BUSINESSEUROPE

POSITION PAPER

09 November 2026

Future revision of the Brussels Ia Regulation (1215/2012) – Reply to the Public Consultation

Introduction

The Brussels Ia Regulation (No 1215/2012) is one of the pillars of the EU Civil Justice area. It has been applied since 2015, setting out uniform rules on which court has jurisdiction over cross-border civil/commercial disputes and the recognition and enforcement of judgments in the EU in such matters, providing a stable and predictable framework for businesses and consumers in cross-border disputes.

BusinessEurope would like to provide its views on the intended future revision of the Regulation following the Commission study on the application and the discussions during the 2025 High Level Forum on Justice for Growth, where BusinessEurope was an active participant and contributor.

1. Brussels Ia as a set of future-proof rules in the field of civil justice

Business believes that the Brussels Ia Regulation has been functioning well overall, providing legal certainty and predictability, allowing for free circulation of judgments (allowing recognition of court decisions and enforcement with less friction), strengthening judicial cooperation, and it has shown adaptability to new economic and societal developments. This good performance helped cut time and costs for cross-border enforcement, which brought benefits to companies across the EU. These conclusions have been largely endorsed by the report of the 2025 High Level Forum on Justice for Growth.

2. Any revision should be targeted and geared towards simplification or restoring a level playing field

We are open to considering new uniform rules for cases involving third-country defendants. At present, such cases are subject to significantly different national rules across the Member States, creating legal uncertainty and additional complexity.

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Extending Brussels Ia to cover situations involving third-country defendants could reduce costs and simplify the legal framework for claimants, legal practitioners and courts, while ensuring a more level playing field for EU companies engaging in transactions with third-country partners. This could be particularly valuable for SMEs, traditionally with fewer resources to manage complex cross-border litigation involving actors from third countries. Corresponding procedural safeguards would need to be considered as well.

3. NO need to introduce jurisdictional collective redress criteria in Brussels Ia

BusinessEurope **is not in favour of introducing specific jurisdictional collective redress criteria** in the Brussels Ia regulation as we do not see the justifiable need for such a change. The existing EU consumer protection framework is among the most effective in the world. European businesses should not be confronted with new or expanded litigation instruments that could increase legal uncertainty and generate significant compliance, risk-management, and litigation costs in the absence of clear evidence demonstrating their necessity.

a) The current framework is clear and works as intended.

The Representative Actions Directive (RAD) deliberately preserved the Brussels Ia framework. The two instruments have distinct roles: Brussels Ia determines *where* proceedings can be brought; the RAD determines *who* can bring representative actions and under what conditions. The current framework already allows cross-border collective redress, subject to established jurisdictional rules[1]. **No concrete jurisdictional gap has been demonstrated that warrants a new regime.**

b) More connecting factors mean more potential for abusive forum shopping.

Special criteria based on the domicile of a qualified entity, the majority of consumers or an EU-wide forum would make it easier to bring claims in jurisdictions perceived as more claimant-friendly. **Jurisdiction would become a strategic choice designed to maximise leverage rather than follow a genuine connection with the dispute** due to different substantive or procedural advantages: favorable damages, flexible criteria for

[1] An authorised entity recognised in accordance with Directive (EU) 2020/1828 may bring cross-border representative actions (Articles 6 and 13 of the Directive). International jurisdiction to hear such actions is determined in accordance with Regulation (EU) No 1215/2012 (Brussels Ia). A consumer domiciled in a Member State other than that in which the representative action is brought may join a cross-border collective action for damages in accordance with Article 9(3) of Directive (EU) 2020/1828. The Directive itself therefore provides for the consolidation of actions before a court, provided that this complies with the principles of Brussels Ia.

group certification, opt-out regimes, a more mature litigation funding market, intrusive disclosure rules, favorable litigation costs structures, less judicial scrutiny of settlements or longer limitation periods**.**

The risk of forum shopping remains particularly acute given the significant differences between national collective redress mechanisms. While Article 9(3) RAD requires consumers not habitually resident in the Member State where a redress action is brought to expressly opt into the action, significant differences remain in relation to consumers resident in the forum State and to collective proceedings falling outside the scope of the Directive. Any additional jurisdictional ground based on the domicile of the qualified entity, the location of only part of the represented group or another insufficiently close connecting factor could therefore encourage claims to be brought in jurisdictions offering the broadest procedural mechanisms. National procedural mechanisms, including opt-out collective redress, should not become an indirect basis for attracting disputes with a limited connection to the jurisdiction concerned.

c) A race to court would create more conflicts, not greater efficiency.

Additional jurisdictional options could encourage competing representative (qualified) entities to file first to secure control over a claim and subsequent settlement negotiations. This would raise difficult questions about overlapping groups, parallel proceedings, *lis pendens*, *res judicata* and the effects of judgments on consumers who never expressly joined the action. Other questions could also be raised:

- What is the identity of the parties if different entities are acting on their behalf?
- Do the parties coincide when an organisation represents consumers who have not yet joined the claim?
- Is there a common subject matter between an action for an injunction and an action for damages?
- Can a collective action preclude an individual claim?
- What happens if the groups only partially overlap?
- What effect does a foreign judgment have on consumers who were unknown at the start of the proceedings?
- Can the consumer challenge inadequate representation?
- How can we prevent two settlements from covering the same individuals?

Giving the first filer a procedural advantage does not guarantee the most suitable representation or the best outcome for consumers. Also, a broad interpretation of *lis pendens* or *res judicata* would undermine individual rights. A narrow interpretation would fail to achieve the intended consolidation. This tension highlights that the problem cannot be resolved simply by designating a single court.

If the intention is to boost enforcement in B2C cases, the EU should clearly privilege public enforcement as it will be in the future revision of the CPC Regulation[2], which BusinessEurope has called for, as well as there should be further promotion of out-of-court means of redress (ADRs).

d) Distancing consumers from a closer court/forum

The jurisdiction established in the Brussels Ia Regulation regarding representative actions is consistent with recitals 15 and 16 thereof, which emphasise that the rules on jurisdiction **must be based on the principle of a close connection between the dispute and the competent court, in order to ensure the proper administration of justice**, facilitate the predictability of competent courts and safeguard the rights of the defence, all of which is in line with the applicable law, namely consumer law, which varies from one Member State to another.

Concentrating thousands of claims in a court chosen by a representative entity could **distance proceedings from the consumers and the underlying harm**. With the introduction of new collective redress criteria, we risk that the **center of gravity would shift from the consumer holding the right to the manager of the collective action**, who seeks the largest possible claim in order to gain greater leverage over the defendant to put (potentially illegitimate) pressure. Being part of a collective claim does not automatically guarantee better access to justice, particularly when the consumer has been left in a position where he has no control or cannot even follow or understand the judicial process. Consumers might find themselves receiving notifications in a foreign language, facing difficulties in reaching or assessing a settlement, suffering a complete loss of their rights in the proceedings (e.g. being prevented from litigating where the harm is caused or from litigating whatsoever) and being entirely dependent on the representative body. Overlapping actions, difficulty to determine which judgment binds which consumers (opt-in vs opt-out systems), conflicting settlements, language barriers, and uncertainty about who is bound by a judgment could undermine individual rights and access to justice.

e) The safeguards are insufficient to justify expanding jurisdictional opportunities.

The RAD's safeguards apply only within its scope. Other collective proceedings, including B2B claims or B2C claims outside of the substantive law in the annex of the RAD, would not automatically benefit from them. Expanding jurisdictional opportunities without a corresponding framework of **safeguards** risks encouraging procedural

[2] Regulation (EU) 2017/2394, which will be up for formal revision by the end of 2026.

arbitrage. This can also lead to increasingly overburdening certain national jurisdictions with cases more than others and causing serious delays in access to courts.

f) The growth of unregulated third-party litigation funding presence would ride the wave of litigation

All the above risks would be maximized with the intervention of **third-party litigation funding (TPLF)**. A growing number of private litigation funders have established themselves across the EU since the adoption of the RAD, and the industry continues to grow strongly in Europe with a considerable market size. The recent Commission's TPLF study estimates the current EU market size (of TPLF) at roughly 2 billion euros, with a potential to increase by 15-30 times in the coming years (by 2030, ranging between 30 and 60 billion Euros). TPLF acts as fuel for litigation and can thrive with measures that facilitate forum shopping. This is a little transparent financial service, taking high commissions from claims, while operating without the typical fiduciary duties typical to services providers in financial or justice sectors.

ANNEX:

Responses to the relevant Questions of the Online European Commission Consultation

Question 2: How important do you think the Brussels Ia Regulation is for individuals and businesses in the EU?

- Very Important

Question 3: To what extent do you think the Brussels Ia Regulation has helped individuals and businesses in resolving disputes across EU countries while ensuring fair and predictable outcomes?

- A lot

Question 5: In your view, does the Brussels Ia Regulation work well with other EU rules and legislation that affect cross-border disputes, such as the EU legislation on collective actions, understood as legal actions defending the interests of more than one person, including representative actions as set out by Representative Actions Directive (EU) 2020/1828?

- Yes, very well

If you selected '*Not really*' or '*Not at all*', please specify which aspects do not work well and therefore could be improved:

We have not identified compelling evidence that Brussels Ia is an obstacle to the use of group actions across Europe. On the other hand, the Representative Actions Directive (RAD) has already enabled class actions in the EU, and collective redress has been expanding every year[3], with the greatest increase in jurisdictions like the Netherlands and Portugal, which have more generous criteria to use collective redress. This signifies that both instruments have been functioning in parallel and independently since the transposition of RAD, in 2023. **Reviewing the relevant area in Brussels Ia at a time when we are "gaining experience by monitoring the application of the RAD in the field of consumer collective redress" could be counterproductive to assessing the effectiveness of RAD.[4]**

On the other hand, there is concrete evidence of the increase in the presence and operation of Third-Party Litigation funders in Europe (more than 300 currently). These funders deal with a variety of individual and collective cases, in all areas of law from consumer to patent, commercial, intellectual property, and competition law. This rise in TPLF in the EU is also interlinked with the RAD, as a growing number of private

[3] See, for example: https://cms.law/en/gbr/publication/cms-european-class-action-report-2025.
[4] See page 9 of the J4G report, where it was a concrete takeaway that we are in a RAD monitoring stage.

litigation funders have established themselves across the EU[5] since the adoption of the RAD, and the industry continues to grow strongly in Europe.[6] If Brussels Ia is modified to facilitate the use of collective redress, it will only **increase risks of abusive forum shopping by litigators, litigator law firms and third-party litigation funders**.

Section 2: Jurisdiction over non-EU defendants

Question 6: Should the Regulation be extended to cover defendants not domiciled in an EU Member State?

- **Yes**

Section 7 - Collective actions and digitalisation

Question 18: Are the current rules of the Regulation sufficient and appropriate for dealing with collective actions, including representative actions as set out by Representative Actions Directive (EU) 2020/1828?

- Yes

Please explain your answer and suggest improvements you think are appropriate:

We consider that the Brussels Ia Regulation is functioning well overall in this regard. We are **not in favour of introducing specific jurisdictional collective redress criteria** in the Brussels Ia Regulation as we do not see the justifiable need for such a change.

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[5] Currently, over 100 third-party litigation funders operate in countries like the Netherlands, France, Germany, and Spain alone.
[6] We refer to the relevant 2025 TPLF Commission study.