



The New Deal for Consumers

How will the new Collective redress mechanism work?

Fact sheet | April 2018

Věra Jourová

Commissioner for Justice,
Consumers and Gender Equality



Directorate-General for
Justice and Consumers



The **New Deal for Consumers** will provide all European consumers with new and stronger ways to obtain redress if their rights are not respected. The next time a Dieselgate-type scandal happens¹, EU Member States will be better equipped to respond to it.



Today: limited redress possibilities

Today, individual consumers hesitate to take action when their rights have been breached, as the procedures to obtain redress or compensation may be costly and lengthy, not always worth the effort especially if the damage is small.

Currently, the Injunctions directive allows a court or an administrative authority to stop a practice violating consumer rules. However, such injunctions do not give harmed consumers possibilities to obtain at the same time redress or compensation. Public authorities are also not always in the position to act effectively to tackle harmful commercial practices. Thus, some consumer rights breaches which can impact thousands or millions of consumers cannot be effectively addressed.



Empowering consumers individually and collectively with the New Deal

The New Deal for Consumers will change this. Consumers will be able to claim their rights not only individually but also through collective actions and will be able to seek at the same time redress, such as obtaining the compensation due to them.

Representative actions could be initiated by qualified entities such as consumer organisations or independent public bodies on behalf of all consumers concerned. This is already the case in some Member States, now this strong protection would be extended to all consumers across the EU.

¹ the proposed directive would not apply retroactively to infringements that started before its date of application, e.g. to the actual Dieselgate scandal.

- **More sectors covered:**

With the New Deal for Consumers, access to collective redress will be available in all areas important to consumers, such as financial services, transport, energy, telecommunications, health and environment.

- **Cross-border actions more efficient:**

Cross-border actions could become more efficient since it will be possible for entities representing consumers from different Member States to join forces within a single representative action.

- **Clearer and simpler rules across the EU:**

It will be easier and faster for relevant entities to launch injunction and redress actions.

- **Different redress possibilities:**

- ▶ Redress could take different forms, such as compensation, repair, replacement, price reduction, reimbursement or contract termination.
- ▶ Relevant entities will be able to negotiate a settlement for consumer redress with the company. This deal will be approved by a court or administrative authority.

- **Empowered consumers:**

- ▶ A trader found in breach of consumer rights will have to properly inform consumers affected about a final judicial decision and the necessary steps to benefit from redress.
- ▶ In some cases, consumers will also be able to use the final judicial decision stating that a company's practice is illegal as a basis to get redress in their own case. This can be done directly with a trader or through their own follow up legal action if necessary, including in other Member States.

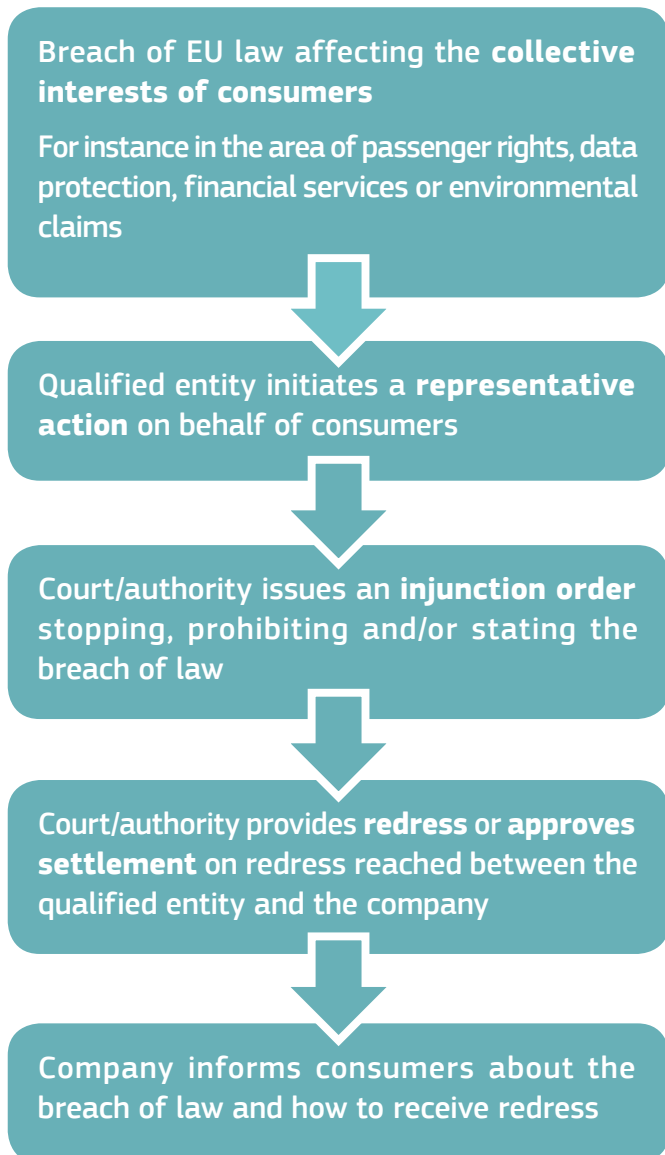


Safeguards to prevent abusive litigation

Thanks to numerous safeguards to avoid abuse of the procedure, the EU representative actions *will be different* from the US style class action. For example, under the EU representative actions:

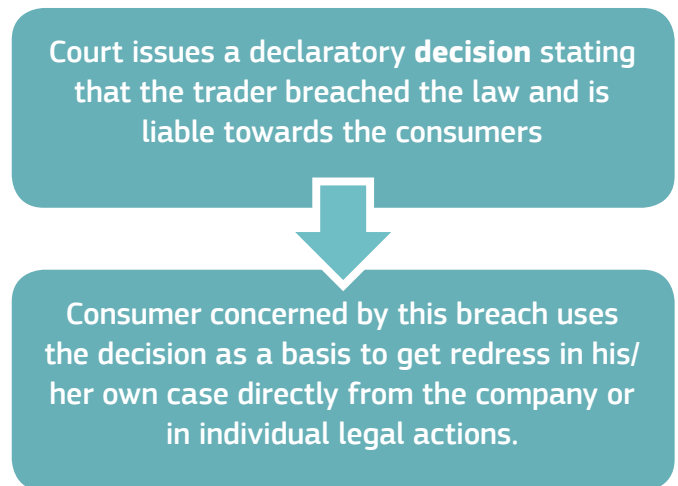
- **only qualified entities**, such as consumer organisations and independent public bodies, designated by the EU Member States - according to strict criteria - will be able to launch an action, not private law firms.
- qualified entities representing consumers will have **strict obligations of transparency regarding the source of their funding and in particular the funds** used to launch a specific representative action. National courts or authorities will be able to assess whether the qualified entity is strong enough to sustain the costs of a failed action or there may be a conflict of interest. For example a company should not be able to use a qualified entity to launch an action against a competitor.

In practice:



Representative actions may also help consumers in their follow up individual actions:

Exceptionally, when a case is not suitable for redress, because for instance it is too complex to assess the damage for consumers, a qualified entity can initiate a **representative action seeking injunctions order** stating that there was a breach of law.



Example of how consumer redress could work:

In the so called Dieselgate scandal, a car producer misled thousands of consumers by selling cars not in compliance with the emissions standards required under existing EU law. This caused a detriment to consumers that bought cars based on misleading information about environmental performance and fuel consumption and also saw their reselling value diminished once the scandal broke out.

Today a consumer organisation can only take action on behalf of consumers to seek an injunction and stop an ongoing practice breaching consumer rights. Consumers can only pursue costly and difficult individual legal actions to seek compensation.

If the rules proposed with the New Deal for Consumers had been in place when the Dieselgate scandal broke out in all Member States consumer organisations or independent public bodies could have launched representative actions against a producer that claims to respect type approval or environmental legislation but does not and thus mislead consumers and seek redress for the consumers affected.

The court or administrative authority would carry out the assessment of the redress claims according to national rules, in particular whether consumers have a right to redress for the loss suffered and what type of redress is available to consumers (e.g. compensation, repair etc.). Alternatively, the car producer and the entity that brought an action could reach a settlement on the redress, which would have to be approved by the court or administrative authority.

Once a redress order would be issued or settlement approved, the company would have to inform all consumers affected and explain the relevant steps to be taken by these consumers to receive redress.

Even if consumers from other Member States would not be included in the action, they could present that final decision to their national court or administrative authority stating that there was a breach of law and seek redress in their own case.

Example 2

A telecommunications trader was not making it clear to consumers that they had made changes to their monthly billing rates. As a result, consumers were unduly charged in their monthly bills for 1,5 years. The individual loss suffered by the affected consumers ranged from 50 – 500 EUR and the aggregate amount of illegal profits obtained by the trader as a result of this practice amounted to 30 million EUR.

With the **New Deal for Consumers**, even if consumers do not realise that there was a breach of their rights, a qualified entity can bring a representative action to stop the illegal practice and seek redress for the consumers affected. The compensation owed to the consumers can be ordered by the court or administrative authority or settled amicably between the qualified entity and company.