

The Consumer Voice in Europe

## WHERE DOES COLLECTIVE REDRESS FOR INDIVIDUAL DAMAGES EXIST?

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## Why it matters to consumers

A legal system has a major hole when consumers are unable to band together and claim compensation despite suffering the same damage. Only very few EU countries provide workable and consumer friendly forms of judicial collective action. Even where collective redress is available, the models and their effectiveness vary significantly. They also do not provide solutions when a trader is located abroad. This leads to significant discrimination against consumers.

## Summary

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This paper outlines how few judicial collective redress mechanisms for compensation there are in European countries. Only in a handful of EU Member States can the procedure be used efficiently. In other countries, either there is no procedure at all, or it is too burdensome to realistically allow for any action.

This situation creates a huge hole for millions of European consumers who suffer damages from a trader and leads to unequal conditions in the Single market, both for consumers and for businesses.

To respond to this gap, the European Commission adopted the Commission recommendation on common principles for judicial collective redress in 2013. However, the EU Member States are not obliged to follow the recommendation, and indeed most of them did not do so.

BEUC is calling on the European Commission to finally propose a binding EU law that will ensure that an effective collective redress for compensation procedure is available to all EU consumers. For more detail on our recommendation, please see our position paper "[European collective redress – what is the EU waiting for?](#)" published on our website.<sup>1</sup>

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<sup>1</sup> [www.beuc.eu](http://www.beuc.eu)



## AUSTRIA



Austrian law does not provide group claims for compensation. However, Austrian practice has developed a form of group litigation based on a joinder of claims. Under this scheme, similar claims of individual consumers against the same professional can be grouped and assigned to a consumer organisation.

Our member Verein für Konsumenteninformation has brought many collective redress cases using that procedure. However the procedure is characterised by very long timelines and numerous complications due to its provisional nature. Because of these procedural and financial obstacles, the introduction of a 'real' group proceeding is both urgent and necessary, and has been discussed since 2005.



## BELGIUM



In March 2014 Belgium passed a law that allows consumers, represented by an authorised group representative, to file a collective redress claim which has been caused by a breach of contractual agreements or an infringement of consumers' rights.

Both opt-out and opt-in procedures are possible. To avoid forum shopping and develop expertise, the action has to be brought either to the Brussels Court of First Instance or (in exceptional cases) the Brussels Commercial Court. The court will preliminarily decide whether to admit the claim. After that the procedure provides a mandatory mediation period of 6 months. Only if a settlement could not be reached can the court handle the case.

BEUC member Test-Achats/Test-Ankoop has been authorised to bring group claims. The group action can only be introduced in Belgium for cases where the cause of damage occurred after 1 September 2014. Since then 6 cases have been launched.



## BULGARIA



In Bulgaria, representative consumer organisations are entitled to initiate an action for collective redress and to demand compensation for the damages to the collective interests of consumers.

However, because the procedure entails very high financial risks, it is not being used.



## **CROATIA**



A collective redress mechanism exists in Croatia since 2009. However, the procedure is very complex and in practical terms does not work.



## **CYPRUS**



Presently, Cyprus does not have any type of collective action for damages.



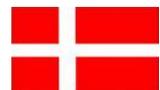
## **CZECH REPUBLIC**



Presently, the Czech Republic does not have any type of collective action for damages.



## **DENMARK**



Denmark has adopted a group action procedure that came into force on 1 January 2008. The Danish law encompasses both opt-in and opt-out options. However, only a public authority (in this case the Consumer Ombudsman) can take opt-out cases to court. Opt-in group actions can be brought either by individual claimants, by the private consumer association (Forbrugerrådet Tænk) or any representative organisation, or by the Consumer Ombudsman.



## **ESTONIA**



Presently, Estonia does not have any type of collective action for damages.



## FINLAND



Finland has had its opt-in group action procedure since October 2007. The Finnish Consumer Ombudsman is the exclusive channel to file a group action seeking redress for consumers or to take the case to the Consumer Complaint Board seeking a recommendation directed at the trader. Individual consumers or consumer associations do not have the right to act, even when the Consumer Ombudsman has decided not to bring proceedings.

This instrument has turned out to be very effective, as its mere existence has led companies to accept negotiations and settlements.



## FRANCE



In 2015, a new collective redress procedure was introduced in France. For the moment it covers infringements of consumer rights, health and competition. However, it is impossible to claim moral damages under this system and the procedure is burdensome.



## GERMANY



There is no general collective redress mechanism in the German legal system. However, German law does have different types of sectoral collective redress mechanisms:

An action for collective redress ('*Einziehungsklage*') allows state subsidised consumer associations to select one or a certain number of claims and pursue them on behalf of consumers. The litigation is limited to monetary claims. The individual claims must be on an opt-in basis. In addition, if the jurisdictional damage limit does not exceed €5,000 the action must be filed at the local court with the risk of no option to appeal. The "*Einziehungsklage*" is not used often because it is very burdensome to collect claims and to prove before court that all claims brought can be covered by the same collective action.

For capital investments disputes a test case proceeding exists. This procedure comes from the Capital Investors' Proceeding Act ('*Kapitalanleger-Musterverfahren*'). It was introduced in 2005 and amended in 2012. Its aim is to obtain a judgment which will resolve a series of similar cases. The test case judgment is binding for all cases pending at the same time. Once the test judgment has been decided, the other individual lawsuits can continue, while the parties involved are bound by the test decision.



## GREECE



Since June 2007, there is legislation that allows consumer organisations to file a collective action asking for the recognition of the right of consumers to be compensated.

The consumer organisation can only obtain a declaratory judgement, and on such a basis individual consumers can then seek compensation directly from the trader. However, the first judgment has to become irrevocable, which may considerably delay compensation of consumers. If the trader does not respond to the demand, then individual consumers may ask, by a simplified written procedure in court, to issue a payment order against the trader.

However, as consumers cannot get compensation in the collective action and still need to go to court individually, the procedure is not effective.



## HUNGARY



Hungary has adopted a representative action procedure that came into force on January 2011. Only the Hungarian Competition Authority is empowered to file an action, and only when a competition supervision proceeding against the infringement in question has already started. Thus, this action concerns exclusively infringements of provisions of competition rules.

There is a time-limit of one year after the commitment of the infringement for bringing an action, the time-limit being suspended for duration of the competition supervision proceeding.



## IRELAND



Presently, Ireland does not have any type of collective action for damages.



## ITALY



Since December 2007, the Italian Consumer Code contains a provision on collective actions for damages.

In the beginning, only consumers' organisations and other adequately representative associations were allowed to bring cases. Since 2010, individual users or consumers can also sue.

Consumers who intend to join the collective action must communicate it in a written form to the claimant (opt-in) before the closure of the procedure (including appeal). The use of collective action is foreseen for claims related to standard contracts, non-contractual torts (only when concerning product liability and antitrust violations), unfair competition issues and unfair commercial practices.

The court will preliminarily decide whether to admit the claim or not. The claim can be brought by any member of the group, by an association or committee delegated by the group or one in which the members of the group participate. The claim will be declared inadmissible if legally unfounded, if there is a conflict of interest or if the collective interest is not proven. The judge can also postpone the decision on the admissibility of the claim when an independent authority is investigating the same subject. If the court admits the claim and will determine the liability of the enterprise, the judge can order the claimant to publicise the collective action in order to allow other consumers to join it. Once the judge has decided on the trader's liability, he will then determine the amount of compensation or define the criteria for the quantification of damages in a final judgement that can be enforced up to 180 days after its publication.

The Italian system also allows contingency fees.

Our Italian member Altroconsumo is very active in bringing collective redress cases.



## LATVIA



Presently, Latvia does not have any type of collective action for damages.



## LITHUANIA



In Lithuania, the provisions allowing group actions came into force as of 2015. The procedure has a wide scope and can be applied to the cases where the claims are based on the identical or very similar circumstances and regard the same or similar rights of the plaintiffs. It can be brought both on behalf of individuals and on behalf of legal entities. However, the procedure is based on a strict opt-in principle and thus not very actively used.



## LUXEMBOURG



Presently, Luxembourg does not have any type of collective action for damages.



## MALTA



A Collective Proceedings Act came into force on 1<sup>st</sup> August 2012 in Malta. It is an opt-in procedure, where a consumer organisation or an individual consumer can represent the rest of the group. Consumer organisations can benefit from lower court fees. There are no statistics of how many actions have been introduced so far.



## THE NETHERLANDS



Since 2005, the Netherlands has a procedure for collective settlements of mass damages (Collective Settlements Act). Consumer organisations can negotiate a settlement on behalf of all victims (on opt-out basis) with the professional responsible for the damages. Agreement with the professional needs to be reached first before going to court. This renders consumer organisations totally dependent on the willingness of the business to cooperate and reach a settlement. Once a settlement is reached, parties to the agreement can ask the court to declare it binding on all victims.

In cases where a settlement appears to be impossible, it is not possible for representative organisations to start a collective action for damages. This is explicitly excluded in the Dutch civil code. According to Dutch law, they can only ask the courts for injunctive relief and or declarations when a person has committed a tort or breached a contract.

The Collective Settlement Act was evaluated in 2009. The national parliament has taken the position that the act fulfils a positive need, but supplementary measures are necessary. The evaluation found that measures are still required in order to increase the willingness of parties to enter into negotiation and actually achieve a collective settlement, and the draft amendment of the law to that effect is in the pipeline.



## POLAND



In December 2009, the Polish Parliament adopted an Act on the pursuing of claims in Group Proceedings. This act, which came into force in July 2010, provides the possibility of pursuing damage claims by a group of claimants of at least 10 people. This mechanism covering both consumer and competition law is not open to consumer associations. It is up to the affected consumers to self-organise (the proceedings can be announced in recognised newspapers), to designate a lawyer and to pay for the litigation fees upfront (a system of contingency fees up to 20% is mentioned in the Act).

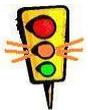
The role of consumer associations is limited to providing help in the constitution of the group or the designation of the lawyer. Consumer organisations are totally set aside from the proceedings.



## PORTUGAL



Since 1995, Portugal has had an effective group action system for the compensation of individual damages. Portuguese citizens, consumer organisations and other associations as well as certain public bodies can file such actions. The plaintiff represents all consumers involved in the group, except those who expressly tell the court they do not want to be represented (opt-out basis). Only in the case that the plaintiff loses the lawsuit in its entirety, court fees may be payable, but even then only between half and 1/10 of the regular rate. The role of the judge, who may collect *ex-officio* the evidence he considers necessary, is also an important factor. These elements ensure that consumers can be represented cost-effectively. DECO, the Portuguese Association for Consumer Protection, has successfully made use of this procedure.



## ROMANIA



The Romanian consumer code allows consumer organisations to file a representative action asking for the recognition of the right of consumers to be compensated. Consumers must then file individual claims and prove they have suffered damages in order to receive compensation.



## **SLOVAKIA**



Presently, Slovakia does not have any type of collective action for damages.



## **SLOVENIA**



The law allowing collective actions in Slovenia was adopted at the end of September 2017. Consumer organisations can bring claims, as can the State attorney. The law has a wide scope and, besides damages arising from the breaches of consumer or competition law, it also covers labour and environmental law.

Both opt-in and opt-out procedures are allowed, the decision being taken by the judge in the certification hearing.



## **SPAIN**



Since 2000, Spain has had two procedures of collective redress for damages. An action can be taken by a consumer association or by a group of consumers in cases where the consumers have registered and are identifiable. Each individual will then be compensated.

If the group of consumers is not identified but they share the same problem, only certain consumer associations can act before the court. The decision establishes the principles by which compensation will be given to individual consumers.

This procedure is actively and successfully being used by Spanish consumer associations especially in relation to financial services.



## **SWEDEN**



Since January 2003, Sweden has implemented an opt-in group action system which also encompasses laws other than those of consumer protection e.g. environmental laws. Under the Swedish Group Proceedings Act either a private individual, an organisation such as a consumer association or a government-appointed authority can bring a case on behalf of a group of consumers.

In October 2008, the Swedish government edited a report assessing the functioning of the Group Proceedings Act. The overall conclusion was positive even though the opt-in mechanism is considered by some as being too burdensome. In six years, twelve cases had been brought to court and the two objectives of the law, namely access to justice and behaviour modification, are considered to have been met.

However, in order to increase the effectiveness of this act, some adjustments are needed such as the spreading of the plaintiff's responsibility for litigation cost (by allowing contingency fees agreements in certain circumstances and by increasing legal aid).



## UNITED KINGDOM



In the UK, legal procedure can be different in England and Wales, Scotland and Northern Ireland. In England and Wales, there are currently two general collective procedures available.

- The first is a Group Litigation Order (GLO), which provides a mechanism for hearing numerous related claims at the same time. While GLOs can deliver some efficiency, they are of very limited use in consumer claims because every consumer has to cover their own court costs. Given the costs of litigation in England and Wales, court costs can dwarf the value of a consumer claim.
- The second is a representative action, where an individual can represent a group of consumers who are all affected by a legal breach in the same way. However, the rules around representative actions present considerable procedural obstacles and such actions have largely fallen out of use.

Across the UK, a new collective redress mechanism was recently introduced – including on an opt-out basis – for consumers who have suffered loss due to a breach of competition law. The class representative can be either an affected individual or a consumer organisation. However, the regime does not apply to consumer laws outside of the competition sphere.

## Annex: summary table

### Color codes:

**Red:** no procedure or a procedure that cannot be efficiently used for consumers to get compensation

**Orange:** a procedure with serious flaws, only partial or too recent to evaluate

**Green:** a functioning procedure that can be used by consumer associations

Country	Traffic light
Austria	Orange
Belgium	Green
Bulgaria	Orange
Cyprus	Red
Croatia	Orange
Czech Republic	Red
Denmark	Orange
Estonia	Red
Finland	Orange
France	Orange
Germany	Orange
Greece	Red
Hungary	Red
Ireland	Red
Italy	Green
Latvia	Red
Lithuania	Orange
Luxembourg	Red
Malta	Orange
The Netherlands	Orange
Poland	Orange
Portugal	Green
Romania	Orange
Slovakia	Red
Slovenia	Orange
Spain	Green
Sweden	Green
United Kingdom	Orange

END



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