
Transposition of Representative Actions Directive

Decree-Law 114-A/2023—transposing Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers—has been published.

Portugal - Legal Update

December 14, 2023



Key aspects

- Decree-Law 114-A/2023 of December 5 transposes into Portuguese law Directive (EU) 2020/1828 of the European Parliament and of the Council of November 25, 2020, on representative actions for the protection of the collective interests of consumers.
- Decree-Law 114-A/2023 of December 5 establishes a new and specific national representative action regime for the protection of consumer rights and interests, establishing new procedural requirements and transparency obligations.
- Following the transposition of this decree-law, companies should monitor and adapt to the new representative action regime due to the increased litigation risks, the possibility of legal actions brought by foreign entities, and the potential damage to reputation arising from mandatory disclosure obligations under this new regime.



Decree-Law 114-A/2023: Specific Portuguese representative action regime for protection of consumer rights and interests

The law transposing Directive (EU) 2020/1828 of the European Parliament and of the Council of November 25, 2020, on representative actions for the protection of the collective interests of consumers, has been published.

Decree-Law 114-A/2023 of December 5 (“Decree-Law 114-A/2023”) transposes into Portuguese law Directive (EU) 2020/1828 of the European Parliament and of the Council of November 25, 2020, on representative actions for the protection of the collective interests of consumers (the “Representative Actions Directive”).

Decree-Law 114-A/2023 applies to representative actions brought after it enters into force on December 6, 2023.

We highlight the following key aspects:

- **It establishes a specific regime for representative actions aimed at protecting the rights and interests of consumers**

Although Portugal already has a national representative action procedural mechanism established in Law 83/95 of August 31, the transposition of the Representative Actions Directive creates a national representative action regime specifically for the protection of consumer rights and interests.

This regime applies whenever there are infringements of the national and EU law provisions identified in Annex I to the Directive¹ or other consumer protection legislation in force in Portuguese law that harm or may harm the collective interests of consumers. Anything that is not covered by Decree-Law 114-A/2023 will be governed by the rules established in the Class Action Law.

- **It intensifies the requirement for plaintiff independence, especially for their legal standing to bring a representative action**

For the purpose of verifying legal standing to bring a representative action, Decree-Law 114-A/2023 expressly requires that the plaintiffs be independent and not influenced by non-consumers.

- **It introduces the possibility for qualified entities designated by other Member States to bring crossborder representative actions in national courts**

¹ For example, product liability, unfair terms in consumer contracts, sale of consumer goods and related guarantees, general product safety, personal data processing and protection of privacy in the electronic communications sector, unfair business practices toward consumers, distance selling of financial services, and contracts for the supply of digital content and services.



Decree-Law 114-A/2023 establishes that qualified entities designated by other Member States can bring crossborder representative actions in national courts to obtain injunctive or redress measures. To this end, the court will accept the lists of qualified entities communicated by Member States to the European Commission as proof of the qualified entity's legal standing to bring a crossborder representative action.

➤ **It introduces a procedure for designating national entities as qualified entities for the purpose of bringing crossborder representative actions in other Member States**

Decree-Law 114-A/2023 introduces a procedure for designating national entities as qualified entities for the purpose of bringing crossborder representative actions in other Member States. The Directorate-General for Consumers (*Direção-Geral do Consumidor*, "DGC") is responsible for communicating the list of designated qualified entities and any subsequent changes to that list to the European Commission.

➤ **Prior consultation procedure and injunctive measures**

To obtain definitive injunctive measures against practices considered to be infringements of consumer protection legislation, Decree-Law 114-A/2023 establishes that there must be a prior consultation process with the trader. This includes sending a registered letter describing the conduct in question and the infringed rules. If the trader has not ceased the infringement within two weeks, the holder of the right of representative action can apply for injunctive measures.

For the purpose of obtaining an injunctive measure, the new decree-law establishes that the plaintiff in this representative action does not need to prove (i) actual damage suffered by the consumers affected by the infringement, or (ii) the trader's intent or negligence. Also, bringing a representative action to obtain an injunctive measure interrupts the limitation period for the represented consumers, which starts running again after the decision in that action becomes final. However, this provision only applies to infringements occurring after Decree-Law 114-A/2023 enters into force.²

➤ **It promotes transparency in third-party funding of representative actions**

Decree-Law 114-A/2023 bolsters the importance of transparency in the funding of representative actions by third parties, requiring plaintiffs to file the financing agreement—if any—in court, including a financial summary listing the funding sources used to support the representative action. This agreement must ensure that the plaintiff is independent and that there are no conflicts of interest. The plaintiff must be solely responsible for making all the decisions relating to the representative action, with the guiding principle being the protection of the interests concerned. The financing agreement cannot establish remuneration for the

² The same principle extends to representative actions for redress measures, but without the last proviso regarding the law's temporal application.



financier that goes beyond a fair and proportionate amount, to be assessed by the court, or concern a financier that is a competitor of or dependent on the defendant.

➤ **It introduces an obligation to publicize representative actions**

Decree-Law 114-A/2023 introduces an obligation for plaintiffs to disclose, on their website, the identification of the representative action they have brought, its current procedural stage, the outcome of the action, and the court's decision.

Decree-Law 114-A/2023 assigns to the DGC responsibility for making available to the public, on its website and through the One-Stop Shop services (*Portal Único de Serviços*), information on the previously designated qualified entities for the purpose of bringing crossborder representative actions and on the ongoing and completed representative actions in the national courts.

Conclusions

Following the publication of Decree-Law 114-A/2023, companies should:

- be aware of the new and specific national representative action regime for the protection of consumer rights and interests, which may entail an increased risk of national and crossborder representative actions and liability for consumer law infringements;
- be prepared to face possible representative actions brought by qualified entities designated by other Member States, which can represent consumers from different countries and demand injunctive or redress measures, including damages, restitution, replacements, reparation, or contract termination;
- consider the transparency in third-party funding for representative actions, which may facilitate access to justice by consumers and encourage them to bring representative actions, in addition to potentially leading to abuses of the right of action; and
- be aware of the obligation to disclose representative actions, which can have an impact on the defendant's reputation.



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IS 713573