On the way towards a representative action for the protection of the collective interests of consumers in the EU

Today, the EU Commission presented its long awaited proposal for a directive on representative actions for the protection of the collective interests of consumers (COM (2018) 184/3). The proposal and other related documents are available here. The directive shall appply to domestic and cross-border infringements (Article 2(1), 2nd sentence). With regard to the latter group of cases, the directive "is without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction and applicable law" (Article 2(3)). However, Article 16 sets out some rules relevant for cross-border representative actions. It ensures the mutual recognition of the legal standing of qualified entities designated in advance in one Member State to seek representative action in another Member State. Moreover, it enables qualified entities from different Member States to act jointly within a single representative action in front of a single forum competent under relevant Union and national rules. The pertinent provision reads as follows:

"Article 16
Cross-border representative actions

1. Member States shall take the measures necessary to ensure that any qualified entity designated in advance in one Member State in accordance with Article 4(1) may apply to the courts or administrative authorities of another Member State upon the presentation of the publicly available list referred to in that Article. The courts or administrative authorities shall accept this list as proof of the legal standing of the qualified entity without prejudice to their right to examine whether the purpose of the qualified entity justifies its taking action in a specific case.

2. Member States shall ensure that where the infringement affects or is likely to affect consumers from different Member States the representative action may be

brought to the competent court or administrative authority of a Member State by several qualified entities from different Member States, acting jointly or represented by a single qualified entity, for the protection of the collective interest of consumers from different Member States.

3. For the purposes of cross-border representative actions, and without prejudice to the rights granted to other entities under national legislation, the Member States shall communicate to the Commission the list of qualified entities designated in advance. Member States shall inform the Commission of the name and purpose of these qualified entities. The Commission shall make this information publicly available and keep it up to date.

4. If a Member State or the Commission raises concerns regarding the compliance by a qualified entity with the criteria laid down in Article 4(1), the Member State that designated that entity shall investigate the concerns and, where appropriate, revoke the designation if one or more of the criteria are not complied with.”