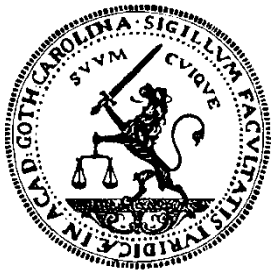

FACULTY OF LAW

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Chasing the White Whale? Collective Compensation for Mass Harm Arising from GDPR Violations

JAEM03 Master Thesis

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Table of contents

Summary

This thesis examines the availability of compensatory collective redress for violations of the General Data Protection Regulation ['GDPR']. The need for such consideration arises from deficiencies in existing enforcement mechanisms for providing redress for GDPR infringements that affect large numbers of individuals.

Two distinct EU secondary law instruments, Article 80 GDPR and the Representation Actions Directive ['RAD'], are analysed. Both frameworks provide mechanisms that may support compensatory collective actions for GDPR violations. However, it remains unclear whether, when interpreted individually or together, they permit or require Member States to introduce opt-in compensatory redress and whether opt-out compensatory measures are permissible at all.

The study is built on the premise that the GDPR collective enforcement mechanism aims to protect individuals in their capacity as data subjects, while RAD protects the collective interests of consumers. The research, therefore, explores the availability of compensatory collective redress for natural persons affected either as data subjects alone or simultaneously as consumers.

The thesis first identifies the types of GDPR infringements that arise in the digital environment, examines the limitations of existing public and private enforcement mechanisms and explores how compensatory collective action may overcome those limitations. It then analyses the scope of the compensatory collective enforcement mechanisms under the GDPR and RAD and the relationship between them. In addition, the thesis considers whether concerns regarding abusive litigation are well-founded. Finally, it assesses whether compensatory collective actions may contribute to achieving the GDPR objective of ensuring a high level of protection of data subjects and whether they may be justified through the principles of effective judicial protection and effectiveness.

The thesis argues that the ambiguity surrounding the interpretation of Article 80(2) GDPR should be resolved in favour of permitting opt-out compensatory collective actions, provided that Member States choose to introduce them. Furthermore, the thesis proposes that, in situations where data subjects are simultaneously affected as consumers, the RAD envisages a stronger model of collective consumer protection. In such cases, Member States may not only be permitted to introduce compensatory opt-in or opt-out mechanisms for GDPR infringements, but may also be required to do so by the RAD. Finally, drawing by analogy on *ASG2* case, the thesis advances that, in certain situations where individual enforcement of GDPR rights is impossible or excessively difficult, compensatory collective redress may constitute the only means to ensure effective judicial protection.

Preface

I would like to thank my parents, my brother and my friends for their kindness and support throughout this journey and always.

I am especially grateful to my supervisor, Xavier Groussot, for his enthusiasm and commitment to teaching, which I found inspiring.

I am also grateful to my moot court teammates, with whom I had the opportunity to discuss EU law daily and who contributed to my interest in the topic of this thesis.

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Last but not least, my appreciation to the tiny desk in the furthest corner of the Raoul Wallenberg Institute Library in Lund, where I wrote most of this thesis and spent a fair amount of time daydreaming.

Abbreviations

CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
EU	European Union
GDPR	General Data Protection Regulation
RAD	Representative Actions Directive
SA	Supervisory Authority under the GDPR
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

1 Introduction

'Consider the subtleness of the sea; how its most dreaded creatures glide under water, unapparent for the most part and treacherously hidden beneath the loveliest tints of azure.'

Moby-Dick or, The Whale by Herman Melville

Violations of the General Data Protection Regulation ['GDPR'][1] can affect large groups of individuals and the resulting harm, like a legendary white whale, can be massive yet difficult to capture and enforce within an increasingly complex digital environment. This Chapter introduces the legal problem related to compensatory collective redress for GDPR violations. It sets out the relevant research questions, the methodology for answering them and clarifies the concepts and limitations of this study.

1.1 Background and Relevance of the Study

Profiling user behaviour through algorithmic processing, placing tracking cookies across the internet to gather extensive information, monetising personal data by selling it to advertisers or using it to train AI models, all without the proper consent of data subjects, are just some examples of mass data protection harm.[2] Technological advancements have enabled a single entity to violate the GDPR rights of millions of data subjects within minutes. This raises the question of whether this group of individuals should also have the right to seek compensation collectively.

Existing public and private enforcement mechanisms demonstrate limitations in addressing this kind of harm.[3] On the one hand, Supervisory Authorities ['SAs'], which are responsible for public enforcement, lack financial resources as well as 'technical and legal expertise'.[4] On the other hand, data subjects may be unaware of infringements or unwilling to pursue legal proceedings individually due to the time and high costs involved.[5] The lack of

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) [2016] OJ L119/1.

[2] See concrete examples of mass data harm in Section 2.1 below.

[3] See the limitations of existing enforcement mechanisms in more detail in Sections 2.2 and 2.3 below.

[4] Stephen Mulders, 'Collective Damages for GDPR Breaches: A Feasible Solution for the GDPR Enforcement Deficit?' (2022) 8 European Data Protection Law Review 493, 494; Communication from the Commission to the European Parliament and the Council, Second Report on the Application of the General Data Protection Regulation, COM (2024) 357 final, section 2.5.1.

[5] Olivia Tambou, 'Art. 80 Representation of Data Subjects' in Indra Spiecker Gen. Döhmann and others (eds), *General Data Protection Regulation article-by-article commentary* (Nomos Verlagsgesellschaft mbH & Co KG 2023) 1031 <https://doi.org/10.5771/9783845276984-1030> accessed 8 April 2026.

incentives could also be caused by the potential award being modest in amount.[6] This allows businesses to profit from unlawful conduct, since often individual low-value claims, which collectively generate significant profit for businesses, may remain unadjudicated.[7]

In such situations, collective redress functions as a tool to improve access to justice and mitigate the imbalance between the resources of data subjects and infringing entities.[8] However, compensatory collective redress has been controversial in the European Union ['EU']. Consumer groups have generally supported it, while industry has expressed concerns about so-called 'abusive litigation'.[9]

These concerns are also reflected in GDPR, which establishes its own collective redress mechanism in Article 80. Following disagreement between the European Parliament ['the Parliament'] and the Council of the European Union ['the Council'], Article 80(1) expressly allowed mandated compensatory actions on the condition that Member States choose to provide such a remedy under national law. By contrast, Article 80(2), read together with Recital 142, is often interpreted as not allowing compensatory redress for non-mandated collective actions.[10]

In contrast, the Representative Actions Directive ['RAD'], which was enacted after GDPR, adopts a more progressive approach to compensatory collective actions by requiring Member States to provide at least one compensatory re-

[6] Laima Jančiūtė, 'Data Protection and the Construction of Collective Redress in Europe: Exploring Challenges and Opportunities' (2019) 9 International Data Privacy Law 2, 5.

[7] *Mastercard Incorporated and others v Merricks* [2020] UKSC 51, para 84.

[8] See more on the rationale behind collective redress in Section 2.4 below; Commission Recommendation of 11 June 2013 on Common Principles for Injunctive and Compensatory Collective Redress Mechanisms in the Member States Concerning Violations of Rights Granted under Union Law [2013] OJ L201/60, recital 10; Francesco Sorace, 'Collective Redress in the General Data Protection Regulation. An Opportunity to Improve Access to Justice in the European Union?' (Working Paper) 5 <https://hdl.handle.net/2445/123425> accessed 31 March 2026.

[9] Emilia Mišćenić and Marina Širola, 'The Road Ahead: Challenges to the Effective Enforcement of the EU Representative Actions Directive' (2025) 1 Anali Pravnog Fakulteta u Beogradu 39, 41-2; Jančiūtė (n 6) 12; Commission Staff Working Document, Public Consultation: Towards a Coherent European Approach to Collective Redress, SEC (2011) 173 final, point 11 <https://www.europarl.europa.eu/meetdocs/2009_2014/documents/itre/dv/250/250520/25052011_SEC_2011_173_EN.pdf> accessed 4 May 2026.

[10] Mandated actions refer to actions brought by a representative body that is mandated by data subjects, whereas non-mandated actions lack such a mandate from data subjects. See more on Article 80 and the distinction between mandated and non-mandated actions in Section 3.1 below.

dress mechanism, which may operate on an opt-in, opt-out, or combined basis.[11] Because the RAD also applies to GDPR violations involving data subjects operating as consumers, this creates uncertainty about the relationship between the two instruments and whether they are compatible.

Two principal uncertainties arise. First, whether RAD requires Member States to provide collective compensatory actions where data subjects are also consumers, even though GDPR appears to leave this to Member States' discretion. Second, whether Article 80(2) GDPR permits Member States to introduce non-mandated compensatory collective actions despite the restrictive wording of Recital 142 and particularly in light of the more permissive approach adopted by RAD.

This issue has significant practical implications for the availability of both opt-in and opt-out compensatory collective actions for GDPR violations in the EU. An interpretation of RAD as obliging Member States to introduce compensatory collective mechanisms, rather than leaving it to Member States' choice as envisaged by the GDPR, could affect the extent of availability of compensatory collective redress for GDPR violations. Furthermore, some Member States, such as the Netherlands and Portugal, permit opt-out compensatory actions. Interpreting Article 80(2) GDPR as precluding such national choice could limit the scope of available collective enforcement mechanisms.

1.2 Purpose and Research Questions

The thesis aims to clarify the scope and relationship between compensatory collective redress mechanisms under GDPR and RAD. The study proceeds from the premise that the GDPR protects natural persons in their capacity as data subjects. In contrast, RAD protects the collective interests of consumers, including when they are data subjects operating as consumers within the meaning of the RAD.[12] To achieve this aim, the thesis addresses one main research question, which is divided into two sub-questions:

To what extent does the current EU legal framework permit compensatory collective redress for GDPR violations?

[11] See more on Representative Actions Directive ('RAD') and opt-in and opt-out systems in Section 3.2 below; 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 and repealing Directive 2009/22/EC (Text with EEA relevance) [2020] OJ L409/1.

[12] GDPR, arts 4(1) and 1; RAD, recital 14, arts 2(1) and 3(1); See more on this in Chapter 4 below.

- How should Article 80 GDPR be interpreted regarding the permissibility of compensatory collective redress for GDPR violations affecting data subjects?

- How should Article 80 GDPR be interpreted regarding the permissibility of compensatory collective redress for GDPR violations in cases where data subjects also qualify as consumers?

1.3 Methodology and Materials

To answer the research questions, this thesis employs a doctrinal legal method.[13] Existing legislation, principles, case law and legal scholarship will be analysed in order to clarify the scope of Article 80 GDPR and its relationship with RAD.

Rather than adopting a purely dogmatic approach, the study applies a contextual analysis, also referred to as 'EU Law in Context'.[14] It will focus not only on the meaning of legal provisions, but also on their place in the social context, including the rationale for their adoption, the advantages and disadvantages of different interpretations and their effects on the relevant actors.

To facilitate the analysis, primary, secondary and tertiary sources of EU law will be examined.[15] Given that the thesis focuses on the intersection between data protection and consumer protection laws concerning the availability of compensatory collective redress, the main sources analysed will be EU secondary legislation, in particular the GDPR and RAD.

Where necessary, provisions of primary EU law will also be considered, in particular Article 16 of the Treaty on the Functioning of the European Union ['TFEU'] (right to the protection of personal data), Article 8 of the Charter of Fundamental Rights of European Union ['the Charter'] (protection of personal data) and the general principle of effective judicial protection, as now

[13] Rob van Gestel and Hans-W. Micklitz, 'Revitalizing Doctrinal Legal Research in Europe: What About Methodology?' in Ulla Neergaard and others (eds), *European Legal Method – Paradoxes and Revitalisation* (DJØF Publishing Copenhagen 2011) 65.

[14] Fiona Cownie, *Legal Academics: Culture and Identities* (Hart Publishing 2004) 197–98 <https://doi.org/10.5040/9781472559531> accessed 20 May 2026; Ulla Neergaard and Marlene Wind, 'Studying the EU in Legal and Political Science Scholarship' in Ulla Neergaard & Ruth Nielsen (eds), *European Legal Method - in a Multi-Level EU Legal Order* (DJØF Publishing Copenhagen 2012) 265-79.

[15] Linda Senden, 'Changes in the relative importance of sources of law – The case of EU soft law' in Ulla Neergaard & Ruth Nielsen (eds), *European Legal Method - in a Multi-Level EU Legal Order* (DJØF Publishing Copenhagen 2012) 227.

reflected in Article 47 of the Charter and 19 of the Treaty on European Union ['TEU'].[16]

As regards tertiary sources of EU law, although non-binding, various forms of soft law will be used. These include pre-law guidance instruments, such as the Green Paper of the Commission, as well as post-law administrative documents, such as reports in the form of the Commission's Communications, and para-law instruments, such as Recommendations.[17]

The study will also analyse both existing and pending case law of the Court of Justice of the European Union ['CJEU' or 'the Court']. Since there is no judgment directly addressing compensatory collective redress for GDPR violations, case law that is relevant for interpreting Article 80 GDPR, either directly or by analogy, will be examined. Where appropriate, Opinions of Advocates General will also be considered, where they provide interpretative guidance.

Legal doctrine will be used to engage with different ideas in existing scholarship on the topic.

Although there is a tendency to assign declining importance to preparatory work as a source for law, the travaux préparatoires of both the GDPR and RAD will nevertheless be examined to some extent to facilitate understanding of the legislative context.[18]

Regarding language, the analysis is primarily limited to English-language sources.[19] When it was necessary to compare different EU official language versions or to translate Dutch case law into English, an AI-assisted tool was used. In such cases, the disclosure can be found in the footnotes.

No substantive text in this thesis has been generated by AI. Grammarly and ChatGPT have been used for grammar and language checking.

1.4 Conceptual Clarifications and Delimitation

[16] Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/47; Charter of Fundamental Rights of the European Union [2016] OJ C202/389; Consolidated version of the Treaty on European Union [2016] OJ C202/13.

[17] Senden (n 15) 229-38.

[18] Ruth Nielsen, 'Towards an Interactive Comparative Method for Studying the Multi-Layered EU Legal Order' in Ulla Neergaard and Ruth Nielsen (eds), *European Legal Method - in a Multi-Level EU Legal Order* (DJØF Publishing Copenhagen 2012) 110-11.

[19] Nielsen (n 18) 97-100.

Terminology regarding collective enforcement mechanisms remains inconsistent across both legal scholarship and EU legislation. Terms such as 'collective action', 'collective redress', 'representative action, 'redress measure' and 'action for damages' are used variably.

Commission's Recommendation on common principles for injunctive and compensatory collective redress mechanism conceptualises 'collective redress' as a broad term that encompasses both 'injunctive collective redress' and 'compensatory collective redress'. While injunctive collective redress aims to bring illegal behaviour to an end, compensatory collective redress enables affected individuals to seek compensation.[20]

Within compensatory collective redress, various mechanisms can exist, including, for example, claim assignment models,[21] representative actions,[22]or bundling individual claims. This thesis focuses exclusively on 'representative actions', namely actions brought by representative organisations such as NGOs, foundations, or other qualified entities.[23]

Furthermore, compensatory collective redress, which in RAD seems to be equivalent to 'redress measure', may pursue different forms of relief including 'compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid'.[24] This thesis is restricted to the damage actions seeking compensation under Article 82 GDPR.[25]

Accordingly, the scope of this thesis is limited to compensatory collective redress pursued through representative actions brought by representative bodies on behalf of individuals who have suffered damage as a result of GDPR violations and seek compensation under Article 82 GDPR. Unless otherwise indicated, references to 'collective action' and 'collective redress' should be understood as referring solely to such kinds of representative actions.

The scope of this thesis is further limited by EU law. While the thesis examines selected practices and case law of certain Member States, it does not aim to provide a comprehensive analysis of the implementations of Article 80 GDPR or RAD across all Member States. European Convention on Human Rights ['ECHR'] is likewise excluded from the scope of this thesis.

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[20] Commission Recommendation (n 8) point 3(a).

[21] See about Germany's and Italy's system on assignment of claims: Carsten Kruger and Andreas Weitbrecht, 'Bundling of Claims by Way of Assignment in Germany' (2021) 2 Mass Claims: An International Journal with a European Focus 107, 108; Giorgio Afferni, 'Bundling of Claims by Way of Assignment in Italy' (2022) 2 Mass Claims: An International Journal with a European Focus 30, 31.

[22] Commission Recommendation (n 8) point 3(a).

[23] See the definitions of 'representative action' and 'qualified entity': Commission Recommendation (n 8) point 3(d); GDPR, art 80; RAD, arts 3(4), 3(5) and 4.

[24] See the definition of 'redress measure': RAD, art 3(10).

[25] See the definition of 'action for damages': Commission Recommendation (n 8) point 3(c).

The primary focus of this study is the availability of compensatory collective redress for GDPR violations and it does not address all potential challenges associated with it, such as debates concerning third-party litigation funding or jurisdictional challenges in cross-border collective actions.

Lastly, the conceptual clarifications should be made regarding the terms 'mandated' and 'non-mandated' actions, as used in the GDPR, and 'opt-in' and 'opt-out' actions, as used in RAD. The relationship between these concepts remains contested and will be discussed in Chapter 4.

1.5 State of the Art

Existing scholarship has devoted greater attention to opt-out compensatory actions. Some scholars argue that such actions are exempt from the scope of GDPR,[26] while others believe that they may be permitted under national laws of Member States and are not precluded by GDPR.[27] Interest in opt-out collective actions has grown amid national proceedings in the Netherlands against companies such as *Amazon, Google, Meta, Oracle, TikTok* and *Adobe*.[28] The case against Amazon has now been referred to the CJEU through the preliminary ruling procedure to clarify questions regarding the tension between national law, GDPR and RAD. This case constitutes the first opportunity for the Court to provide its opinion on compensatory collective actions for GDPR violations.[29] However, less attention has been devoted to the broader scope of Article 80 GDPR, as well as to its interaction with RAD.

1.6 Outline

The thesis consists of 6 chapters, including this introductory chapter. Chapter 2 examines the mass nature of GDPR harms, the limitations of existing public and private enforcement mechanisms and the rationale underlying compensatory collective redress. Chapter 3 analyses the regulation of compensatory collective actions under GDPR and RAD. Chapter 4 explores the relationship between GDPR and RAD. Chapter 5 discusses concerns about abusive litigation and evaluates them against the GDPR's objective of ensuring high-level protection of data subjects and the principles of effective judicial protection and effectiveness. Finally, Chapter 6 presents the research findings and answers the research questions.

[26] Geert Potjewijd and others, 'Mass Damage Claims for GDPR Infringements: A Multi-Jurisdictional Perspective' (2021) 1 Mass Claims: An International Journal with a European Focus; Tambou (n 5) 1034-35.

[27] Francesca Episcopo, Anna van Duin and Aart Jonkers, 'Towards Collective Redress for Data Harms under the GDPR' [2025] 1 Mass Claims: An International Journal with a European Focus.

[28] See Section 4.5 for the Netherlands' national case law.

[29] See Section 4.4 for *Amazon* preliminary ruling.

2 Nature of GDPR Harms and Need for Compensatory Collective Redress

In her book *The Age of Surveillance Capitalism,* Shoshana Zuboff recalls 1933 motto 'Science Finds - Industry Applies - Man Conforms' to criticise the logic of the modern data-driven industry, where an individual's role is just passive acceptance.[30] This notion of 'conformity' may also be linked to what has been described as 'rational apathy' towards the enforcement of personal-data-related rights.[31] When enforcing one's rights becomes excessively burdensome in terms of time, cost, or psychological strain, individuals may have no choice but to conform.[32]

This Chapter explores the GDPR-related harms driven by modern technologies that often have a mass nature. It further analyses the limitations that current enforcement mechanisms face in responding to such harms. Finally, it discusses the rationale for compensatory collective redress as a means of addressing enforcement challenges.

2.1 Mass and Diffuse Nature of GDPR Harm

A mass harm situation is defined as an occurrence in which more than one person suffers harm from the same unlawful behaviour.[33] It can manifest in various forms and across different sectors, such as damage caused by defective medicines, consumer-related unfair commercial practices or violations of data protection law.[34]

'Globalisation and digitalisation' are often cited as accelerators of mass harm situations.[35] In the modern economy, the data has acquired the characteristics of a 'commodity', or even 'capital', which may motivate certain actors to seek profit from it.[36] Business models employ various techniques to keep users

[30] Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (Profile Books 2019) 15.

[31] Maria Ioannidou, 'Compensatory Collective Redress for Low Value Consumer Claims in the EU: A Reality Check' (2019) 27 European Review of Private Law 1371.

[32] Beate Gsell, 'The New European Directive on Representative Actions for the Protection of the Collective Interests of Consumers – A Huge, but Blurry Step Forward' (2021) 58 Common Market Law Review 1365; Jančiūtė (n 6) 5.

[33] Commission Recommendation (n 8) point 3(b).

[34] Ruud Hermans, 'To Settle or Not to Settle; That's the Question: An Economic Analysis of the Factors Determining the Settlement of Mass Damage Disputes and Implications for Legal Practice' (2024) 1 Mass Claims: An International Journal with a European Focus 5, 5.

[35] RAD, recital 1; Jasminka Kalajdzic, 'Interview: Commissioner Vera Jourova on the Collective Redress Directive' (2021) 1 Mass Claims: An International Journal with a European Focus 38, 38.

[36] Marina Federico, 'European Collective Redress and Data Protection Challenges and Opportunities' (MediaLaw*s*, 14 June 2023) 87 <https://www.medialaws.eu/rivista/european-collective-redress-and-data-protection-challenges-and-opportunities/> accessed 31 March

engaged on their platforms, including strategies to optimise data collection.[37] Data is needed to offer enhanced and personalised services, goods and advertising as well as to facilitate AI training.[38]

There are two principal types of mass data violations: data breaches and the unauthorised transmission of data.[39] This categorisation, however, is illustrative and non-exhaustive of all possible GDPR violations that can have mass implications.

Data breaches constitute infringements of the GDPR resulting from insufficient security measures.[40] They encompass not all types of unauthorised disclosures, erasures, or access to personal data, but specifically those caused by security failures.[41] This derives from the security principle and obligation for data processors and controllers to 'implement appropriate technical and organisational measures' to protect personal data they hold.[42] When security is compromised and data is accidentally deleted, disclosed to third parties or hacked, this constitutes a data breach. A data breach can result in different kinds of damage:

> … physical, material or non-material damage to natural persons such as loss of control over their personal data or limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorised reversal of pseudonymisation, damage to reputation, loss of confidentiality of personal data protected by professional secrecy or any other significant economic or social disadvantage to the natural person concerned.[43]

Some real-world examples of data breaches affecting a large number of data subjects include Meta's failure to protect users' data, which was exploited by

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2026; Regarding characterisation data as capital, see: Jathan Sadowski, 'When Data Is Capital: Datafication, Accumulation, and Extraction' (2019) 6 Big Data & Society <https://doi.org/10.1177/2053951718820549> accessed 31 March 2026.

[37] BEUC, 'Towards the Digital Fairness Act' (2025) 16 <https://www.beuc.eu/position-paper/towards-digital-fairness-act> accessed 1 May 2026.

[38] Federico (n 36) 87-8.

[39] David Jevons, Lirio Barros and Kimela Shah, 'Mass Claims: How to Value Data' (2022) 1 Mass Claims: An International Journal with a European Focus 19, 21.

[40] GDPR, art 4(12).

[41] Alexander Dix, 'Art. 4(12) Definitions' in Indra Spiecker Gen. Döhmann and others (eds), *General Data Protection Regulation article-by-article commentary* (Nomos Verlagsgesellschaft mbH & Co KG 2023) 218 <https://doi.org/10.5771/9783845276984-216> accessed 7 May 2026.

[42] Evangelia Papadaki and Sophie Stalla-Bourdillon, 'Art. 32 Security of Processing' in Indra Spiecker Gen. Döhmann and others (eds), *General Data Protection Regulation article-by-article commentary* (Nomos Verlagsgesellschaft mbH & Co KG 2023) 661-63 <https://doi.org/10.5771/9783845276984-659> accessed 7 May 2026; GDPR, arts 5(1)(f) and 32.

[43] GDPR, recital 85.

third parties due to weaknesses in Facebook's 'view as' function;[44] the hacking the British Airways website due to the vulnerabilities in its system, which led to the theft of personal information, including credit card details;[45] or failures by public authorities to properly protect the personal data.[46]

Unauthorised transmission, on the other hand, does not result from weak security systems but instead often involves the mass unlawful collection of personal data, which is then sold to third parties for profit or used for reasons outside what it was initially collected for.[47] So-called 'business model violations' fall within this second category, which encompasses practices by large technology corporations (Big Tech) that are designed around the model to seek profit through unlawful processing or sale of data.[48] There is a growing perception of 'paying with one's data' in exchange for certain free services provided by such corporations, thereby rendering personal data a form of 'payment'.[49] This practice is not necessarily considered unlawful, although it may entail risks, particularly if data is commercialised without proper consent. Even if consent is obtained, the lack of knowledge or understanding of risks on the part of data subjects demonstrates the often 'illusory' nature of the consent.[50]

Examples of unlawful collection or transmission of data that can impact a large number of people include nudging data subjects to consent to personalised advertising by Google,[51] or placing tracking cookies without data subjects' consent by SHEIN.[52] For similar practices, there are pending collective

[44] See BBC Article 'Facebook security breach: Up to 50m accounts attacked' <https://www.bbc.com/news/technology-45686890> accessed 8 May 2026.

[45] See BBC Article 'British Airways fined £20m over data breach' <https://www.bbc.com/news/technology-54568784> accessed 8 May 2026.

[46] See data breaches by Swedish Equality Agency and Region Uppsala respectively: <https://www.edpb.europa.eu/news/national-news/2025/swedish-sa-administrative-fine-against-equality-ombudsman-when-personal_lv> accessed 9 May 2026; <https://www.edpb.europa.eu/news/national-news/2022/swedish-authority-privacy-protection-imy-fines-region-uppsala-breaches-its_en> accessed 9 May 2026.

[47] Jevons, Barros and Shah (n 39) 21.

[48] Episcopo, van Duin and Jonkers (n 27).

[49] See Andreas Kotsios, *Paying with Data : A Study on EU Consumer Law and the Protection of Personal Data* (Department of Law, 2022); Roman Pozhodzhuk and Tetiana Pozhodzhuk, 'Paying with Data: The Protection of Personal Data in Consumer Contracts in the Digital Age' (2026) 14 Studia Iuridica Cassoviensia 67.

[50] On the consent illusion, see Ignacio Cofone, *The Privacy Fallacy: Harm and Power in the Information Economy* (Cambridge University Press 2023) 46–66 <https://doi.org/10.1017/9781108995825> accessed 23 May 2026.

[51] 'French SA: Cookies and advertisements inserted between emails' <https://www.edpb.europa.eu/news/national-news/2025/french-sa-cookies-and-advertisements-inserted-between-emails-google-fined_lv> accessed 9 May 2026.

[52] 'French SA: Cookies placed without consent: SHEIN fined 150 000 000 EUR by the CNIL' <https://www.edpb.europa.eu/news/national-news/2025/french-sa-cookies-placed-without-consent-shein-fined-150-000-000-eur-cnil_lv> accessed 9 May 2026.

actions in the Netherlands against companies such as *Amazon, Google, Adobe, TikTok, Meta* and *Oracle*.[53]

Other GDPR-related violations that may not align with this categorisation but could impact a group of data subjects include the transfer of data to third countries without appropriate safeguards and the use of automated decision-making. Examples include Facebook Ireland transferring personal data to the USA, or TikTok's transfer of personal data to China without adequate safeguards.[54] As regards automated decision-making under the GDPR, cases involving creditworthiness show an increasing use of automated decision-making that could, in the future, affect a group of people.[55] Uber's practices in the Netherlands, for instance, also show that decisions made by solely automated systems led to a group of Uber drivers losing their jobs.[56]

The above examples demonstrate that many of the GDPR violations are characterised by their mass-harm nature. These include, for instance, data breaches, unlawful transmission and collection of data, transferring data to third countries without proper safeguards and automated decision-making. These violations can affect groups of individuals through a single infringement committed by public or private actors.

2.2 Limitations of Public Enforcement of GDPR

GDPR public enforcement is carried out by supervisory authorities in each Member State to ensure compliance with the GDPR.[57] They have the authority to carry out investigations either on their own initiative or in response to complaints submitted by data subjects and to impose administrative fines under Article 83 of the GDPR.[58] Yet this enforcement mechanism faces several limitations.

[53] See further in Section 4.5 below.

[54] Case C-362/14 *Maximillian Schrems v Data Protection Commissioner* [2015] ECLI:EU:C:2015:650; Case C-311/18 *Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems* [2020] ECLI:EU:C:2020:559; 'Irish Supervisory Authority fines TikTok €530 million and orders corrective measures following Inquiry into transfers of EEA User Data to China' <https://www.edpb.europa.eu/news/news/2025/irish-supervisory-authority-fines-tiktok-eu530-million-and-orders-corrective_lv> accessed 9 May 2026.

[55] Case C-634/21 *OQ v Land Hessen* [2023] ECLI:EU:C:2023:220.

[56] Sümeyye Elif Biber, 'Between Humans and Machines: Judicial Interpretation of the Automated Decision-Making Practices in the EU' in Herwig C.H. Hofmann and Felix Pflücke (eds), *Governance of Automated Decision-Making and EU Law* (Oxford University Press 2024) 208 <https://doi.org/10.1093/9780198919575.003.0007> accessed 9 May 2026; Amsterdam Court of Appeal, *200295742/01* [2023] ECLI:NL:GHAMS:2023:793.

[57] Sanjay Sharma, *Data Privacy and GDPR Handbook* (1st edn, Wiley 2019) 256–59 <https://doi.org/10.1002/9781119594307> accessed 9 May 2026.

[58] GDPR, arts 57, 58 and 77; Paul Voigt and Axel Von Dem Bussche, *The EU General Data Protection Regulation (GDPR): A Practical Guide* (Springer Nature Switzerland 2024).

In the Oracle case, the representative highlighted some of the reasons for bringing the case before the courts rather than the SAs. These reasons included a lack of resources within SAs, particularly where investigations involve large companies such as Oracle; greater procedural influence over the proceedings before the court; and the possibility of seeking compensation for affected data subjects, which is not available through SAs.[59]

A comparison of two GDPR reports prepared by the Commission in 2020 and 2024 shows that the financial resources of SAs have improved, but remain unsatisfactory.[60] Challenges persist regarding deficiencies in human resources, modernised equipment and specialised technical and legal competences.[61]

SAs can also be perceived as insufficiently independent in certain contexts. Large corporations that infringe GDPR rights are also major taxpayers in their respective Member States, which may create potential bias in enforcement.[62]

2.3 Limitations of Individual Private Enforcement

In addition to the right to file a complaint with the SAs, data subjects also have the possibility to bring the case before the court.[63] However, there are many reasons that can prevent them from doing so.

Data subjects frequently lack awareness regarding infringements, since data-related harms in a digitalised economy can be challenging to detect and data subjects may lack the technical or legal expertise to identify them.[64] Claims are often diffuse and low-value, which does not motivate them to start a dispute, given the litigation costs and potential time to be invested.[65] Despite the 'loser pays' principle in Europe, not all litigation costs are recoverable; pre-litigation costs may constitute a significant barrier, as individuals first need

[59] 'Have a GDPR Complaint? Skip the Regulator and Take It to Court' (POLITICO, 30 August 2020) <https://www.politico.eu/article/have-a-gdpr-complaint-skip-the-regulator-and-take-it-to-court/> accessed 9 May 2026.

[60] Communication from the Commission to the European Parliament and the Council, Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition - two years of application of the General Data Protection Regulation, COM (2020) 264 final; Commission Report (n 4) section 2.5.1.

[61] Commission Report (n 4) section 2.5.1.

[62] Karl Wörle and Oskar Josef Gstrein, 'Collective Data Protection Litigation: A Comparative Analysis of EU Representative Actions and US Class Actions Enforcing Data Protection Rights' (2024) 11 European Journal of Comparative Law and Governance 275, 304.

[63] Olivia Tambou, 'Art. 79 Right to an Effective Judicial Remedy against a Controller or Processor' in Indra Spiecker Gen. Döhmann and others (eds), *General Data Protection Regulation* (Nomos Verlagsgesellschaft mbH & Co KG 2023) 1025 <https://doi.org/10.5771/9783845276984-1023> accessed 10 May 2026.

[64] Joana Moreira and Lena Hornkohl, 'Collective Redress in the Digital Age' (Transformative Private Law, 19 March 2026) <https://transformativeprivatelaw.com/collective-redress-in-the-digital-age/> accessed 10 May 2026.

[65] Ioannidou (n 31) 1370-71.

to assess the potential merits of the claim.[66] They can be in a weaker position compared to giant companies that overshadow them with human, financial, informational or technical resources.[67] Organising groups independently is also often ineffective. Individuals may still require separate representatives and collective coordination itself can create practical challenges.[68] All this can lead data subjects to form overall nihilistic views of such proceedings, making them unlikely to pursue them.[69] This phenomenon is described as 'rational apathy'.[70]

2.4 Rationale Underlying Compensatory Collective Redress

The UK Supreme Court in the *Mastercard* case has summarised the core logic behind the collective actions as 'claimants to benefit from the same economies of scale as are already naturally enjoyed by the defendant as a single litigant.'[71] Indeed, collective redress mechanisms facilitate addressing the fundamental inequalities between stronger infringers and weaker individuals by enabling affected individuals to unite their resources.[72]

Collective redress has long been a subject of debate in the EU.[73] Significant developments were first introduced by the Commission's Green Paper, which identified problems consumers face in mass harm situations and proposed possible solutions.[74] Subsequently, the Commission's Recommendation laid down a general approach to collective redress, including compensatory redress.[75] This was followed by the Injunction Directive, which has since been repealed and replaced by RAD.[76]

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[66] Csongor István Nagy, *Collective Actions in Europe: A Comparative, Economic and Transsystemic Analysis* (Springer International Publishing 2019) 11–13 <https://doi.org/10.1007/978-3-030-24222-0> accessed 9 April 2026.

[67] Moreira and Hornkohl (n 64).

[68] On challenges associated with group organisation, see Nagy (n 66) 16–17.

[69] On limitations of individual private enforcement, see Episcopo, van Duin and Jonkers (n 27); Mulders (n 4).

[70] Ioannidou (n 31) 1371.

[71] *Mastercard* (n 7) para 84; Rachael Mulheron, 'A Priceless Opportunity: Class Actions Post-Merricks v Mastercard' (2021) 1 Mass Claims: An International Journal with a European Focus 49, 61 and 64.

[72] Mulders (n 4) 494 and 505; Jančiūtė (n 6) 5.

[73] On this topic, see Ioannidou (n 31) 1377-86; For early documents on collective redress, see Consumer Redress Memorandum from the Commission to the Council Transmitted on 4 January 1985, COM (84) 629 Final <https://aei.pitt.edu/1597/> accessed 13 May 2026; Liability for Defective Products - Green Paper, COM (99) 396 Final, 33–34 <https://aei.pitt.edu/1217/> accessed 13 May 2026.

[74] Green Paper on Consumer Collective Redress, COM (2008) 0794 final.

[75] Commission Recommendation (n 8).

[76] Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (Codified version) Text with EEA relevance [2009] OJ L110/30.

The general aims of collective redress also apply to compensatory collective redress, which is typically described as a tool to strengthen access to justice, enhance administrative efficiency in the judicial system, and prevent unlawful activities by holding wrongdoers accountable.[77]

Access to justice is facilitated by enabling even small, dispersed claims that would otherwise not be brought before the courts.[78] This promotes not only the individual interests of the claimants in being compensated for the harm they suffered, but also the collective interest in ensuring the effectiveness of such a right.[79] Such access to justice contributes to reducing rational apathy.[80]

Judicial efficiency is improved by aggregating similar cases, reducing overall procedural costs through shared factual and legal elements.[81] This also allows for more efficient use of judicial and administrative resources compared to many individual claims.[82] Costs can also be reduced through representative actions, since the knowledge and expertise some representative organisations can acquire through repeated involvement in collective actions can reduce information costs.[83]

Further, compensatory collective redress contributes to the cessation of illegal behaviour.[84] Holding wrongdoers financially responsible ensures that costs are internalised, strengthening their preventive function.[85]

Consequently, by analysing examples of GDPR violations and remedies designed to address them, it can be observed that GDPR-related harms can often affect large numbers of individuals and collective redress may serve as a crucial instrument to remedy deficiencies within existing enforcement mechanisms.

[77] Maria José Azar-Baud, 'Winds of Change after the Implementation of the Directive on Representative Actions?' (2025) 2 Mass Claims: An International Journal with a European Focus; Bernard Murphy, 'Foreword' (2021) 2 Mass Claims: An International Journal with a European Focus 91; Ioannidou (n 31) 1372-73.

[78] Mulders (n 4) 494.

[79] Ioannidou (n 31) 1372-73.

[80] Gsell (n 32) 1365.

[81] Nagy (n 66) 14.

[82] Nagy (n 66) 16; Murphy (n 77).

[83] L Visscher and M Faure, 'A Law and Economics Perspective on the EU Directive on Representative Actions' (2021) 44 Journal of Consumer Policy 455, 469.

[84] Commission Recommendation (n 8) recital 9.

[85] Azar-Baud (n 77).

3 Current Legal Framework: GDPR and RAD

This chapter examines how two EU legislative acts, GDPR and RAD, regulate the availability of compensatory collective redress for GDPR violations.

3.1 Compensatory Collective Redress under GDPR

GDPR establishes its own mechanism for representative actions in Article 80, constituting a significant advancement compared to its predecessor, the Data Protection Directive, which only allowed representation before the supervisory authorities.[86] In the *Fashion ID* case, it was later confirmed that the silence in the Directive did not rule out the national law permitting consumer organisations to bring representative actions before the court.[87]Against this background, GDPR marks a shift towards more explicit and more mandatory regulation of representative actions, allowing representation both before the SAs (Article 77) and before the courts (Articles 78 and 79).

Although Article 80 does not explicitly refer to 'collective actions' and mentions data subjects in the singular form, the title of the provision and Recital 142, both referring to 'data subjects', should be understood as allowing for the representation of a group of data subjects. In line with the categorisation developed by the Commission, the mechanism in Article 80 GDPR can therefore be classified as 'representative action'.[88] However, due to the way this provision is formulated, in theory, it permits the representation of a single data subject. It has further been confirmed that Article 80(2) allows the initiation of injunctive relief without a mandate, even when no specific right of a data subject has been infringed.[89] Consequently, it seems that for the purposes of invoking Article 80 GDPR, the number of affected individuals is not a decisive factor.

Another characteristic of representative actions is that the represented individuals are not parties to the proceedings, or they relinquish certain procedural rights.[90] Article 80 GDPR does not clearly address this issue, nor does it specify the extent of the influence data subjects might have over the proceedings. The wording of the provision referring to the right to 'lodge the

[86] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31, art 28(4).

[87] Case C-40/17 *Fashion ID GmbH & CoKG v Verbraucherzentrale NRW eV* [2019] ECLI:EU:C:2019:629, paras 46–63.

[88] Commission Recommendation (n 8) point 3(d).

[89] Case C-319/20 *Meta Platforms Ireland Limited v Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband eV* [2022] ECLI:EU:C:2022:322, paras 69-72.

[90] Commission Recommendation (n 8) point 3(d); RAD, art 3(5) and recital 36.

complaints' or 'exercise the rights' on behalf of the data subjects, suggests that organisations assume the position of claimant parties. However, it appears to be left to Member States to regulate.

An organisation representing data subjects should meet several preconditions. It must be a non-profit entity, 'properly constituted in accordance with the law of a Member State, have statutory objectives which are in the public interest and be active in the field of the protection of data subjects.' It has been clarified that a consumer organisation may also bring a representative action for data protection violations.[91] It has further been referred to the Court whether the requirement of 'being active' should be interpreted strictly to entail actual activity with a demonstrated track record in the data protection field.[92]

Article 80 GDPR aims to facilitate 'access to justice in the data protection context',[93] albeit to different degrees, as its paragraphs 1 and 2 have distinct 'normative scope'.[94] Article 80 distinguishes between mandated (paragraph 1) and non-mandated (paragraph 2) representative actions. Mandated representative action depends on the data subject granting the mandate to the representing organisation, whereas non-mandated representative action allows the organisation to bring the case 'in the interest of the law', independent of the data subjects' mandate.[95] Mandated collective action is a mandatory mechanism under the GDPR, while non-mandated collective action is left to Member States' discretion to implement in their national law.

While the above is true for injunctive action, compensatory action involves even more complexity. The substantive right to compensation for a GDPR infringement is set out in Article 82 GDPR. Article 80(1) allows mandated compensatory actions only if provided for by a Member State law, whereas Article 80(2) does not refer to Article 82 GDPR at all. Recital 142 also provides that 'body, organisation or association may not be allowed to claim compensation on a data subject's behalf independently of the data subject's mandate.' Thus, a purely textual analysis of Article 80 suggests that mandated compensatory actions are permitted only if the Member States choose to do

[91] *Meta Platforms Ireland I* (n 89).

[92] Pending Case C-523/25, Stichting Data Bescherming Nederland (SDBN) v Amazon Europe Core Sàrl, Amazon EU Sàrl, Amazon Media EU Sàrl, Amazon.com, Inc. See questions 3 in the request for preliminary ruling: 'Does the activity requirement in Article 80(1) of the GDPR mean that the interest group must have a track record?' ('Amazon') <https://infocuria.curia.europa.eu/tabs/document/C/2025/C-0523-25-00000000RP-01-P-01/DDP/302636-EN-1-pdf> accessed 18 April 2026.

[93] Tambou (n 5) 1031.

[94] Opinion of Advocate General Richard de la Tour in Case C-319/20 *Meta Platforms Ireland Limited v Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband eV* [2021] ECLI:EU:C:2021:979, point 56.

[95] Tambou (n 5) 1034.

so, whereas non-mandated compensatory actions may be precluded by GDPR.[96]

3.1.1 GDPR Legislative History: Who was Afraid of Compensatory Collective Redress?

The legislative history of GDPR reveals a significant disagreement during the drafting of what is now Article 80, particularly over compensatory collective redress. The following is a chronological overview of how this Article evolved into its current form.

In its initial GDPR draft, the Commission proposed that a representative body could submit a complaint in the name of data subjects to both the supervisory authority and the courts. It also suggested that such bodies could lodge complaints independently of data subjects, but this was limited to data breaches and did not cover all GDPR violations. This version did not require any implementation by Member States' national law, nor did it explicitly mention the right to compensation through a representative action.[97]

When the Economic and Social Committee commented on the Commission's proposal, it emphasised the importance of compensatory collective action, highlighting the collective nature of data-related violations and the inadequacy of traditional legal remedies to address them. They pointed out that the draft lacked compensatory collective action for enforcing Article 77, which later became Article 82 in the final version of GDPR.[98] The European Data Protection Supervisor has also recommended introducing 'wider provisions on collective action'.[99]

In 2014, in the position of the Parliament, as adopted at first reading, appears the reference to representative compensatory action if mandated by the data subjects, which was not conditional on the Member States' implementation into national law.[100]

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[96] See the interpretation of Article 80(2) in Section 3.1.3.

[97] Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM (2012) 011 final, recitals 112 and 114 and arts 73 (2-3) and 76(1) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2012%3A0011%3AFIN> accessed 8 April 2026.

[98] Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)'[2012] OJ C229/90, point 4.18.

[99] Executive summary EDPS Opinion of 7 March 2012 on the data protection reform package [2012] OJ C192/7, opinion on articles 73 and 76.

[100] Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the

Some Member States were against this development. The Netherlands was afraid that GDPR would bring US-like class actions and suggested adding in the recitals that the representative body should not have the right to claim damages.[101] Ireland has also agreed that the recital should have made it clear that this article was not introducing class actions.[102]

Discussions in a Trilogue further show that there were divergent views on compensatory collective redress for GDPR violations. The Parliament aimed to retain the reference to compensation, but the Council opposed it. The Parliament then proposed to retain a reference to compensation only in the first paragraph of the article (for mandated representative actions) and to refer to the 'non-profit' nature of the representative body, thereby reducing the risks of 'commercial claims culture in the field of data protection'.[103]It seems that the omission of reference to compensation in Article 80(2) and its retention only in paragraph 1, with reference to Member State's legislation, was the result of a compromise between the Parliament and the Council.

Concerns about compensatory collective action within the European Union existed even before the GDPR. The Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress indicates that opt-out compensatory actions are generally excluded unless justified by sound administration of justice.[104] Although this Recommen-

Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) [2014] OJ C378/399, art 76(1).

[101] Council of the European Union, Note from the Presidency to the Permanent Representatives Committee on the Proposal for a General Data Protection Regulation - Chapter VIII [13 May 2015] 8383/15, 17 <https://data.consilium.europa.eu/doc/document/ST-8383-2015-INIT/en/pdf> accessed 8 April 2026.

[102] Council of the European Union, Note from CZ, DE, IE, ES, FR, HR, NL, AT, PL, PT, FI and UK Delegations to Working Group on Information Exchange and Data Protection (DAPIX) on the Proposal for a General Data Protection Regulation - Chapters III and VIII [10 April 2015] 7586/1/15, 15 <https://data.consilium.europa.eu/doc/document/ST-7586-2015-REV-1/en/pdf> accessed 8 April 2026.

[103] Council of the European Union, Note from the Presidency to the Delegations on the Proposal for a General Data Protection Regulation – Written Debrief on Chapter VIII (30 October 2015) 13606/15, 3, 6-7 and 34-35 <https://data.consilium.europa.eu/doc/document/ST-13606-2015-INIT/en/pdf> accessed 8 April 2026. See Council's version to compare, 'Council of the European Union, 'Note from the Presidency to Council on the Proposal for a General Data Protection Regulation – Preparation of a General Approach (11 June 2015) 9565/15'184 <https://data.consilium.europa.eu/doc/document/ST-9565-2015-INIT/en/pdf> accessed 19 April 2026. The Statement of the Council's Reasons elaborates that 'specific criteria' for representative bodies, namely working on a non-profit basis and active in the field of data protection, was to avoid 'commercial claims culture in the field of data protection': Statement of the Council's Reasons: Position (EU) No 6/2016 of the Council at First Reading with a View to the Adoption of GDPR, 9.2 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016AG0006(02)> accessed 22 April 2026.

[104] Commission Recommendation (n 8) point 21.

dation sets non-binding rules, they illustrate the prevailing view on compensatory collective actions in the EU.[105] The rationale behind this negative attitude was usually explained by the interest of 'safeguarding against abusive litigation', especially in cross-border situations, where there was a risk that individuals might be involved in litigation without knowing about it.[106] It is important to acknowledge that lobbying of business interests played a role in the development of this document.[107] While this document recognises the significance of extending collective actions to data protection, [108]it shows a somewhat narrow perspective on compensatory collective action, being more 'defendant-oriented' and lacking openness to more effective enforcement of data protection rights.[109]

3.1.2 Mandated Compensatory Collective Actions

Article 80(1) outlines the conditions for mandated compensatory actions. It refers to Article 82 GDPR, which is the right to compensation and allows it to be exercised through representative action, only if Member States permit it in their national legislation. Therefore, there is no blanket mandatory obligation under GDPR for compensatory collective redress, even when it's mandated by data subjects.[110]

There is ambiguity regarding the definition of the term 'mandate'. It is unclear whether basic consent is sufficient or if a higher level of formality, such as a power of attorney, is required. Additionally, the question of whether consent must be explicit (like in opt-in systems) or can be tacitly implied (like in opt-out systems) remains open. Thus, this issue is particularly important when clarifying what is the conceptual relationship between mandated and non-mandated actions and opt-in and opt-out systems.[111]

In the pending *Amazon* case, the Court has been asked whether the 'opt-out' mechanism as defined in RAD falls within the scope of the GDPR's mandated

[105] Stefaan Voet, '"Where the Wild Things Are". Reflections on the State and Future of European Collective Redress' (Social Science Research Network, 7 February 2017) 18 <https://doi.org/10.2139/ssrn.2913010> accessed 3 April 2026.

[106] Commission Recommendation (n 8) recitals 10 and 15; Report on the implementation of the Commission Recommendation of 11 June 2013 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) COM (2018) 40 final, 2.1.3.

[107] Alexandre Biard, 'Collective Redress in the EU: A Rainbow behind the Clouds?' (2018) 19 ERA Forum 189, 3 <https://doi.org/10.1007/s12027-018-0509-4>; Vlad Gross, 'Keeping the Status Quo: Business Success in the EU Collective Redress Initiative' (2017) 6 Interest Groups & Advocacy 161, 14.

[108] Sorace (n 8) 8; Commission Recommendation (n 8) recital 7;

[109] Voet (n 105) 25.

[110] Gloria González Fuster, 'Article 80 Representation of Data Subjects' in Christopher Kuner and others (eds), *The EU General Data Protection Regulation (GDPR): A Commentary* (Oxford University Press 2020) 1149 <https://doi.org/10.1093/oso/9780198826491.003.0126> accessed 29 March 2026.

[111] See interpretation of 'mandate' in Section 4.2.

collective action.[112] If the answer is affirmative, this would strengthen the prospects for compensatory collective actions, given that non-mandated collective actions may not extend to compensatory redress. However, some scholars argue that 'mandate' should encompass only 'explicit expression of data subjects' will.[113] This uncertainty is further compounded by the lack of clarity as to whether 'opt-in' systems are covered by the mandate, calling into question the overall compatibility of compensatory collective actions in the GDPR context. If the mandate is defined as formal authorisation, such as a power of attorney and not covering opt-in or opt-out consent, then it could mean such systems falling into the 'non-mandated' umbrella that might not allow compensatory actions. Thus, the interpretation of 'mandate' may have utmost importance in defining the future of compensatory actions in relation to RAD.

European Data Protection Supervisor, in its opinion, underlined the necessity of providing clarification about the mandate and 'the degree of formality required', but apparently the legislator did not consider giving further guidelines on it.[114]

3.1.3 Non-mandated Compensatory Collective Actions

Article 80(2) establishes non-mandated representative action, the initiation of which does not necessitate a mandate from data subjects. It is for Member States discretion to decide whether to incorporate this mechanism into their national law.[115] Therefore, to enable non-mandated collective actions, Member States should first use the margin of appreciation afforded by this 'opening clause' and permit it into their legislation.[116]

This mechanism enables non-profit organisations to act as guardians and a 'supervisory authority' of GDPR compliance.[117] In the literature, it has been argued that Article 80(2) does not cover the protection of 'general interest' and presupposes an infringement of at least one data subject's right.[118] However, in *Meta Platforms Ireland I*, the Court affirmed that, for the purposes of initiating a representative action under this mechanism, there is no requirement to identify specific data subjects or demonstrate the infringement. The

[112] *Amazon,* see referred questions 4 and 5 (n 92); Maria-Jose Azar-Baud and others, 'France, Germany, Italy, the Netherlands and Portugal' (2024) 2 Mass Claims: An International Journal with a European Focus 133, 144.

[113] Potjewijd and others (n 26) 7.

[114] EDPS (n 99).

[115] Fuster (n 110) 1149.

[116] Case C-757/22 *Meta Platforms Ireland Limited v Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband eV* [2024] ECLI:EU:C:2024:598, paras 58–60.

[117] Opinion of Advocate General Richard de la Tour in Case C-319/20 (n 94) point 63.

[118] Fuster (n 110) 1149; Alexia Pato, 'The Collective Private Enforcement of Data Protection Rights in the EU' (Social Science Research Network, 2019) 4 <https://doi.org/10.2139/ssrn.3303228> accessed 28 March 2026.

Court emphasised that the wording 'considers' indicates that it is sufficient for a representative body to 'consider' and presume an infringement of GDPR rights without the necessity of demonstrating actual harm to commence the action. Furthermore, the data subject's representative is not obliged to identify individual affected persons, as the definition of a data subject under Article 4(1) includes both identified and identifiable data subjects. Thus, defining the group of potentially affected data subjects may be enough.[119]

The Court has further clarified that the requirement that the infringement arise 'as a result of processing' should not be interpreted strictly. It may also encompass situations in which the data subject's right to information is breached.[120]

Some contend that compensatory actions are precluded by Article 80(2) of the GDPR.[121] This is supported by the fact that Article 80(2) does not cite Article 82 GDPR and the legislative history of GDPR also indicates that the right to compensation was intentionally omitted in Article 80(2). More significantly, Recital 142 explicitly excludes the possibility of representative entities seeking compensation on behalf of data subjects in non-mandated contexts. However, reliance on Recital 142 for the interpretation of Article 80(2) may be subject to scrutiny, as it is a recital that lacks legal binding force and there exists divergence in the interpretation of Recital 142 due to its variances in translations across different EU official languages.

The Court's case law establishes that recitals do not have 'binding legal force' and they cannot be relied upon 'for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner clearly contrary to their wording'.[122] However, recitals may also be useful for their interpretative value in clarifying the ambiguity of legally binding provisions.[123]Therefore, it must be assessed whether recital 142 assists in interpreting Article 80(2), meaning whether the legislator intended to exclude the compensatory non-mandated actions from its scope. On the other hand, the interpretation that such actions are not available solely on the basis of the recital risks attributing the prohibitive force to a non-binding provision, while Article 80(2) itself does not expressly impose such a limitation. Reliance on recitals should thus be more cautious, especially in light of preparatory legisla-

[119] *Meta Platforms Ireland I* (n 89) paras 69-72.

[120] *Meta Platforms Ireland II* (n 116) paras 61-62.

[121] Pato (n 118) 5; Potjewijd and others (n 26) 22; Tambou (n 5) 1034-1035.

[122] Case C-10/18 P *Mowi ASA v European Commission* [2020] ECLI:EU:C:2020:149, para 44; Case C-134/08 *Hauptzollamt Bremen, v J. E. Tyson Parketthandel* [2009] ECLI:EU:C:2009:229 para 16; Case C-136/04 Deutsches Milch-Kontor GmbH v Hauptzollamt Hamburg-Jonas [2005] ECLI:EU:C:2005:716, para 32; Case C-162/97 *Nilsson and Others* [1998] ECLI:EU:C:1998:554, para 54.

[123] Maarten den Heijer, Teun van Os van den Abeelen and Antanina Maslyka, 'On the Use and Misuse of Recitals in European Union Law' (Social Science Research Network, 30 August 2019) 5 <https://doi.org/10.2139/ssrn.3445372> accessed 24 May 2026.

tive materials, which show that there was divergence of views regarding compensatory redress, but they do not show that there was consensus on the prohibition either.[124] A balanced interpretation may suggest that Article 80(2) neither establishes the general right to compensatory collective redress nor imposes the prohibition. Instead, it leaves discretion to Member States.

Recital 142 GDPR states that a representative entity 'may not be allowed to claim compensation' in a non-mandated context. In the English version, the usage of 'may not' introduces ambiguity, as 'may' is associated with granting permission or choice, whereas in a more formal legal context, the expression 'shall not' is employed to indicate a clear prohibition. The Commission's English Style Guide emphasises that, although 'may not' is quite common, it should not be used to denote prohibition, as it may lead to misunderstandings when interpreted as possibility.[125] Instead, it recommends employing 'shall not' as an optimal drafting technique for conveying a negative obligation.

In other provisions of GDPR, when the legislator intends to express a negative imperative, the term 'shall not' is employed.[126] Apart from Recital 142, the phrase 'may not' is used only on two occasions. First, in Article 9(1), where it signifies a prohibition within a conditional or delegated framework, allowing Union or Member States' law to determine whether the prohibition on processing special categories of data can be lifted by consent. The legislator's choice to use 'may not' here instead of 'shall not' may be explained by the fact that the provision itself does not impose a direct prohibition, but recognises that Union or Member States' law might exclude such possibility. This is particularly relevant in this context, since the implementation of Article 80(2) is also left to the discretion of Member States. The wording 'may not' in Recital 142 appears capable to be understood in the same way as in Article 9(1) as reflecting the discretionary structure, in the sense that Member States may choose to prohibit compensatory non-mandated actions.

Second time 'may not' is used in GDPR, is in Recital 143, where it expresses a limitation on the authority of national courts, restricting their power to refer questions on the validity through the preliminary ruling procedure, where the applicant had the opportunity to challenge the act directly under Article 263 TFEU. The likely rationale why the legislator opted to use 'may not' instead of 'shall not' in this instance can be that the right to refer through a prelimi-

[124] See France, which was in favour of a broad scope for the collective enforcement mechanism in the GDPR: Note from CZ, DE, IE, ES, FR, HR, NL, AT, PL, PT, FI and UK Delegations (n 102) 22.

[125] English Style Guide: A Handbook for Authors and Translators in the European Commission, 8th edition, Last updated in November 2025, point 10.28, 62 <https://knowledge-centre-translation-interpretation.ec.europa.eu/sites/default/files/ckeditor5-files/styleguide_english_dgt_en.pdf> accessed 21 April 2026.

[126] See GDPR, there are at least 30 occasions of using 'shall not', for example, in Articles 7 and 22;

nary ruling technically still exists. This case differs from the situation in Recital 142 and do not clarify whether the legislator adopted any specific approach regarding the use of 'shall not' or 'may not'.

Interestingly, when the Netherlands first offered to put the prohibition in the recitals, it offered the following wording: 'this body, organisation or association does not have the right to claim damages on his/her behalf',[127] but the legislator opted for 'may not'.

This ambiguity could be the reason for divergent translations of GDPR across various languages. The Dutch version translates as 'it may be stipulated that those bodies, organisations or associations are not entitled to claim compensation on a data subject's behalf independently of the data subject's mandate', thereby leaving it to Member States to decide whether to prohibit it.[128]The Italian, Greek, Portuguese, Latvian and Lithuanian versions also appear to be ambiguous and likely express varying degrees of possibilities, whereas other languages, such as German and French, adopt a more stringent prohibitive language.[129]

There are 24 official languages in the EU.[130] In the *CILFIT* case, the Court first introduced the principle of 'equal authenticity of all language versions'.[131] Accordingly, all language versions are equally authentic and proper interpretation of EU law requires the comparison of those versions.[132] No single language version can determine the meaning of the law without considering the other versions in other languages.[133] During comparison, not only translations, but also legislative history documents and opinions of lawyer linguists are considered.[134] In the course of interpretation, account must also

[127] Note from the Presidency - 8383/15 (n 101).

[128] *Amazon* (n 92).

[129] The analysis is based on the official language versions of the GDPR. AI-assisted tools were used for translation. See: Anne Hendrikx, Veerle van den Bergen, 'Dutch Court Refers Preliminary Questions to the CJEU Regarding the Interplay between the GDPR and the Dutch WAMCA' (2025) 2 Mass Claims: An International Journal with a European Focus.

[130] See European Union's website <https://european-union.europa.eu/principles-countries-history/languages_en> accessed 21 April 2026.

[131] Stefaan van der Jeught, 'The Multilingualism Paradox in EU Law: In Our Own Language Version We Trust' (2025) 14 International Journal of Language & Law (JLL) 81, 84.

[132] Case 283/81 *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health* [1982] ECLI:EU:C:1982:335, para 18.

[133] Case C-422/24 *Integritetsskyddsmyndigheten v AB Storstockholms Lokaltrafik* [2025] ECLI:EU:C:2025:980, para 31; Case C-950/19 *Proceedings brought by A* [2021] ECLI:EU:C:2021:230, para 37; Case C-476/19 *Allmänna ombudet hos Tullverket v Combinova AB* [2020] ECLI:EU:C:2020:802, para 31; Case C-29/19 *ZP v Bundesagentur für Arbeit* [2020] ECLI:EU:C:2020:36, para 48; Case C-168/14 *Grupo Itevelesa SL and Others v Oca Inspección Técnica de Vehículos SA and Generalidad de Cataluña* [2015] ECLI:EU:C:2015:685, para 42; Case C-558/11 *SIA Kurcums Metal v Valsts ieņēmumu dienests* [2012] ECLI:EU:C:2012:721, para 48;

[134] Court of Justice of the European Union, *Multilingualism at the Court of Justice of the European Union* (Publications Office of the European Union 2023) 46 <https://data.europa.eu/doi/10.2862/012811> accessed 20 April 2026.

be taken of the provision's context and it must be interpreted in the broader EU legal framework, its objectives and how EU law has developed over time.[135]

Applying this to the present case, it is clear that comparing different language versions does not facilitate interpretation, since they do not convey a uniform meaning. Nor should the legislative history be given particular weight, although the omission of the right to compensation may be intentional. Nothing in Article 80 (2) itself indicates that if the Member States decide to introduce such an enforcement mechanism, they should not be allowed to do so. This is particularly because GDPR does not provide an exhaustive list of remedies.[136] Considering this within the wider context of the European Union's legal framework and its evolution, the development of EU legislation concerning compensatory collective actions (such as the adoption of RAD) also indicates a growing positive attitude towards collective compensatory measures.

3.1.4 Right to the Compensation under Article 82 GDPR and Compensatory Collective Redress

Article 82(1) GDPR provides the right to compensation from the controller or processor for the damages resulting from the GDPR infringement. As this provision would form the basis for compensatory collective redress, the extent to which such actions fit within the framework of this provision must be examined.

As a preliminary point, a textual reading of the GDPR indicates that generally compensatory collective redress is compatible with the nature of Article 82 GDPR. This is demonstrated by the fact that, in mandated actions under Article 80(1), legislators expressly permit Member States to introduce compensatory collective actions into their legislation by referring to Article 82 GDPR.

Regulation brought a major advancement by extending compensation coverage to non-material damage.[137] Since data protection-related mass harm situations frequently result in non-material harm, this adequately aligns with the nature of Article 82 GDPR.[138]

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[135] *CILFIT* (n 132) para 20; Case C-561/19 *Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA* [2021] ECLI:EU:C:2021:799, para 46; Case C-379/15 *Association France Nature Environnement v Premier ministre and Ministre de l'Écologie, du Développement durable et de l'Énergie* [2016] ECLI:EU:C:2016:603, para 49.

[136] Case C-21/23 *ND v DR* [2024] ECLI:EU:C:2024:846, para 60.

[137] Potjewijd and others (n 26) 8; Article 23 (1) of the Data Protection Directive was unclear about its application to non-material damages.

[138] 'What Is Missing for Collective Redress to Deliver for Consumers?' <https://www.beuc.eu/tools/what-missing-collective-redress-deliver-consumers> accessed 2 May 2026; Federico (n 36) 92.

The Court in *Österreichische Post* established that the terminology employed in Article 82, specifically 'material and non-material damage' and 'compensation for the damage suffered', is an autonomous EU notion and should be defined uniformly across the European Union.[139] The Court establishes three cumulative conditions necessary for eligibility for compensation pursuant to Article 82 of GDPR. A mere violation of the GDPR is insufficient, it must lead to damage and a causal link must exist between the infringement and the damage.[140]

It is noteworthy that the Court has repeatedly affirmed that Article 82 imposes neither a seriousness threshold for non-material harm nor a de minimis requirement below which harm cannot be compensated.[141] This establishes a solid basis for compensatory collective redress, as in cases of mass harm, individual damages may be minimal and dispersed, whereas collectively they could total a significantly higher amount.[142]

Furthermore, the Court determined that the loss of control over personal data already qualifies as non-material damage, provided such claim is adequately substantiated.[143] Therefore, there is no requirement for actual misuse of personal data, but the fear of data subjects that their personal data could be misused is sufficient to constitute non-material damage.[144] The Court expanded the scope of material damage to include 'negative feelings experienced by the data subject as a result of an unauthorised transmission of his or her personal data to a third party, such as fear or annoyance'.[145]

The particular challenge for opt-out or large-scale opt-in collective actions under Article 82 GDPR lies in its compensatory nature,[146]which appears to presuppose individual assessment of harm. The Court has never yet ruled on

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[139] Case C-300/21*UI v Österreichische Post AG* [2023] ECLI:EU:C:2023:370 para 30; Case C-526/24 *Brillen Rottler GmbH & Co KG v TC* [2026] ECLI:EU:C:2026:216, para 58.

[140] *UI v Österreichische Post AG* (n 139) para 31-37; Case C-741/21 *GP v juris GmbH* [2024] ECLI:EU:C:2024:288, para 34.

[141] Joined Cases C-182/22 and C-189/22 *JU and SO v Scalable Capital GmbH* [2024] ECLI:EU:C:2024:531, para 44; Case C-456/22 *VX and AT v Gemeinde Ummendorf* [2023] ECLI:EU:C:2023:988, paras 16-18; *UI v Österreichische Post AG* (n 139) paras 49-51; Case C-200/23 *Agentsia po vpisvaniyata v OL* [2024] ECLI:EU:C:2024:827, paras 147 and 149.

[142] Wörle and Gstrein (n 62) 289.

[143] *Agentsia po vpisvaniyata v OL* (n 141) paras 145 and 150; Case C-340/21 *VB v Natsionalna agentsia za prihodite* [2023] ECLI:EU:C:2023:986, para 82; See the illustrative list of damages in recital 85 of GDPR, which mentions 'loss of control' as one of the examples of damage.

[144] Case C-590/22 *AT and BT v PS GbR and Others* [2024] ECLI:EU:C:2024:536, para 32.

[145] Case C-655/23 *IP v Quirin Privatbank AG* [2025] ECLI:EU:C:2025:655, para 64.

[146] Case C-687/21 *BL v MediaMarktSaturn Hagen-Iserlohn GmbH* [2024] ECLI:EU:C:2024:72, para 50; Case C-667/21 *ZQ v Medizinischer Dienst der Krankenversicherung Nordrhein, Körperschaft des öffentlichen Rechts* [2023] ECLI:EU:C:2023:1022, para 87.

compensatory collective actions, but in cases brought by individuals, it consistently emphasised that the compensation under Article 82 serves a compensatory rather than punitive character.[147]As the GDPR does not provide guidelines for quantification of compensation, this matter falls within the national procedural autonomy of Member States, subject to principles of equivalence and effectiveness.[148] Under the principle of effectiveness, the Court mentions that the compensation should be 'full and effective', thereby reflecting the actual harm suffered.[149]The Court has further clarified that factors such as the infringer's intentions cannot reduce the compensation for the actual harm suffered by the affected person.[150]

This individualised approach can create difficulties in compensatory collective actions. The Court often emphasize that the fear or other negative feelings, together with their negative consequences, should be demonstrated by the affected person.[151] This can be difficult or impossible, especially in an opt-out situation, when not all affected individuals are identified, or because of a large class of litigants.

These challenges were illustrated in *Loyd v Google*, where one reason the compensatory mass claim failed in the data protection field was the lack of uniform harm in the represented group.[152] Not all individuals affected by the wrongful act experienced harm uniformly, owing to variations in the amount of time spent browsing or the different kinds of data they lost control over.[153] While this case was decided under the old Data Protection Act, some argue that this judgment can still be relevant for interpreting Article 82 GDPR, since GDPR also distinguishes between infringement and damage.[154]

More broadly, the valuation of personal data is inherently challenging due to its 'heterogeneous' nature, as individuals can value the same type of data differently.[155] Several solutions have been proposed, including valuing data based on the price similar data has on the dark web or on the profits law-

[147] *IP v Quirin Privatbank AG* (n 145) para 69.

[148] Case C-507/23 *A v Patērētāju tiesību aizsardzības centrs* [2024] ECLI:EU:C:2024:854, para 32.

[149] A v Patērētāju tiesību aizsardzības centrs (n 148) 34.

[150] *IP v Quirin Privatbank AG* (n 145) para 72.

[151] *Brillen Rottler* (n 139) para 63; *IP v Quirin Privatbank AG* (n 145) para 62.

[152] Laura Elizabeth John and Will Perry, 'Lloyd v Google [2021] UK SC 50: A Setback in the Supreme Court for Collective Redress in the UK' (2021) 2 Mass Claims: An International Journal with a European Focus 132, 133–134; Anna Dannreuther and others, 'England and Wales, France, Hungary, Italy, the Netherlands, Portugal, Spain, Switzerland Country Reports' (2022) 2 Mass Claims: An International Journal with a European Focus, 56.

[153] John and Perry (n 152) 134.

[154] John and Perry (n 152) 134–135.

[155] Jevons, Barros and Shah (n 39) 22.

breaking businesses generate based on this data.[156]However, the current compensatory framework under Article 82 appears to focus more on the subjective value of the data from the data subject's perspective.[157] The representative of Euroconsumers has correctly indicated that the current model focuses on how each individual experienced the harm, whereas situations involving mass harm require a different approach.[158]

Such a different approach could be redefining what constitutes 'full and effective' compensation for situations involving mass harm.

There exists a conflict between safeguarding the interests of precise, individualised compensation for each data subject and their right to access justice in mass harm situations.[159] Lump sums or the establishment of sub-groups with comparatively similar harms may constitute potential solutions to this issue.[160]Although collective compensation might not precisely correspond to the exact harm incurred, it at least guarantees a degree of justice in cases that might otherwise never be brought before the courts.[161]

3.2 Compensatory Collective Redress under the Representative Actions Directive

The Representative Actions Directive was enacted in 2020, repealing its predecessor, the Injunctions Directive.[162] The Commission's proposal for RAD illustrates that it was a response to the Commission's assessments of Collective Redress, revealing the necessity of a new directive given the heightened risks of mass infringements in the digitalised economy and the increasing number of Member States hesitant to adopt compensatory redress mechanisms.[163]

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[156] Justyna M Niemczyk, 'Navigating Current Issues and Future of Collective Redress: Key Takeaways from the 2024 Global Class Actions and Mass Tort Conference' (2024) 1 Mass Claims: An International Journal with a European Focus 35, 38.

[157] Niemczyk (n 156) 38.

[158] Niemczyk (156) 38.

[159] Jevons, Barros and Shah (n 39) 20.

[160] 'What Is Missing for Collective Redress to Deliver for Consumers?' (n 138); Federico (n 36) 93.

[161] Federico (n 36) 93.

[162] Lena Hornkohl, 'Up- and Downsides of the New EU Directive on Representative Actions for the Protection of the Collective Interests of Consumers – Comments on Key Aspects' (2021) 10 Journal of European Consumer and Market Law 189 <https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\EuCML\EuCML2021039.pdf> accessed 21 April 2026.

[163] 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 2018; See, RAD was a response to the REFIT Fitness Check of EU consumer and marketing law and to the Commission Report on the implementation of Commission Recommendation 2013/396/EU on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law.

RAD constitutes a minimal harmonisation directive and has already been transposed into all Member States' legislation, except for Spain, which is in the process of adopting the new law.[164]

The purpose of this Directive is to establish a mechanism for representative actions aimed at safeguarding consumers' collective interests, while also outlining measures to prevent abusive litigation.[165]

Consumers' collective interest is defined as 'general interest of consumers' and for compensatory redress, as 'the interests of a group of consumers'.[166] The scope of protection under this Directive is therefore limited to consumers only.[167]A consumer is a natural person who acts outside of any business or professional interests.[168]Moreover, the concept is not confined to individuals explicitly labelled as 'consumer', it may also encompass natural persons described 'travellers', 'customers', 'data subjects' or by other terms, provided that their interests as consumers are compromised.[169]

The material scope of RAD is set out in Article 2. This provision refers to Annex 1, which lists various pieces of secondary EU law, including the GDPR. Consequently, the Directive covers representative actions concerning EU rights derived from the EU legal acts listed in Annex I, including the situations where these EU rights have already been implemented into national law.[170]

As of the writing of this paper, Annex I lists 69 pieces of EU secondary legislation, and it can be updated if a new legal act that is pertinent to the protection of consumers' collective interests is enacted.[171] Some Member States, such as Austria, Estonia, Czechia, Germany and the Netherlands, have even chosen to extend the scope of representative actions beyond the disputes falling under the legislation listed in Annex 1 to include any mass harm situations affecting consumers.[172]

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[164] Note that this information is accurate as of the time of writing this thesis, May 2026; Azar-Baud (n 77); BEUC, 'From Collective Harm to Redress: What's New? | Issue #7' 2 <https://www.beuc.eu/tools/collective-harm-redress-whats-new-issue-7> accessed 24 May 2026.

[165] RAD, art 1.

[166] RAD, art 3(3).

[167] RAD, recital 14.

[168] RAD, art 3(1).

[169] RAD, recital 14.

[170] Antonia Hotter and Florian Scholz-Berger, 'Organisation and Design of Collective Redress in Europe Workshop Report' (2023) 1 Mass Claims: An International Journal with a European Focus 40, 41.

[171] RAD, recital 17.

[172] BEUC, 'From Collective Harm to Redress: What's New? | Issue #3' 4 <https://www.beuc.eu/tools/collective-harm-redress-whats-new-issue-3> accessed 24 May 2026.

The broad scope of the Directive is explained by the fact that 'consumers now operate in a wider and increasingly digitalised marketplace'.[173]To attain a higher level of protection, it is essential to recognise that consumer law interacts with various other sectors. Merely covering general consumer law is insufficient and the directive specifically references sectors such as tourism, energy, telecommunications and notably, data protection.[174]

Representative actions are brought by 'qualified entities' which may be an organisation or a public body designated by a Member State.[175]This differs from GDPR, since Article 80 does not refer to public bodies. Specific requirements are laid down only for qualified entities bringing cross-border representative actions, while for domestic actions, Member States may establish their own requirements in line with the Directive's objectives.[176]

RAD imposes an obligation on Member States to make representative action available for injunctive and redress measures.[177]The redress measure includes a compensatory remedy alongside repair, replacement, price reduction, contract termination, and reimbursement of the price paid.[178] It means that, unlike GDPR, the Directive is strict in requiring Member States to implement compensatory representative actions.[179]

RAD differentiates between two categories of compensatory redress measures, opt-in and opt-out and Member States are free to choose one or to combine elements of both.[180] The distinction between these two types of actions is about how and when consumers give or withdraw their consent to be part of the representative action brought by the qualified entity.[181]

An analysis of the implementation by Member States reveals that the majority adopted an opt-in system, with the exception of Cyprus, Hungary, Portugal,

[173] RAD, recital 13.
[174] RAD, recital 13.
[175] RAD, art 3(4).
[176] Alexandre Biard-Denieul, 'Thunder Road: The Implementation of the Representative Actions Directive in Europe Special Issue of the Emory International Law Review' (2024) 38 Emory International Law Review 751, 759; RAD, art 4: 'domestic representative action' means a representative action brought by a qualified entity in the Member State in which the qualified entity was designated; 'cross-border representative action' means a representative action brought by a qualified entity in a Member State other than that in which the qualified entity was designated.
[177] RAD, art 7(4) and recital 7.
[178] RAD, art 3(10) and recital 42.
[179] Gsell (32) 1368.
[180] RAD, recital 43.
[181] RAD, Recital 43, art 9(2); Fernando Gascón Inchausti, 'A New European Way to Collective Redress? Representative Actions under Directive 2020/1828 of 25 Novembe' (2021) 18 Zeitschrift für das Privatrecht der Europäischen Union 61, 72.

and the Netherlands, which selected an opt-out system, and Slovenia and Luxembourg, which employ a mixed system.[182]

3.2.1 Opt-in Redress Measure

In a mechanism that is opt-in in nature, consumers should express explicit consent about whether they want to be represented in the representative action.[183]However, the Directive does not provide more information on what form this consent should be conveyed. In such a system, while some consumers give their consent prior to initiating the action, others should also have a chance to join the proceedings at a subsequent stage.[184]

Despite the general freedom for Member States to choose between opt-in and opt-out redress systems, in cross-border situations where the consumers affected do not 'habitually reside' in that Member State where the representative action is brought, RAD requires the use of opt-in.[185] This was to prevent consumers from participating in parallel actions across different countries. Now that they are identified through the opt-in mechanism, the trader against whom the case is brought will have the opportunity to challenge the participation of such consumers.[186]

3.2.2 Opt-out Redress Measures

In an opt-out system, consumers are considered to be part of the representative action unless they expressly choose to withdraw from it.[187] In different provisions, RAD uses the terms 'explicit' and 'tacit' consent. Tacit consent is, therefore, the consent given by the consumer when they do not choose to opt-out from the proceeding.[188]

While collective redress generally offers the benefits highlighted in Section 2.4, opt-out compensatory collective redress is sometimes attributed to specific advantages that are characteristic of this model alone.

Some scholars emphasise that in low-value claim situations, affected individuals do not have an incentive to bring the case either through individual private enforcement or through opt-in, since opt-in still requires some active participation.[189] Affected persons may be reluctant to join the claim for various

[182] Azar-Baud (n 77).
[183] RAD, recital 43.
[184] RAD, recital 44.
[185] RAD, recital 45, art 9(3).
[186] Kalajdzic (n 35) 40.
[187] RAD recital 43.
[188] See for instance RAD, art 9(2).
[189] Visscher and Faure (n 83) 460.

reasons, including 'rational apathy'.[190] In opt-out systems, affected individuals are less likely to leave the proceeding. According to the BEUC report, in most cases in the Netherlands, consumers did not opt out.[191] In law and economic research, economists also highlight that opt-out systems can help overcome rational apathy.[192] Thus, opt-out systems are seen as encouraging more widespread participation.[193]

Opt-out systems are also considered advantageous for settlements, since the presence of a large group of claimants and therefore the higher overall monetary value of disputes, increases the likelihood that infringing parties will engage in negotiations.[194]

Another advantage of opt-out systems compared to opt-in is that they are less costly, since there are no costs associated with organising the group.[195]Opt-in systems require identification of affected individuals and informing them, which is challenging in the context where funding for consumer orgaisations is limited. In Italy, in the case against Volkswagen, such costs only amounted to 150 000 euro.[196]

[190] John and Perry (n 152) 132; Wörle and Gstrein (n 62) 289; BEUC report, 'Opt-out and Opt-in in Collective Redress. Why Does It Matter.' <https://www.beuc.eu/tools/opt-out-and-opt-collective-redress-why-does-it-matter> accessed 24 May 2026: 'There may be various reasons for consumers for not opting-in. Firstly, economic reasons – many people may be worried about having to bear costs in proving the common issues, let alone their individual issues; or may consider that the litigation is "not worth it" given their own individual small amount at issue. They may also not know about the litigation, despite the best efforts of the qualified entity or may not believe in the positive outcome of the action. Finally, a lot of psychological reasons exist, such as people feeling ashamed or fearing stigmatization because of the nature of their claim, as well as language or cultural issues preventing them to opt-in. So, it is impossible to get all or even the vast majority of the harmed consumers to come forward and register to the action'.

[191] BEUC report (n 190).

[192] Visscher and Faure (n 83) 460.

[193] Liubomir Nikiforov, 'When the Plaintiff Is a Prediction: The EU Collective Redress Gap for Algorithmic Inference Harms' (*Transformative Private Law*, 10 March 2026) <https://transformativeprivatelaw.com/when-the-plaintiff-is-a-prediction/> accessed 13 May 2026.

[194] Wörle and Gstrein (n 62) 23.

[195] Nagy (n 66) 17.

[196] BEUC report (n 190).

4 Relationship between GDPR and RAD

Compensatory collective redress under RAD and GDPR demonstrates that these are distinct enforcement mechanisms, although they also share certain common features. Each framework establishes its own rules on standing as well as its personal and material scope. While these elements may sometimes overlap, they remain different in several respects and necessitates the clarification what is relationship between these two frameworks.

Advocate General Richard de la Tour, in the opinion for *Meta Platforms Ireland I*, states that in the digital economy, it is common for data processing to affect natural persons not only as data subjects but also as consumers.[197] Article 80 GDPR is aimed at protecting the interests of data subjects, while RAD is limited to consumers. There are data subjects who may not qualify as consumers and there are also situations in which individuals act as consumers without being affected in their capacity as data subjects. In such circumstances, determining the applicable framework is relatively straightforward, as either GDPR or RAD applies. However, matters become more complex where data subjects simultaneously operate as consumers. In such cases, questions arise as to which enforcement mechanism applies. Can both mechanisms operate together or does one prevail over the other?

4.1 GDPR within the Scope of RAD

Given that GDPR is also referenced in Annex I, it implies that the scope of the Directive also encompasses GDPR infringements. However, Article 2(2) stipulates that the Directive is without prejudice to the legislation in the Annex. This is further clarified in the recitals, which specify that this Directive 'should not change or extend the definitions laid down in those legal acts or replace any enforcement mechanism that those legal acts might contain.'[198] Furthermore, GDPR is used as an example, stating that its enforcement mechanisms 'could, where applicable, still be used for the protection of the collective interests of consumers'.[199]

The reason GDPR was cited as an example has its explanation in the Directive's legislative history. In the Commission's initial proposal, there was no such provision.[200] However, some Member States were concerned about

[197] Opinion of Advocate General Richard de la Tour in Case C-319/20 (n 94) point 1.
[198] RAD, recital 15.
[199] RAD, recital 15.
[200] Proposal for RAD (n 163).

the Annex's broad scope.[201]In working documents, Ireland observed that the scope of the Directive might potentially conflict with the legal acts listed in the Annex and in particular, Article 80 GDPR. It was emphasised that, as GDPR already possesses its own mechanism for representative actions, this could lead to a parallel system of data protection remedies for consumers, potentially causing confusion among consumers and legal practitioners. [202]Similarly, Germany also suggested that there ought to have been a reference to the interaction between Article 80 GDPR and RAD.[203]

The Parliament's first reading position on the Directive shows that the Parliament explicitly sought to highlight the special position of GDPR by referring to 'collective interests of data subjects alongside the 'collective interests of consumers within the scope of the Directive's protected category.[204]

On the other hand, Denmark and Finland had doubts about the suitability of GDPR in the context of the Directive.[205]Sweden and the Czech Republic were explicitly addressing the potential conflict between GDPR and the RAD. It was mentioned that, under GDPR, associations may not be permitted to claim compensation under Article 80(2), which could conflict with the Directive.[206] The question was raised, when Directives impose more stringent requirements on certain aspects while GDPR affords greater discretion to Member States, which legal framework should take precedence?[207]

[201] Council of the European Union, Working Paper, ES Comments on Directive on Representative Actions, WK 15180/2018 INIT (05 December 2018) 7 <https://data.consilium.europa.eu/doc/document/WK-15180-2018-INIT/en/pdf> accessed 21 April 2026; Council of the European Union, Working Paper, New Deal for Consumers: Representative Actions Directive - EE Comments on PYC Proposal for Articles 1-4, 7 and 15, WK 1492/2019 INIT (05 February 2019) 1 <https://data.consilium.europa.eu/doc/document/WK-1492-2019-INIT/en/pdf> accessed 21 April, 2026.

[202] Council of the European Union, Working Paper, IE Comments on Directive on Representative Actions, WK 13904/2018 INIT (14 November 2018) 6-8 <https://data.consilium.europa.eu/doc/document/WK-13904-2018-INIT/en/pdf> accessed 21 April 2026.

[203] Council of the European Union, Working Paper, DE Comments on Directive on Representative Actions, WK 15839/2018 INIT (21 December 2018) 5 <https://data.consilium.europa.eu/doc/document/WK-15839-2018-INIT/en/pdf> accessed 22 April 2026.

[204] Council of the European Union, Note from General Secretariat of the Council to Permanent Representatives Committee/Council on Outcome of the European Parliament's First Reading (03 April 2019) 7714/19, 6–7, 26 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_7714_2019_INIT> accessed 22 April 2026.

[205] Council of the European Union, Working Paper, DK Comments on Directive on Representative Actions-Annex I, WK 5630/2019 INIT (03 May 2019)' 14 <https://data.consilium.europa.eu/doc/document/WK-5630-2019-INIT/en/pdf> accessed 22 April 2026.

[206] Council of the European Union, Working Paper, SE Comments on Directive on Representative Actions-Annex I, WK 5565/2019 INIT (03 May 2019) 3 <https://data.consilium.europa.eu/doc/document/WK-5565-2019-INIT/en/pdf> accessed 22 April 2026.

[207] Council of the European Union, Working Paper, CZ Comments on Directive on Representative Actions-Annex I, WK 5567/2019 INIT (03 May 2019) 2 <https://data.consilium.europa.eu/doc/document/WK-5567-2019-INIT/en/pdf> accessed 22 April 2026.

Probably, in response to these diverse perspectives, the presidency has proposed a solution by adding to the recitals that the directive is without prejudice to Union law.[208] More interestingly, later in one draft of the Council, it is observed that they proposed excluding GDPR entirely from the scope of the Directive:

> However, the General Data Protection Regulation should not be included in the scope of this Directive since this newly adopted Regulation already gives Member States an option to introduce rules on collective action in respect of infringements of rights of data subjects.[209]

Nevertheless, GDPR has been reintroduced into the draft later, a version of which is very close to the one in the adopted Directive.[210]

This legislative history demonstrates that the legislator was aware of potential tension between GDPR and RAD, yet nonetheless chose to retain GDPR within the scope of the Directive, with the reference that RAD is without prejudice to GDPR.

Some scholars suggest that the scope of RAD likely extends to Article 82 GDPR.[211]However, the question remains as to how it should be interpreted that RAD is 'without prejudice' to GDPR and it should not 'replace any enforcement mechanism'of GDPR.

4.2 Interaction Between Mandated, Non-mandated, Opt-in and Opt-out Mechanisms

[208] Council of the European Union, Working Paper, From Presidency to Working Party on Consumer Protection and Information Directive on Representative Actions, WK 6052/2019 INIT (14 May 2019) 2 <https://data.consilium.europa.eu/doc/document/WK-6052-2019-INIT/en/pdf> accessed 22 April 2026.

[209]'Council of the European Union, Working Paper, From Presidency to Working Party on Consumer Protection and Information Directive on Representative Actions, WK 10131/2019 INIT (19 September 2019) 3–4 <https://data.consilium.europa.eu/doc/document/WK-10131-2019-INIT/en/pdf> accessed 22 April 2026.

[210] Council of the European Union, Note from General Secretariat of the Council to Delegations on Representative Actions for the Protection of the Collective Interests of Consumers (14 October 2019) 12826/19, 8 <https://data.consilium.europa.eu/doc/document/ST-12826-2019-INIT/en/pdf>accessed 22 April 2026; See the compromised text Council of the European Union, Working Paper, Directive on Representative Actions- Presidency Drafting Suggestions, WK 6018/2020 INIT (08 June 2020), 14–15 <https://data.consilium.europa.eu/doc/document/WK-6018-2020-INIT/en/pdf> accessed 22 April 2026.

[211] Lena Hornkohl, 'Up- and Downsides of the New EU Directive on Representative Actions for the Protection of the Collective Interests of Consumers – Comments on Key Aspects' (2021) 10 Journal of European Consumer and Market Law 194 <https://kluwerlawonline-com.ludwig.lub.lu.se/api/Product/CitationPDFURL?file=Journals\EuCML\EuCML2021039.pdf> accessed 29 April 2026.

The differing terminology employed by GDPR and RAD further complicates the understanding of their relationship.[212] The meaning of the term 'mandate' remains unclear and constitutes one of the questions referred to the Court in pending *Amazon* case.[213]Three principal interpretation currently emerge in legal scholarship and practice.

Mandate as authorization through a power of attorney

First interpretation understands 'mandate' as formal authorization. The referring court in *Amazon* appears to assume that, from a linguistic perspective, the word 'mandate' implies some form of active conduct. It is also possible that Dutch legislator associated the concept with formal 'power of attorney'.[214]

Even for opt-in mechanisms, consent is not required at the initiation stage. It is only subsequently that consumers can be informed, allowing them to decide whether to participate. Therefore, based on textual analysis, even opt-in systems do not fall within the scope of 'mandated' procedures.

Such restrictive interpretation would imply that both opt-in and opt-out systems fall under the category of 'non-mandated' actions, potentially jeopardizing compensatory collective redress for GDPR violations, due to the restrictive wording of Article 80(2) and Recital 142.

Mandate as active consent

The second interpretation understands 'mandate' as requiring active and express consent. Under this view, 'mandated' encompasses an explicit form of consent characteristic of opt-in systems, whereas tacit forms of consent, associated with opt-out systems, are excluded. Article 80(2) is frequently cited as resembling an 'opt-out' system.[215]Some authors employ 'opt-in' as synonymous with mandated actions and 'opt-out' as synonymous with non-mandated actions.[216]

If this interpretation were adopted, the gravity of tension would be whether RAD's opt-out compensatory redress is compatible with Article 80(2) and Recital 142.

Mandate encompassing both active and tacit consent

[212] Potjewijd and others (n 26) 23.
[213] *Amazon* (n 92).
[214] *Amazon* (n 92) 11.
[215] Sorace (n 8) 14; Potjewijd and others (n 26) 8.
[216] Potjewijd and others (n 26) 8.

A third interpretation adopts the broad understanding of 'mandate', encompassing both explicit and tacit expressions of will. Under this interpretation, choosing not to opt out of the collective action is understood as a form of expression of the wish to be represented.

Some scholars support this broader understanding[217] and the Rotterdam District Court also suggested that the Directive provides for such freedom and opportunity to interpret 'mandate' broadly.[218]

Objective interpretation of 'mandate'

Legislative history provides some indications for defining the concept of 'mandate', although not definitive answers. In the Parliament's first hearing version of GDPR, both 'consent' and 'mandate' appeared in the recitals. However, they were used in a different context. 'Consent' with regard to lodging the complaint before the supervisory authority and 'mandate' for bringing the case before the courts. This distinction creates the impression that 'mandate' was intended to signify something different from ordinary consent and perhaps require a higher level of formality.[219]

Interestingly, the original proposal for RAD also mentioned the term 'mandate', which was later replaced with language of an opt-in/opt-out system.[220] In Article 5 of the proposal, a mandate was not required for injunction measures. In the final version of the Directive, the term itself disappeared, but the underlying idea remained: 'consumers shall not be required to express their wish'. Perhaps this suggests that 'mandate' in the RAD context was understood as an expression of will rather than a formal authorisation.

The proposal also allowed Member States to require a 'mandate' for redress measures, subject to two exceptions when a 'mandate' was not required. First, where consumers formed a clearly identifiable group and second, where individual losses were so small that the distribution of compensation would be disproportional.[221] However, this model was rejected. The final version of RAD, permits Member States to choose either an explicit or a tacit expression of wish (opt-in/opt-out). This evolution suggests that the EU legislature moved away from a mandate-based approach and instead uses a framework centred on the expression of wish. It also appears that in RAD context, 'mandate' was conceptually closer to active consent.

Nevertheless, neither GDPR proposal nor RAD proposal can be treated as an authoritative source to define what constitutes 'mandate'. From a functional

[217] Episcopo, van Duin and Jonkers (n 27) 10.
[218] Hendrikx and van den Bergen (n 129).
[219] Proposal for GDPR (n 97), recital 112.
[220] Proposal for RAD (n 163); WK 6052/2019 INIT (n 208).
[221] Proposal for RAD (n 163) art 6.

perspective, interpreting ‘mandate’ as requiring formal power of attorney appears excessively restrictive, particularly since the legislative framework provides little support for such a reading. On the other hand, interpreting ‘mandate’ as encompassing tacit consent may also stretch the concept too far. Article 80(1) provides that ‘data subject shall have the right to mandate’, which appears to imply an active exercise of choice rather than passive inclusion through an opt-out mechanism.

As a final note, it is important to acknowledge that GDPR and RAD constitute two distinct frameworks and that their terminology might not align perfectly.

4.3 Case Law: *Meta Platforms Ireland I*

Meta Platforms Ireland's case is the first preliminary ruling procedure ever submitted regarding the interpretation of Article 80 GDPR. This case illustrates a tension between the benefits of a harmonised enforcement mechanism established under GDPR and the potential of greater protection for data subjects through representative actions available under other EU laws.[222]

Federal Union, the representative body, which is a consumer protection association, has filed an injunction action before the Berlin Regional Court against Meta Platform Ireland, the controller of all Facebook users’ data across the EU.[223]The unlawful act was that Facebook Germany enabled third-party game suppliers to collect user data through its platform under unfair conditions and without meeting the requirements for valid consent.[224]Injunction action was not mandated by any data subject and no infringement of any particular data subject’s right has been identified.[225]

The Higher Regional Court in Berlin, before which the case was appealed, having doubts that the Federal Union may have lost its standing during the proceedings due to the entry into force of GDPR, referred the matter to the Court of Justice with the question concerning the admissibility of such an injunction action.[226] The core issue in the legal matter before the referring court was that national law, which was enacted before the GDPR, granted associations the standing to initiate proceedings on an objective basis against violations of data protection provisions, irrespective of the infringement of rights of data subjects or a mandate conferred by them.[227]However, the court was unable to categorise this national law within Article 80(1) of the GDPR,

[222] Svetlana Yakovleva, ‘Standing of Consumer Organizations in Data Protection Representative Actions - Case Note: C-319/20, ECLI:EU:C:2022:322 Case Notes’ (2022) 2022 Mass Claims: An International Journal with a European Focus 51, 53.

[223] *Meta Platforms Ireland I* (n 89) paras 34–36.

[224] *Meta Platforms Ireland I* (n 89) paras 34–35.

[225] *Meta Platforms Ireland I* (n 89) para 36.

[226] *Meta Platforms Ireland I* (n 89) para 39.

[227] *Meta Platforms Ireland I* (n 89) paras 39 and 42.

as this provision pertains to mandated actions, whereas the national law concerned non-mandated actions. Similarly, the referring court could not fit it within Article 80(2) of the GDPR either, since the wording of this article seemed to necessitate an infringement of specific data subjects' rights, whereas in this case, no such infringement of any individual rights was present.[228]

National law was a transposition of the Injunction Directive. Germany did not transpose Article 80(2) into its Legislation. However, the Injunction Directive's transposition extended to data protection as well.[229]

The referred question was asking whether this national law was precluded by GDPR and, in particular, Articles 80 and 84.[230]The Court decided that the question was about the interpretation of Article 80(2), since the situation concerned a non-mandated action and Articles 80(1) and 84(1) were not relevant in this context. [231]

The Court deliberated on the personal scope of Article 80, explaining that a consumer organisation can fall within the body eligible to bring the case under Article 80 of the GDPR,[232]as consumer protection can also include the protection of data subjects. For instance, in this case, the protection of consumers against Facebook's unfair practices was related to the collection of their data.[233]

Regarding the material scope, the Court stated that it is not necessary to have identified all consumers to bring an action under Article 80 (2) GDPR, as the definition of data subjects under GDPR covers both identified and identifiable data subjects and the designation of possibly affected data subjects should be enough to initiate an action under Article 80(2) GDPR.[234] Furthermore, the Court stated that it is not required to demonstrate the infringement of the rights of specific data subjects. Rather, it should be shown that the actions are 'liable to affect the rights which identified or identifiable natural persons derive from that regulation.'[235]

The court further commented on the relationship between consumer protection law and data protection law. Particularly, on whether GDPR precludes representative actions regarding data protection when such actions are

[228] *Meta Platforms Ireland I* (n 89) paras 40-46.
[229] *Meta Platforms Ireland I* (n 89) para 61.
[230] *Meta Platforms Ireland I* (n 89) para 47.
[231] *Meta Platforms Ireland I* (n 89) para 49-51.
[232] The same national law has been scrutinised against GDPR's predecessor, the Data Protection Directive, in the *Fashion ID* case, where the Court confirmed the consumer organisation's standing. See Opinion of Advocate General Richard de la Tour in Case C-319/20 (n 94) points 44-49; *Fashion ID* (n 87).
[233] *Meta Platforms Ireland I* (n 89) paras 65-66.
[234] *Meta Platforms Ireland I* (n 89) paras 67-69.
[235] *Meta Platforms Ireland I* (n 89) paras 70-72.

brought within the framework of consumer protection law, as in this case. This issue arose because, in the present case as well, German national law implemented the Injunction Directive rather than GDPR.[236]The Court answered that infringement of data protection rules may simultaneously cause infringement of consumer law,[237] Therefore, GDPR 80(2) does not prevent Member States from using consumer protection tools to enforce GDPR.[238]

This case has demonstrated that even though GDPR is considered to be 'in principle full harmonisation', some provisions of this Regulation allow Member States discretion with regard to the implementation of provisions. Such provisions are called 'opening clauses'.[239]And even though the Regulations have direct effects, some of their provisions still need to be implemented into national law.[240] Such a provision is Article 80(2), implementation of which depends on Member States' action. However, the discretion should be exercised within the limits of GDPR,[241] 'taking into account its wording and the scheme and objectives of that regulation.'[242] This line of reasoning is relevant for the problem of whether Article 80(2) GDPR allows compensatory collective action, whether it should be interpreted as such actions do not fall within the discretion of this provision.[243]

The Court also commented on RAD, which was not applicable at that time, but confirmed that it also 'contains several elements which confirm that Article 80 of the GDPR does not preclude the bringing of additional representative actions in the field of consumer protection'.[244] However, based on reading recitals 11 and 15 or RAD together, the Court concluded that while RAD can introduce additional mechanisms, this does not imply that it replaces or amends those provided by GDPR. This line of reasoning supports the notion that procedural mechanisms offered by RAD and GDPR are parallel.[245] AG Richard de la Tour also highlights the 'complementarity and convergence' of consumer law and data protection law and sees RAD as the tool to strengthen the 'effective application' of GDPR.[246]

4.4 Case Law: Pending *Amazon* Case

[236] *Meta Platforms Ireland I* (n 89) para 77.
[237] *Meta Platforms Ireland I* (n 89) para 78.
[238] *Meta Platforms Ireland I* (n 89) para 79.
[239] *Meta Platforms Ireland I* (n 89) para 57.
[240] *Meta Platforms Ireland I* (n 89) para 58; Case C-645/19 *Facebook Ireland Ltd and Others v Gegevensbeschermingsautoriteit* [2021] ECLI:EU:C:2021:483, para 110.
[241] *Meta Platforms Ireland I* (n 89) para 60; Opinion of Advocate General Richard de la Tour in Case C-319/20 (n 94) points 51-52.
[242] *Meta Platforms Ireland I* (n 89) para 62.
[243] Yakovleva (n 222) 55.
[244] *Meta Platforms Ireland I* (n 89) para 81.
[245] *Meta Platforms Ireland I* (n 89) para 82.
[246] *Meta Platforms Ireland I* (n 89) para 84

The Netherlands is regarded as one of the most advanced legal frameworks for collective actions within the European Union, owing to its legislation on representative actions (WAMCA), enacted in 2020, which permits compensatory collective actions on an opt-out basis.[247]The Netherlands was also the first country to transpose the RAD into national law, and given its already well-developed system, it needed to make minimal changes to WAMCA.[248]

The recent Dutch case law exemplifies the types of issues that may arise in mass data protection damage disputes, due to the currently unclear understanding of the relationship between RAD's more progressive approach to permitting opt-out compensatory measures and the GDPR's allegedly more limited stance.[249]Currently, there are GDPR related collective actions before the Dutch courts against *Amazon, Google, Adobe, TikTok, Meta* and *Oracle*.[250]

The *Amazon* case is given particular attention since there is a pending preliminary case before the Court, and the judgment will have a significant influence on the fate of collective damage claims for GDPR in the European Union.[251]In this case, Stichting Data Bescherming Nederland (SDBN) represents the interests of approximately 5,000,000 Amazon users in the Netherlands, seeking declaratory and compensatory remedies for alleged unlawful processing of their data in the breach of GDPR.[252]

The referred questions can be broadly divided into two main categories: Firstly, whether national law, in this case WAMCA, can impose stricter admissibility requirements than the GDPR, such as the similarity of affected interests or the representativeness of the association.[253]Secondly, whether GDPR permits national laws to introduce collective actions seeking compensation without a mandate.[254]

Both questions share the common feature of depending on the interpretation of the margin of appreciation afforded to Member States under Article 80 GDPR.

The similarity requirement is particularly significant, since if the Court does not provide a relatively uniform interpretation at the EU level, each Member State might develop its own understanding of which claims can be bundled in

[247] Hotter and Scholz-Berger (n 170) 42; See: Wilem van Boom and Charlotte Pavillon, 'The Netherlands Takes Collective Redress to a next Level: An Introduction to the Collective Redress of Mass Damages Act 2019 [VbR 2019/79]' (2019) Zeitschrift für Verbraucherrecht 133.

[248] Azar-Baud (n 77).

[249] *Amazon* (n 92) 11.

[250] Hendrikx and van den Bergen (n 129); *Amazon* (n 92) 12.

[251] Hendrikx and van den Bergen (n 129).

[252] *Amazon* (n 92) 7.

[253] *Amazon* (n 92) 7–8.

[254] *Amazon* (n 92) 9–11.

compensatory collective actions. In particular, it remains unclear whether similarity should be assessed based on the type of infringement of GDPR, for example, the loss of control over the data, or similarity in the subjective damage suffered. This can be a threat to compensatory collective actions for non-material damage,[255]especially in conditions that the current interpretation of Article 82 strongly promotes individual assessment. A strict interpretation would result in cases requiring individual assessment remaining unadjudicated. Even Dutch courts have different ideas about how non-pecuniary damage claims fit within this requirement of 'similarity'.[256] For instance, unlike the District Court of Amsterdam, which held that non-material damages are not similar enough to be bundled,[257]the Amsterdam Court of Appeal in TikTok case interprets similarity primarily by reference to a common factual base and common alleged infringement, while treating differences in individual harm as an issue that may be addressed through categorisation rather than the barriers to admissibility.[258]Formally, however, this reasoning applies to non-GDPR claims, as the court suspended its assessment of GDPR claims pending the outcome of the preliminary ruling in the *Amazon* case.[259]

Regarding the availability of opt-out compensatory actions for GDPR violations, Amazon argues that the GDPR does not allow them under a strict interpretation of Article 80(2) and recital 142. While it is countered by the arguments that 'mandate' could, in itself, encompass implicit consent, such as in opt-out systems.[260] Therefore, it is expected from the Court to provide more clarity about the 'mandate'. There is also a divergence in the understanding of Recital 142 across languages, given that the Dutch version is more permissive than restrictive regarding non-mandated compensatory actions.[261]

A comparable case has occurred in Portugal, which also permits opt-out damage claims - the DECO v Facebook case. The defendant argued that traditional Portuguese popular actions, which have a longstanding history, are exempt from the scope of the GDPR. There is no definitive outcome regarding how the national court or, hypothetically, the Court of Justice would rule on this matter, as there was an agreement between the parties.[262]

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[255] Hendrikx and van den Bergen (n 129).

[256] Hendrikx and van den Bergen (n 129).

[257] Amsterdam District Court *C/13/702849 / HA ZA 21-526* [2023] ECLI:NL:RBAMS:2023:6694, para 2.44.4.

[258]Amsterdam Court of Appeal *200339869/01, 200339845/01 and 200339905/01* [2025] ECLI:NL:GHAMS:2025:2666, paras 4.31.2-4.31.3; BEUC, 'From Collective Harm to Redress: What's New? | Issue #6' 6 <https://www.beuc.eu/tools/collective-harm-redress-whats-new-issue-6> accessed 3 May 2026.

[259] Case *200.339.869/01, 200.339.845/01 and 200.339.905/01* (n 258) paras 4.12-4.16.

[260] *Amazon* (n 92) 10.

[261] *Amazon* (n 92) 11.

[262] This case was withdrawn after the parties reached the agreement. See: Miguel Sousa Ferro, 'Class Actions in Portugal: The Little Regime That Could' (2021) 2 Mass Claims: An International Journal with a European Focus 115, 123.

4.5 Case Law: National Cases in the Netherlands

To better understand the difficulties opt-out system countries face with regards the GDPR collective enforcement, some case law that are currently before the Dutch courts will be analysed.

Oracle and Salesforce

The Privacy Collective Foundation (TPC) alleges that Oracle and Salesforce are complicit in placing tracking cookies to collect data, creating user profiles based on this information and subsequently selling them for advertising purposes.[263] Compensation is thought to be 5 million euros, to be paid by Oracle and Salesforce each, or alternatively, 500 euros for each affected individual.[264] While assessing the non-material damages in the context of admissibility, the Amsterdam Court of Appeal emphasised that both Dutch law and Article 82 GDPR require proof of actual harm and infringement is not enough to be entitled to compensation. The court noted that not all users experienced the same non-material damages, or some may not have suffered any harm at all.[265]Nevertheless, the WAMCA legislative history held that differences in the extent of harm do not defeat the similarity requirement. Such differences should instead be addressed in the merit phase, potentially through the categorisation of class members.[266]The Dutch court, interestingly, did not provide its opinion on the requirement of 'mandate'.[267]

While the Supreme Court's decision is anticipated regarding the admissibility of this case, the Advocate General at the Supreme Court of the Netherlands has issued an opinion stating that the GDPR does not require the 'mandate' to be considered at the admissibility stage and discussing it on the merits would not contravene GDPR.[268]Concerning the mandate requirement, the Dutch Advocate General suggests that the preliminary ruling in the *Amazon* case will clarify this issue.[269]

Meta

Meta case concerns three types of GDPR violations: a data breach resulting in the disclosure of 533 million Facebook users' information, of which 5.4

[263] Amsterdam Court of Appeal, *200308490/01* [2024] ECLI:NL:GHAMS:2024:1651, para 4.3.1.

[264] Case *200308490/01* (n 263) para 4.1.

[265] Case *200308490/01* (n 263) paras 4.15-4.17.

[266] Case *200308490/01* (n 263) para 4.18-4.19.

[267] 'Fourth Edition of "Unlocking the WAMCA"' (*De Brauw Blackstone Westbroek*) para 392 <https://www.debrauw.com/articles/de-brauw-publishes-fourth-edition-of-unlocking-the-wamca> accessed 3 May 2026.

[268] Dutch Advocate General in *Oracle* case*, 24/04650, 24/04656* [2026] ECLI:NL:PHR:2026:129, para 12.31.

[269] Dutch Advocate General in *Oracle* case (n 268), para 12.38.

million are located in the Netherlands; unauthorised personalised advertising without proper consent (these two claims are together called DPS claims); and the transfer of data to the United States without adequate safeguards (Reffered as Schrems II claims).[270]The Data Privacy Stichting (DPS), a representative organisation, requests a fee of 750 euros for DPS claims and 500 euros for Schrems II claims per affected individual.[271]The court decided to suspend the proceedings until the *Amazon* preliminary ruling case is decided.[272]

Adobe

Through this action, Stichting Data Bescherming Nederland (SDBN) seeks compensation for approximately 7 million users in the Netherlands for alleged pecuniary and non-pecuniary damages caused by Adobe's practices to place tracking cookies on websites and apps and collect data without proper consent, infringing GDPR and sharing data with other parties in breach of GDPR.[273] Likewise, the Dutch court is awaiting clarification from the pending *Amazon* case before the Court of Justice.[274]

Google

Dutch foundation Massaschade & Consument initiated an opt-out action against Google, claiming that Google extensively tracks Android users' data through its 'Google Play Services', which are installed on all Android smartphones and cannot be disabled.[275]The case is now awaiting the outcome of the preliminary ruling in the Amazon case.[276]

[270] Amsterdam District Court, *C/13/741774 / HA ZA 24-2 and C/13/747370 / HA ZA 24-224* [2025] ECLI:NL:RBAMS:2025:7489, paras 4.3 and 45.

[271] Case *C/13/741774* (n 270) para 5.2.1; BEUC, 'From Collective Harm to Redress: What's New?' 5 <https://www.beuc.eu/tools/collective-harm-redress-whats-new> accessed 3 May 2026.

[272] Case *C/13/741774* (n 270) paras 6.3 and 7.

[273]Rotterdam District Court, *C/10/670559 / HA ZA 23-1087* [2025] ECLI:NL:RBROT:2025:6254, para 1.1.

[274] Case C/10/670559 (n 273) para 6.58.

[275] See the information on Massaschade & Consument website: <https://www.massaschadeconsument.nl/collectieve-acties/google/> accessed 22 May, 2026.

[276]Amsterdam District Court, *C/13/739486 / HA ZA 24-1* [2025] ECLI:NL:RBAMS:2025:2964, para 2.10.

5 Compensatory Collective Redress: Concerns and Justifications

This Chapter examines the principal concerns associated with compensatory collective redress, particularly fears relating to US-style class actions and the risk of abusive litigation. It then assesses these concerns against the objectives underlying the GDPR and the broader requirements of EU law.

In particular, the Chapter analyses the GDPR's objective of ensuring a high level of protection of personal data-related rights, which the Court often relies on as an interpretative tool to define the scope and meaning of GDPR provisions. This is particularly relevant to the interpretation of Article 80(2) and the availability of opt-out compensatory actions.

The Chapter further analyses the principles of effective judicial protection and effectiveness to evaluate the role of compensatory collective redress in ensuring the effectiveness of the right to compensation under Article 82 GDPR.

5.1 Concerns on Abusive Litigation

Debates concerning collective redress reflect a common leitmotif: fear of US-like class actions and abusive litigation.

US-like class actions are viewed negatively in Europe and are associated with the so-called 'toxic cocktail' of contingency fees, punitive damages, pre-trial discovery-related risks and the opt-out system.[277] It has been shown that the risks associated with US-style class actions stem from the legal characteristics of the US legal system, not the class actions themselves, and that these risk-related legal characteristics are foreign to European systems. For instance, in Europe, contingency fees are uncommon; instead, there is a 'loser pays' principle that removes the incentive for law firms to view litigation as a means of profit.[278]

These problems were already addressed in the 2013 Recommendation. Recital 15 laid down safeguards towards abuse of litigation, avoiding 'punitive damages, intrusive pre-trial discovery procedures and jury awards'.[279]Similarly, in RAD, the goal of the legislator is to expressly balance the need to access justice with the avoidance of abuse of GDPR rights.[280]This suggests

[277] See question 9 of Q&A on the Green Paper on Consumer Collective Redress: <https://ec.europa.eu/commission/presscorner/detail/en/memo_08_741> accessed 23 May 2026.

[278] Nagy (n 66) 35-6.

[279] Commission Recommendation (n 8) recital 15.

[280] RAD, recitals 10 and 20 and art 1.

that in RAD, EU legislators overcame the fear of US-style class actions and concluded that collective redress can be exercised safely, while setting out appropriate safeguards against abusive litigation.

Recent developments in GDPR case law also indicate an additional safeguard against abusive litigation. In March 2026, in the *Rottler* Case, the Court addressed the consequences of abusive practices in the context of Article 82 GDPR, concluding that, in such situations, the right to compensation may be denied where the data subject has artificially created the condition giving rise to the claim. [281]

The case concerned a natural person who subscribed to the optician company Brillen Rottler's newsletter and subsequently submitted a request for information under Article 15 of the GDPR. This request has been rejcted, prompting them to request compensation. The Brillen Rottler argued that this individual had engaged in similar behaviour on previous occasions with the intention of obtaining compensation.[282]

In its reasoning, the Court reiterated that the right to compensation requires three cumulative conditions to be satisfied: an infringement, harm and a causal link between the two. It further held that this causal link may be broken where the damage results primarily from the claimant's own conduct, in particular where the individual has deliberately created an artificial situation to trigger the application of GDPR.[283]

The Court drew an analogy with existing case law in the field of migration law, extending this principle into GDPR context.[284] The judgment is significant as it recognises an abuse of right limitation under Article 82 GDPR. This reasoning can be relevant in the context of collective actions, as it confirms that data subjects cannot rely on the GDPR compensation mechanism where they lack a genuine interest in protecting their rights and instead create circumstances solely to gain claims.

5.2 High Level Protection of GDPR Rights

The high level of protection of fundamental rights and freedoms of natural persons, specifically their right to privacy with regard to the processing of their personal data, is the objective of the GDPR, deriving from Article 8 of the Charter and Article 16(1) TFEU.[285]

[281] *Rottler* (n 139) para 66.
[282] *Rottler* (n 139) paras 12-16.
[283] *Rottler* (n 139) paras 59-67.
[284] C-679/23 P *WS and Others v European Border and Coast Guard Agency* [2025] ECLI:EU:C:2025:976, para 151.
[285] *ND v DR* (n 136) para 71.

When interpreting the provisions of GDPR's predecessor, the Data Protection Directive, the Court frequently referred to Article 1(1) and Recital 10 of the Directive, which emphasised the objective of ensuring a higher level of protection of personal data-related rights.[286] In *Fashion ID*, the Court relied on that objective to support the recognition of consumer protection associations' standing to bring representative actions to protect data-related rights.[287]

The Court has continued this approach under GDPR. The case law suggests that the objective of 'high level of protection' has significant interpretative weight in the Court's reasoning.[288] It promotes a broad and effective interpretation of GDPR concepts, demonstrating a more progressive and open-minded approach to legal interpretation.

The bases for this objective can be found in Recitals 10, 11, and 13, and in Article 1(2) of the GDPR.[289] They set out aims like 'consistent and high level of protection of natural persons' and 'effective protection of personal data'. Below are some examples of how the Court employs these objectives to base its interpretation or support its reasoning.

In the case of *Google (Territorial Scope in De-referencing)*, the Court uses a high and consistent protection argument to justify EU-level de-referencing as a means of effectively enforcing the right to be forgotten.[290]This is because removing such information solely within one Member State would render the right ineffective, as other users could still access it in other Member States.

In the *Schrems II* case, the Court and Advocate General emphasised the continuous nature of the high level of protection of the personal data-related rights that should be maintained even when transferring data to third countries, justifying the requirement that the level of protection by third countries must not be less than what the EU guarantees.[291]

The same objective has been relied upon to justify a uniform, stricter interpretation of Article 10 GDPR, which lays down specific safeguards for the

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[286] Case C-210/16 *Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v Wirtschaftsakademie Schleswig-Holstein GmbH* [2018] ECLI:EU:C:2018:388, para 26; Case C-473/12 *Institut professionnel des agents immobiliers (IPI) v Geoffrey Englebert and Others* [2013] ECLI:EU:C:2013:71, para 28; Case C-131/12 *Google Spain SL and Google Inc v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* [2014] ECLI:EU:C:2014:317, para 66.

[287] *Fashion ID* (n 87) paras 50-51.

[288] See cases: Case C-34/21 *Hauptpersonalrat der Lehrerinnen und Lehrer beim Hessischen Kultusministerium v Minister des Hessischen Kultusministeriums* [2023] ECLI:EU:C:2023:270, paras 54-55; *UI v Österreichische Post AG* (n 141) paras 48-49.

[289] Case C-507/17 *Google LLC, successor in law to Google Inc v Commission nationale de l'informatique et des libertés (CNIL)* [2019] ECLI:EU:C:2019:772, para 54.

[290] *Google (Territorial scope of de-referencing)* (n 289), para 66.

[291] *Schrems II* (n 54); Opinion of Advocate General Saugmandsgaard Øe in Case C-311/18 *Data Pro-tection Commissioner v Facebook Ireland Limited and Maximillian Schrems* [2019] ECLI:EU:C:2019:1145, point 117.

processing of sensitive criminal offence-related data. The Court held that divergent classifications of the offence as administrative or criminal would not satisfy the high-level protection requirement, thereby encouraging interpreting this article based on the substantive nature of the offence.[292]

In the *Meta Platforms Ireland I* case, the Court used a high-level protection argument as a supportive argument in addition to the other arguments that suggested that the standing of a consumer organisation to bring the case without a mandate and without an infringement of a specific data subject's right would not run against Article 80 (2) GDPR.[293]

In *ND* case, the Court ruled that, even though the GDPR does not explicitly confer such a remedy, the national law allowing competitors to bring injunctive actions against GDPR infringements would not conflict with GDPR and, on the contrary, would contribute to the objective of high protection of GDPR rights.[294]

In the *Meta Platforms Ireland II* case, the Court relied on a high-level protection objective to demonstrate that defining 'as a result of processing' under Article 80(2) GDPR should be interpreted broadly, so as to also encompass infringements relating to the obligation to provide information even though such obligation usually exists before any processing starts, thereby strengthening the protection of data subjects.[295]

On interpreting Article 80(2) and Recital 142 of the GDPR as allowing Member States to have opt-out collective actions seeking compensation, it is apparent that such an interpretation would strengthen the protection of data subjects and make the compensation right more effective, given the benefits of opt-out systems as defined in Section 3.2.2.

5.3 Effective Judicial Protection and Principle of Effectiveness

Effective judicial protection, as a general principle of EU law codified in Article 47 of the Charter and reflected in Article 19(1) TEU, establishes the right

[292] Case C-439/19 *Proceedings brought by B* [2021] ECLI:EU:C:2021:504, para 83.

[293] *Meta Platforms Ireland I* (n 93) paras 73-74; Case C-487/21 *FF v Österreichische Datenschutzbehörde and CRIF GmbH* [2023] ECLI:EU:C:2023:369, para 40; Case C-60/22 *UZ v Bundesrepublik Deutschland* [2023] ECLI:EU:C:2023:373, para 64; Case C-579/21 *Proceedings brought by JM* [2023] ECLI:EU:C:2023:501, paras 54-55; Case C-46/23 *Budapest Főváros IV Kerület Újpest Önkormányzat Polgármesteri Hivatala v Nemzeti Adatvédelmi és Információszabadság Hatóság* [2024] ECLI:EU:C:2024:239, paras 43-44; Case C-740/22 *Endemol Shine Finland Oy* [2024] ECLI:EU:C:2024:216, paras 31-32; Case C-394/23 *Mousse v Commission nationale de l'informatique et des libertés (CNIL) and SNCF Connect* [2025] ECLI:EU:C:2025:2, para 69.

[294] ND v DR (n 136) para 69.

[295] Meta Platforms Ireland II (n 116) para 63.

to an effective remedy and to access to the court.[296]Collective redress mechanisms, including Article 80 GDPR, are linked to Article 47 of the Charter, insofar as they facilitate the enforcement of EU rights.[297]

In constraining the national procedural rules within the procedural autonomy, effective judicial protection operates together with the principles of equivalence and effectiveness, although the distinctions between these standards are sometimes difficult to draw.[298]It has been recognised in case law that the obligation to ensure the effectiveness of the EU right in itself also entails effective judicial protection.[299] Since this chapter analyses the effectiveness of Article 82 GDPR, both the principle of effectiveness and effective judicial protection will be relevant.

Article 82 GDPR establishes a substantive right to compensation for the damage resulting from GDPR violations, while Article 80 GDPR provides the procedural mechanism concerning the representation and possibility of collective enforcement. Article 80 allows Member States to provide for compensatory actions on a voluntary basis. However, the question arises as to what happens in situations where the compensatory collective redress would be the only effective means for exercising the right to compensation under Article 82 GDPR.

Since there is no direct case law specifically addressing compensatory collective actions in relation to the effective judicial protection in the context of GDPR, an analogy can be drawn with *ASG2* case in the field of competition law.[300]

In the *ASG2* case, group action was brought using the assignment model. That means that the affected undertakings, in this case, 32 sawmills, assigned their own claims against the cartel to *ASG2* in order to seek compensation for the harm they suffered.[301]The referring court expressed concerns that in the situ-

[296] Sacha Prechal, 'Article 19 TEU and National Courts: A New Role for the Principle of Effective Judicial Protection?' *Article 47 of the EU Charter and Effective Judicial Protection Ed. Matteo Bonelli , Mariolina Eliantonio and Giulia Gentile*, vol 1 (Hart Publishing 2022) 19.

[297] Fuster (n 110) 1143; GDPR recital 141; Jančiūtė (n 6) 5-6 and 14.

[298] Bonelli, Matteo, 'Article 47 of the Charter, Effective Judicial Protection and the (Procedural) Autonomy of the Member States' *Article 47 of the EU Charter and Effective Judicial Protection, Volume 1: The Court of Justice's Perspective. Ed. Matteo Bonelli, Mariolina Eliantonio and Giulia Gentile*, vol 1 (Hart Publishin 2022) 83.

[299] Case C-767/24 *mBank SA v ML* [2025] ECLI:EU:C:2025:962, para 46; Joined Cases C-776/19 to C-782/19 *VB and Others v BNP Paribas Personal Finance SA and AV and Others v BNP Paribas Personal Finance SA and Procureur de la République* [2021] ECLI:EU:C:2021:470, para 29.

[300] Case C-253/23 *ASG2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH v Land Nordrhein-Westfalen* [2025] ECLI:EU:C:2025:40.

[301] ASG2 (n 300) paras 18 and 25.

ation of mass, scattered, low-value harm, procedural complexity and high litigations costs may make group actions 'only economically rational and practical way to claim such compensation'.[302]

This is directly relevant for GDPR enforcement, as GDPR infringements also involve scattered, low value harms, with mass implications, which make them unsuitable for individual enforcement.[303]

The Court held that interpretation of national procedural rules preventing the use of the claim assignment model may be incompatible with Article 47 of the Charter. This is particularly the case where individual enforcement is impossible or excessively difficult and where no alternative mechanism exists for collective enforcement under national law.[304]

CJEU emphasised that it would undermine the effectiveness of Article 101(1) TFEU if it were impossible for any individuals to collect compensation for its infringement.[305] By analogy, it can be argued that it would similarly undermine the effectiveness of infringed GDPR rights and Article 82 GDPR if individuals were unable to effectively exercise the right to compensation, since Article 82 GDPR is open for 'any person who has suffered material or non-material damage as a result of an infringement.'

The Court also clarified that the fact that individual actions are complicated or expensive does not, in itself, mean that the right is impossible or difficult to exercise. Such a finding depends on specific factual and legal aspects of the case and national law that render the enforcement practically impossible or excessively difficult.[306]

Applied to GDPR context, this reasoning is particularly relevant in cases involving low-value, scattered harm, information asymmetries and highly complex data-processing practices. In such situations, individual enforcement may become economically or practically unrealistic and compensatory collective mechanisms (representative action, assignment-based model or other aggregation mechanism) may become necessary to ensure the effectiveness of Article 82 GDPR. AG Szpunar describes it as 'risk of inertia', which arises when procedural rules undermine the principle of effectiveness and effective

[302] ASG2 (n 300) paras 28–29 and 77.

[303] See Chapter 2 above.

[304] ASG2 (n 300) para 94.

[305] The right to compensation itself is enshrined in Directive 2014/104; ASG2 (n 300) para 61.

[306] ASG2 (n 300) para 86.

judicial protection, by leaving individuals with formally existing rights but no incentive to enforce them in practice.[307]

Given the nature of many GDPR infringements, particularly technology-driven violations where data subjects may be unaware of the infringement, representative actions brought by specialised non-profit entities may constitute the only realistically effective means of detecting infringements and ensuring the effectiveness of Article 82 GDPR.

Furthermore, there may exist narrowly defined categories of cases in which only opt-out representative actions are an effective means of ensuring enforcement. This may arise where the participation in opt-in mechanisms is likely to be minimal due to low individual harm, lack of awareness or limited financial and organisational resources of representative bodies to identify and inform each affected individual. In such cases, an interpretation of Article 80(2) and Recital 142 GDPR as establishing a categorical prohibition of non-mandated compensatory actions would be contrary to effective judicial protection.

In the *ASG2* case, the Court addressed a restrictive national interpretation that might need to be set aside after the national court's assessment (a negative obligation). However, to translate the whole logic of *ASG2* case into the Unibet scenario,[308]the question arises whether it may also support a more positive obligation on Member States to ensure the effective procedural mechanism for the enforcement of EU rights. In the context of Article 82 GDPR, this could imply that Member States must ensure the availability of compensatory collective redress where individual enforcement is not practically effective.

[307] Opinion of Advocate General Szpunar in Case C-253/23 *ASG 2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH v Land Nordrhein-Westfalen* [2024] ECLI:EU:C:2024:767, point 114.

[308] Case C-432/05 *Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern* [2007] ECLI:EU:C:2007:16, paras 66-77.

6 Conclusions

The subject matter of this Chapter is to summarise the key findings and arguments developed throughout the different parts of this thesis and to answer the research question as to what extent the EU legal framework permits compensatory collective redress for GDPR violations.

The analysis is divided into three main parts: the general availability of compensatory collective redress under Article 80 GDPR, corresponding to the first research sub-question; second, the availability of compensatory collective redress through interplay between Article 80 GDPR and RAD in cases where data subjects are also affected in their capacity as consumers, corresponding to the second research sub-question; and third, the availability of compensatory collective redress where individual enforcement is impossible or excessively difficult, in light of the principles of effective judicial protection and effectiveness.

6.1 General Availability of Compensatory Collective Redress under Article 80 GDPR

In cases where GDPR violations affect natural persons in their capacity as data subjects, the applicable collective enforcement mechanism is representative actions under Article 80 GDPR.

The availability of mandated compensatory collective redress is straightforward under Article 80(1), which clearly allows such actions, but makes it dependent on the Member States' choice to permit them under national law.

On the other hand, the availability of non-mandated compensatory collective actions under Article 80(2) is more debatable. Despite the prohibitory wording of Recital 142 GDPR and the analysis of the GDPR's legislative history, which demonstrates the deliberate omission of a reference to the right to compensation in Article 80(2), several factors suggest that such a restrictive interpretation may not be justified.

Article 80(2) GDPR itself does not prohibit compensatory collective redress. It is only recital 142 that states that the representative body 'may not be allowed to claim compensation'. This research has therefore examined the legal effect of recitals. Case law has established that a recital does not have a binding legal effect. While it has interpretative significance in clarifying the scope of provisions, it would be overly expansive to interpret it as capable of establishing a prohibition.

Ambiguity in the translation of Recital 142 into different EU official languages further makes reliance on it problematic. As demonstrated, some language versions of Recital 142 impose a strict prohibition on compensatory

actions in non-mandated contexts, whereas others are formulated in a more permissive manner. The Court's case law does not appear to afford special priority to any language version and consistently suggests comparing different language versions while considering the context of the provisions and their place within the broader EU law framework. Through the comparison of different language versions, it appears unlikely that a single definitive interpretation of recital 142 can be identified. This may therefore support a more balanced interpretation of Article 80(2), according to which compensatory collective redress is not precluded but instead remains conditional upon Member States' choice to introduce such an enforcement mechanism under national law.

Such an interpretation would also be compatible with the 'margin of appreciation' approach developed by the Court in the *Meta Platforms Ireland I* case regarding Article 80(2) GDPR. Since this provision has been recognised as not providing exhaustive harmonisation and its implementation depends entirely on Member States choosing to introduce it, it would be logical to allow them discretion over compensatory redress as well.

The evolution of EU law also reflects a more permissive approach to compensatory collective actions than existed during the drafting of GDPR. One example is RAD, which has moved beyond concerns regarding abusive litigation and recognises the possibility for Member States to choose opt-out compensatory actions.

Scholarship further suggests that the commonly expressed fear of US-like class actions is unlikely within the EU context, since such concerns arise from the characteristics of the US legal system that are not present in European legal tradition. Recent developments in GDPR case law, particularly the *Rottler* case, also demonstrate that safeguards can exist against data subjects abusing their GDPR rights, artificially placing themselves in a position to benefit from them. Data subjects may lose the right to compensation under Article 82 GDPR where their conduct constitutes the determining cause of the damage, meaning that the causal link between the infringement and the harm is broken when rights are abused. Although these safeguards do not directly address the concerns of abusive litigation, they nevertheless demonstrate that EU law contains mechanisms capable of limiting the filing of artificial claims. Thus, the mere fear of abuse of litigation may not be enough to justify a restrictive interpretation of the GDPR that would prevent compensatory non-mandated actions altogether.

The results of this research further showed that interpreting Article 80(2) GDPR as allowing compensatory non-mandated actions can also be supported by GDPR's objective of ensuring a high level of protection for data subjects. This objective shows considerable interpretative significance in case law. Allowing compensatory collective redress in a non-mandated context

would increase the number of individuals able to seek redress for the harm suffered and help overcome rational apathy.

All these factors support the less restrictive interpretation of Article 80(2) GDPR, meaning that if Member States decide to permit compensatory collective actions, such decisions would not contravene the GDPR.

6.2 Availability of Compensatory Collective Redress through Interplay between Article 80 GDPR and RAD

When natural persons are affected simultaneously in their capacity as data subjects and consumers, both Article 80 GDPR and the enforcement mechanism in RAD become relevant. This is the case, for instance, in so-called 'business model' GDPR infringements, where undertakings commercialise personal data and individuals are affected as not only data subjects but also as consumers.

In such circumstances, a tension arises regarding compensatory collective redress. While Article 80 GDPR may be interpreted restrictively as granting Member States discretion over representative actions and potentially excluding opt-out compensatory mechanisms, RAD obliges Member States to provide collective redress mechanisms, including compensatory measures.

The wording in RAD that it applies 'without prejudice' to GDPR could suggest that GDPR prevails. However, such an interpretation appears unconvincing for the following reasons:

- Recital 15 clarifies the meaning of 'without prejudice' as that RAD does not replace enforcement mechanisms established under sector-specific instruments such as GDPR. This indicates coexistence rather than hierarchy.

- The Court's case law confirms that GDPR remedies are not exhaustive and in the *Meta Platforms Ireland I* case the Court referred to RAD as an 'additional' mechanism. Likewise, Advocate General Richard de la Tour emphasised the 'complementarity' between data and consumer protection laws and predicted that the RAD system will strengthen the 'effective application' of GDPR provisions.

What this 'additional' mechanism means yet still needs to be clarified, but this could suggest that data subjects who are also consumers could potentially enjoy the protection envisaged by the RAD, irrespective of how Article 80(2) GDPR will be interpreted generally. Adoption of RAD in a form that also extends to GDPR infringements could be seen as recognition of the need for

enhanced collective consumer protection, including in the data protection sphere. In such circumstances, it appears too restrictive that Member States were unable to introduce compensatory actions under the RAD umbrella to protect data subjects when they are also consumers.

A broader argument is that the RAD's obligation on Member States to provide compensatory collective redress may imply that, in situations where individuals are affected as both consumers and data subjects, the availability of such remedies under national law is not merely permissible but mandatory.

This study has also attempted to clarify the relationship between the concepts of opt-in and opt-out mechanisms and mandated and non-mandated representative actions. The comparison of different interpretations of the term 'mandate' has led to the prediction that the term is unlikely to be interpreted either as requiring a formal power of attorney or as encompassing the implicit consent characteristic of opt-out systems.

Depending on how the term 'mandate' is interpreted, it can have an impact on the availability of opt-out compensatory actions. However, the interpretation of the concept of a 'mandate' becomes less decisive if the relationship between the GDPR and RAD is understood to mean that the RAD, as an 'additional' enforcement mechanism, introduced specific safeguards for consumers who are simultaneously consumers and data subjects. Under such an understanding, the availability of compensatory collective actions for consumer data subjects would not depend solely on how Article 80(2) of the GDPR is generally interpreted.

6.3 Compensatory Collective Redress in Light of Effective Judicial Protection and the Principle of Effectiveness

Outside the enforcement mechanisms under Article 80 GDPR and RAD, a further scenario should be considered, in particular, the requirement arising from effective judicial protection under Article 47 of the Charter and the principle of effectiveness.

The *ASG2* case in competition law may provide a useful analogy for assessing how these principles can influence the availability of group compensatory actions in Member States. Drawing on that reasoning, it can be argued that national procedural rules must not make it impossible or excessively difficult to exercise the right to compensation under Article 82 GDPR by excluding compensatory collective actions in situations where individual enforcement is ineffective. This may occur where barriers make individual enforcement practically ineffective, such as cases involving low-value mass claims, complex data processing systems, information asymmetry and other factors that make

it excessively difficult or impossible for natural persons to redress their rights through individual enforcement mechanisms.

It can be argued that, in some cases, representative actions could be the only effective means to enforce Article 82 GDPR, particularly when the expertise to detect and pursue such complex harms is held only by representative organisations.

It can further be maintained that, in certain narrowly defined situations, only opt-out compensatory collective actions can serve as effective enforcement mechanisms. This may arise when opt-in systems are ineffective due to low individual participation, lack of awareness, or high organisational costs.

A broader argument would be that the logic underlying the negative obligation requiring the disapplication of ineffective national procedural rules may also support the positive obligation on Member States to introduce effective compensatory collective actions where individual enforcement is impossible or excessively difficult.

6.4 Final Remarks

The analysis in this thesis demonstrates that the availability of compensatory collective redress for GDPR violations may be justified by several distinct, yet interconnected lines of reasoning. This conclusion rests on three layers of interpretation: the first layer views Article 80 GDPR as generally capable of allowing Member States to provide both mandated and non-mandated compensatory collective redress to protect data subjects' interests. However, even if Article 80 GDPR were interpreted more restrictively as not allowing non-mandated compensatory actions, the second layer of interpretation suggests that a particular category of data subjects, namely those who simultaneously fall within the scope of consumers under RAD, could still benefit from the 'additional' enforcement mechanism introduced by RAD. Lastly, irrespective of the enforcement mechanisms in Article 80 GDPR or RAD, the third layer of interpretation suggests that where individual enforcement of GDPR rights becomes impossible or excessively difficult, the requirement to preserve the effectiveness of the right to compensation may itself presuppose the necessary availability of some form of compensatory collective mechanism.

While these layers of interpretation show that compensatory collective redress for GDPR violations may be available under EU law, the analysis also raises unresolved questions about the operation of such mechanisms in practice. Frameworks established under the GDPR and RAD create uncertainty concerning the procedural design of collective actions. While RAD grants Member States considerable discretion, including the possibility of introducing additional admissibility requirements, Article 80 GDPR does not expressly impose strict admissibility conditions. This may create tensions where

procedural requirements introduced under national law implementing RAD risk make the exercise of GDPR rights more difficult than Article 80 GDPR envisages. An example of such tensions can be observed in proceedings before Dutch courts, where questions have arisen as to whether requirements such as 'similarity' and 'representativeness', introduced under national law, are compatible with Article 80 GDPR. Consequently, further uncertainties will likely arise in future practice.

Beyond these procedural uncertainties, the research also highlights the broader challenges associated with applying the traditional concepts of private enforcement to mass data protection infringements. Analysis of the compensatory nature of Article 82 GDPR suggests that mass infringement situations may require different approaches to legal principles originally developed with individual enforcement mechanisms in mind. One example is the compensatory nature of Article 82, which necessitates an individualised assessment of harm that can be impracticable in large-scale mass-harm situations. Therefore, the success of compensatory collective actions may largely depend on the willingness to adopt existing concepts of enforcement in response to the complex and evolving ways in which rights can be infringed in an increasingly digitalised society.

Table of Cases

Court of Justice of the European Union

283/81 Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health [1982] ECLI:EU:C:1982:335

C-162/97 Nilsson and Others [1998] ECLI:EU:C:1998:554

C-136/04 Deutsches Milch-Kontor GmbH v Hauptzollamt Hamburg-Jonas [2005] ECLI:EU:C:2005:716

C-432/05 Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern [2007] ECLI:EU:C:2007:16

C-134/08 Hauptzollamt Bremen, v J. E. Tyson Parketthandel [2009] ECLI:EU:C:2009:229

C-558/11 SIA Kurcums Metal v Valsts ieņēmumu dienests [2012] ECLI:EU:C:2012:721

C-131/12 Google Spain SL and Google Inc v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González [2014] ECLI:EU:C:2014:317

C-473/12 Institut professionnel des agents immobiliers (IPI) v Geoffrey Englebert and Others [2013] ECLI:EU:C:2013:71

C-168/14 Grupo Itevelesa SL and Others v Oca Inspección Técnica de Vehículos SA and Generalidad de Cataluña [2015] ECLI:EU:C:2015:685

C-362/14 Maximillian Schrems v Data Protection Commissioner [2015] ECLI:EU:C:2015:650

C-379/15 Association France Nature Environnement v Premier ministre and Ministre de l'Écologie, du Développement durable et de l'Énergie [2016] ECLI:EU:C:2016:603

C-210/16 Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v Wirtschaftsakademie Schleswig-Holstein GmbH [2018] ECLI:EU:C:2018:388

C-40/17 Fashion ID GmbH & CoKG v Verbraucherzentrale NRW e. V. [2019] ECLI:EU:C:2019:629

C-507/17 Google LLC, successor in law to Google Inc v Commission nationale de l'informatique et des libertés (CNIL) [2019] ECLI:EU:C:2019:772

C-10/18 P Mowi ASA v European Commission [2020] ECLI:EU:C:2020:149

C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximillian Schrems [2020] ECLI:EU:C:2020:559

C-29/19 ZP v Bundesagentur für Arbeit [2020] ECLI:EU:C:2020:36

C-439/19 Proceedings brought by B [2021] ECLI:EU:C:2021:504

C-476/19 Allmänna ombudet hos Tullverket v Combinova AB [2020] ECLI:EU:C:2020:802

C-561/19 Consorzio Italian Management and Catania Multiservizi S.p.A. v Rete Ferroviaria Italiana S.p.A. [2021] ECLI:EU:C:2021:799

C-645/19 Facebook Ireland Ltd and Others v Gegevensbeschermingsautoriteit [2021] ECLI:EU:C:2021:483

Joined Cases C-776/19 to C-782/19 VB and Others v BNP Paribas Personal Finance SA and AV and Others v BNP Paribas Personal Finance SA and Procureur de la République [2021] ECLI:EU:C:2021:470

C-950/19 Proceedings brought by A [2021] ECLI:EU:C:2021:230

C-319/20 Meta Platforms Ireland Ltd v Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband e. V. [2022] ECLI:EU:C:2022:322

C-34/21 Hauptpersonalrat der Lehrerinnen und Lehrer beim Hessischen Kultusministerium v Minister des Hessischen Kultusministeriums [2023] ECLI:EU:C:2023:270

C-300/21 UI v Österreichische Post AG [2023] ECLI:EU:C:2023:370

C-340/21 VB v Natsionalna agentsia za prihodite [2023] ECLI:EU:C:2023:986

C-487/21 FF v Österreichische Datenschutzbehörde and CRIF GmbH [2023] ECLI:EU:C:2023:369

C-579/21 Proceedings brought by JM [2023] ECLI:EU:C:2023:501

C-634/21 OQ v Land Hessen [2023] ECLI:EU:C:2023:220

C-667/21 ZQ v Medizinischer Dienst der Krankenversicherung Nordrhein, Körperschaft des öffentlichen Rechts [2023] ECLI:EU:C:2023:1022

C-687/21 BL v MediaMarktSaturn Hagen-Iserlohn GmbH [2024] ECLI:EU:C:2024:72

C-741/21 GP v juris GmbH [2024] ECLI:EU:C:2024:288

C-60/22 UZ v Bundesrepublik Deutschland [2023] ECLI:EU:C:2023:373

Joined Cases C-182/22 and C-189/22 JU and SO v Scalable Capital GmbH [2024] ECLI:EU:C:2024:531

C-456/22 VX and AT v Gemeinde Ummendorf [2023] ECLI:EU:C:2023:988

C-590/22 AT and BT v PS GbR and Others [2024] ECLI:EU:C:2024:536

C-740/22 Endemol Shine Finland Oy [2024] ECLI:EU:C:2024:216

C-757/22 Meta Platforms Ireland Ltd v Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband e. V. [2024] ECLI:EU:C:2024:598

C-21/23 ND v DR [2024] ECLI:EU:C:2024:846

C-46/23 Budapest Főváros IV Kerület Újpest Önkormányzat Polgármesteri Hivatala v Nemzeti Adatvédelmi és Információszabadság Hatóság [2024] ECLI:EU:C:2024:239

C-200/23 Agentsia po vpisvaniyata v OL [2024] ECLI:EU:C:2024:827

C-253/23 ASG2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH v Land Nordrhein-Westfalen [2025] ECLI:EU:C:2025:40

C-394/23 Mousse v Commission nationale de l'informatique et des libertés (CNIL) and SNCF Connect [2025] ECLI:EU:C:2025:2

C-507/23 A v Patērētāju tiesību aizsardzības centrs [2024] ECLI:EU:C:2024:854

C-655/23 IP v Quirin Privatbank AG [2025] ECLI:EU:C:2025:655

C-679/23 P WS and Others v European Border and Coast Guard Agency [2025] ECLI:EU:C:2025:976

C-422/24 Integritetsskyddsmyndigheten v AB Storstockholms Lokaltrafik [2025] ECLI:EU:C:2025:980

C-526/24 Brillen Rottler GmbH & Co KG v TC [2026] ECLI:EU:C:2026:216

C-767/24 mBank SA v ML [2025] ECLI:EU:C:2025:962

C-523/25 Stichting Data Bescherming Nederland (SDBN) v Amazon Europe Core Sàrl and others (Pending)

Opinions of Advocates General

Opinion of Advocate General Saugmandsgaard Øe in C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximillian Schrems [2019] ECLI:EU:C:2019:1145

Opinion of Advocate General Richard de la Tour in C-319/20 Meta Platforms Ireland Ltd v Bundesverband der Verbraucherzentralen und Verbraucherverbände [2021] ECLI:EU:C:2021:979

Opinion of Advocate General Szpunar in C-253/23 ASG 2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH v Land Nordrhein-Westfalen [2024] ECLI:EU:C:2024:767

National Cases and Opinions

Amsterdam Court of Appeal, 200295742/01 [2023] ECLI:NL:GHAMS:2023:793 (Uber)

Amsterdam District Court, C/13/702849 / HA ZA 21-526 [2023] ECLI:NL:RBAMS:2023:6694 (TikTok)

Amsterdam Court of Appeal, 200308490/01 [2024] ECLI:NL:GHAMS:2024:1651 (Oracle, Salesforce)

Amsterdam Court of Appeal, 200339869/01, 200339845/01 and 200339905/01 [2025] ECLI:NL:GHAMS:2025:2666 (TikTok)

Amsterdam District Court, C/13/741774 / HA ZA 24-2 and C/13/747370 / HA ZA 24-224 [2025] ECLI:NL:RBAMS:2025:7489 (Meta)

Rotterdam District Court, C/10/670559 / HA ZA 23-1087 [2025] ECLI:NL:RBROT:2025:6254 (Adobe)

Amsterdam District Court, C/13/739486 / HA ZA 24-1 [2025] ECLI:NL:RBAMS:2025:2964 (Google)

Opinion of Advocate General at Supreme Court of the Netherlands in Oracle case 24/04650, 24/04656 [2026] ECLI:NL:PHR:2026:129

Cases from other Jurisdictions

Mastercard Incorporated and others v Merricks [2020] UKSC 51

Lloyd v Google [2021] UKSC 50

European Union Legislation

Consolidated version of the Treaty on European Union [2016] OJ C202/13

Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/47

Charter of Fundamental Rights of the European Union [2016] OJ C202/389

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1

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 and repealing Directive 2009/22/EC [2020] OJ L409/1

Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (Codified version) [2009] OJ L110/30 (repealed)

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 (repealed)

European Union Documents

Consumer Redress. Memorandum from the Commission to the Council Transmitted on 4 January 1985, COM (84) 629 Final, 12 December 1984. Bulletin of the European Communities Supplement 2/85 (1985) <https://aei.pitt.edu/1597/> accessed 13 May 2026

Liability for Defective Products - Green Paper. COM (99) 396 Final (1999) <https://aei.pitt.edu/1217/> accessed 13 May 2026

Green Paper on Consumer Collective Redress, COM (2008) 0794 final

Commission Staff Working Document Public Consultation: Towards a Coherent European Approach to Collective Redress Brussels, 4 February 2011 SEC (2011) 173 final

Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM (2012) 011 final

Commission Recommendation of 11 June 2013 on Common Principles for Injunctive and Compensatory Collective Redress Mechanisms in the Member States Concerning Violations of Rights Granted under Union Law [2013] OJ L201/60

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of the Commission Recommendation of 11 June 2013 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) 2018

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 2018

Communication from the Commission to the European Parliament and the Council, Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition - two years of application of the General Data Protection Regulation, COM (2020) 264 final

Communication from the Commission to the European Parliament and the Council, Second Report on the Application of the General Data Protection Regulation, COM (2024) 357 final

Council of the European Union, Note from CZ, DE, IE, ES, FR, HR, NL, AT, PL, PT, FI and UK Delegations to Working Group on Information Exchange and Data Protection (DAPIX) on the Proposal for a General Data Protection Regulation - Chapters III and VIII (10 April 2015) 7586/1/15

Council of the European Union, Note from the Presidency to the Permanent Representatives Committee on the Proposal for a General Data Protection Regulation – Chapter VIII (13 May 2015) 8383/15

Council of the European Union, Note from the Presidency to Council on the Proposal for a General Data Protection Regulation – Preparation of a General Approach (11 June 2015) 9565/15

Council of the European Union, Note from the Presidency to the Delegations on the Proposal for a General Data Protection Regulation – Written Debrief on Chapter VIII (30 October 2015) 13606/15

Council of the European Union, Working Paper, IE Comments on Directive on Representative Actions, WK 13904/2018 INIT (14 November 2018)

Council of the European Union Working Paper, ES Comments on Directive on Representative Actions, WK 15180/2018 INIT (05 December 2018)

Council of the European Union, Working Paper, DE Comments on Directive on Representative Actions, WK 15839/2018 INIT (21 December 2018)

Council of the European Union, Working Paper, New Deal for Consumers: Representative Actions Directive - EE Comments on PYC Proposal for Articles 1-4, 7 and 15, WK 1492/2019 INIT (05 February 2019)

Council of the European Union, Note from General Secretariat of the Council to Permanent Representatives Committee/Council on Outcome of the European Parliament's First Reading (03 April 2019) 7714/19

Council of the European Union, Working Paper, CZ Comments on Directive on Representative Actions-Annex I, WK 5567/2019 INIT (03 May 2019)

Council of the European Union, Working Paper, DK Comments on Directive on Representative Actions-Annex I, WK 5630/2019 INIT (03 May 2019)

Council of the European Union, Working Paper, SE Comments on Directive on Representative Actions-Annex I, WK 5565/2019 INIT (03 May 2019)

Council of the European Union, Working Paper, From Presidency to Working Party on Consumer Protection and Information Directive on Representative Actions, WK 6052/2019 INIT (14 May 2019)

Council of the European Union, Working Paper, From Presidency to Working Party on Consumer Protection and Information Directive on Representative Actions, WK 10131/2019 INIT (19 September 2019)

Council of the European Union, Note from General Secretariat of the Council to Delegations on Representative Actions for the Protection of the Collective Interests of Consumers (14 October 2019) 12826/19

Council of the European Union, Working Paper, Directive on Representative Actions- Presidency Drafting Suggestions, WK 6018/2020 INIT (08 June 2020)

European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM (2012)0011 — C7-0025/2012 — 2012/0011(COD))

Executive summary EDPS Opinion of 7 March 2012 on the data protection reform package [2012] OJ C192/7

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)' COM (2012) 11 final — 2012/011 (COD) 2012

Court of Justice of the European Union, Multilingualism at the Court of Justice of the European Union (Publications Office of the European Union 2023) <https://data.europa.eu/doi/10.2862/012811> accessed 20 April 2026

English Style Guide: A Handbook for Authors and Translators in the European Commission, Eighth Edition, January, Last Updated in November 2025

Bibliography

Literature

Afferni G, ‘Bundling of Claims by Way of Assignment in Italy’ (2022) 2 Mass Claims: An International Journal with a European Focus

Azar-Baud M-J, ‘Winds of Change after the Implementation of the Directive on Representative Actions?’ (2026) 2 Mass Claims: An International Journal with a European Focus

Azar-Baud M-J and others, ‘France, Germany, Italy, the Netherlands and Portugal’ (2024) 2 Mass Claims: An International Journal with a European Focus

Biard A, ‘Collective Redress in the EU: A Rainbow behind the Clouds?’ (2018) 19 ERA Forum

Biard-Denieul A, ‘Thunder Road: The Implementation of the Representative Actions Directive in Europe Special Issue of the Emory International Law Review’ (2024) 38 Emory International Law Review

Bonelli, M, ‘Article 47 of the Charter, Effective Judicial Protection and the (Procedural) Autonomy of the Member States’ Article 47 of the EU Charter and Effective Judicial Protection, Volume 1: The Court of Justice’s Perspective. Ed. Matteo Bonelli, Mariolina Eliantonio and Giulia Gentile, vol 1 (Hart Publishing 2022)

Cofone I, *The Privacy Fallacy: Harm and Power in the Information Economy* (Cambridge University Press 2023)

Cownie F, *Legal Academics: Culture and Identities* (Hart Publishing 2004)

Dannreuther A and others, ‘England and Wales, France, Hungary, Italy, the Netherlands, Portugal, Spain, Switzerland Country Reports’ (2022) 2 Mass Claims: An International Journal with a European Focus

den Heijer M, Abeelen T van O van den and Maslyka A, ‘On the Use and Misuse of Recitals in European Union Law’ (Social Science Research Network, 30 August 2019)

Dix A, ‘Art. 4(12) Definitions’ in Indra Spiecker Gen. Döhmann and others (eds), *General Data Protection Regulation article-by-article commentary* (Nomos Verlagsgesell-schaft mbH & Co KG 2023)

Elif Biber S, ‘Between Humans and Machines: Judicial Interpretation of the Automated Decision-Making Practices in the EU’ in Herwig CH Hofmann

and Felix Pflücke (eds), *Governance of Automated Decision-Making and EU Law* (Oxford University Press 2024)

Episcopo F, van Duin A, Jonkers A, 'Towards Collective Redress for Data Harms under the GDPR' [2025] Mass Claims: An International Journal with a European Focus

Federico M, 'European Collective Redress and Data Protection. Challenges and Opportunities' (MediaLaws, 14 June 2023)

Ferro MS, 'Class Actions in Portugal: The Little Regime That Could' (2021) 2 Mass Claims: An International Journal with a European Focus 115

Fuster GG, 'Article 80 Representation of Data Subjects' in Christopher Kuner and others (eds), *The EU General Data Protection Regulation (GDPR): A Commentary* (Oxford University Press 2020)

Gross V, 'Keeping the Status Quo: Business Success in the EU Collective Redress Initiative' (2017) 6 Interest Groups & Advocacy

Gsell B, 'The New European Directive on Representative Actions for the Protection of the Collective Interests of Consumers – A Huge, but Blurry Step Forward' (2021) 58 Common Market Law Review

Hendrikx A, van den Bergen V, 'Dutch Court Refers Preliminary Questions to the CJEU Regarding the Interplay between the GDPR and the Dutch WAMCA' (2025) 2 Mass Claims: An International Journal with a European Focus

Hermans R, 'To Settle or Not to Settle; That's the Question: An Economic Analysis of the Factors Determining the Settlement of Mass Damage Disputes and Implications for Legal Practice' (2024) 1 Mass Claims: An International Journal with a European Focus

Hornkohl L, 'Up- and Downsides of the New EU Directive on Representative Actions for the Protection of the Collective Interests of Consumers – Comments on Key Aspects' (2021) 10 Journal of European Consumer and Market Law

Hotter A and Scholz-Berger F, 'Organisation and Design of Collective Redress in Europe Workshop Report' (2023) 1 Mass Claims: An International Journal with a European Focus

Inchausti FG, 'A New European Way to Collective Redress? Representative Actions under Directive 2020/1828 of 25 Novembe' (2021) 18 Zeitschrift für das Privatrecht der Europäischen Union

Ioannidou M, ‘Compensatory Collective Redress for Low Value Consumer Claims in the EU: A Reality Check’ (2019) 27 European Review of Private Law

Jančiūtė L, ‘Data Protection and the Construction of Collective Redress in Europe: Exploring Challenges and Opportunities’ (2019) 9 International Data Privacy Law 2

Jevons D, Barros L and Shah K, ‘Mass Claims: How to Value Data’ (2022) 1 Mass Claims: An International Journal with a European Focus 19

John LE and Perry W, ‘Lloyd v Google [2021] UK SC 50: A Setback in the Supreme Court for Collective Redress in the UK’ (2021) 2 Mass Claims: An International Journal with a European Focus 1

Kalajdzic J, ‘Interview: Commissioner Vera Jourova on the Collective Redress Directive’ (2021) 1 Mass Claims: An International Journal with a European Focus

Kotsios A, *Paying with Data: A Study on EU Consumer Law and the Protection of Personal Data* (Department of Law, 2022)

Kruger C and Weitbrecht A, ‘Bundling of Claims by Way of Assignment in Germany’ (2021) 2 Mass Claims: An International Journal with a European Focus

Mišćenić E and Širola M, ‘The Road Ahead: Challenges to the Effective Enforcement of the EU Representative Actions Directive’ (2025) 1 Anali Pravnog Fakulteta u Beogradu

Moreira J and Hornkohl L, ‘Collective Redress in the Digital Age’ (Transformative Private Law, 19 March 2026)

Mulders S, ‘Collective Damages for GDPR Breaches: A Feasible Solution for the GDPR Enforcement Deficit?’ (2022) 8 European Data Protection Law Review

Mulheron R, ‘A Priceless Opportunity: Class Actions Post-Merricks v Mastercard’ (2021) 1 Mass Claims: An International Journal with a European Focus

Murphy B, ‘Foreword’ (2021) 2 Mass Claims: An International Journal with a European Focus 91

Nagy CI, Collective Actions in Europe: A Comparative, Economic and Transsystemic Analysis (Springer International Publishing 2019)

Neergaard U and Wind M, 'Studying the EU in Legal and Political Science Scholarship' in Ulla Neergaard & Ruth Nielsen (eds), *European Legal Method - in a Multi-Level EU Legal Order* (DJØF Publishing Copenhagen 2012)

Nielsen R, 'Towards an Interactive Comparative Method for Studying the Multi-Layered EU Legal Order' in Ulla Neergaard and Ruth Nielsen (eds), *European Legal Method - in a Multi-Level EU Legal Order* (DJØF Publishing Copenhagen 2012)

Niemczyk JM, 'Navigating Current Issues and Future of Collective Redress: Key Takeaways from the 2024 Global Class Actions and Mass Tort Conference' (2024) 1 Mass Claims: An International Journal with a European Focus 35

Nikiforov L, 'When the Plaintiff Is a Prediction: The EU Collective Redress Gap for Algorithmic Inference Harms' (Transformative Private Law, 10 March 2026)

Papadaki E and Stalla-Bourdillon S, 'Art. 32 Security of Processing' in Indra Spiecker Gen. Döhmann and others (eds), *General Data Protection Regulation article-by-article commentary* (Nomos Verlagsgesellschaft mbH & Co KG 2023)

Pato A, 'The Collective Private Enforcement of Data Protection Rights in the EU' (Social Science Research Network, 2019)

Potjewijd G and others, 'Mass Damage Claims for GDPR Infringements: A Multi-Jurisdictional Perspective' (2021) 1 Mass Claims: An International Journal with a European Focus 5

Pozhodzhuk R and Pozhodzhuk T, 'Paying with Data: The Protection of Personal Data in Consumer Contracts in the Digital Age' (2026) 14 Studia Iuridica Cassoviensia

Prechal S, 'Article 19 TEU and National Courts: A New Role for the Principle of Effective Judicial Protection?' Article 47 of the EU Charter and Effective Judicial Protection Ed. Matteo Bonelli , Mariolina Eliantonio and Giulia Gentile, vol 1 (Hart Publishing 2022)

Sadowski J, 'When Data Is Capital: Datafication, Accumulation, and Extraction' (2019) 6 Big Data & Society

Senden L, 'Changes in the relative importance of sources of law – The case of EU soft law' in Ulla Neergaard & Ruth Nielsen (eds), *European Legal*

Method - in a Multi-Level EU Legal Order (DJØF Publishing Copenhagen 2012)

Sharma S, *Data Privacy and GDPR Handbook* (1st edn, Wiley 2019)

Sorace F, 'Collective Redress in the General Data Protection Regulation. An Opportunity to Improve Access to Justice in the European Union?' (Working Paper)

Tambou O, 'Art. 79 Right to an Effective Judicial Remedy against a Controller or Processor' in Indra Spiecker Gen. Döhmann and others (eds), General Data Protection Regulation (Nomos Verlagsgesellschaft mbH & Co KG 2023)

Tambou O, 'Art. 80 Representation of Data Subjects' in Indra Spiecker Gen. Döh-mann and others (eds), *General Data Protection Regulation article-by-article commentary* (Nomos Verlagsgesellschaft mbH & Co KG 2023)

van Boom W and Pavillon C, 'The Netherlands Takes Collective Redress to a next Level: An Introduction to the Collective Redress of Mass Damages Act 2019 [VbR 2019/79]' (2019) 2019 Zeitschrift für Verbraucherrecht

van der Jeught S, 'The Multilingualism Paradox in EU Law: In Our Own Language Version We Trust' (2025) 14 International Journal of Language & Law (JLL)

van Gestel R and Micklitz H-W, 'Revitalizing Doctrinal Legal Research in Europe: What About Methodology?' in Ulla Neergaard and others (eds), *European Legal Method – Paradoxes and Revitalisation* (DJØF Publishing Copenhagen 2011)

Visscher L and Faure M, 'A Law and Economics Perspective on the EU Directive on Representative Actions' (2021) 44 Journal of Consumer Policy

Voet S, '"Where the Wild Things Are". Reflections on the State and Future of European Collective Redress' (Social Science Research Network, 7 February 2017)

Voigt P and Von Dem Bussche A, The EU General Data Protection Regulation (GDPR): *A Practical Guide* (Springer Nature Switzerland 2024)

Wörle K and Gstrein OJ, 'Collective Data Protection Litigation: A Comparative Analysis of EU Representative Actions and US Class Actions Enforcing Data Protection Rights' (2024) 11 European Journal of Comparative Law and Governance

Yakovleva S, ‘Standing of Consumer Organizations in Data Protection Representative Actions - Case Note: C-319/20, ECLI:EU:C:2022:322 Case Notes’ (2022) 1 Mass Claims: An International Journal with a European Focus 51

Zuboff S, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (Profile Books 2019)

Reports and Online Materials

‘Fourth Edition of “Unlocking the WAMCA”’ (De Brauw Blackstone Westbroek) <https://www.debrauw.com/articles/de-brauw-publishes-fourth-edition-of-unlocking-the-wamca> accessed 3 May 2026

‘From Collective Harm to Redress: What’s New?’ <https://www.beuc.eu/tools/collective-harm-redress-whats-new> accessed 3 May 2026

‘From Collective Harm to Redress: What’s New? | Issue #3’ <https://www.beuc.eu/tools/collective-harm-redress-whats-new-issue-3> accessed 24 May 2026

‘From Collective Harm to Redress: What’s New? | Issue #6’ <https://www.beuc.eu/tools/collective-harm-redress-whats-new-issue-6> accessed 3 May 2026

‘From Collective Harm to Redress: What’s New? | Issue #7’ <https://www.beuc.eu/tools/collective-harm-redress-whats-new-issue-7> accessed 24 May 2026

‘Have a GDPR Complaint? Skip the Regulator and Take It to Court’ (POLITICO, 30 August 2020) <https://www.politico.eu/article/have-a-gdpr-complaint-skip-the-regulator-and-take-it-to-court/> accessed 9 May 2026

‘Opt-out and Opt-in in Collective Redress. Why Does It Matter.’ <https://www.beuc.eu/tools/opt-out-and-opt-collective-redress-why-does-it-matter> accessed 24 May 2026

‘Towards the Digital Fairness Act’ <https://www.beuc.eu/position-paper/towards-digital-fairness-act> accessed 1 May 2026

‘What Is Missing for Collective Redress to Deliver for Consumers?’ <https://www.beuc.eu/tools/what-missing-collective-redress-deliver-consumers> accessed 2 May 2026