

## LEGAL ALERT

# REPRESENTATIVE ACTIONS TO PROTECT THE INTERESTS OF CONSUMERS

Decree-Law no. 114-A/2023, of 5 December, which transposes Directive (EU) 2020/1828 of the European Parliament and of the Council, of 25 November 2020, on representative actions for the protection of the collective interests of consumers, entered into force on 6 December.

This Decree-Law established, for the first time, a specific national regime for representative actions to protect the rights and interests of consumers. From now on, this will be **the rule regime whenever it comes to infringements, committed by professionals, of the provisions of national and European Union (EU) law referred to in Annex I of the transposed Directive, which harm or are likely to harm the collective interests of consumers (see Article 2(1)).**

It should also be noted that, in the preamble to the law, the legislator states that this is “the applicable regime when there are infringements of the provisions from other consumer protection legislation in force in the domestic legal system”.

The new regime applies to representative actions brought after its entry into force, on 6 December 2023, even if the infringement ceased before the representative action was brought or before its conclusion. Injunctive measures may be requested, and they aim at putting an end, identifying or prohibiting an unlawful practice by a professional, as well as redress measures, providing consumers with remedies such as compensation, repair, replacement, price reduction, termination of contract or reimbursement of the amount paid, according to what is legally stipulated.

Among the main innovations of the Decree-Law, the following are highlighted:

- The legal standing to bring domestic representative actions is attributed: (i) to associations and foundations, regardless of whether or not they have a direct interest in the action, provided that they meet the requirements set out in Article 6 (which are the requirements provided for in [Law no. 83/95, of 31 August](#) – Popular Action Law, adding the independence of the plaintiff and the absence of influence from third parties, in particular professionals, who have an economic interest in bringing a representative action, namely in the case of third-party funding, and the adoption of procedures to prevent their influence, as well as to prevent conflicts of interest between themselves, their funders and the interests of consumers); and (ii) to the local authorities.
- In cross-border representative actions:
  - (i) A procedure is provided for the designation of national entities as qualified entities for the purpose of bringing cross-border representative actions in other Member States, establishing harmonised criteria that they will have to comply with – more stringent than those provided for associations and foundations in the context of domestic actions – and which will be assessed by the competent authority, which will publish a list of the designated entities. The Public Prosecutor’s Office (*Ministério Público*) and the Consumers Directorate General (*Direção Geral do Consumidor*) are considered to be qualified entities for this purpose (see Article 7(8)).
  - (ii) In addition to the requirements established for domestic actions, the Decree-Law establishes four new requirements:
    - a) The exercise by the plaintiff of an effective public activity to promote the interests of consumers at least in the 12 months prior to the application for designation as a qualified entity;

- b) The absence of an insolvency process or declaration;
  - c) The public availability of information on compliance with legal requirements, on the sources of funding, the organisational, management and participation structure, the corporate purpose and the activities;
  - d) The submission to the competent authority of an application for designation as a qualified entity with a set of elements, such as the activity report for the previous two years and copies of agreements signed with funding entities.
- Unlike the Popular Action Law, which recognizes active legitimacy of any citizen enjoying their civil and political rights, the Decree-Law does not recognize active legitimacy to individual consumers to file representative actions.
  - The Decree-Law includes provisions on funding by third parties, and it is established, considering the transparency of the funding, that the claimants make the funding agreement available to the court, including a financial summary with the list of funding sources used to support the representative action, and this agreement, under the terms of this Decree-Law, must guarantee the independence of the claimant and the absence of conflicts of interest (see Article 10).
  - In terms of representation, the Decree-Law maintains the opt-out regime established in the Popular Action Law (which means that anyone who does not want to be represented in this action will have to expressly exclude themselves from it). However, the opt-in regime has been established for consumers who do not have their habitual residence in Portugal, who, instead, will have to expressly state their willingness to be represented in the representative action for this to happen (see Article 12(1)).

- The disclosure of relevant information on representative actions shall be ensured by the claimants through publishing, on their website, relevant information, such as the identification of the representative action at stake, identifying the parties, the claim, the case number and the court, the procedural stage of the representative action, as well as the outcome of the action (overall compensation and method of distribution of the compensation to the represented parties, when applicable), and the decision of the Court.
- In addition, the Consumers Directorate General (*Direção Geral do Consumidor*), the competent authority, will also disclose, through its website and the Single Portal for Services (*Portal Único de Serviços*), information on qualified entities that have been previously designated for the purpose of bringing cross-border representative actions, and on representative actions before the courts, both ongoing and already concluded.

Lastly, the rules on popular actions provided for in the Popular Action Law and the rules provided for in [Law no. 24/96, of 31 July](#) – Consumer Protection Law continue to apply on a subsidiary basis.

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