



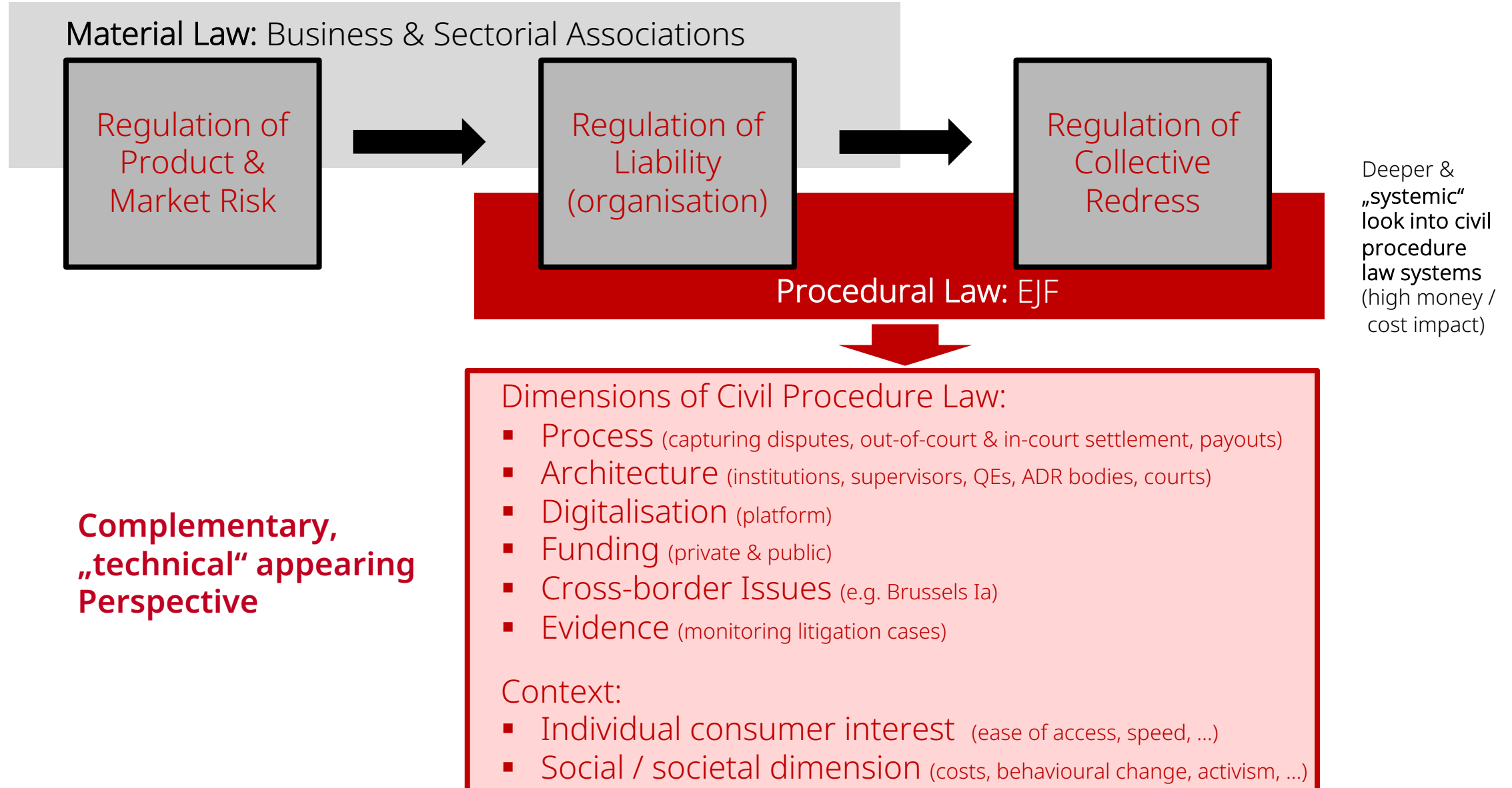
**european  
justice forum**

# **Collective Redress in the EU: Representative Actions Directive (RAD) transposition**

12 June 2024, Vienna (WKÖ)



# EJF Perspective: Civil Procedure Law





# RAD\* Drivers of Mass Actions in Europe

\* Representative Actions Directive

## Participation Mechanism

(opt-in vs. opt-out and alternatives to representative actions)

## Qualified Entities

(criteria who can claim on behalf of the consumers/beneficiaries)

## Private Litigation Funding

(safeguards on distance funder&funded, transparency, profit potentials)

## Admission

(criteria for admitting mass claims in court vs. testing alternatives)

## Settlement, Limitation Period, Pay-out

(criteria influencing court procedure)

## Scope

(Representative Actions Directive Annex 1 vs. broader scope)

Pressure Potentials, e.g.

# of claimants

„Activist“ & # QEs,  
Ease of Collection

Profit & Early  
Settlement

Easy Access

Cost & Risk Factors

Range of claims areas



# RAD\* Transposition: State-of-Play (June 2024)

\* Representative Actions Directive

18

## ***Adopted & Applicable:***

***Cyprus, Croatia, Denmark, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Sweden***

5

## ***Parliament Discussion:***

***Belgium, Czech Republic, Estonia, France\*\*, Spain***

4

## ***Government Draft Law:***

***Austria\*\*\*, Bulgaria\*\*\*\*, Luxembourg, Poland***

\*\* Senate proposed new changes in the draft, a joint committee comprising members from both the Senate and the National Assembly may be designated to develop a joint text.

\*\*\* Government draft issued on 2<sup>nd</sup> of May with a consultation phase until 27<sup>th</sup> of May. Justice Committee hearing 18<sup>th</sup> of June. Envisaged parliament elections on 29<sup>th</sup> of September pushes generally for a fast adoption.

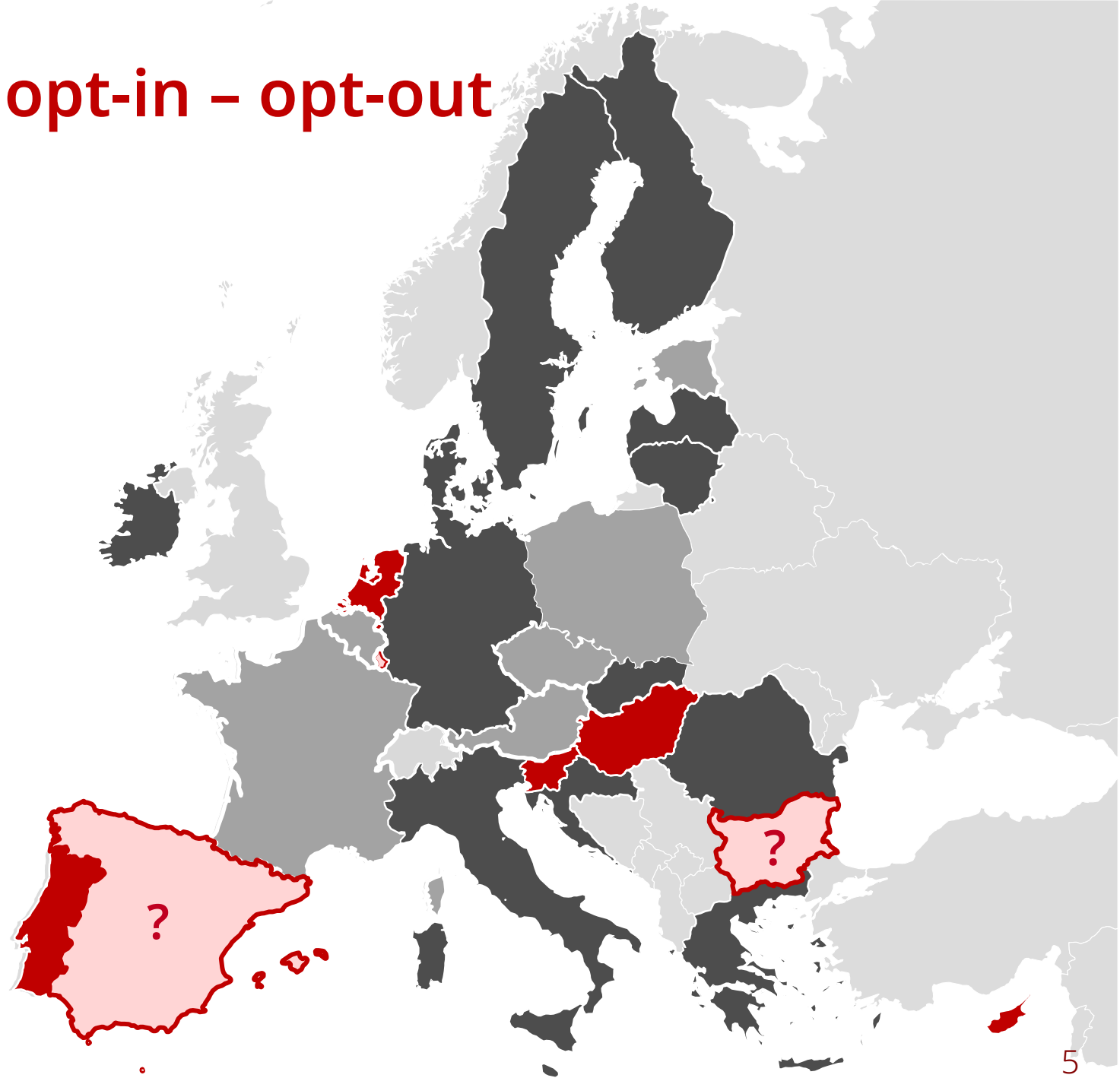
\*\*\*\* Preliminary government draft. Difficult political environment, e.g. with recurring new elections and difficult majority building in parliament is slowing down the process.



# RAD\* Transposition: opt-in - opt-out

as of June 2024

- Opt-in adopted - 13
- Opt-in drafted - 6
- Opt-out adopted - 5
- Opt-out drafted - 3
- Not evaluated



\* Representative Actions Directive

# RAD\*: Opt-in vs. Opt-out

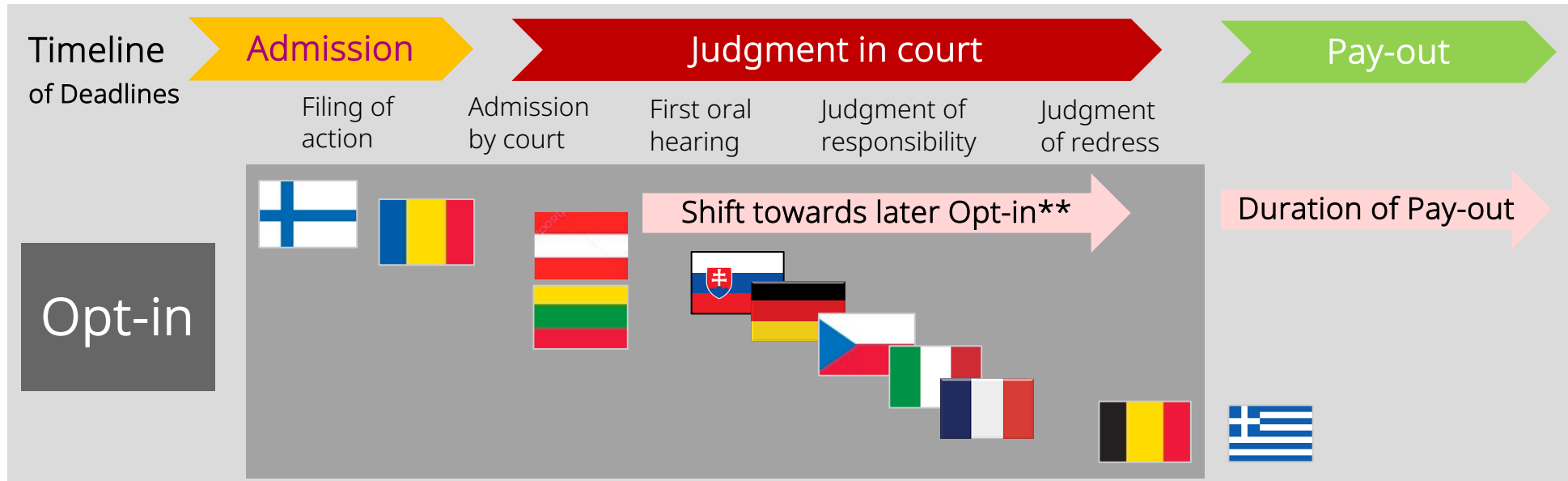
\* Representative Actions Directive

\*\* Flag location of Opt-in:  
Estimated average time of opt-in

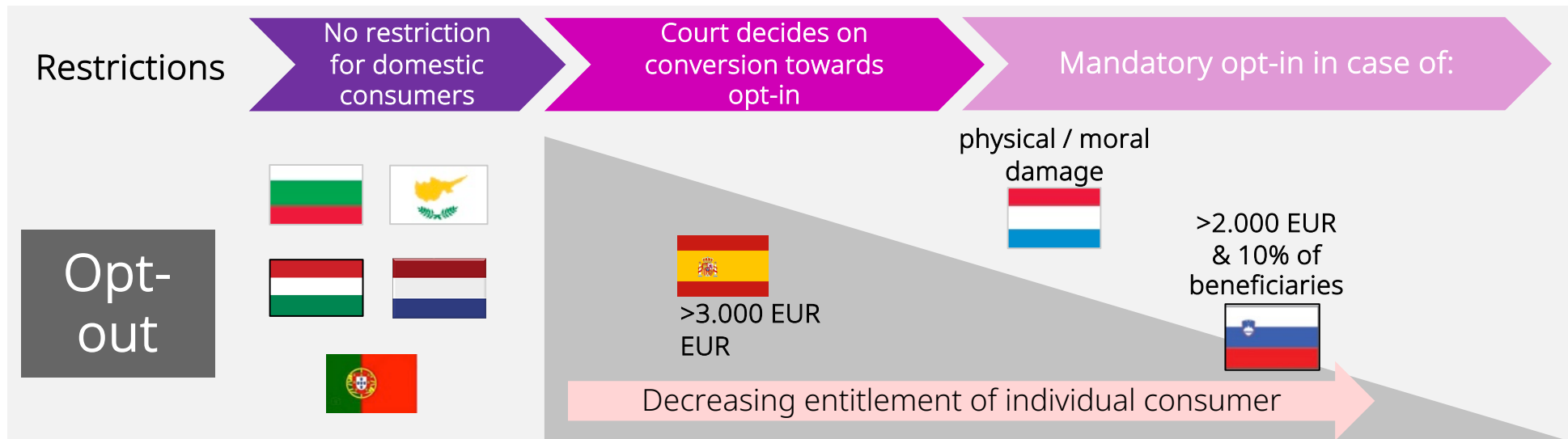
19 EU Member States



Shift into opt-in mechanism



8 EU Member States



# Different Deadlines/Periods for Opt-In (RAD\*)

\* Representative Actions Directive

Samples

RAD\*  
Adopted



In application by public authority/ombudsman



30 days from filing of the action



#50

90 days after accepting application by court

(note: Malta up to 5 months)



30-90 days after accept. application by court



From 2 months before filing an action until the conclusion of evidence before court of first instance

#20



From filing to 3 weeks after end of oral proceedings\*\* (Risk of litigation ad infinitum due to constant new stream of re-/de-registrations)

#50

\*\* leading to judgement on responsibility, to be re-opened when re-/de-registrations)



2 - 6 months after publication of the decision on admissibility (in special register)

#10



Within a maximum of 6 months from the publication of the judgment on responsibility (before start of redress phase)

#50



Within deadline set by Court, after judgment on responsibility (before start of redress phase)



Negotiation phase

4 month after judgement of redress

Longer period of opt-in



# RAD\* Transposition: National QEs

\* Representative Actions Directive

Samples

Dimensions

Criteria

Countries/Samples

National=cross-border QEs

Same as cross-border\*\*

\*\* sample for national less than cross-border is Bulgaria



National > cross-border QEs

Longer Registration Period

3 years

2 years



AT: max. 20% by business donations/contributions

LT: Min. 20 members

FR: Min. 50 natural or 10 legal persons

Member Composition / Budget Financing



DE: min.3 associations/ 75 individuals & max. 5% of budget from business



LV: Providing assistance

SME QEs



SK: Selfregulatory body possible

Public QE Areas

Covering RAD Annex I



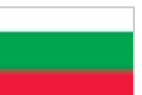
Several Authorities (named or allowed)



LV: Relevant supervisory & control authority shall consider QE application for actions within 90 days

(Note: In BE the Consumer Ombudsman Services can act only for early Negotiation / Settlement)

A „Key Authority“ in Practice (Public Consumer Ombudsman\*\*\*)

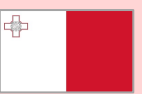


PL: UOKIK plus \*\*\* Financial Ombudsman



Accelerated QE admission

Ad-hoc allowed



MT: still cross-border criteria applying



RO: accelerated procedure (30 days term)



Opt-in



Opt-out





# RAD\* Transposition: Models of Private Funding

Samples

\* Representative Actions Directive

## Private Enforcement

Private QE Financing  
via TPLF

*"Safeguards"*

## Regulatory Options

RAD Criteria

Cap on redress awards

Transparency of contracts  
to court or supervisor\*\*

Transparency of beneficial  
owner behind TPLF to court\*\*\*

Maximum loan rate  
(central bank as reference)

Prohibition of private TPLF

## Countries/Samples



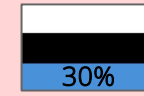
EU: Independence & transparency of QE, general information on funding to public, procedures in place preventing conflict of interest



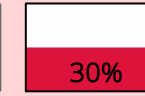
10%



16%



30%



30%



\*\* AT: possible check by Federal Cartel Prosecutor (QE supervisor) during court procedure



\*\*\*Anti-Money Laundering (AML) Approach



Private QE Financing  
via CONTRIBUTIONS

Charging of a (modest)  
participation fee, incl. some  
voluntary contributions by  
traders (PL & EE)



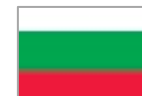
Special use of  
„unused awards“

To other group members first,  
if any rest left to consumer QEs



Opt-in

For state & consumer protection  
in general (PT) or QE (CY)



Opt-out



# RAD\* Transposition: Models of Public Funding

Samples

\* Representative Actions Directive

## Private Enforcement

State Financing  
PRIVATE QEs

## Organisation/QE

One established key\*\*  
consumer QE

All registered consumer QEs  
(LT) / all registered QEs

## Countries/Samples



\*\*DE: private & state based „vzbv“



AT: „VKI“



## Public Enforcement

State Financing  
PUBLIC QEs

## Organisation/QE

Public Ombuds only in  
judicial negotiation phase

One established key  
public body

Generally public bodies\*\*\*  
(Government decides)

All public bodies  
covering Annex I

## Countries/Samples



Private QEs could raise  
case to authority (UOKiK)



\*\*\*incl. Chamber of  
Commerce in AT



*“Competitors to  
Private QEs”*

## Public State Funds

Part of regulatory discussions

(currently open)





# RAD\* Transposition: Starting Phase (1/2)

Samples

Dimensions	Criteria	Countries/Samples
Preconditions	Upfront notification (Trader** or Public***)	** ***
	Process to go first with other dispute solving options	LV: first via a supervisor of relevant area
		RO: first mediation procedure before injunctive action, check by court of other means
	“Procedure”	Negotiations
	Prohibition of same claims via other court procedures	
Register Responsibility	Public Organisation / Notary**** / Court*****	**** **** ***** ***** *****
	QE	



# Samples

## RAD\* Transposition: Starting Phase (2/2)

Dimensions

Criteria

Countries/Samples

Admission Criteria

*"Court check"*

Appropriateness Check\*\*\*  
if most effective & efficient way



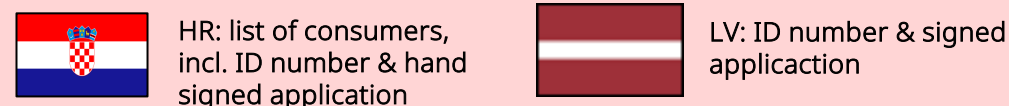
\*\*\* Best practice reference is the „Ontario Formula“ in Canada, avoiding that state resources are overburdened and blocked (which creates a general risk for democracy)

*"Identification"*

Minimum number



Identification of consumers



HR: list of consumers, incl. ID number & hand signed application

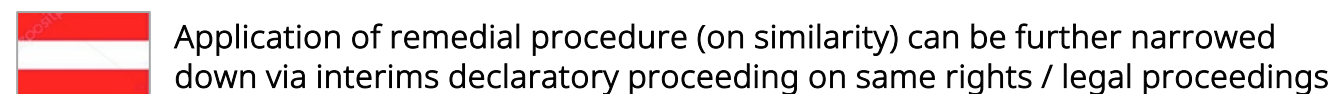
LV: ID number & signed application

*"Similarity"*

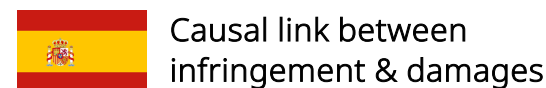
Factual & legal similarity



Narrower than similarity



Application of remedial procedure (on similarity) can be further narrowed down via interims declaratory proceeding on same rights / legal proceedings



Causal link between infringement & damages

*"QE Role"*

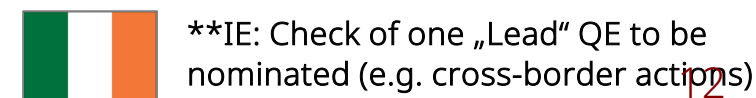
Legal Standing of QE / Cooperation\*\* of QEs



ES: Includes an appropriateness check of TPLF agreement



\*\*BG: via public Consumer Protection Commission



\*\*IE: Check of one „Lead“ QE to be nominated (e.g. cross-border actions)



# RAD\* Transposition : EJF Issue Paper

Samples

## Positive Key Points

- **Emphasis on Dispute Resolution:**  
Prioritizes out-of-court and administrative resolutions to reduce court burden.
- **Transparency in Financing:**  
Requires disclosure of litigation financing agreements to the Court while protecting confidentiality interests of the claimant.
- **Public Register for Class Actions:**  
Establishes a centralized register of General Contractual Conditions and Class Actions, managed by the Official Association of Registrars of Spain.

## Key Issues and Proposed Solutions

- **Opt-Out Mechanism Concerns**
  - **Issue:** High costs and consumer learning curve.
  - **Solution:** Going for an opt-in approach to streamline processes, ensure transparency, provide quicker consumer relief.
- **TPLF should not undermine Collective Redress Mechanism**
  - **Issue:** Conflict of interest, money laundering/financial misuse, excessive profits.
  - **Solution:** Transparency to courts and administrative bodies, disclosure of beneficial owners behind the funds, appropriateness of profit via caps.
- **High traditional requirements for consumer and user associations**
  - **Issue:** Weakening of standing criteria and stringent controls may provide rise to profit-seeking intermediaries
  - **Solution:** Law should clearly define and maintain the traditional requirements for consumer and user associations to ensure only entities qualify which are the most **representative** of a large number of consumers.
- **Fragmented Register IT Infrastructure**
  - **Issue:** Risk of inefficiency and fragmentation as current plan asks each QE to set up its own IT platform.
  - **Solution:** State-run electronic platform for centralized data processing and decision.



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**Thank you very much for your attention.**

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