

# FROM COLLECTIVE HARM TO REDRESS

what's new

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Newsletter first issue, August 2024

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Dear Reader,

You are about to read the first issue of the quarterly newsletter on the development of representative actions in the European Union. You will find updates about the national implementation of the EU Directive on Representative Actions, news about the legal actions brought to various European courts, links to interesting articles and other insights into the world of representative actions in Europe and third countries. We hope this publication will be both interesting and useful to you!

This newsletter is part of the activities of a BEUC project on representative actions, aimed at keeping you informed and engaged. This is the follow-up of a 2022-2023 project focused on private enforcement and representative actions, both supported by Luminare Projects Limited.

With warm regards,

BEUC Enforcement team



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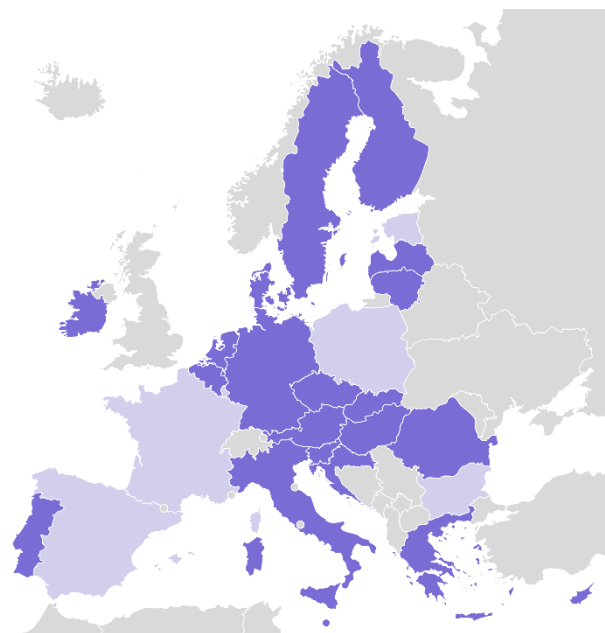
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# RAD roll-out tracker

Implementation of the EU Directive on Representative Actions: what is the state of play?

-  RAD is transposed
-  RAD transposition is pending



**By mid-July 2024, 21 EU countries have fully implemented the Directive. The latest ones are:**

- In **Austria**, in May 2024, the Federal Ministry of Justice finally produced the draft law, which was adopted by the National Council on 5 July and by the Federal Council (Bundesrat) on 11 July. The law was [published](#) on 17 July and entered into force the next day.
- In **Belgium**, the law transposing the Directive was [published](#) in the national gazette on 31 May and entered into force on 10 June, modifying previously existing class actions system, in particular updating and extending the list of infringements to which the regime applies.
- In **Czechia**, the transposition of the Directive was recently finalised. The President signed the bill into law on 7 June 2024, and the law was [published](#) on 24 June, which came into force on 1 July, introducing a completely new institute of collective actions in Czechia.

**In the remaining 6 Member States, the draft legislation is being negotiated. Some of the latest developments include:**

- In **Bulgaria**, on 12 June 2024, a draft bill revising the Consumer Protection Act was [published](#) for public discussion. Interested parties were given a 30-day deadline for proposals and opinions on the project.

- In **Estonia**, the [draft law](#) was published by the Government in October 2023. The first reading of the draft bill was completed in the State Assembly of Estonia (Riigikogu) in December 2023, and some amendments are still being discussed.
- In **France**, the [draft law](#) was adopted by the Senate in February in its 1<sup>st</sup> reading, with amendments. The second reading before the National Assembly is pending. A joint committee comprising members from both the Senate and the National Assembly may be designated to develop a joint text.
- In **Luxembourg**, a substantially amended draft of the law has been [published](#) in April, following a highly critical opinion issued by the Council of State on the previous draft. Council of State is now reviewing the amended draft.
- In **Poland**, on 6 June, the draft bill that provides for a new mechanism to complement the currently existing class action model was submitted to the Parliament (Sejm). On 26 June the Sejm discussed the draft and referred it to the Committee for further work. More information [here](#).
- In **Spain**, in March 2024, the government submitted the [draft bill](#) that amends the civil procedure law to the Parliament. The provisions transposing the Directive are only a part of a much larger judicial reform, making the overall draft lengthy.

The European Commission is now conducting the transposition check. If you believe that in your country, the Directive is not implemented correctly, it is possible to submit a formal complaint to the Commission. More information [here](#).

# Best practices of national transposition

The consumer movement was concerned that most EU countries would choose strict opt-in procedures, where harmed individuals must sign up very early, even before the legal action is launched. That type of procedure is burdensome and expensive. The good news is that many Member States have finally decided to introduce opt-out (Portugal, Spain, Hungary, Cyprus, Slovenia and The Netherlands). This opt-out can usually only be applied to residents of the respective countries and, in some cases, if additional conditions are satisfied. Several countries have introduced or are planning to have so-called “late” opt-in, where the names of the individuals need to be provided only after the judgement on liability has been passed (France, Belgium and Estonia).

## Big Tech in the spotlight

### **German class action lawsuit against Amazon over unilateral contract changes**

In March 2024, the Saxony Consumer Advice Centre (Verbraucherzentrale Sachsen) [announced](#) a redress claim against Amazon Digital Germany GmbH. The claim addresses Amazon’s unilateral decision to introduce additional advertising into its Prime Video streaming service as of 5 February 2024, without obtaining customer consent.

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### **Meta faces new legal battle over privacy violations in the Netherlands**

On 1 March 2024, the Data Privacy Stichting (DPS), in cooperation with BEUC member Consumentenbond, filed a class action against Meta, seeking compensation for Facebook and Instagram users. In 2023, the Amsterdam court found Meta guilty of violating the privacy rights of Dutch users. Meta was fined €1.2 billion for transferring user data to the United States without sufficient protection against government surveillance. DPS demands that Meta compensate affected Facebook users €750 each for data misuse and €500 each for unlawful data transfers. More information on the Consumentenbond [webpage](#).

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### **UK Tribunal certifies multi-billion-pound collective claim against Google for ad tech practices**

On 5 June 2024, the UK's Competition Appeal Tribunal (CAT) certified a 13.6-billion-pound collective claim against Google, allowing it to proceed to trial. The claim alleges that Google abused its

dominant position in the ad tech market, causing significant financial losses to UK online publishers. The action covers all UK-domiciled natural or legal persons that published content on websites or mobile apps containing ad units for which they received revenue from 1 January 2014 to 30 November 2022 unless they opted out. [More info](#).

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## Privacy violation claim against Salesforce and Oracle

Salesforce and Oracle face the prospect of a mass privacy claim in the Netherlands, after a campaign group received permission to bring cases against them. On the 18 June 2024, the Amsterdam Court of Appeal said that The Privacy Collective meets the requirement to bring the claim, which concerns the allegedly unlawful collection of personal data through the placement of cookies. The decision on the merits is postponed. [More info](#).

# Other major legal actions and judgements

## Philips Respironics class action in Italy

In July 2024, Adusbef, an Italian consumer organisation, along with Global Justice Network, filed a collective claim in Milan against Philips. This case involves allegations of injuries and deaths caused by faulty sleep and respiratory devices. Philips Respironics recalled a series of these devices in June 2021 due to soundproofing foam that could degrade and release harmful particles and gases. These substances, which can cause irritation, inflammation and even carcinogenic effects, were inhaled by users, potentially leading to severe health issues.

The litigation could impact over 1.2 million European citizens who have used these devices. In April 2024, Philips reached a \$1.1 billion settlement in the U.S. for similar claims, though they admitted to no fault or liability. Read Adusbef's press release [here](#) (in Italian).

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## Settlement with BNP Paribas in France over controversial Swiss franc loans

After 8 years of litigation, in January 2024, BEUC French member CLCV reached a settlement with BNP Paribas regarding controversial loans issued in 2008-2009. These loans were denominated in Swiss francs but repayable in euros, exposing consumers to significant currency risk. The depreciation of the euro against the Swiss franc following the 2008 financial crisis led to skyrocketing repayments. In late 2023, a Paris court ruled that BNP Paribas misled consumers and held the bank responsible for the damages. The settlement allows for the cancellation of these mortgage contracts

and exempts consumers from future interest payments, potentially benefiting around 4,400 borrowers. See [CLCV press release](#) (in French).

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## Austrian court confirms direct applicability of RAD

On 20 March 2024, the Regional Court of Klagenfurt issued a groundbreaking ruling declaring that essential provisions of the RAD are directly enforceable in Austria, despite the country's failure to incorporate the Directive into its national laws at the time of the judgment. The court found that the provisions of Articles 2, 4, 7 and 8 of RAD are “sufficiently precise and unconditional”, as required by the existing ECJ jurisprudence on the direct applicability of EU Directives. This decision, a first in the EU, is particularly significant as similar arguments could be used in other Member States where RAD has not yet been transposed. Read [press release](#) from BEUC member VKI (in German).

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## Settlement with driving schools that formed a price fixing cartel in Lithuania

In May 2024, BEUC Lithuanian member LVOA reached an amicable agreement with ten driving schools found to have formed a cartel, resulting in increased prices for consumers. LVOA prepared a collective suit and informed the schools of the impending litigation, leading to a settlement where all schools agreed to compensate consumers to avoid court proceedings. Read LVOA [press release](#) (in Lithuanian).

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## Volkswagen settlement in Italy

Also in May 2024, BEUC Italian member Altroconsumo secured an amicable settlement with Volkswagen. This settlement compensates 60,000 consumers represented by Altroconsumo since 2015, following allegations of emissions fraud. Read Altroconsumo [press release](#) (in Italian).

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## Several class actions in Germany to redress unfair price increases

Between late 2023 and early 2024 BEUC German member vzbv introduced five representative redress actions concerning unfair price increases:

- **E.ON and Hansewerk** allegedly raised prices arbitrarily on existing contracts, using formulas that did not reflect actual cost increases but instead were linked to natural gas trading prices. [More info](#).
- **ExtraEnergie** (natural gas and electricity) is accused of significant price hikes based on unfair contract terms. More info [here](#).
- **Vodafone** raised its monthly internet prices by €5, allegedly without a legal basis to do so. See vzbv [press release](#).
- **DAZN** doubled prices from €15 to €30 using unfair contract clauses. More info [here](#).

# Beyond the Directive: what's new on representative actions in Europe

## New association is formed in the Netherlands to facilitate collective redress discussions

In May 2024, the [VEMCA \(Vereniging voor Massaschade en Collectieve Actie\)](#) was established in the Netherlands, to advance discussions and knowledge on collective procedures and mass damage settlements. VEMCA gathers judges, ministry representatives and lawyers to engage in regular meetings and publications. It is dedicated to collective redress in the Netherlands and beyond.

## 2024 EU Justice Scoreboard includes collective redress for the first time

On 11 June 2024 the European Commission published its [2024 EU Justice Scoreboard](#). For the first time, this edition includes specific measures for representative actions protecting the collective interests of consumers. Notably, Figure 30 highlights which Member States have established arrangements to inform consumers about these actions and their outcomes and which have implemented measures to train judges in effective management of representative actions.

# Latest updates from the Court of Justice of the EU

## ECJ rules that the transparency of 'floor' clauses in mortgage loans may be reviewed in the context of a collective action

The CJEU [ruled](#) that the EU Directive on unfair terms in consumer contracts does not exclude from collective actions the judicial review of transparency of the 'floor' clauses in variable-rate mortgage loans agreements. Such review must simply be adapted to the specific features of collective actions and focus on the standard contractual and pre-contractual practices followed by the seller or supplier towards the average consumer.

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## ECJ greenlights representative actions against controllers for non-compliance with information obligations

In July 2024, in the case C-757/22 **Meta Platforms Ireland Limited**, the [ECJ held](#) that when the right of a data subject to obtain intelligible information from the controller on the purpose of processing and the recipients is infringed, the subject under GDPR can rely on the representative action mechanism. The ECJ was asked by the German Federal Court of Justice to interpret whether a consumer protection association could bring a representative action without a mandate and without a concrete violation of a data subject's rights in the event of non-compliance with information obligations by the controller.

## Interesting reads



### Revue européenne de droit de la consommation - European Journal of Consumer Law: Special issue / Representative actions" (2024-2)

The European Journal of Consumer Law is at the forefront of scholarly discourse in consumer law. The latest [edition](#) is a special issue dedicated entirely to the implementation of the Representative Actions Directive across various EU Member States. This issue examines the decisions made by national legislators when transposing the RAD, the rationale behind these choices, and critically assesses the effectiveness of the resulting new legal instrument.

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## International tech litigation reaches the next level: collective actions against TikTok and Google

Prof. Xandra Kramer and Eduardo Silva de Freitas delve into the evolving landscape of collective action litigation, focusing on recent interim judgments against tech giants TikTok and Google under the Dutch WAMCA procedure (i.e. the Act on Collective Damages in Class Actions). These cases highlight significant questions in private international law, particularly regarding jurisdiction and admissibility. The [article](#) provides a detailed analysis of the Amsterdam District Court's decisions, addressing issues like third-party funding agreements and the implications of the Brussels I-bis

Regulation, illustrating the complex, international dimensions of holding tech companies accountable.

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## Who can bite the Apple? The CJEU can shape the future of online damages and collective actions

In the final weeks of 2023, the District Court of Amsterdam set the stage for a landmark decision by referring pivotal questions to the Court of Justice of the European Union. This move could clarify jurisdictional conflicts that have long clouded collective actions, especially those tied to the complex world of competition law and online damages. With Apple at the centre of this storm, accused of monopolistic practices within its App Store, the forthcoming judgment promises to be a game-changer. Dive into [this insightful article](#) by Eduardo Silva de Freitas as he unravels the intricate legal battles and their implications for the future of collective redress in the digital age.

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## Financing Collective Actions in the Netherlands: Towards a Litigation Fund?

Collective actions often raise significant funding challenges due to their complexity. The RAD, effective since June 2023, and the 2022 European Parliament Resolution on Responsible Private Funding of Litigation have further intensified discussions around these issues. This new book - by Xandra Kramer, Ianika Tzankova, Jos Hoevenaars and Karlijn van Doorn - explores Dutch collective action developments, the impact of the WAMCA, and various funding models, including third-party litigation funding. It also examines whether a litigation fund for collective actions would be necessary and feasible in the Netherlands. You can freely access the [digital version](#) or order a [hardcover copy](#).

## Upcoming events



We are planning two important trainings this autumn:

- **Representative legal actions based on the EU AI Act:** details to follow.
- **Private international law issues in cross-border representative actions:** Scheduled for the morning of the 20<sup>th</sup> of September 2024, this session will be led by Professor Xandra Kramer from the University of Rotterdam, a distinguished academic renowned for her extensive work in this area. Please save the date and watch for the invitation coming your way soon.

## Key outputs to watch

In the context of this project, we will commission a comparative legal study focusing on national procedural provisions and jurisprudence related to:

1. Burden of proof, access to evidence and disclosure of information,
2. Financing of collective redress actions, with a focus on third-party funding and court fees, and
3. Quantification of (immaterial) damage, especially in cases of online infringements.

Researchers have already been selected to conduct this study, with the full results expected to be available in Q1 2025.

## Stay connected and engaged

We are eager to make the activities of this new project as interesting and beneficial to your work as possible. Your feedback and ideas are invaluable to us. Please feel free to share your thoughts by emailing [augusta.maciuleviciute@ext.beuc.eu](mailto:augusta.maciuleviciute@ext.beuc.eu).

Additionally, if you know of other consumer or digital rights groups that could benefit from this project, please let us know.

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