



# Improving the Consistent Application of PSD across Member States: Public and Private Enforcement of the EU Law of Payments

14 April 2023

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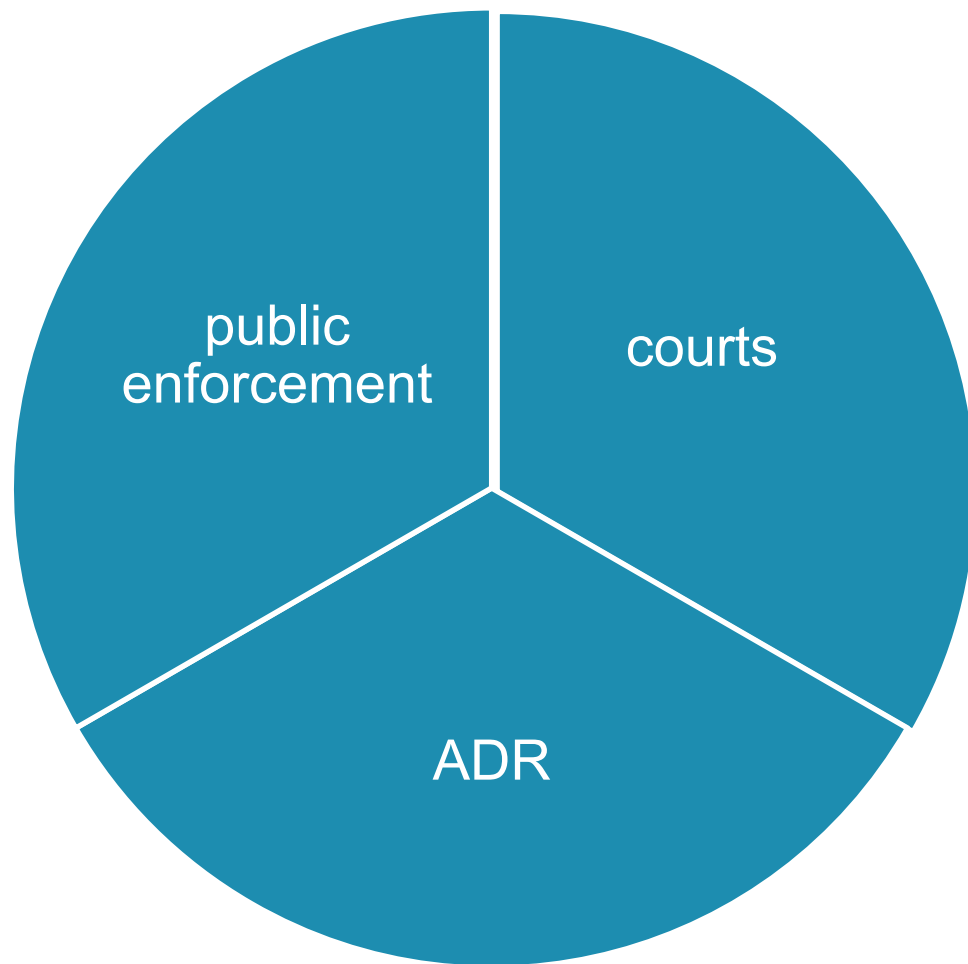
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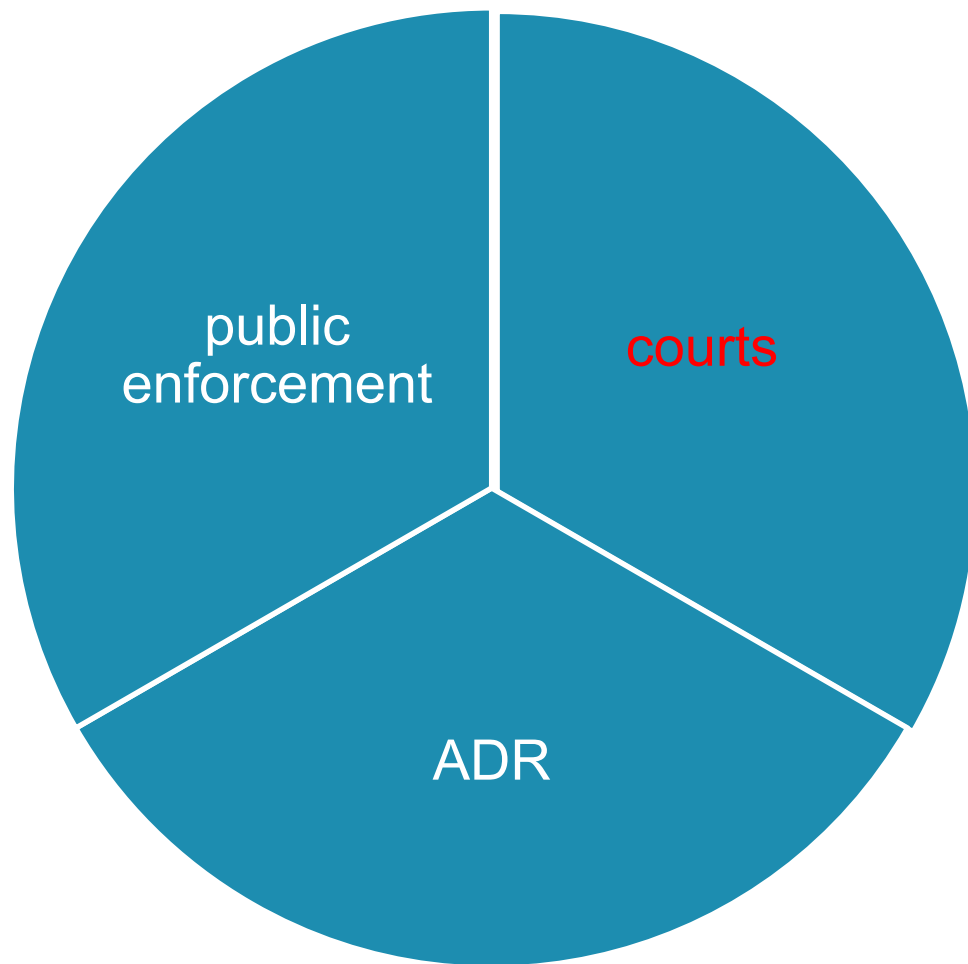




“multilayered framework of regulation, lawmaking  
and law application”

(Walter Van Gerven)





# PSD2 Directive

## Recital (98)

Without prejudice to the right of customers to bring action in the courts (...)

## Recital (100)

Without prejudice to the right to bring action in the courts to ensure compliance with this Directive (...)

## Article 25

Right to apply to the courts

# PSD2 Directive

## Article 52

### Information and conditions

Member States shall ensure that the following information and conditions are provided to the payment service user: (...) 7. on redress: (a) any contractual clause on the law applicable to the framework contract and/or the competent courts

## Article 99

### Complaints

2. Where appropriate and without prejudice to the right to bring proceedings before a court in accordance with national procedural law, (...)



# Directive 2009/22/EC Injunctions for the Protection of Consumers' Interests



## Directive 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers, and Repealing Directive 2009/22/EC (“RAD”)

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2020.409.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.409.01.0001.01.ENG)



## Article 2

### Scope

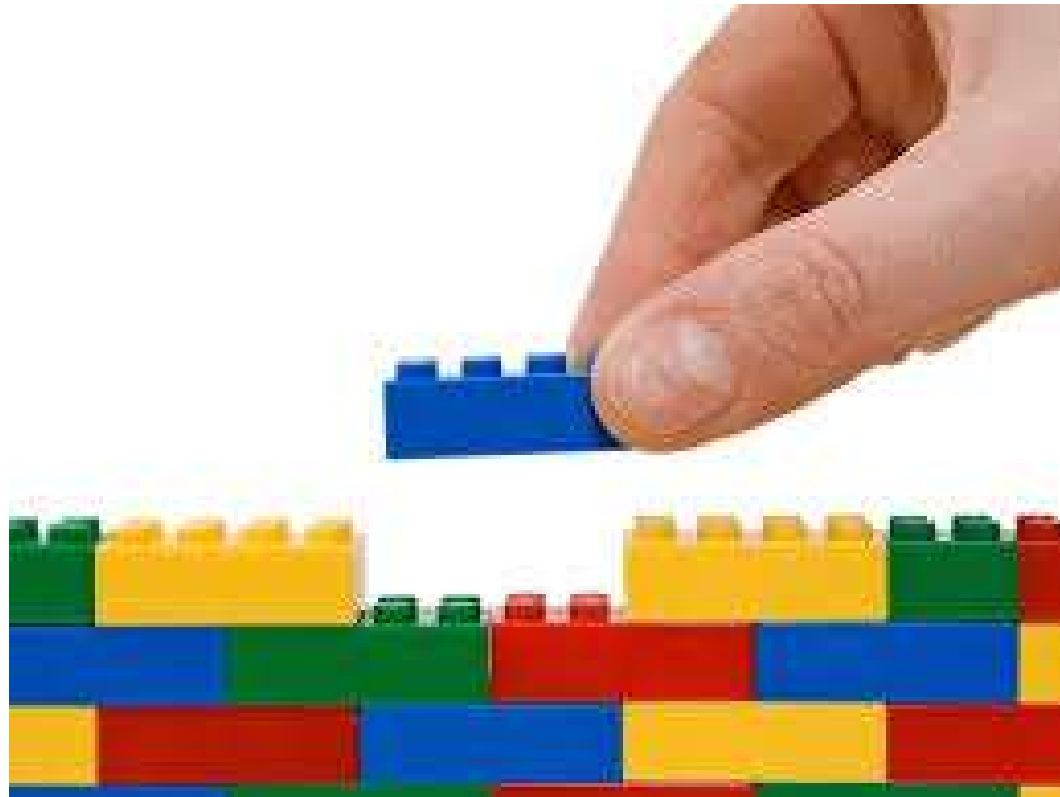
1. This Directive applies to representative actions brought against infringements by traders of the provisions of Union law referred to in Annex I, including such provisions as transposed into national law, that harm or may harm the collective interests of consumers. This Directive is without prejudice to the provisions of Union law referred to in Annex I. It applies to domestic and cross-border infringements, including where those infringements ceased before the representative action was brought or where those infringements ceased before the representative action was concluded.

## ANNEX I

# LIST OF PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 2(1)

(54)

Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).



## Qualified entity (QE)



any organisation or public body representing consumers' interests which has been designated by a Member State as qualified to bring representative actions in accordance with this Directive

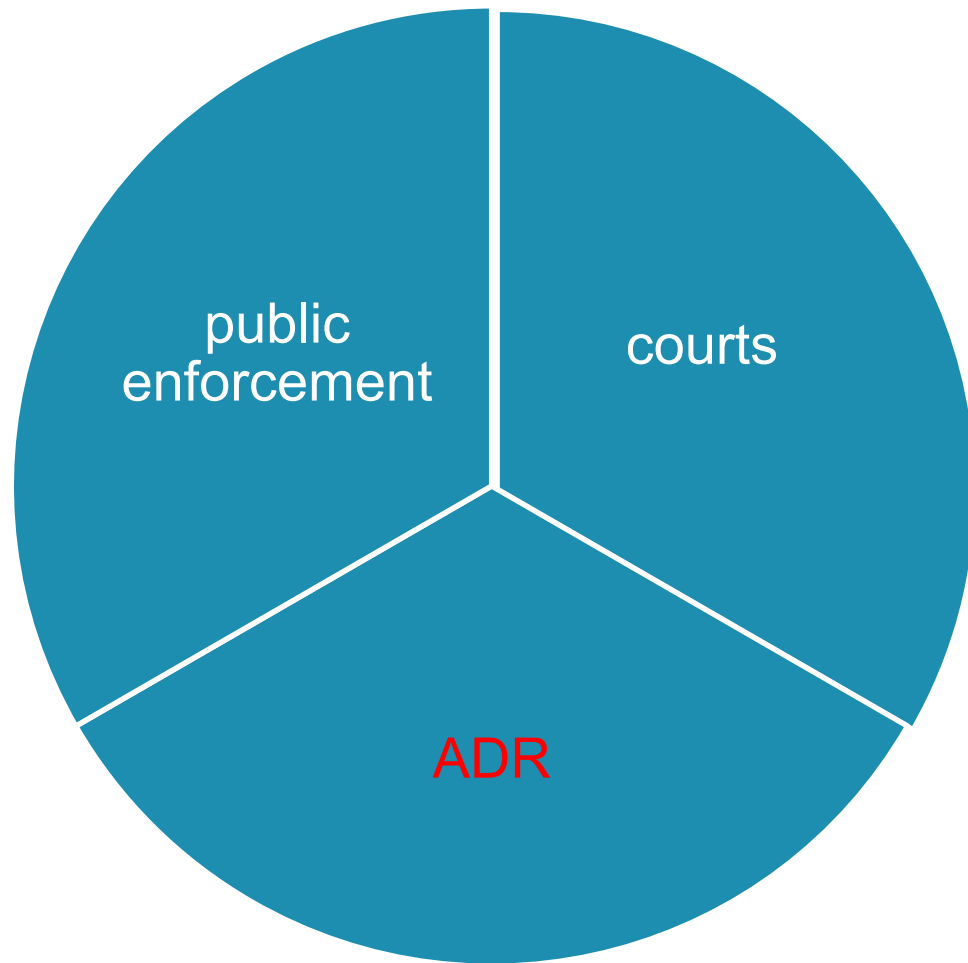
# Domestic vs. Cross-border

domestic  
representative  
action

- representative action brought by a QE in the **Member State in which the QE is designated**

cross-border  
representative  
action

- representative action brought by a QE in a **Member State other than that in which the QE is designated**



# PSD2 Directive

## Recital (98)

(...) Member States should ensure effective ADR procedure (...)

## CHAPTER 6

### ADR procedures for the settlement of disputes

## Article 102

1. (...) in accordance with Directive 2013/11/EU of the European Parliament and the Council (...)

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC  
**(Directive on consumer ADR)**  
OJ L 165, 18.6.2013, p. 63–79



Recommendations from academic research regarding  
future needs of the EU framework of the consumer  
Alternative Dispute  
Resolution (ADR)  
(JUST/2020/CONS/FW/CO03/0196)

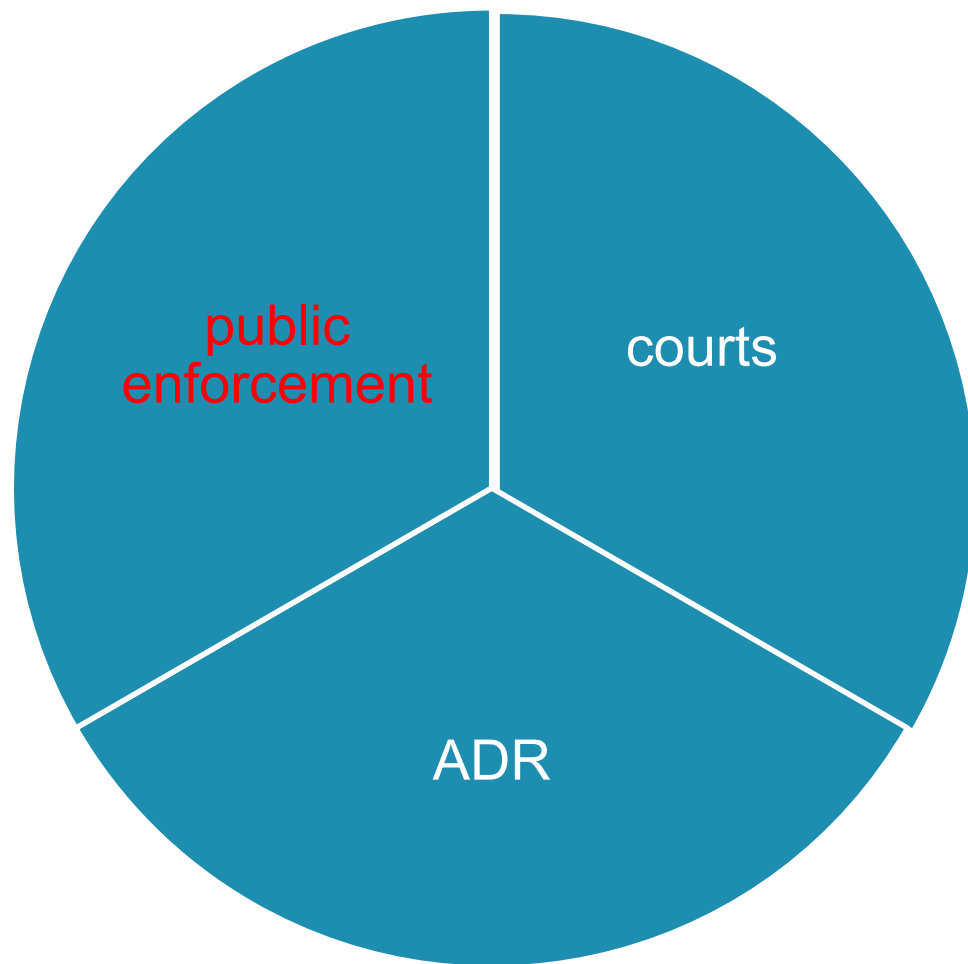
Prof. dr. Stefaan Voet

Sofia Caruso

Anna D'Agostino

Stien Dethier

June 2022



# REGULATORY REDRESS

redress that is ordered or brought about  
by the intervention of public enforcers

+

combined weight of public/regulatory enforcement tools and  
civil/compensatory tools  
integrated solutions

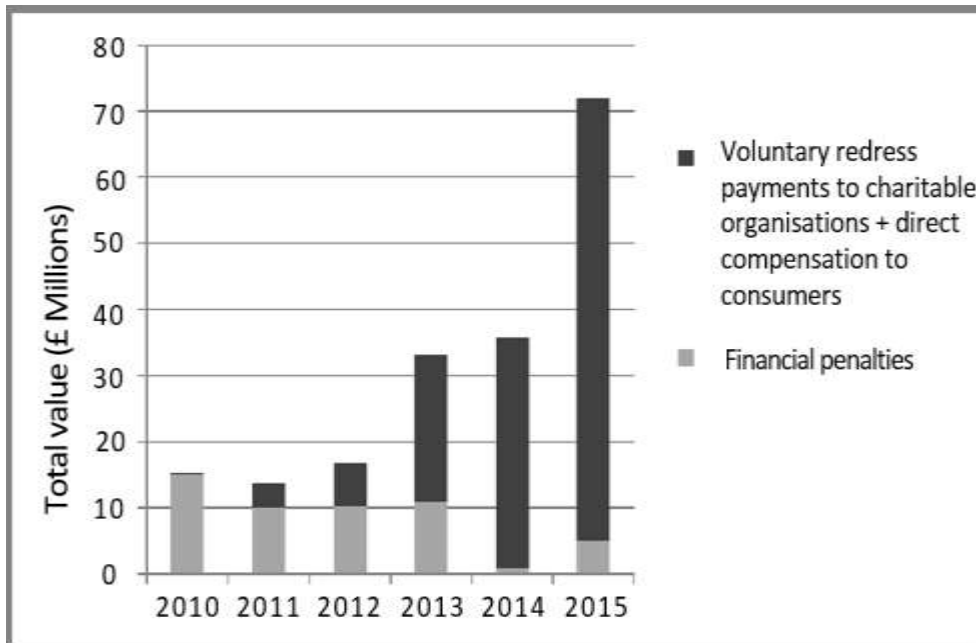
-

(political) capture  
knowledge, means

(need for publication of enforcement policies, fair procedural rules,  
predictable and transparent process, ministerial and stakeholder  
oversight, possibility for courts to impose more serious sanctions, and  
a mechanism for appeals)



BANCA D'ITALIA



(Ofgem)

(UK Office of Gas and Electricity Markets)



## Article 9 (CPC Regulation)

### Minimum powers of competent authorities

4. Competent authorities shall have at least the following enforcement powers:

(c) the power to receive from the trader, on the trader's initiative, additional remedial commitments for the benefit of consumers that have been affected by the alleged infringement covered by this Regulation, or, where appropriate, to seek to obtain commitments from the trader to offer adequate remedies to the consumers that have been affected by that infringement





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