

COLLECTIVE REDRESS

Where & how it works

01 Introduction

As policymakers consider an EU system of Collective Redress, this BEUC leaflet showcases the efficiency of existing national examples.

So, just what is Collective Redress and why is its introduction at European level essential?

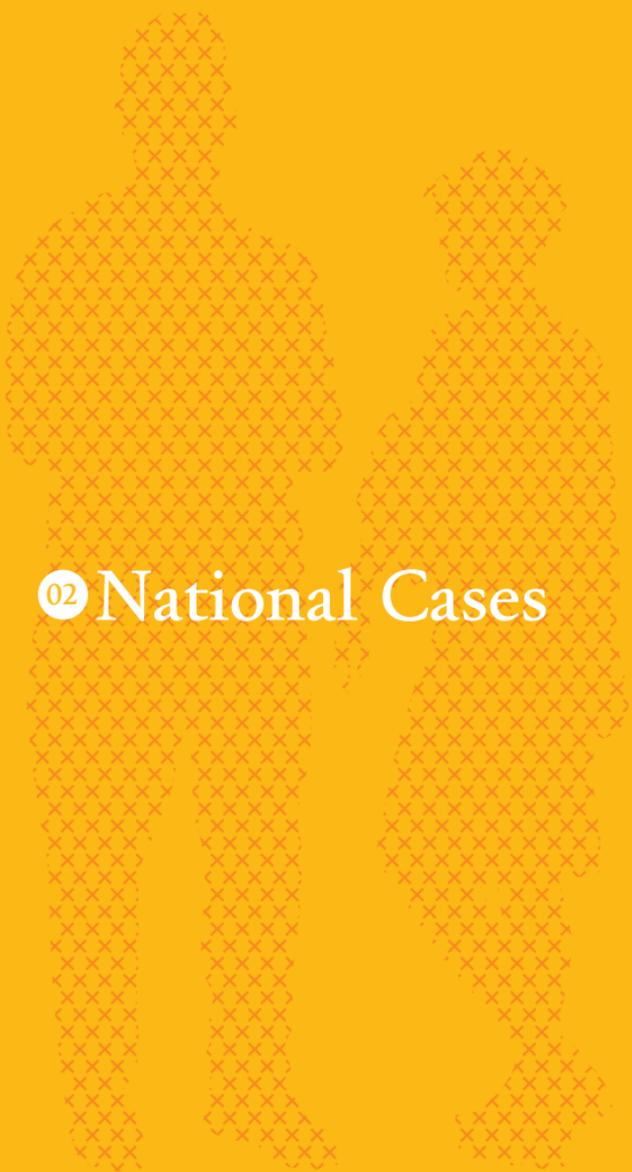
Also known as a Group Action, it enables more than one person to join a single court application for compensation if they are the victim of loss or harm. It is a streamlined, judicial solution where consumers are otherwise left empty-handed.

Its flexibility means collective redress can rectify problems across different sectors: from defective goods, negligent financial advice, flight delays, environmental pollution to overcharging for services.

That Collective Redress currently exists in 15 EU countries is proof of its worth. However, many national systems are very limited in their scope or not easily accessible for consumers. A cross-border system is paramount for the Single Market to progress. All EU consumers, not just some, should have this means of accessing justice at their disposal.

A 2011 European Commission study found 79% of consumers would defend their rights if they could join with other victims. Such a remedy would inspire consumer confidence and improve commercial standards. The time has clearly come for an EU Collective Redress system.

BEUC'S detailed analyses of existing national schemes and EU financing recommendations can be downloaded from the Consumer Redress Team section of www.beuc.eu

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02 National Cases

INVESTMENT MALFEASANCE

The Dexia case

Legio Lease, a subsidiary of Dexia Bank issued high interest loans for investments in shares. Due to **mis-leading prior information, several hundred thousand Dutch investors suffered heavy losses** (such as interest paid and various debts averaging €3,000 - €5,000 each).

Lengthy negotiations failed, so in April 2005 a mediator reached a collective €1billion settlement between *Dexia*, Dutch consumer group *Consumentenbond* and others. In January of 2007, this settlement was declared in court to be binding on all victims involved, with the possibility for individual consumers to opt-out.

DANGEROUS MEDICINES

The DES Hormone case

Diethylstilbestrol (DES) was a nausea preventing hormonal medicine prescribed to pregnant women between 1947 and 1976 which caused various severe disabilities among their children.

In 1986, six such disabled victims (they became known as 'DES daughters') began proceedings in Holland for damages against ten pharmaceutical companies, several of which were based outside The Netherlands. Many more victims joined later, as approximately 17,000 persons were estimated to have suffered harm.

An out-of-court settlement amounting to compensation of €38 million for victims was reached. The Amsterdam Court of Appeal rubberstamped the agreement as binding and declared all manufacturers jointly liable for the harm.

Importantly, all victims exposed to DES in The Netherlands before 1977 can apply for a grant from the DES fund, even if now living abroad.

CONTRACTUAL BREACHES

The Carmen case

Just before a high-demand concert performance of *Operama Carmen* in Lisbon in 1999, the media announced the famous lead singer and other participants would not appear. Most consumers wanted full reimbursement of their tickets, the average price of which was €163.

Several consumers approached an Alternative Dispute Resolution (ADR) body but, as they did not have legal representation, did not produce the right evidence. They thus lost the dispute. Portuguese consumer organ-

isation DECO brought an opt-out, collective redress court action representing all affected consumers. Simultaneously they entered negotiations with the companies involved. However, the companies used this time to disappear and avoid reimbursement to the affected consumers.

This is a clear example of how ADR procedures are a welcome tool, but often run the risk of insufficient results. In contrast, the court in the collective redress case ordered a full reimbursement of tickets.

OVERCHARGING FOR SERVICES

The Portugal Telecom case

In 1999, *Portugal Telecom* introduced an activation fee which contravened Portuguese law.

DECO instigated a group action against *Portugal Telecom* who was ordered to refund the activation fee to all consumers concerned. This amounted to **€120 million**. Due to the practical difficulty of financially compensating

each of the large number of affected persons (**almost 2 million**), the award took the form of free weekend phone calls for a stipulated time period.

By helping such a vast number of consumers, the award demonstrated the efficiency of collective redress in providing a streamlined solution for multiple victims.

REFUND OF UNDUE CHARGING

The English School cases

An English school abroad, *Academia Opening*, systematically required payment in advance of classes. More than 50% of students - almost **42,000** people - used a credit provider approved by the school to do so. When the school closed abruptly, Spanish and Portuguese students were asked to continue payments in their entirety.

In response, Spanish consumer group OCU brought a group action against *Academia Opening* and four credit

providers aiming to rescind the students' contracts due to the shutdown.

The court decision **fully recognised** the complaints and ordered a refund of €50,000 plus interest paid by the victims since August 2003.

DECO, the Portuguese consumer organisation was also successful in securing victim reimbursement via a parallel action in Portugal.

DEFECTIVE SERVICES

The Electricity case

After OCU took action, Spanish electricity providers *FECSA-Endesa* and *REE* were found guilty of serious negligence in maintaining the network, which prompted an electricity blackout in 2007 and affected more than 300,000 consumers.

An **opt-out method** was used and resulted in an automatic 10% bill

discount and an option to apply for further financial compensation. This ranged from €122 for users who suffered the blackout for up to 11 hours, to €300 for those stricken for over 36 hours.

BANKRUPTCY LIABILITIES

The Riegerbank case

Significant property losses were suffered by consumers when Austria's *Riegerbank* was declared insolvent in 2000. In the wake of the bankruptcy, consumers saw only a 4% investment reimbursement, effectively losing their capital.

The total shortfall estimate was €95 million and the average **individual loss €80,000**. Some 1,200 persons were affected by the bankruptcy and 820 were represented in the

resultant opt-in collective action by Austrian consumer organisation VKI. Claimants were obliged to contribute a fee - in order to dissuade those with no intention of serious participation in proceedings.

Interestingly, this case was a cross-border case where 5% of parties were foreign nationals, mainly German, Swiss, Slovakian, Slovenian and Croatian. They were permitted to join the action and a decision is pending.

TRAVEL PROBLEMS

The Air Olympic case

2003 saw the bankruptcy of the airline *Air Olympic*, leaving hundreds of passengers stranded in airports across Europe and forcing them to make their way home entirely independently and at their own expense.

A criminal investigation was launched into the illegal practices of the owners. Subsequently, a passenger initiated a private group action in Sweden

claiming approximately €300,000 for the 700 passengers. As their names and addresses were easily available from the criminal case, the court was able to notify each individually. A healthy majority of 500 people opted in. Just before the case was contested the parties reached a settlement of approximately €70,000. The court confirmed the settlement in a judgment in July 2007.

ANTI-TRUST/PRICE-FIXING

The JJB Football case

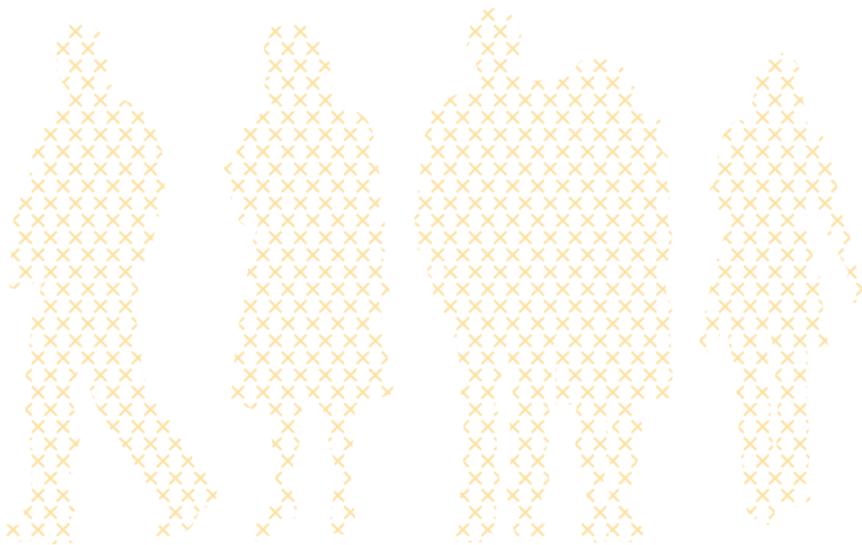
The UK's Office of Fair Trading (OFT) launched an enquiry in 2001 into the price fixing of replica football shirts.

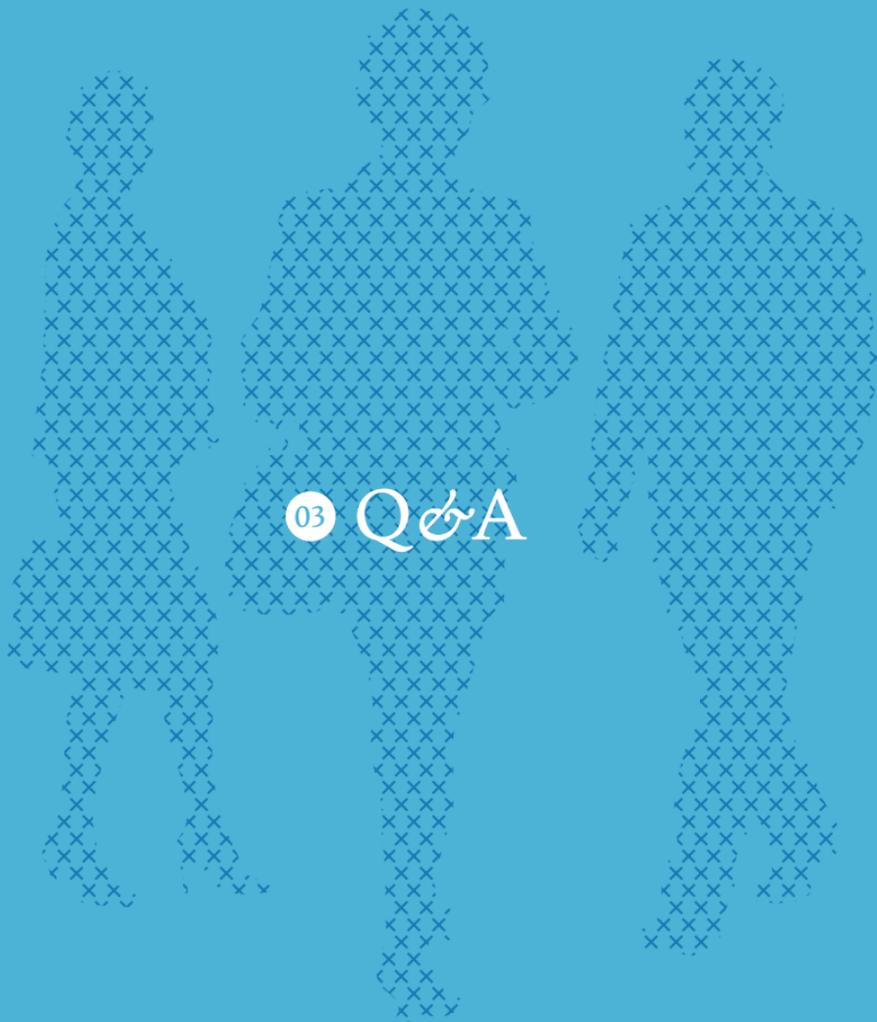
The OFT decided in 2003 that the retailer *JJB Sports* and others had breached the UK's Competition Act by agreeing to fix the price of certain England and Manchester United football shirts.

UK consumer organisation Which? estimated that **2 million** consumers

had been harmed by the cartel and in 2007 initiated a collective claim for damages against *JJB*, who were centrally involved.

A fair level of compensation for consumers was settled in January 2008: £20 for those who opted in and £10/£5 for the consumers who did not join the action but could provide evidence that they had bought shirts.





03 Q&A

WHAT IS COLLECTIVE REDRESS?

It is a legal procedure enabling many victims of the same harm or loss to obtain compensation by

way of a single group application to court.

WHAT WOULD IT SOLVE?

Collective Redress should enable all victims – whether physical, financial, commercial, environmental, services or product related – to be represented in court in a uniform action. It should also be an ‘opt-out’ system to ensure all affected persons are

included by default and have effective access to justice. Notably, collective redress is also a deterrent for commercial malpractice, thereby not only having the immediate remedial effect, but helping to drive up standards.

IS IT EXPERIMENTAL?

No. Various Collective Redress procedures are available in 15 Member States and the number is growing. These systems demonstrate not only the clear need for redress

tools, but their effectiveness in compensating victims who would otherwise not receive it, without harming the business sector.

DOES IT RISK REPLICATING SOME EXCESSES OF CLASS ACTIONS SEEN IN THE USA?

BEUC has long advocated that any European system should have carefully inbuilt safeguards to guarantee

only meritorious cases are considered and that exorbitant damages are avoided.

SAFEGUARDS SUCH AS?

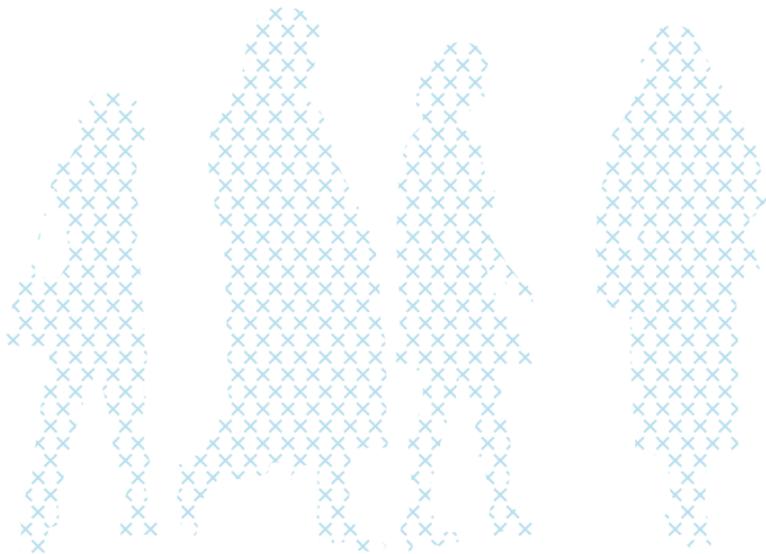
To begin with, cases must prove they are well-founded before being fully heard. In court, a judge – not a jury – will hear the facts and evaluate compensation, thereby deciding cases strictly in accordance with

the law. Thirdly, punitive damages would be unavailable. This prevents excessive settlements and victims would be compensated for the actual loss suffered.

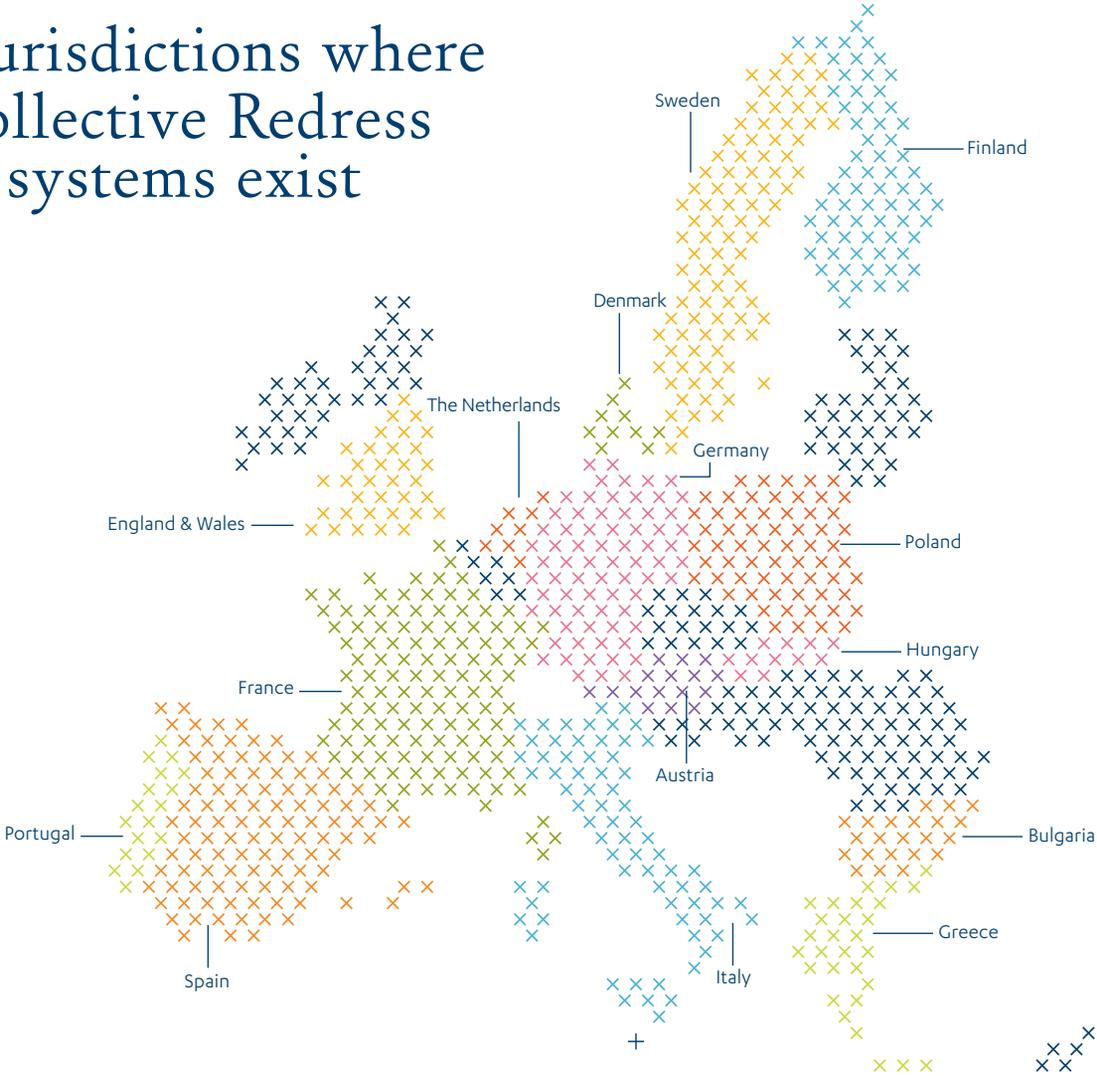
WHO WOULD IT HELP?

It is a basic tenet of justice that all EU citizens and consumers should have equal and appropriate access to justice. To help realise this, an EU Collective Redress law should be both cross-border and national. After all, whether a consumer is

Spanish or Lithuanian, British or Dutch, should not stop you being part of a cross-border action if they have all suffered harm in another EU country. If we achieve this, we achieve a just Europe for all 500 million consumers.



15 jurisdictions where Collective Redress systems exist



42 NATIONAL MEMBERS ACROSS EUROPE

Arbeiterkammer (AT) / Verein für Konsumenteninformation (AT) / Test-Achats - Test-Aankoop (BE) / Българска национална асоциация на потрибителите - ВНАР (BG) / Fédération Romande des Consommateurs (CH) / ΚΥΠΡΙΑΚΟΣ ΣΥΝΔΕΣΜΟΣ ΚΑΤΑΝΑΛΩΤΩΝ (CY) / Czech Association of Consumers (TEST) (CZ) / Stiftung Warentest (DE) / Verbraucherzentrale Bundesverband (DE) / Forbrugerrådet (DK) / EestiTarbijakaitse Liit (EE) / Confederación de Consumidores y Usuarios (ES) / Organización de Consumidores y Usuarios (ES) / Kuluttajaliitto – Konsumentförbundet ry (FI) / Kuluttajavirasto (FI) / Confédération de la Consommation, du Logement et du Cadre de Vie (FR) / Organisation Générale des Consommateurs (FR) / UFC - Que Choisir (FR) / Consumer Focus (GB) / Which? (GB) / Ένωση Καταναλωτών η Ποιότητα της Ζωής - ΕΚΠΟΙΩ (GR) / Γενική Ομοσπονδία Καταναλωτών Ελλάδος (GR) / Κέντρο Προστασίας Καταναλωτών - ΚΕΠΚΑ (GR) / Országos Fogyasztóvédelmi Egyesület (HU) / Hrvatski Savez Udruga za Zaštitu Potrošač – “Potrošač” (HR) / Consumers' Association of Ireland (IE) / Neytendasamtökin (IS) / Altroconsumo (IT) / Consumatori Italiani per l' Europa (IT) / Union Luxembourgeoise des Consommateurs (LU) / Latvijas Patērētāju interešu aizstāvības asociāciju (LV) / Organizacija na Potrosuvacite n Makedonija (MK) / Għaqda Tal - Konsumaturi (MT) / Consumentenbond (NL) / Forbrukerrådet (NO) / Federacja Konsumentów (PL) / Stowarzyszenie Konsumentów Polskich (PL) / Associação Portuguesa para a Defesa do Consumidor (PT) / Asociația pentru Protecția Consumatorilor din România (RO) / Sveriges Konsumenter (SE) / Zveza Potrošnikov Slovenije (SI) / Združenie Slovenských Spotrebiteľ' ov (SK)