GREEK LAW DIGEST
VIEWPAPER

EU COLLECTIVE REDRESS ON THE RISE

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Summary: Transactions are becoming increasingly more automated and quick, assisted by the rapid developments in technology, within a digitalised environment dominated by platforms. Standardization, repetition, high speed and low cost are key elements, together with the trustworthiness and security of the systems used, including personal data protection. As a result, many consumers may suffer similar damages either concurrently or within a short period of time out of the use of the same products offered and services provided in breach of the legal requirements.

Thus, consumer collective redress either before or out-of-court, by means of ADR and especially mediation, allows the pursuance of many similar small claims, which individually could not be claimed on cost /benefit analysis. So, collective redress is expected to gain significant legal weight and importance in the years to come. Within this framework, individual consumer litigation appears old fashioned or the last unavoidable resort, since disputes resolution requires similarly low-cost, speedy and mostly uniform mechanisms.

The EU legislator has expressed a stable preference for collective redress, by ADR or litigation, on numerous instances. The Representative Actions Directive, as a horizontal regulation, is the result of a long process implementing this preference, among other considerations. Various other significant EU legislative pieces and initiatives support this trend.

I. INTRODUCTION

1. Collective redress in Greece is regulated primarily by Law 2251/1994 *"on the protection of consumers"*, as in force (article 10, paras 16 ff, Law 2251/1994; herein below, **Law 2251**). The concept of the collective action introduced by Law 2251 has been a special feature in the Greek legal system mainly due to the erga omnes effect of a court decision upholding a declaratory collective action, which may favor any consumer who although not a litigant in the respective litigation has suffered damages due to the same unlawful act /omission of the defendant sued and held liable. Overall, in practice, collective redress has been of a rather limited application in Greece thus far (see below under **II.A**).

2. In 2020, collective redress in Greece was expanded, for the first time after Law 2251, following the coming into force of Regulation (EU) 2019/1150 on *"promoting fairness and transparency for business users of online intermediation services"* of 20.6.2019, applicable from 12.7.2020 (the Platform to Business Regulation, herein below, the **P2B**), which introduced for the first time rules on online business platforms and search engines within the European Union (the **EU**).

Not by coincidence, P2B shows the EU legislator's general preference for collective redress, including alternative dispute resolution mechanisms (herein below, **ADR**) and especially mediation.

In supplementation of P2B, Law 4753/2020, in force as from 18.11.2020 (herein below, **Law 4753**), was enacted, specifying various aspects for the P2B's application in Greece (see below under **II.B**).

3. The enactment of Directive (EU) 2020/1828 *"on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC"* of 25.11.2020, which will apply as from 25.6.2023 (the Representative Actions Directive, herein below, the **RAD**), aims at changing the overall collective actions landscape within the EU ensuring that each EU Member State has in its national law at least one representative action mechanism for the protection of the collective interests of consumers, together with appropriate safeguards for the avoidance of abusive litigation, while giving emphasis to the facilitation of cross-border representative actions. Notably, the RAD also includes collective ADR provisions related to both injunctive and redress measures (see below under **III.A**).

4. The EU legislator's overall preference for collective redress, including ADR, for consumer dispute resolution remains stable. So, it is no wonder that the EU Commission's proposal for the significant regulation *"on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC"* of 15.12.2020 [COM(2020) 825 final] (the Digital Services Act; herein below the **DSA**) provides for collective redress regarding the rights of specific users (see below under **III.B**).

II. THE CURRENT LEGAL REGIME

II.A. The collective action of Law 2251/1994

1. An overview

1.1. The Greek collective redress mechanism regards basically the so-called collective action which is regulated by Law 2251 "on the protection of consumers", as in force (article 10, paras 16

ff; unless indicated otherwise, all citations below in this section are made to Law 2251).

According to the **definition** by Law 2251: *"A consumer association of at least five hundred (500) active members, being registered with the consumer associations registry for at least one year, may file any type of action for the protection of the general consumers' interests (collective action). The action of the previous subparagraph may be also filed when the illegal behavior affects the interests of at least 30 consumers"* (article 10, para. 16).

Collective actions may cover a broad spectrum of subject matters. Law 2251 lists indicatively a) various provisions of the same and b) other legislative pieces covering a variety of fields and basically consisting of transposition of EU legislation into Greece, for the breach of which a collective action may be filed. The breaches may regard for example product liability/safety, service liability, distance sales, abusive general terms and conditions (herein below, **GT&Cs**), consumer credit, unfair commercial practices, advertising, e-commerce, medicines, time-sharing, organized trips, as well as consumer ADR.

1.2. A collective action is distinguished from the **joinder of parties** in a (non-collective) action, where a) several plaintiffs connected to each other by the specific subject matter of a trial, under conditions, become co-plaintiffs (articles 74 ff of the Code of Civil Procedure, herein below **CCP**) or b) third parties intervene and participate in an existing trial either on their own initiative or following invitation by an initial litigant (articles 79 ff, CCP).

2. The definition of consumer

2.1. Regarding the definition of **consumer**, before the extensive revision and codification of Law 2251 in 2018 (by Law 4512/2018 and ministerial decision 5338/2018), same was extremely broad, including any natural or legal person or entity without legal personality that was the end recipient and user of products or services, as well as any guarantor acting in favour of a "consumer" (but not as a business operation) (previous article 1, para. 4a of Law 2251). Moreover, such broad definition had been further expanded by case law to cover persons that used the products or services not only for private use but also for business use.

2.2. As of 18.3.2018, this extended definition was narrowed and aligned with the EU standards; thus "consumer" is considered to mean any natural person acting for purposes not falling within a commercial, business, handcraft or freelance activity (new article 1a, para. 1 of Law 2251).

3. The standing to sue

3.1. Consumer associations and chambers have the standing to sue. Specifically, a consumer association of at least five hundred (500) active members, being registered with the consumer associations registry, maintained at the Directorate of Policy and Consumer Information being part of the General Directorate for Consumer Protection General Secretariat of Commerce and Consumer Protection of the Ministry of Development and Investments, for at least one year, has standing to bring a collective action (article 10, para. 16). Chambers (commercial, industrial, handcraft and professional) may also file collective actions, however only for moral harm claims (article 10, para. 24).

3.2. Also, qualified entities (herein below, **QEs**) of other EU member states within the framework of Directive 2009/22/EC *"on injunctions for the protection of consumers' interests"*, of 23.4.2009, as in force having being amended (herein below, the **Injunctions Directive**), which are included in the relevant list published periodically by the European Commission (article 4 of the Injunctions Directive) may also file a collective action in Greece (article 10, para. 30). However, such cross-border collective action may basically regard the quashing of and abstention from an allegedly unlawful act (ie. a cease and desist order), thus not a claim for damages. The Injunctions Directive is to be abolished by the RAD (see below under **III.A.6**).

4. The available relief

Collective actions may seek:

4.1. a cease and desist order, namely a court decision ordering the defendant(s) to stop the illegal action /omission challenged and /or refrain from it in the future, even before it occurs; depending on the circumstances and with the consumers' safety as a priority, the court may additionally order any appropriate measure such as the recall, seizure, destruction of any defective products and /or the publicity of the decision issued;

4.2. provisional relief, including the cessation of the unlawful breach and the recall, seizure or even destruction of any defective products at issue;

4.3. moral harm damages, which may be awarded only once for the same breach as a result of a collective action; and /or

4.4. a declaratory decision, namely that the court recognizes the consumers' right to restore the damage caused to them by the defendant's unlawful behavior (article 10, para 16).

5. The special feature of a declaratory court decision

5.1. The *res judicata* effect of a declaratory decision recognizing the recovery right for damages suffered by the consumers due to an unlawful act /omission of the defendant, favors any such consumers damaged, even if they did not participate in the relevant trial. Such so-called *erga omnes* effect of the specific decision issued, namely on non-litigants as well, is a special feature in Greek law. In particular, once such a decision accepting the collective action becomes irrevocable, any consumer that has suffered damages may notify his/her claim to the defendant. If the defendant does not compensate the consumer at issue within thirty (30) days, the latter may file a petition before the competent court asking for the issue of a judicial order against such defendant.

5.2. Individual consumers' rights are not affected by the collective pursuance of a claim, not even by a decision rejecting a collective action (article 10, paras 16, 20 and 22).

6. The special nature of a moral harm award

6.1. Also, although punitive damages are not recoverable under Greek law, in collective actions the way the amount of the one-off moral harm award is calculated and the effect of the relevant decision as discussed above bring it closer to a pecuniary sentence, a so-called "civil sanction" imposed on the defendant (article 10, paras 16.b, 20 and 22). Such calculation by the court of the moral harm damages takes into account, indicatively, the extent of the breach at issue, the financial status of the defendant entity and especially its turnover and "*the needs for a general and special prevention*".

6.2. Worthy to note that prior to 2018 there was an obligation to allocate 20% of the moral damages awarded by the court to the General Consumers' Secretariat so that same is invested for the promotion of consumer protection policies; however, the latest extensive revision of Law 2254 in 2018 (by Law 4512/2018 and ministerial decision 5338/2018 that codified it), abolished such obligation.

7. Legislative change due to collective redress case law
The res judicata effect of an irrevocable decision issued following a collective action (or even an individual consumers' action) may trigger a decision by the competent minister imposing terms and conditions which have to be met by suppliers of goods and services in compliance with the court judgment at issue, provided such effect has a broad public interest in terms of the operation of the market and the protection of consumers (article 10, para. 21).
An example of such a ministerial decision issued is No Z1-798/25.6.2008 of the Minister of Development regarding GT&Cs in banking agreements (of housing loans, issue of credit cards and deposit accounts) which were held abusive by irrevocable decisions of various courts.

8. Main procedural issues

8.1. The ordinary procedural rules for the introduction of any action have to be followed, namely a) the filing with the competent court and b) the service on the named defendant(s). Especially for collective actions pursuing either a cease and desist order or moral harm damages, non-contentious proceedings, instead of adversarial ones apply so that the progress of the judicial proceedings can be speed up (article 10, para 20).
Collective actions may be jointly brought by more than one QEs.

8.2. Specific courts are exclusively competent by law for the hearing of collective actions and these are a) the multi-member first instance court of the defendant's residence or seat or b) likewise, of the seat of the defendant where the latter is a radio/tv station, if the subject matter of the collective action regards a radio/tv advertising matter (article 10, para. 19).
The limitation period for bringing a collective claim is a) six months from the latest infringement challenged by the collective action or b) five years, if only a declaratory judgment on the right to damages is sought (article 10, paras 17 & 18).
The language of the proceedings is Greek (like in any court proceedings in Greece).

8.3. Regarding **publicity**, subject to the overall circumstances, the court may order the same especially for the decision issued and regarding a cease and desist ordinary or provisional order (article 10, para. 16; see above under **4**). Additional publicity depends on the importance of the case and the extent to which it may attract the public interest, as it has been the case with the CHF loans litigation (see below under **10**), as well as on the activities of the QE handling it. In any case, the court decision issued on a collective action is published in (private) legal databases.

9. Third-party funding

Third-party funding of any actions, including collective ones, is not specifically regulated under Greek law, thus, it is permitted. In practice, some insurance companies offer to their insured clients a funding of possible litigation expenses. However, litigation funding is neither common nor "culturally" accepted. The lack of legal framework could raise issues of transparency. However, especially the funding and income of QEs that may bring collective actions is regulated restrictively regarding the course and way thereof, including the strict prohibition of any kind of payments made by suppliers and political entities of any type (article 10, paras 6-8).

10. Collective actions in practice

10.1. Collective actions are not frequently used in Greece and collective redress has a rather limited application, the main reasons being the lack of adequate consumer awareness combined with the overall long duration of the judicial proceedings and the low amounts for moral harm awarded by the courts. The most common categories of collective actions regard GT&Cs in banking & insurance contracts and cases of misleading advertising.

Worthy to note that there is no official case law database; a number of private databases exist, however each one lists case law based on its own selection and evaluation criteria.

10.2. Among the banking contracts, the main topic and an extensively publicized one due to a broad public interest has been the so-called CHF loans, namely consumer housing loans in CHF with a floating rate that resulted to a substantial increase of the borrowers' debt following the dramatic change to the CHF/EUR rate. QEs have either initiated CHF loans collective litigation or have intervened into trials commenced by individual actions, whereas eventually all the four Greek systemic banks were involved into relevant litigation proceedings. Finally supreme court decision (No 4/2019 – plenary session) resolved the matter in favor of the banks (similarly supreme court decision No 948/2021; A1 civil chamber). Parenthetically, a subsequent Athens multi-member first instance court decision (No 1599/2020), issued on an individual action and adopting an opposite view, re-opened the legal questions by referring the matter to the Court of Justice of the European Union, which in turn issued decision No C 243/20 of 21.12.2021 (Sixth Chamber); thus, the topic remains pending one way or the other.

10.3. Lastly, a significant collective litigation regarded the collection by the Greek state of a tax (in Greek, EETHDE) through the electricity bills issued by the (Greek) Public Power Corporation, the non-payment of which would even result to a power cut-off. The litigation lasted for years and eventually, the plenary session of the supreme court (decision No 7/2016) considered the overall collection of the relevant tax lawful, reconfirming however the lower court's specific prohibitions regarding its non-payment effects.

II.B. Collective actions under Law 4753/2020

1. The EU legal framework – P2B

1.1. The P2B Regulation (EU) 2019/1150 on "promoting fairness and transparency for business users of online intermediation services", applicable from 12.7.2020, is of multiple significance regarding both the substance of the issues it regulates and the procedural rules it introduced for the resolution of relevant disputes. P2B enacted novel EU rules on the tri-party relations among a) providers of online intermediation services and online search engines, b) business and corporate website users established or residing in the EU, which provide or offer to provide goods and services via the providers - online platforms or search engines to consumers and c) consumers located in the EU, irrespective of the place of establishment or residence of the providers and of the law otherwise applicable (article 1, para. 2).

The great importance of the rules introduced by the P2B may be easily understood if one considers that providers are worldwide known brands, such as Google, Yahoo, Mozilla, Amazon, E-bay, Airbnb, Uber, Booking.com, Linkedin, Meta (Facebook), Tripadvisor, etc., which play a key role in the rapidly growing market of online transactions.

1.2. On dispute resolution, P2B provides for a collective redress mechanism authorizing a) organisations and associations representing business users or corporate website users and b) public bodies formed and assigned with such a task by Member States, to take judicial actions against the providers of online intermediation services or online search engines to stop or prohibit any non-compliance by them with their obligations under P2B. P2B sets the requirements that have to be met by the relevant entities and bodies - QEs, stressing out that same must be non-profitable and not dependent upon funders, thus transparent regarding their sources of funding, and leaves the Member States to specify them and notify the EU Commission accordingly for the drawing by the latter of a relevant EU QEs list; such list has to be updated every six months and it binds the national courts on the standing to sue by the QEs at issue.

P2B states that the collective redress scheme as above does not (and could not, in any case) prejudice the right of recourse to national courts by individual business users or corporate website users (article 14).

1.3. It is worth mentioning that P2B declares the ongoing and overall preference of the EU legislator for ADR and especially for mediation by introducing it mandatorily especially for online platforms (with exceptions; articles 12-13).

2. Law 4753 - An overview

2.1. Law 4753 (articles 1-7), in force as from 18.11.2020, was enacted to supplement the application of the P2B, specifying the basic requirements for bringing a collective action, including the procedural ones such as the prescription period, the competent courts and kind of proceedings that may be pursued (including injunctive measures), as well as establishing a special registry set up for the relevant QEs, defining the supervisory authority and determining the sanctions that may be imposed for relevant breaches. Specifically:

2.2. Collective actions may be brought by QEs being:

a) legal entities (article 61 of the Civil Code) with the specific scope of representing business users or corporate website users, and

b) public bodies assigned with such users' collective representation task or with the task of safeguarding compliance with the P2B provisions.
Such QEs may seek:

i) the cease and desist of the allegedly illegal behaviour of the providers of online intermediation services or of online search engines within the framework of P2B and /or

ii) an injunctive relief safeguarding the rights of the business users or corporate website users against the allegedly illegal behaviour.

The prescription period to bring a collective action is **I)** 18 months from the time the claimant first became aware of the illegal behaviour and, in any case, **II)** up to three years from the last occurrence of the illegal behaviour.

Ordinary proceedings are followed before the multi-member first instance court of defendant's residence or seat, which is conferred exclusive competence and which may order the temporary enforcement of the issued decision.

2.3. Law 4753 names the Interdepartmental Market Surveillance Unit (in Greek, DI.M.E.A) of the Ministry of Development and Investments as the competent authority supervising the application of the P2B, with broad powers to carry out surprise raids by itself or with other authorities, data collection and maintenance and imposition of sanctions for any relevant breach by online platforms and search engines that may range from simple recommendations, orders of cease and desist to fines between 1,500 and 2m euros that are specified per the circumstances of each case and the criteria indicatively stated in same law.

The same authority maintains the **registry of the QEs** which meet the P2B requirements and are included in the same. **However,** and strangely, Law 4753 states that the listing of a QE in the relevant registry is not a prerequisite for bringing a collective action.

2.4. Ministerial decisions may specify a range of relevant issues, including the formation of a **registry of actions held illegal** by court decisions, as also provided by the P2B; no such decisions have been issued thus far [status as of February 2022].

2.5. Lastly, Law 4753 notes that its provisions apply in a manner supplementary to the GDPR provisions (article 6).

III. THE FORTHCOMING CHANGES TO THE LEGAL REGIME

III.A. The Representative Actions Directive (EU) 2020/1828

1. The background

1.1. The adoption of the RAD marks the end of quite lengthy discussions within the EU on the overall need for an EU collective redress mechanism, especially regarding the way it had to be enacted. The need became urgent in light of the rapid technological developments in the recent years facilitating the mass and automated production and offer of the same goods and services to numerous consumers, thus allowing mass damages caused by defective products and services either contractually or in tort. It had been generally accepted that the individual judicial pursuance of small claims remains unrealistic based on cost /benefit analysis, so the lack of the same results to an overall unlawful enrichment of the traders which cause a mass damage and, at same time, a high risk that the unlawful behavior is repeated.

1.2. At the same time, private enforcement has been long considered a useful tool for granting justice, in assistance to the slow and overall cumbersome national public justice systems. However, the EU's significant sectoral initiative that resulted in Directive 2014/104/EU "on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union" of 26.11.2014, in force as from 27.12.2016 (herein below, **the Competition Damages Directive**), left collective redress out:

"This Directive should not require Member States to introduce collective redress mechanisms for the enforcement of Articles 101 and 102 TFEU" (see recital 13 of Directive 2014/104).

This outcome has been contradictory to the repeated EU acknowledgments on the importance of collective redress that were made during the discussions on the Competition Damages Directive by both

a) the **Green Paper** of 19.12.2005 [COM(2005) 672 final], under para. 2.5:

"2.5 Defending consumer interests

[…] Beyond the specific protection of consumer interests, collective actions can serve to consolidate a large number of smaller claims into one action, thereby saving time and money." and

b) the **White Paper** of 2.4.2008 [COM(2008) 165 final], under para. 2.1:"2.1. Standing: indirect purchasers and collective redress

[…] With respect to collective redress, the Commission considers that there is a clear need for mechanisms allowing aggregation of the individual claims of victims of antitrust infringements."

1.3. The reason for finally leaving collective redress related to competition law claims unregulated by the Competition Damages Directive appears to be the change in the EU policy towards a **horizontal regulation** and not a merely sectoral one, as noted primarily in the **European Parliament resolution of 2.2.2012** "*Towards a Coherent European Approach to Collective Redress"* (2013/C 239 E/05) (herein below, the **EP Resolution**), under para. 15:

"Legally binding horizontal framework and safeguards

15. […] calls, …, for any proposal in the field of collective redress to take the form of a horizontal framework including a common set of principles providing uniform access to justice via collective redress within the EU and specifically but not exclusively dealing with the infringement of consumers' rights".

1.4. Eventually, the change in tune was given on 11.6.2013 when the EU Commission issued:

a) a **Communication** *"Towards a European Horizontal Framework for Collective Redress"* [COM(2013) 401 final]; and

b) a **Recommendation** *"on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law"* (2013/396/EU) with a non-binding effect by its nature (article 288, Treaty on the Functioning of the European Union), which proposed guidelines and set certain safeguards against abuse, such as the prohibition of punitive damages (para. 31), asking Member States to implement such general principles by 26.7.2015.

However, the Recommendation was of a limited effect.

1.5. Effective collective enforcement and redress remains high in the EU Commission's agenda and among the key priorities for EU consumer policy over the next years as shown by its **Communications** of:

a) 11.4.2018: *"A New Deal for Consumers"* [COM(2018) 183 final], especially pointing out the benefits of representative actions mechanisms and ADR (see esp. under 3.1); and

b) 13.11.2020: *"New Consumer Agenda - Strengthening consumer resilience for sustainable recovery"* [COM(2020) 696 final, see esp. under 3.3].

2. Scope and minimum harmonization

2.1. In the above general framework and with the acknowledgments, among others, that a) the Injunctions Directive (see above under **II.A.3**) has been insufficient to address the overall challenges and b) Member States' relevant mechanisms offer variable levels of consumer protection, the RAD was enacted to impose **minimum requirements** on balance of the different national regimes aiming to ensure that each EU Member State has in its national law at least one representative action scheme for the protection of the collective interests of consumers, including both injunctive and redress measures, together with appropriate safeguards for the avoidance of abusive litigation (esp. recitals 1, 2, 5, 6, 7, 10, 11, 14).

Each Member State is therefore allowed to define its own rules within the framework provided for by the RAD (article 1, paras 1 & 2). Thus, it remains to be seen how the RAD's overall regulation will **interact with** the existing or future relevant national schemes among the Member States, for instance, those on personal data class actions created by Regulation (EU) 2016/679 of 27.4.2016 (the General Data Protection Regulation; see esp. article 80 and recital 142).

2.2. The RAD specifies the representative actions that may be brought under it to infringements by traders of 66 EU Regulations and Directives listed in its **Annex I**, which cover a broad spectrum of claims in various areas, such as product liability, general product safety, general food legislation, sale of goods, energy, telecommunications, environment, health, travel, tourism, passenger rights, data (protection, privacy, processing), unfair business practices, financial services, medical and diagnostic products, cosmetics, as well as consumer ADR. Also, the RAD notes that contractual and non-contractual EU or Member States national remedies available to consumers for such infringements remain unaffected (article 2, paras 1 & 2 and Annex I).

Furthermore, Member States may choose to go beyond the scope of Annex I of the RAD by extending representative actions claims to other matters, primarily to human rights and environmental rights, that are covered by the RAD only indirectly.

3. Key features

As key features of the RAD the following may be shortly noted:

3.1. The measures that QEs may seek are specified, together with the framework within which same may be pursued, and divided into injunctive and redress ones; the latter are indicatively defined by the RAD, including compensation, repair, replacement, price reduction or reimbursement and contract termination (articles 3.10, 7, 8 & 9).

3.2. Speedy proceedings for injunctive measures have to be safeguarded (article 17).

3.3. Member States may decide whether a representative action may be brought in judicial proceedings, administrative proceedings or both, depending on the relevant area of law or economic sector (recital 19).

3.4. QEs that may bring representative actions are only the ones specified by each Member State applying the criteria set up by the RAD. Such criteria are mandatory regarding cross-border actions but Member States may opt for applying same to domestic ones (article 4).

3.5. QEs are free to choose any procedural means available to them, as a case may be (article 1, para. 3).

3.6. Certain QEs of each Member State may bring cross-border representative actions within the EU, while they may collaborate with QEs from different Member States in jointly bringing a representative action in a Member State where the alleged infringement affects or is likely to affect consumers from different Member States (article 6).

3.7. Member States are free to choose between an 'opt-in' or an 'opt-out' system but the 'opt-in' system is mandatory for any consumer residing outside the relevant Member State to join an action (articles 9, para.2 and 13, para.2).

3.8. Member States may choose the possibility of third-party funding of representative actions for redress measures (article 10, para.1).

3.9. Final decisions of a court or administrative authority of any Member State have a cross-border effect within the EU (article 15).

3.10. Publicity is provided for the QEs at national level and at EU level for those QEs that may bring cross-border actions as well as for the representative actions brought and their outcome (articles 5, 13 & 14).

3.11. Collective ADR is especially promoted (see below under **5**).

4. Safeguards

The RAD's initiative has raised concerns on a possible misuse of the collective mechanism by unmeritorious claims and US-type of class action proceedings. As noted by the European Parliament in 2012: *"Europe must refrain from introducing a US-style class action system or any system which does not respect European legal traditions" and "safeguards must be put in place within the horizontal instrument in order to avoid unmeritorious claims and misuse of collective redress, so as to guarantee fair court proceedings"* (the EP Resolution**,** under paras 2 and 20; see above under **III.A.1.3**).

Within that framework, the RAD imposes certain safeguards towards avoiding abusive collective actions, especially:

4.1. Strict rules on the specification and funding of QEs, while third-party funding, if opted by a Member State, must comply with restrictions ensuring that no conflict of interests or undue influence exists (articles 4 and 10).

4.2. The "loser pays" principle, thereby the unsuccessful party pays the costs of proceedings incurred by the winning one (article 12, para.1).

4.3. The prohibition of punitive damages (recital 42).

5. Collective ADR

It's important, although not strange, that the RAD especially includes collective ADR provisions related to both injunctive and redress measures. Collective ADR has long been an EU concern and preference for consumer rights enforcement.

5.1. Already in 2012 the **European Parliament** noted particularly [emphasis added]:

"…the availability of an effective judicial redress system would act as a strong incentive for parties to agree an out-of-court settlement, which is likely to avoid a considerable amount of litigation; ***encourages the setting up of ADR schemes at European level so as to allow fast and cheap settlement of disputes as a more attractive option than court proceedings****, and suggests that judges performing the preliminary admissibility check for a collective action should also have the power to order the parties involved to first seek a collective consensual resolution of the claim before launching collective court proceedings; …"*

(the EP Resolution**,** under para 25; see above under **III.A.1.3**).

5.2. In the same context, the **EU Commission** urged the Member States by its **Recommendation** of 11.6.2013 to ensure that [emphasis added]:

"…the parties to a dispute in a mass harm situation are ***encouraged to settle the dispute about compensation consensually or out-of-court, both at the pre-trial stage and during civil trial****, taking also into account the requirements of Directive 2008/52/EC…", (ie. the Mediation Directive) and "…judicial collective redress mechanisms are accompanied by appropriate means of collective alternative dispute resolution available to the parties before and throughout the litigation…",* supplemented by procedural benefits and safeguards

(paras 25-28; see above under **III.A.1.4**).

5.3. The RAD eventually introduced two kinds of collective ADR respectively for injunctive and redress measures. Specifically:

a) Injunctive measures
Member States may **opt to** provide that a QE is only allowed to seek a definitive injunctive measure (to cease or prohibit an infringement) only after it has entered into **consultations** with the trader concerned, which have failed to result in a positive outcome within two weeks. Such an option is notified by the Member State to the EU Commission for publicity purposes (article 8, para. 4). Furthermore, according to recital 41 of the RAD, such a condition for prior consultations can also be applied by a Member State to representative actions for redress measures.

It is noted that the same prior consultation procedure was initially provided by the Injunctions Directive (article 5; see above under **II.A.3**).

Lastly, it is not clear why the redress settlement mechanism (below under **b**) has not been also provided for representative actions regarding injunctive measures.

b) Redress measures
Member States have to **ensure** that in a representative action for redress measures either (a) the litigants, i.e. the QE and the trader at issue, may jointly propose to the competent court or administrative authority a **settlement** reached or (b) the court or administrative authority, after having consulted the QE and the trader, may invite them to reach a settlement within a reasonable time. Any settlement reached is assessed by the relevant court or administrative authority, which takes into account all the circumstances and primarily the interests of the consumers and if the settlement is not approved litigation proceeds.

Approved settlements as above are also binding on the individual consumers concerned; however, the Member States may give them an option to be bound or not. Any settlement does not affect any additional remedies available to consumers which were not the subject of that settlement (article 11 and recitals 53-57).

It is worth mentioning that the above invitation of the litigants by the competent court or administrative authority to reach a settlement mirrors the **Greek courts' authority and duty to encourage the litigants at any stage of proceedings to resort to mediation** and generally reach any other appropriate out-of-court settlement (articles 116A and 214C of CCP).

6. Transposition of the RAD

6.1. The deadlines set by the RAD for its transposition are 25.12.2022 (implementation) and 25.6.2023 (application). The Injunctions Directive will be repealed on 25.6.2023 but it will continue to apply to representative actions brought before that date (articles 21, 22 and 24).

6.2. Thus far, no draft legislative piece has been publicized regarding the RAD's transposition into Greek law. The transposition will most probably be done by a joint ministerial decision of (at least) the ministers of a) Development and Investments and b) Justice, being the pattern used for the Injunctions Directive (transposed by joint ministerial decision No Z1-111/7.3.2012; see above under **II.A.3**). The primarily competent authority for the Directive's transposition is the Directorate of Policy and Consumer Information belonging to the General Directorate for Consumer Protection of the Ministry of Development & Investments. An informal working group was set up thereat with the participation of stakeholders, such as consumer associations, and a draft legislative text is currently expected around summer 2022 [status as of February 2022].

III.B. The proposed DSA

1. An overview

1.1. On 15.12.2020, the EU Commission published its proposal for a regulation "*on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC*" [COM(2020) 825 final]. The explanatory memorandum accompanying the DSA stresses out the new and innovative information society digital services that have emerged since the adoption of the "e-Commerce Directive" 2000/31/EC of 8.6.2000. It is noted that such digital services have brought dramatic changes to people's daily lives in the EU and although they resulted to benefits at the same time they pose risks deriving from the great dependency of the EU economy and society on them.

1.2. The DSA lays down uniform and harmonised rules on the provision of **intermediary services**, being conduit, caching and hosting services (defined similarly to the "e-Commerce Directive"), by intermediary service providers (**ISPs**) established in or outside the EU to recipients established or residing in the EU (articles 1 and 2). The various obligations imposed on ISPs differ depending on their kind and these range from common ones, which apply to all ISPs, to additional and specific obligations regarding all hosting providers, online platforms and very large online platforms, as these are specified in the DSA.

2. Online platforms

2.1. Especially, **online platforms** are ISPs of hosting services, which store and disseminate to the public information at the request of a recipient of the service (such as social media platforms, online marketplaces, App stores), unless that activity is a minor and purely ancillary feature of another service and cannot be used without that other service (such as private messaging and email services) (article 2,h).

2.2. The additional **obligations** imposed on online platforms exclude those that qualify as micro or small enterprises within the meaning of the Annex to EU Commission Recommendation 2003/361/EC and, among them, the following are noted:

a) an internal *complaint-handling system*, user-friendly and easily accessible, provided to the recipients of the service regarding decisions taken by the online platform on illegal content;

b) *out-of-court dispute settlement* proceedings, under which the online platform has to cooperate, in good faith, with the certified ADR body selected by a recipient of the service regarding the online platform's decision on illegal content under a) above, and be bound by that body's decision; and

c) priority in processing notices on illegal content submitted by *trusted flaggers* qualified as such by the digital services coordinator of the Member State where the entity of the trusted flagger is established, if same meet the requirements listed in the DSA, one of them being that the trusted flagger represents **collective interests** and is independent from any online platform. The EU Commission's publicly available database has to include a list of EU trusted flaggers (articles 14, 17-19).

3. Collective mechanism

3.1. On enforcement, the DSA provides that the rights of recipients of online platform services related to their obligations mentioned above under **2** may be exercised collectively through bodies, organizations or associations, which meet the following conditions specified by the DSA, namely:

a) they are non-profitable;

b) they have been properly established under the laws of a Member State; and

c) their statutory objectives include a legal interest in ensuring compliance with the DSA.

3.2. The DSA notes that the above collective redress mechanism is set up without prejudice to the RAD (see above under **III.A.2**), whose Annex I will be amended to include consumers rights under the DSA (articles 68 and 72).

4. Time framework

DSA is expected to be voted around the end of 2022, it will come into force immediately and apply three months thereafter (article 74).

IV. CONCLUSION

In the years to come, the shift towards EU collective redress for consumer disputes will continue due to the increased necessity for quick, friendly, uniform and low cost resolution of mass torts and transactions. Collective redress will increasingly include ADR, and especially mediation, as a first option due to the overall additional benefits that ADR may provide. The enactment of the RAD has been a significant step in this framework notwithstanding the many options it allows to the Member States; the implementation of the RAD by the Member States will change the collective redress culture throughout the EU, with multiple benefits.