

## THE POSSIBILITY OF USING REPRESENTATIVE ACTIONS TO PURSUE CLAIMS RESULTING FROM THE DIESELGATE SCANDAL – THE FUTURE OF REDRESS FOR INFRINGEMENTS OF COLLECTIVE CONSUMER INTERESTS

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**Abstract.** Since the disclosure of unethical and illegal solutions used by Volkswagen A.G. during exhaust emission tests in many countries, proceedings are underway to impose an appropriate penalty on the company and to compensate the victims. On a global scale, the USA, Australia, South Korea and Canada can be mentioned. The European Union is not standing still. Until mid-February 2020, national courts and administrative bodies imposed various types of sanctions in Spain, Germany, Portugal, the Netherlands, Austria and Poland, among others. However, although the Volkswagen case is an infringement of collective consumer interests on a pan-European scale, Member States are resolving the problem through internal proceedings. Does this ensure effective and adequate compensation of affected consumers? The increase in protection would ensure, among other things, that there is a valid injunction for adequate compensation and that the proceedings are international in nature. The paper aims to show how the representative actions mechanism proposed in the “New Deal for Consumers” package could affect the effectiveness of decisions taken in the Volkswagen case by Member States’ competent authorities.

**Keywords:** consumer protection, New Deal, representative actions.

### INTRODUCTION

On 11 April 2018 the European Commission presented its Communication ‘A New Deal for Consumers’ and the accompanying proposals for two Directives – a Directive on representative actions<sup>2</sup> and a Directive aimed at better enforcement and modernisation of consumer law<sup>3</sup>. Both drafts aim to thoroughly reform EU consumer law, adapting it to current challenges. The new representative actions mechanism is intended to make it easier for consumers to seek redress to eliminate the effects of infringements of their rights, including claims for damages, and to ensure effective protection of consumers’ collective interests.

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2 Proposal for 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, COM/2018/184 final, hereinafter: draft directive on representative actions.

3 Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules, COM/2018/185 final.

The European Commission has referred to the so-called Dieselpgate<sup>4</sup> scandal several times in its explanatory memorandum. A car producer has misled thousands of consumers by selling cars that do not comply with emission standards required by EU law. The new deal for consumers is to ensure that in the future traders will not commit similar cross-border infringements and consumers will have effective means of redress. The European Commission confidently stated that if the rules proposed in the New Deal for Consumers in all Member States existed at the time of the Dieselpgate scandal, consumer organisations or independent public entities could bring representative actions against the producer who is misleading consumers and seek compensation for the consumers affected. Under the draft directive on representative actions, qualified entities would bring actions against traders who infringe the collective interests of consumers. Courts or authorities will decide in a single injunction procedure on the form of compensation for damages caused to consumers.

The draft directive on representative actions is still subject to legislative work. If the proposed amendments enter into force, representative actions may be a solution to consumers' problems of harming their collective interests. Will the future decade of European Union law be free from scandals similar to those committed by Volkswagen?

#### THE DIESELGATE SCANDAL

In September 2015 the Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) revealed that Volkswagen AG (VW) was using an exhaust emission control system in its vehicles that was only activated during emission tests (MacDaugald, 2017, p. 94–96). This allowed the cars to be advertised as more environmentally friendly than competing brands while consuming less fuel. In fact, Volkswagen A.G. was not able to reconcile the desired level of combustion with the production of exhaust gases corresponding to the required standards. For this reason, the company used software that recognized that the vehicle was being tested for the release of toxic substances, which resulted in switching to the low emission mode. At the end of the test, the engine control software returned to normal operating mode, where it was possible to improve vehicle acceleration while reducing fuel consumption (Ewing, 2015, p. B1). The President of the Management Board of VW confirmed the use of a special operating mode of the software embedded in the engine control units during the exhaust emission tests<sup>5</sup>.

In view of the VW scandal, consumers who decided to buy cars with built-in alternative modes of engine operation try to assert their rights by using the legal instruments provided by the applicable national law. There are many similarities across the European Union in terms of consumer redress, but there are also significant differences. The process of settling consumer claims varies widely across Member States. At present, there are no uniform mechanisms that would allow all victims in the European Union to receive adequate compensation, as is the case in the United States<sup>6</sup>.

4 [https://ec.europa.eu/info/sites/info/files/ndc\\_factsheet4\\_redress\\_mechanism.pdf](https://ec.europa.eu/info/sites/info/files/ndc_factsheet4_redress_mechanism.pdf).

5 <https://www.media.vw.com/en-us/releases/575>.

6 [https://www.washingtonpost.com/business/economy/court-approves-15-billion-emission-settlement-by-volkswagen/2016/10/25/5f94f474-9ad9-11e6-b3c9-f662adaa0048\\_story.html](https://www.washingtonpost.com/business/economy/court-approves-15-billion-emission-settlement-by-volkswagen/2016/10/25/5f94f474-9ad9-11e6-b3c9-f662adaa0048_story.html).

## CONSUMER REDRESS

Consumers seeking compensation in the Member States are faced with a number of problems arising from the circumstances of the case, such as the cross-border nature of the case, which, in the absence of adequate harmonisation of rules, slows down proceedings and, above all, does not guarantee identical compensation for victims of the same infringement in different EU countries.

Jurisdiction can be established on the basis of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (EU, 12 December 2012, p. 1–32). According to Article 18(1), a consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled. This provision is without prejudice to Article 7(2) of the Regulation, which provides that in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.

However, there are also doubts concerning the attribution of liability for damage caused to consumers. Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (25 May 1999, p. 12–16) imposes a liability on the seller by stipulating that he must deliver to the consumer goods which are in conformity with the sales contract (Article 2(1)). Although in most cases the claims were initially directed against car sellers (Nemeth, Carvalho, 2015, p. 35), there have gradually been allegations directly against producers<sup>7</sup>.

An additional obstacle is the lack of binding character of decisions by national administrations on the violation of collective consumer interests. For this reason, consumers must always prove the existence of an infringement before a court in private law proceedings.

## COLLECTIVE CONSUMER INTERESTS

Advertising cars as ‘environmentally friendly’ has caused the average consumer to make a transactional decision that he would not have taken otherwise (Henning-Bodewig, 2016, p. 153). As a consequence, VW’s practices can be accused of infringing the collective interests of consumers. According to Directive 2009/22/EC on injunctions for the protection of consumers’ interests (23 April 2009, p. 30–36), the notion of “collective interests of consumers” should be understood as interests which do not include the cumulation of interests of individuals who have been harmed by an infringement (recital 3).

Where there is no definition of the collective interest of consumers in national law, the court or administrative authority must always examine whether there is a collective interest of consumers and whether there has been an infringement (Sieradzka, 2016, p. 1). In this case, it is helpful to refer to the infringement of the public interest, which can occur when a number of consumers are affected by an act or omission of the trader or when the functioning of the market is adversely affected (Sieradzka, 2016, p. 2). In addition, it is essential that a potentially unlimited number of consumers

7 <https://www.stopvw.pl/afera-na-swiecie/>.

can be affected by the infringement. Therefore, the specificity of the collective interest of consumers lies in the fact that it includes, but also exceeds, individual interests, being more than the sum of the individual elements of a set (Wesołowska, 2014, p. 92). However, this term cannot be given purely economic significance (Borkowski, Chmielewski, 2017, p. 143–144).

The doctrine states that the term “collective” refers to both an abstract consumer and an abstract interest. In addition, the trader’s practice must be such that each individual person may be affected, whether he is the trader’s contractor or potentially becomes one. However, even incidental practices by a trader will be regarded as harming the collective interests of consumers insofar as they adversely affect the rights of an abstract consumer (Sieradzka, 2016, p. 5).

In addition, the term “collective interest” may be understood differently depending on the context and nature of the legal relationship with the consumer (Sieradzka, 2012, p. 24–33). The definition of who the trader’s practice is addressed to is also relevant to the remedies available to the consumer in the event of damage. In the case of an infringement of an individual interest, the consumer can pursue his claims in private law. On the other hand, if collective interests have been infringed, the entitled entities represent consumers in court proceedings (Wesołowska, 2014, p. 93–94; Sieradzka, 2007, p. 175).

Collective redress involves a wide range of procedural mechanisms for the collective enforcement of consumer rights. Although these mechanisms are very diverse, four main forms of collective redress can be identified. The first is a representative action on behalf of a group to obtain redress, in which a qualified entity is granted a standing entitlement. In addition, a group action can be distinguished, in which a legal representation is granted to a group member. The so-called model case, in which an action is brought by one or more persons and the judgment is based on other cases against the same defendant. The last type is characteristic of the common law system in the United States, where group actions are conducted by professional lawyers (Durovic, Micklitz, 2017, p. 81).

#### DIRECTIVE 2009/22/EC ON INJUNCTIONS FOR THE PROTECTION OF CONSUMERS’ INTERESTS

By adopting Directive 98/27/EC on injunctions for the protection of consumers’ interests (19 May 1998, p. 51–55), the EU legislator initiated a process of approximation of the laws, regulations and administrative provisions of the Member States on injunctions against traders. The reason for this was the inefficiency of the legal mechanisms available to consumers in the event of an infringement (Directive 98/27/EC, recital 2). The problem was in particular due to the lack of effective injunction mechanisms for cross-border infringements, as raised in the preambles of Directive 98/27/EC (recital 3) and repealing Directive 2009/22/EC (recital 4). Firstly, ineffective actions or passivity of public authorities risk losing consumer confidence in the market. Second, the aforementioned lack of uniform legislation within the Union results in the helplessness of public authorities in cross-border practices. Proceedings concerning the same practice may take place across the Union in different modes and may not necessarily result in a similar outcome. Directive 2009/22/EC, like its predecessor 98/27/

EC, obliged Member States to introduce into their national legal systems the possibility for qualified entities to bring actions for the cessation of practices that harm the collective interests of consumers. This could be done by placing the injunction procedure in national judicial or administrative proceedings, with the option of a mixed system.

In order to be considered harmful under Directive 2009/22/EC, a practice must endanger or infringe the collective interests of consumers and must furthermore be incompatible with the Directives listed in Annex I to the Directive. Qualified entities are defined in Article 3 of the Directive as bodies or organisations with an interest in ensuring compliance with the consumer protection provisions in Annex I. Under Directive 2009/22/EC Member States shall select the authorised entities according to their choice, either by extending the competence of existing bodies or by setting up new ones whose task is solely to pursue the objective of the Directive (recital 10).

According to Article 2(1)(a) of Directive 2009/22/EC, qualified entities may apply to a court or competent authority for an injunction requiring them to cease the practice or to prohibit it in future. These may be preventive in the form of providing the details of the case and the decision to be taken by the public (Directive 2009/22/EC, Article 2(1)(b)), or they may be punitive in the event of an undertaking's failure to comply with its obligation. In case of failure to comply with the obligation on time, the court or authority may charge certain amounts for each day of delay (Directive 2009/22/EC, Article 2(1)(c)). These optional elements of an action for an injunction, according to part of the doctrine, indicate that the legislator has doubts as to the effectiveness of the injunction itself (Bogdan, 1998, p. 369–375).

The Directive is also intended to open the door to bringing actions in the case of cross-border infringements without interfering with international law on the choice of law applicable to the settlement of a dispute (Article 2(2)). The effectiveness of the procedure in the case of cross-border infringements is limited by the cost of bringing an action, the complexity of the procedure and its duration (COM 2012/0635 final, 1.1.).

According to the report on the application of Directive 2009/22/EC, a detailed list of proceedings pending in the event of infringements of consumers' collective interests is difficult to compile, as Member States are not obliged to keep records of such cases. During the first 4 years of application of Directive 2009/22/EC, approximately 5600 actions for an injunction were brought, of which only 70 covered cross-border infringements (COM 2012/0635 final, 2.1.). The lack of accurate data makes it impossible to make a reliable assessment of the effectiveness of the procedure.

Although Directive 2009/22/EC has contributed to reducing the incidence of harmful practices, injunctions under the Directive have mainly future effects. In addition, existing procedural measures are primarily aimed at eliminating infringements and not at enabling consumers to seek damages (Mucha, 2019, p. 212). Another factor contributing to the low popularity of injunctions is the length of proceedings and the significant differences in the duration of injunctions for cross-border infringements. Cases pending in several Member States are additionally characterised by the complexities of the order.

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## EFFECTIVENESS OF REDRESS FOR INFRINGEMENTS OF COLLECTIVE CONSUMER INTERESTS

In 2017 the Commission carried out a detailed evaluation of consumer protection legislation. The assessment of the adequacy of the REFIT (SWD(2017) 209) and the evaluation of the Consumer Rights Directive (COM(2017) 259; SWD(2017) 169) showed that, while these provisions fulfil their role, their enforcement is still not fully effective. The European Commission has analysed the effectiveness of existing collective redress methods (COM(2018) 40). The outcome of the study showed that when collective redress occurs for a significant number of consumers in several Member States, the available means of enforcing redress from traders are not fully effective (Communication from the Commission – “A New Deal for Consumers”, 1.1.), as the Dieselgate scandal seems to confirm.

After analysing consumer protection legislation and diagnosing problems in ensuring its effectiveness, the European Commission has started to draft directives in the framework of the “New Deal for Consumers”. An impact assessment of the proposed legislative changes was also published on 11 April 2018, together with the Communication and the draft directives (SWD/2018/096 final).

As part of the package of options to ensure that traders comply with consumer protection law, the European Commission identified three options. Option I focused on improving enforcement to stop infringements by ensuring dissuasive and proportionate penalties and strengthening injunctions to stop violations of Union law with the exception of collective redress for the elimination of the effects of the infringement. There would be a uniform list of criteria for assessing the seriousness of infringements across the European Union, which would be binding on authorities when dealing with an infringement by a trader. When imposing a fine, a court or national authority would be obliged to take into account the size and turnover of the undertaking to ensure that the fine is appropriate (SWD/2018/096 final, 5.1.4.). Option II would partly consist of the measures under Option I, reinforced by the possibility for consumers affected under the Unfair Commercial Practices Directive (2005/29/EC, 11 May 2005, p. 22–39) to benefit from contractual and non-contractual remedies. As an argument, the European Commission once again referred to the Dieselgate scandal. Consumers affected by the carmaker’s practice have had the possibility in many Member States to use only contractual remedies. These remedies were only available to car dealers and not to the manufacturer actually responsible for the damage (SWD/2018/096 final, 5.1.5.). Option III was a combination of the previous two. The European Commission envisaged improving the enforcement of Union law and individual and collective consumer redress (SWD/2018/096 final, 5.1.1.). In addition, the privileged entities would have the power to apply for an injunction to stop the infringement and to seek redress to eliminate the effects of the infringement.

### A NEW DEAL FOR CONSUMERS – REPRESENTATIVE ACTIONS

Finally, in two draft directives adopted on 11 April 2018, the European Commission opted for Option III (Explanatory Memorandum, COM(2018) 184 final) to improve the enforcement of Union law and individual and collective consumer redress. Particularly far-reaching changes were included

in the draft Directive on representative actions to protect the collective interests of consumers, which would replace Directive 2009/22/EC. The changes are intended to empower consumers by ensuring effective redress where an act or omission of the trader is considered harmful<sup>8</sup>.

Like Directive 2009/22/EC, the draft Directive on representative actions provides for the empowerment of qualified entities to bring actions to protect the collective interests of consumers. The proposal also extends the requirements for qualified entities qualified to represent the collective interests of consumers (COM(2018) 184 final, Article 4(1)). Article 5(2) of the draft Directive on representative actions obliges qualified entities to demonstrate the grounds on which the application or action for an injunction is based. To this end, it is necessary to prove evidence of damage to consumers or of the intention of the trader to cause damage or of negligence on his part.

Under the draft directive on representative actions, qualified entities will seek an injunction before a court or administrative authority as a temporary measure to stop an infringement or, if the practice has not yet been carried out but is imminent, to prohibit it. Alternatively, the claim may include a request for an injunction finding that the practice constitutes an infringement and, if necessary, for the practice to be stopped or prohibited if it has not already been carried out (COM(2018) 184 final, Article 5(2)). In addition, the proposal extends the competence of representative bodies to cover claims for measures to eliminate the effects of the infringement, including, in particular, claims for damages. Under Article 5(3) of the draft Directive, a prior injunction or decision by a court or authority declaring that a practice constitutes an infringement of the Directives listed in Annex I to the draft is required in order to seek damages. The draft directive on representative actions also provides for the possibility for qualified entities to pursue these measures together with an injunction (Article 5(4)), a key change in the injunction procedure.

Under the draft directive on representative actions, the court or body seised will be able to order the cessation of the practice by the trader and, at the same time, to award consumers adequate compensation for their collective claims if so requested by qualified entities. In addition to monetary compensation, in accordance with Article 6(1) of the draft, these may include sanctions such as requesting repair, replacement of goods, reduction of price, termination of the contract or reimbursement of the consumer.

In cases where the complexity of the matter makes it impossible to give a ruling with an order or decision to compensate consumers who have been harmed, Member States will be able to authorise the competent courts or authorities to issue a declaratory ruling on the trader's liability towards affected consumers. Consumers will bring individual actions under private law based on the declaratory decision (COM(2018) 184 final, Article 6(2) and recital 35). This procedure will not apply if it is possible to identify consumers who have suffered damage as a result of the practice or have suffered a small loss and the compensation paid to them could be disproportionate. In the latter case, the compensation in its entirety is to be allocated to public objectives serving the collective interests of consumers (COM(2018) 184 final, Article 6(3)). The proposal does not specify how small the amount

8 [https://www.uokik.gov.pl/aktualnosci.php?news\\_id=14867](https://www.uokik.gov.pl/aktualnosci.php?news_id=14867).

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is in accordance with the Directive. Member States should therefore develop similar criteria for assessing whether the consumer's claim should be taken into account. At the same time, the provisions of the draft Directive on representative actions do not prevent consumers from pursuing private law claims, even after having obtained compensation (Article 6(4)).

#### AN OLD DEAL FOR CONSUMERS?

The first reading of the draft Directive on representative actions in Parliament took place on 26 March 2019. The European Parliament, after hearing the comments submitted to it by EU bodies, institutions representing the interests of consumers and traders, made a number of changes to the draft Directive on representative actions. The legislative procedure is ongoing. The last work on the draft took place in the Council on 30 June 2020<sup>9</sup>.

In line with the text agreed by the European Parliament in first reading, the qualified entities will continue to seek an injunction, but without the possibility to pursue remedies for the infringement simultaneously, based on the decision finding the infringement, including an injunction<sup>10</sup>.

The legislative work in the Council resulted in an agreement with the European Parliament on EU-wide rules on the protection of collective consumer interests. It is not yet clear when the Directive on representative actions would enter into force, but the European Commission already sees in its statement an opportunity to protect the collective interests of consumers more effectively<sup>11</sup>. Unfortunately, changes have been made to the original draft of the Directive which call into question its impact on consumer empowerment.

Of the many amendments made in the course of the legislative work, the modification of Article 5(4), according to which Member States shall ensure that qualified entities are able to seek the measures eliminating the continuing effects of the infringement, is questionable. As adopted by the Council and the European Parliament in the framework of a recent agreement, Member States may enable qualified entities to seek, where appropriate, means to remedy the persistence of an infringement<sup>12</sup>. As Member States will not be obliged to ensure that the qualified entities are able to seek enforcement measures, there may still be a situation where consumers from different countries are protected to different levels.

Another important change in the text of the draft directive concerns the binding of a final decision by a court or administrative authority of a Member State finding an infringement of the collective interests of consumers. Article 10 of the draft directive as it was originally drafted provided that Member States shall ensure that final decisions of courts or administrative authorities are recognised as irrefutable evidence of the existence of an infringement for the purposes of any other action seeking compensation in their national courts against the same trader for the same infringement

9 <https://eur-lex.europa.eu/legal-content/PL/HIS/?uri=COM:2018:0184:FIN>.

10 [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST\\_6759\\_2020\\_INIT&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_6759_2020_INIT&from=EN), p. 114.

11 [https://ec.europa.eu/commission/presscorner/detail/pl/STATEMENT\\_20\\_1227](https://ec.europa.eu/commission/presscorner/detail/pl/STATEMENT_20_1227).

12 [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST\\_9223\\_2020\\_INIT&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_9223_2020_INIT&from=EN), p. 40.



(COM(2018) 184 final, Article 10(1)). In addition, final decisions taken in other Member States were to be recognised by national courts or administrative authorities as presumed to be a rebuttable infringement of collective consumer interests (COM(2018) 184 final, Article 10(2)). Also, a declaratory decision on the trader's liability towards consumers (taken when, due to the nature of the case, it is not possible to specify in the order for individual compensation, pursuant to Article 6(2) of the draft directive) was to be considered as irrefutable evidence of the trader's liability (COM(2018) 184 final, Article 10(3)). However, amendments made in the course of the legislative procedure have limited the effect of decisions of final courts and administrative authorities in such a way that the new Article 10 only obliges Member States to ensure that a final decision finding an infringement which harms the collective interests of consumers can be used as evidence of the infringement for any other action to obtain redress<sup>13</sup>. As a result, consumers are deprived of the means to ensure effective individual redress. This measure was to be the essence of representative actions. By depriving consumers of the guarantee that they will effectively invoke the final decisions of courts or administrative authorities in their individual cases against the same trader, the New Deal may not be as important as the European Commission originally attributed to it. Binding the final decisions of courts and administrative bodies in cases against the same trader was an important novelty, without which the European Commission's package of changes will rather resemble the old deal for consumers.

## CONCLUSIONS

The European Commission has highlighted on several occasions that the New Deal for Consumers is meant to be a remedy for inefficient consumer protection by, among other things, ensuring effective private redress in the draft Directive on representative actions. The first part of the package of amendments in the form of a Directive amending Directives 93/13 EEC, 98/6/EC, 2005/29/EC and 2011/83/EU<sup>14</sup> has already entered into force. However, the changes during the legislative process of the draft Directive on representative actions are questionable.

In assessing the effectiveness of EU consumer protection law, the European Commission has identified many irregularities and ineffective protection mechanisms in EU law. These have been identified, among others, in Directive 2009/22/EC, as preventing individual consumer claims from being settled. The Dieselgate case was a kind of a starting point for changes to the existing provisions on collective and individual consumer redress. Following the REFIT assessment, the Commission concluded that the most effective model to prevent similar problems to the VW case in the future would be to choose the option to allow qualified entities to apply for an injunction and to seek redress for the infringement in a single action and the decision in the course of the procedure would be binding in individual cases.

<sup>13</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST\\_9223\\_2020\\_INIT&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_9223_2020_INIT&from=EN), s. 48.

<sup>14</sup> Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, OJ L 328, 18.12.2019, p. 7–28.

The new deal for consumers was to ensure that the injunction would be enforced at the same time and that the persistent effects of the infringement would be eliminated. However, changes in the course of the legislative procedure have led to a deviation from the original approach. Also in the case of binding by a final decision of a court or administrative authority, amendments have been introduced that weaken consumers' ability to pursue individual claims. It is difficult to see why there are such significant departures from the original draft Directive. What is certain, however, is that the announced revolution in consumer protection law will not have as significant effects as the European Commission has announced.

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