

LITIGATION AND DISPUTE RESOLUTION BRIEFING: Special Edition

## Modernisation of Greek legislation on the Protection of Collective Interests of Consumers: Transposition of Directive 2020/1828

This briefing provides an overview of the amendments introduced to the Consumer Protection Law (8th part of Law 2251/1994 - the Consumer Protection Law) resulting from the transposition of Directive 2020/1828 (by virtue of the new Law 5019/2023 (the New Law)) and the modernisation of the legislative framework for the protection of the collective interests of consumers involving representative actions.

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#### A. Introduction to the New Law

1. By virtue of the New Law, Article 10 of the 8th part of the Consumer Protection Law regarding collective measures of consumer protection is repealed and the representative actions mechanism is introduced into Greek Law.
2. The New Law comes into force on 26 June 2023 and applies to representative actions filed from 25 June 2023 onwards.
3. The aim of the New Law (Government's Gazette Issue A' 27/14.02.2023) is twofold:
  - a. to transpose into Greek Law Directive 2020/1828 of the European Parliament and of the Council of 25 November 2020 (the **Directive**) regarding the representative actions

for the protection of the collective interests of consumers and for repealing Directive 2009/22/EC; and

- b. to modernise the legislative framework for the protection of the collective interests of consumers.

4. An overview of the New Law's most important amendments is presented below under Sections B-J.

#### B. Purpose and Subject Matter

1. Article 1 stipulates that the New Law's main purpose is to empower the protection of consumers from commercial practices that lead to a violation of their rights (by transposing the Directive).
2. Article 2 defines the subject matter of the New Law as being the modernisation of the legislative framework for the protection of the collective interests of consumers through the update of the Consumer Protection Law.

#### C. Scope

1. The New Law applies:
  - a. to representative actions brought in relation to infringements by suppliers of the legislative framework listed in Annex II that harm or may harm the collective interests of consumers; provisions included originate from:
    - i. Greek legislation, such as unfair commercial practices, advertising and supplier's liability for defective products and provisions; and

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- ii. European Union Law, such as Regulation (EU) 2016/679, Regulation (EU) 2015/2120 and Regulation (EU) 2017/1369); and
- b. to domestic and cross-border infringements, including cases of infringements which ceased before the filing of the representative action.

## D. Qualified Entities

1. Representative actions can be brought by the following Qualified Entities:
  - a. Consumer Associations under the prerequisites that they:
    - i. have a website;
    - ii. are not subject to insolvency proceedings and have not been declared insolvent;
    - iii. are independent and not influenced by persons (especially by suppliers) other than consumers;
    - iv. make publicly available in plain and intelligible language by any appropriate means, in particular on their website, information that demonstrates that the entity complies with the criteria listed in points i-iii above and information about the sources of its funding in general, its organisational, management and membership structure, its statutory purpose and its activities;
    - v. keep books;
    - vi. demonstrate 12 months of actual public activity in the protection of consumer interests prior to its request for designation; and
    - vii. make publicly available in plain and intelligible language by any appropriate means, in particular on their website, information that demonstrates that the entity complies with the criteria listed in point vi above; and
  - b. Qualified Entities designated by other EU Member States to bring cross-border representative actions.
2. The Greek Legislator did not make use of the discretion provided for in the Directive for the designation of:
  - a. an entity as a Qualified Entity on an ad hoc basis for the purpose of bringing a particular domestic representative action; and
  - b. public bodies as Qualified Entities for the purpose of bringing representative actions.

## E. Bringing of Cross-Border Representative Actions

1. Qualified Entities which are designated in advance in another Member State for the purpose of bringing cross-border representative actions can bring such representative actions before the Greek courts.
2. In the event that infringements of Annex II of the New Law occurring within Greek jurisdiction affect or are likely to

affect consumers in different Member States, the cross-border representative action can be brought before the Greek Courts jointly by several Qualified Entities from different Member States in order to protect the collective interests of consumers in different Member States.

## F. Representative Actions

1. The New Law gives jurisdiction to the First Instance Multi-Member court of the place of residence or registered offices of the defendant supplier to hear a representative action.
2. Qualified Entities are entitled to seek at least:
  - a. injunctive measures against suppliers involving a particular practice even before it occurs, in cases where it constitutes an infringement of Annex II of the New Law which harms or may harm the collective interests of consumers; and
  - b. redress measures, including compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid.
3. The Greek court determines its jurisdiction and the applicable law on the basis of the facts which need to be presented by the Qualified Entity in its representative action.

## G. Injunctive Measures

1. In line with the Directive's provisions, the New Law allows for applications for injunctions to be brought by Qualified Entities against suppliers on the basis of an **opt-out** mechanism.
2. The injunctive measures provided may take the form of provisional or definitive measures to cease or prohibit a practice that constitutes an infringement, as referred to in Annex II of the New Law.
3. A definitive measure may include:
  - a. a judgment ruling that the practice constitutes an infringement of Annex II of the New Law; and
  - b. the obligation to publish the judgement on the measure in full or in part, in a form the court considers appropriate, or the obligation to publish a corrective statement on the supplier's part.
4. It is further provided that for an injunctive measure to be adopted, the Qualified Entity is not required to prove:
  - a. the actual loss or damage incurred by individual consumers affected by the infringement; or
  - b. the intent or negligence of the supplier.
5. In the context of an injunctive action, the Qualified Entity may additionally request payment of compensation as a civil penalty for the demonstrated anti-consumer behavior of the supplier.
6. Should an action requesting payment of a civil penalty be irrevocably dismissed as being manifestly unsubstantiated, the defendant supplier may file an action within 6 months requesting payment of compensation or moral damages

from the Consumer Association and personally from the board members which resolved to file the original action against the supplier, who are deemed as severally liable.

## H. Redress Measures

1. The Greek Legislator made use of the discretion provided for in the Directive and established the opt-in mechanism for redress measures which Qualified Entities are entitled to seek as follows:
  - a. individual consumers must explicitly consent to being represented in a representative action seeking redress measures and be bound by its outcome by the time the Qualified Entity files its statement of claim;
  - b. filing must be effected within 90 days of the end of the 30 days deadline for serving the defendant with the action;
  - c. Qualified Entities must also submit the individual consumers' declarations of consent; and
  - d. the introductory court document consisting of the action for redress measures is sufficient to describe the group of consumers asserting eligibility to benefit from these remedies.
2. The Greek legislator further adopted a later opt-in mechanism. This allows individual consumers to benefit from any redress measures awarded, if the judgment accepting the representative action seeking redress measures becomes irrevocable, even if they had not explicitly consented to being represented. The following process applies:
  - a. individual consumers must notify the supplier in writing within a period specified by the court of their claim;
  - b. if within 30 days of the notification individual consumers are not satisfied, they can file an application with the General Secretariat of Commerce, along with the necessary documentation;
  - c. as long as it is documented that the particular individual consumers are entitled to benefit from the awarded

redress measures, the competent body of the Ministry of Development and Investments shall issue a decision inviting the supplier to apply the redress measure within 5 days;

- d. if the supplier fails to comply within the 5 days, the Ministry will issue a decision to impose sanctions on the supplier.
3. Any redress funds not recovered by individual consumers within the period defined by the court's judgement will be transferred to the Qualified Entity, if they have not been claimed within 60 days of an invitation to do so issued by the Qualified Entity.

## I. Redress Settlement

1. In line with the Directive, the New Law provides that the Qualified Entity and the supplier may jointly propose a settlement to the court regarding redress for the consumers concerned.
2. The content of the settlement is subject to analysis by the court and, should the court refuse to approve it on the grounds that it is unfair, it will proceed with the hearing of the representative action.
3. Approved settlements are binding on the Qualified Entity, the supplier and individual consumers.
4. Individual consumers affected by a representative action and any settlement can accept or refuse to be bound by it.
5. A decision due from the Minister of Development and Investments will set out the procedure to be applied in these cases.

## J. Funding of Representative Actions

1. The Greek Legislator does not make use of the discretion provided for in the Directive as regards third-party funding of representative actions seeking redress measures.
2. The New Law expressly prohibits any kind of third-party funding of representative actions.

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