CONTRIBUTION TO THE PUBLIC CONSULTATION ON THE REVIEW OF THE BRUSSELS Ia REGULATION

I. IUS OMNIBUS

Ius Omnibus is a non-profit consumer association based in Lisbon, Portugal. Its purpose is to safeguard and promote the rights and interests of consumers in the European Union. Its statutes provide for collective litigation and participation in public consultations on consumer protection, legislative development and access to justice.

Ius Omnibus has been designated by the Portuguese Direção-Geral do Consumidor as a qualified entity entitled to bring cross-border representative actions under Directive (EU) 2020/1828 and appears on the list published by the European Commission. Recognition of its legal standing under Article 6 of that Directive enables it to bring such actions in other Member States. Identifying the courts before which it may do so is therefore directly relevant to our work.

Collective redress should provide an effective judicial response to infringements affecting consumers in different Member States. Where individual losses are small, the costs and fragmentation of litigation may prevent consumers from obtaining redress. Rules on jurisdiction, parallel proceedings and enforcement directly affect the practical viability of representative actions.

Our contribution focuses on the rules on judicial cooperation that can facilitate effective cross-border consumer protection. We seek targeted improvements, supported by objective connecting factors and procedural safeguards, that enable consumers, qualified entities and traders to foresee where proceedings may be brought and what their scope will be.

II. THE PUBLIC CONSULTATION

Ius Omnibus welcomes the opportunity to contribute to the European Commission's consultation on the review of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels Ia Regulation). The initiative combines an evaluation of the existing framework with an impact assessment of possible legislative amendments.

The Commission's application report recognises the Regulation's contribution to legal certainty and the circulation of judgments, while identifying areas that could benefit from improvement. The call for evidence considers options for clarification and reform, including

rules on collective redress and defendants domiciled outside the Union. A legislative proposal is provisionally scheduled for the fourth quarter of 2027.

This review provides an opportunity to complement the protection afforded by Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers (the Representative Actions Directive, or "RAD"). Article 2(3) RAD preserves the application of Union rules on jurisdiction, recognition and enforcement. The designation of a qualified entity and recognition of its legal standing do not in themselves determine the court having jurisdiction or resolve the effects of parallel proceedings.

Our contribution identifies three areas for reform. The first has two objectives: a predictable forum for representative consumer actions, building on the affected-market logic of the ECJ *Apple* judgment, and an express basis for effective cross-border injunctive relief under additional conditions. The other areas concern coordination of genuine overlaps and certificates accurately recording judgments, including the conduct and territory covered by injunctions. Our recommendations preserve existing fora, exclusive jurisdiction, applicable-law rules and procedural safeguards.

III. COMMENTS AND RECOMMENDATIONS

1. AN EFFECTIVE MARKET-BASED FORUM AND CROSS-BORDER RELIEF

The current framework

Article 7(2) allows non-contractual claims before the courts of the place where the harmful event occurred or may occur. The RAD recognises qualified entities across borders but leaves these jurisdiction rules unchanged.

This framework already allows preventive actions. In Henkel (C-167/00), the CJEU treated the association's statutory action to prevent the use of unfair contract terms as extracontractual for jurisdictional purposes. The association was enforcing its own statutory right, rather than rights of the consumers under a contract with the undertaking, and jurisdiction did not depend on damage having already occurred.

However, the personal forum available to an individual consumer does not automatically pass to the entity representing consumers.[1] The practical question is therefore how the Regulation's connecting factors apply to representative actions, including where the harmful event occurred and the territorial scope of the court's jurisdiction.

[1] CJEU, Henkel, C-167/00, judgment of 1 October 2002, paragraphs 32–50, on a statutory preventive action; Schrems v Facebook Ireland, C-498/16, judgment of 25 January 2018, operative part, point 2, on assigned claims and the personal consumer forum; Wikingerhof, C-59/19, judgment of 24 November 2020, paragraphs 25–33, on obligations independent of the contract.

The practical problem

Consumer organizations bringing representative actions face two related difficulties. First, determining jurisdiction separately for each consumer can split claims arising from the same practice between different courts or national markets. Second, a court with jurisdiction over harm in one market may lack jurisdiction to order the practice to cease in other affected markets. [2]

Additionally, the costs of litigating in certain member states, where companies are domiciled and restrictions or even prohibitions on commercial third-party funding may make that EU wide collective redress impossible. This problem affects compensatory actions and injunctions.[3]

Our proposals and legal basis

The ECJ's *Apple* judgment (C-34/24, 2 December 2025) provides the starting point for our proposal. The case concerned representative claims alleging excessive App Store commissions in the Netherlands. The Court located the harm by reference to the national digital market and an identifiable group of users, without requiring each consumer's individual place of damage to be established. It therefore allowed any court with subject-matter jurisdiction in that Member State to hear the representative action for that market as a whole.

The *Apple* judgment shows that Article 7(2) can reflect the collective nature of the action and avoid fragmentation within a national market.[4] Where individual consumers are entitled to sue in their home Member State under Article 18, representative enforcement should not, in itself, remove an effective forum there. The proposed market-based forum would provide a separate basis of jurisdiction for representative actions, whether contractual or non-contractual.

We recommend consolidating *Apple*'s market-based approach and extending it beyond competition damages to representative consumer actions concerning unlawful practices, both digital and non-digital if the market is sufficiently affected. The additional, non-

[2] CJEU, CDC Hydrogen Peroxide, C-352/13, EU:C:2015:335, paragraphs 35–36 and 47–56; Volvo and Others, C-30/20, EU:C:2021:604, paragraphs 33–43; Vereniging van Effectenbezitters v BP, C-709/19, EU:C:2021:377, operative part; Verein für Konsumenteninformation v Volkswagen, C-343/19, EU:C:2020:534, paragraphs 28–39.

[3] Irish Supreme Court, Persona Digital Telephony Ltd v Minister for Public Enterprise, [2017] IESC 27; SPV Osus Ltd v HSBC Institutional Trust Services (Ireland) Ltd, judgment of 31 July 2018, on maintenance and champerty.

[4] CJEU, Stichting Right to Consumer Justice and Stichting App Stores Claims (Apple), C-34/24, EU:C:2025:936, paragraphs 60–76 and operative part. Adrien de Hauteclocque, "Virtual Markets, Real Jurisdiction: The 'Apple' of Discord in Article 7(2) Brussels I bis", Journal of European Competition Law & Practice (2026), lpag020, pp. 2–3, on national concentration and the unresolved pan-European question.

exclusive forum should be in a Member State where consumers covered by the action have their habitual residence and the practice has a substantial connection with that market.[5]

The forum should be available for all representative actions under the RAD, including those concerning contractual and non-contractual rights, and should encompass final preventive, declaratory or injunctive relief.

The proposed forum should be available whether the action is brought by one qualified entity or jointly by several qualified entities from different Member States. Where the proposed forum requirements are met, the court should be able to hear the action as a whole. Participation and binding-effect rules would remain, including Article 9(3) RAD's express opt-in requirement for consumers not habitually resident in the forum State in redress actions.

The proposed forum should also be available against non-EU undertakings, subject to the same consumer-domicile and substantial market-connection requirements, including where the relevant practice is directed towards consumers in the forum State.

The *Apple* judgment supports a collective approach to jurisdiction within an affected national market but does not determine whether that court may order cessation in other Member States.

In its judgment of 12 August 2025 (12 HK O 32/24), the Mainz Regional Court accepted jurisdiction under Article 7(2) of Brussels Ia and declined to limit its injunction to Germany, relying on the DMA's EU-wide scope and the need to avoid fragmented enforcement. The EU-wide scope of the injunction was subsequently upheld by the Higher Regional Court of Koblenz (U 851/25 Kart)[6]. These proceedings illustrate how cross-border relief can support the effective enforcement of uniform EU regulations. Although these judgments concern DMA disputes, it also supports our proposal for clearer rules on cross-border relief in Brussels for consumer representative actions.

We also recommend an express basis for the affected-market court to hear closely connected cross-border conduct and, where justified (for instance in cases of fragmented enforcement of EU Regulations like the DSA, DMA and GDPR), order cessation beyond the forum State. This would address uncertainty over the territorial reach of relief, without making an EU-wide order automatic whenever harm occurs in one market.

Wider jurisdiction should rest on plausible allegations of a common practice and substantial actual or potential effects in the additional markets. The court should separately assess

[5] Frederick Rielaender, "Aligning the Brussels Regime with the Representative Actions Directive", ICLQ 71(1) (2022), pp. 107–138, especially pp. 130–138; Burkhard Hess, David Althoff, Tess Bens and Niels Elsner, The Reform of the Brussels Ibis Regulation – Academic Position Paper, 22 May 2024 pp. 11–13; Petra Leupold, Private International Law and Cross-Border Collective Redress (2022), pp. 21–31.

[6] LG Mainz, judgment of 12 August 2025, 12 HK O 32/24, Sections B, C.I, C.III and C.VII; pp. 12–13 and 21–22 y Oberlandesgericht Koblenz (Higher Regional Court of Koblenz), Case U 851/25 Kart. These proceedings concerned Article 5(8) DMA in conjunction with § 33 GWB between business operators.

whether broader relief is necessary and proportionate, whether a narrower order would be sufficient, and whether limiting the order would undermine the principle of effectiveness of EU law.[7]

2. COORDINATION LIMITED TO GENUINE OVERLAPS

Two collective actions against the same undertaking may overlap only partly in the consumers, groups, rights or collective interests covered. Staying the later action in full could halt claims absent from the earlier proceedings. The rules should clarify identity of parties and limit any stay or declining of jurisdiction to the part involving the same parties, cause of action and object. With cross-border injunctions, the conduct and territories covered must also be compared. Only addressing the formal identity of the entities to stay a proceeding is insufficient.[8]

The ECJ judgment in The Tatry permits proceedings to continue between non-overlapping parties. The mechanism should reflect that approach for representative actions, taking account of each group, the rights or interests asserted and the judgment's effects. Similarity of collective interests alone should not establish identity of parties. Related proceedings should remain capable of coordination under Article 30 even where lis pendens does not apply.[9]

Courts should be able, upon request and without delay, to exchange the information necessary to compare pending proceedings, including their subject matter, groups, conduct, territories and relevant procedural stage, while protecting personal data. This would support identification of real overlaps without an automatic priority for the first entity to sue or a new uniform rule on individual participation. The approach should cover representative actions for both injunctive and redress measures.[10]

3. CERTIFICATES THAT CLEARLY REFLECT THE SCOPE OF THE JUDGMENT

Collective judgments already benefit from the Regulation's circulation regime. An imprecise certificate may nevertheless make it difficult to identify who can seek enforcement, the beneficiaries and the obligations imposed. For a cross-border representative action,

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[7] CJEU, Kolassa, C-375/13, judgment of 28 January 2015, paragraphs 61–65: verification of jurisdiction does not require exhaustive examination of the merits, but may take account of all available information, including the defendant's arguments. Apple, C-34/24, paragraphs 64–67, on an identifiable group and the absence of a requirement to identify individual victims at the jurisdictional stage.

[8] Rielaender, pp. 120–125; Leupold, pp. 83–86; Hess and others, pp. 14–15.

[9] CJEU, The Tatry, C-406/92, EU:C:1994:400, paragraphs 29–36 and 38–41. The English concept of the same cause of action must reflect the distinction between cause and object discussed there. The proposed clarification addresses the additional questions raised by representation and group scope.

[10] Leupold, pp. 85–86, on participation and missing information; Hess and others, pp. 14–15, on judicial communication and competing approaches to priority.

uncertainty about the prohibited conduct, infringement or territory covered may produce further disputes at enforcement.[11]

The standardised certificate should record the persons entitled to seek enforcement, the beneficiaries or identification criteria and the enforceable obligations, insofar as established by the judgment. It should clearly describe the conduct and territories covered by an injunction or redress action. Where the court of origin has ordered a penalty payment to secure compliance with an injunction, the certificate should also record whether its amount has been finally determined, as Article 55 requires for enforcement in another Member State. Benefiting from cessation must not be confused with being a party bound by a redress judgment. At an interested party's request, the court of origin should update the certificate following a decision changing those matters or enforceability.

IV. CONCLUSIONS

The problems identified above call for three complementary improvements:

- A market-based forum and effective cross-border relief: Consolidate the market-based logic of the ECJ's *Apple* judgment and extend it to representative consumer actions beyond competition damages under the RAD.

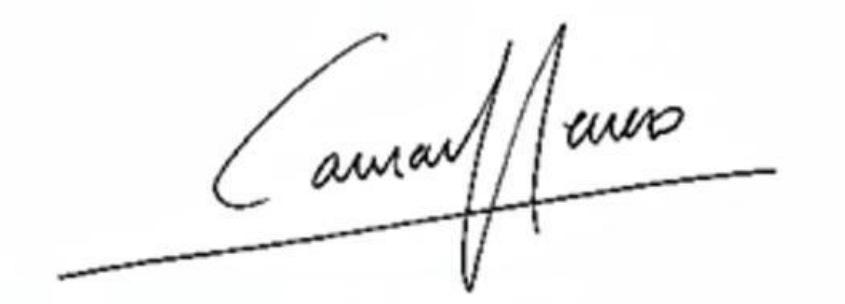
  Provide an additional, non-exclusive forum in a Member State where consumers covered by the action are domiciled, subject to a substantial connection with that market and irrespective of the entity's location. Cover autonomous or combined redress claims and final preventive, declaratory and injunctive relief.

  Provide for jurisdiction over closely connected cross-border conduct, assessed separately from whether a wider order is necessary and proportionate, while preserving applicable law and defence rights.

- Coordination of proceedings: Limit lis pendens to genuine overlaps, including the conduct and territory covered by cross-border orders, while retaining coordination of related actions. Protect individual claims outside the representative action and facilitate judicial communication without giving the first entity automatic substantive priority.

- Certificates and enforcement: Identify who can seek enforcement, beneficiaries or identification criteria, and enforceable obligations, including the conduct and territory covered by injunctions. Allow updates by the court of origin without extending the judgment or determining outstanding substantive questions.

[11] Leupold, p. 71, on collective judgments within the existing recognition and enforcement regime and the persons entitled to invoke or enforce them.



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