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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC

Delegations will find attached document COM(2020) 693 final.

Encl.: COM(2020) 693 final



Brussels, 5.11.2020
COM(2020) 693 final

2018/0089 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a directive of the European Parliament and of
the Council on representative actions for the protection of the collective interests of
consumers and repealing Directive 2009/22/EC**

(Text with EEA relevance)

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2018) 184 final – 2018/0089 (COD): 12 April 2018.

Date of the opinion of the European Economic and Social Committee: 20 September 2018.

Date of the opinion of the European Committee of the Regions: 10 October 2018.

Date of the position of the European Parliament, first reading: 26 March 2019.

Date of transmission of the amended proposal: N/A.

Date of adoption of the position of the Council: 4 November 2020.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

As part of the "New Deal for Consumers" initiative, the European Commission presented a proposal for a Directive on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC.

The objective of the proposal is to increase the level of consumer protection and improve the smooth functioning of the internal market, by increasing the effectiveness of the current injunction procedure for the protection of consumers' interests, and complementing it with a mechanism for collective consumer redress.

The proposal sets out rules enabling qualified entities to seek representative actions aimed at the protection of the collective interests of consumers, while ensuring appropriate safeguards to avoid abusive litigation. The possible measures to be sought within the representative actions include injunctive measures to stop or prohibit a trader's practice, if it is considered an infringement of one of the relevant EU laws, as well as redress measures that will provide consumers represented in the action with remedies available

under EU and national law. The proposal foresees harmonised criteria for the designation of qualified entities as well as rules on third party funding, assistance to qualified entities and their mutual recognition, settlements, consumer information and disclosure of evidence with the aim to ensure the effectiveness of the procedure in the domestic and cross-border context. The scope of application of the proposal covers horizontal consumer law and sector-specific EU instruments relevant for the protection of collective interests of consumers in different sectors such as financial services, energy, telecommunications, data protection, travel, tourism, health and environment.

3. COMMENTS ON THE POSITION OF THE COUNCIL

In line with the political agreement, the Council's first reading position introduces a number of changes to the Commission's proposal, mainly in order to:

- clarify the objectives of the Directive as contributing to the functioning of the single market through a high level of protection of consumers. In this context, it also refers to the objective of consumers' access to justice,
- provide the Member States with discretion as regards the designation of the qualified entities enabled to bring domestic representative actions, while strengthening the harmonised criteria for designation of qualified entities enabled to bring cross-border actions,
- clarify the categories of measures to be sought by qualified entities, the rules on consumer participation within the action, coordination of possible parallel actions, third party funding, allocation of procedural costs, consumer information, disclosure of evidence and assistance to qualified entities,
- make the Directive more principle-based by providing Member States with more discretion as regards procedural modalities such as settlements, effects of final decisions, limitation periods or penalties in order to facilitate the adaptation of the representative actions into the national enforcement frameworks.
- introduce a review clause on the possible establishment of a European ombudsman for representative actions,
- extend the transposition period of the Directive from 18 to 24 months.

The Council's position fully reflects the political agreement reached between the European Parliament and the Council on 22 June 2020. The Commission considers that these amendments to the proposal are in line with its original policy objectives. Therefore, the Commission can endorse the Council's position.

4. CONCLUSION

The Commission supports the Council position.

The adoption of this Directive will mark an important milestone towards the effective enforcement of consumer rights in the EU where the collective interests of consumers are

concerned. The Directive will also contribute to a level playing field for traders operating in the internal market.