair: Reinhard Steennot (Univ. Gent)

Peter Rott (Univ. Oldenburg), The new German representative action - a mixed bag

Jutta Gurkmann (vzbv), The view of vzbv

Ursula Pahl (BEUC), Multinational litigation – dream or reality?

14.30 – 15.00

Peter Rott (Univ. Oldenburg), Wrapping up

Concept

Collective enforcement has come a long way in the EU. As soon as in 1984, the Misleading Advertising Directive 84/450/EEC required Member States to introduce (or maintain) collective enforcement mechanisms, be they public law or private law mechanisms. Other Directives, including the Unfair Contract Terms Directive 93/13/EEC followed but it was only in 1998 that the Injunctions Directive put this at a broader scale. Its effectiveness was limited though, as the remedy – an injunction – only has effect for the future but does not provide for redress for harm that is done by the breach of consumer law.

Many Member States reacted and created collective redress mechanisms of different kinds and different effectiveness, whereas the EU itself did not manage, for a long time, to establish a binding mechanism, due to the resistance of certain Member States. It was only in the aftermath of the Fitness Check on Consumer Law – and the Volkswagen diesel scandal – that the gap was filled with a new legal instrument, the Representative Actions Directive (EU) 2020/1828.

By the end of 2022, Member States had to implement the Representative Actions Directive into national law (although some are delayed, including Germany). The Directive is meant to open a new chapter in the enforcement of consumer law, in particular in those Member States that had not introduced collective redress mechanisms yet. At the same time, it leaves a great number of regulatory choices to the Member States, and one may envisage that their choices will affect the effectiveness of the representative action greatly. Crucial issues include the requirements on legal standing of qualified entities, the way and in particular the time in which consumers would have to sign up to collective litigation (or otherwise), the financing of redress claims and the way in which potential gains are to be distributed to the consumers concerned.

In this workshop, I would like us to explore

- the choices that our national legislators made when implementing the Directive;
- the reasons for those choices (doctrinal reasons, lobbying, ...) including debates before and during the legislative process;
- your evaluation of the effectiveness of the new instrument in practice, also in the context of what mechanisms already exist in your Member State, and whether they have been used successfully. This may include a comparison with public enforcement but also legal tech claims management, where applicable,
- and perhaps the magnitude of the difference to what you had so far in your Member State.

Quite obviously, and most importantly, as this is a comparative exercise, contributors should focus on what is special in their Member States, and this could be anything that fosters or hampers that practical effect of the new instrument, including legal mechanisms and practicalities.

A selection of six to eight conference papers will be published in a special edition of *Revue Européenne de Droit de la Consommation (REDC) / Journal of European Consumer Law 2024*; which means that the papers must be finalised by 30 November 2024 to give me the chance to edit, streamline and so on.