



DG SANCO

Study regarding the problems faced by consumers in  
obtaining redress for infringements of consumer  
protection legislation, and the economic  
consequences of such problems

Final Report

Part I: Main Report

Submitted by Civic Consulting of the Consumer Policy Evaluation Consortium  
(CPEC)  
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## CONTENTS

<b>KEY CONCLUSIONS.....</b>	<b>4</b>
<b>EXECUTIVE SUMMARY.....</b>	<b>6</b>
<b>1 INTRODUCTION .....</b>	<b>12</b>
1.1 Objectives and scope of the study .....	12
1.2 Structure of the report.....	13
1.3 Acknowledgements .....	13
<b>2 METHODOLOGY .....</b>	<b>14</b>
<b>3 INCIDENCE OF CONSUMER MASS CLAIMS IN THE EU.....</b>	<b>17</b>
3.1 Overview.....	17
3.2 The relevance of data on the incidence of consumer mass claims/issues .....	17
3.3 Inadequate redress for mass claims/issues .....	18
3.4 Data on the incidence of mass claims/mass issues.....	20
<b>4 SECTORS IN WHICH IT IS MOST DIFFICULT TO OBTAIN REDRESS .....</b>	<b>21</b>
4.1 Overview.....	21
4.2 Existence of mass problems/issues and their observance in different sectors.....	22
4.3 Frequency of observed mass claims/issues reported by sector .....	23
4.4 Relevance of sectors .....	31
4.5 Conclusions .....	39
<b>5 OBSTACLES PREVENTING CONSUMERS FROM OBTAINING REDRESS .....</b>	<b>42</b>
5.1 Overview.....	42
5.2 Potential obstacles preventing consumers from obtaining satisfactory redress .....	42
5.3 Difficulties to obtain redress by obstacle .....	44
5.4 Relative importance of obstacles from a consumer viewpoint .....	70
5.5 Conclusions .....	76
<b>6 ECONOMIC CONSEQUENCES .....</b>	<b>78</b>
6.1 Introduction .....	78
6.2 General problems of redress in Consumer Law.....	79
6.3 Immediate economic consequences for consumers .....	87
6.4 Immediate economic consequences for businesses.....	94
6.5 Long-term economic consequences for the relevant markets .....	99
6.6 Economic consequences in cross-border situations .....	105
<b>ANNEX 1: QUESTIONNAIRE TO STAKEHOLDERS</b>	
<b>ANNEX 2: LIST OF RESPONDENTS TO THE QUESTIONNAIRES</b>	
<b>ANNEX 3: MASS CLAIMS/ISSUES DOCUMENTED</b>	
<b>ANNEX 4: LITERATURE</b>	
<b>ANNEX 5: DESCRIPTION OF EXEMPLARY CASES</b>	

## LIST OF TABLES

Table 1: Main law infringements reported in the financial services sector .....	24
Table 2: Main law infringements reported in the telecommunication sector .....	25
Table 3: Main law infringements reported in the package travel/tourism sector .....	25
Table 4: Main law infringements reported in the transport sector .....	26
Table 5: Main law infringements reported in the energy, water supply, heating sector .....	26
Table 6: Main law infringements reported in the food services/products sector .....	27
Table 7: Main law infringements reported in the pharmaceutical and cosmetics sector.....	27
Table 8: Main law infringements reported in other consumer goods sectors.....	28
Table 9: Main law infringements reported in the construction sector .....	28
Table 10: Main law infringements reported in relation to games of chance .....	29
Table 11: Main law infringements reported in relation to scams and pyramid schemes.....	29
Table 12: Main law infringements reported in the e-commerce sector .....	30
Table 13: Main law infringements reported in other sectors .....	30
Table 14: Summary of data concerning sectors.....	40
Table 15: Ranking of obstacles that prevent consumers from obtaining redress .....	76

## LIST OF FIGURES

Figure 1: Number of collective redress cases per sector .....	31
Figure 2: Sectors in which mass claims/issues were reported most often.....	32
Figure 3: Cross-border element of mass claims/issues collected .....	33
Figure 4: Sectors in which collective redress cases under the French action were brought .....	34
Figure 5: Number of potential mass claims/issues by sector documented by Consumer Direct...	37
Figure 6: Number of individual complaints by sector documented by Consumer Direct .....	38
Figure 7: Sectors in which it is most difficult for consumers to obtain redress.....	39
Figure 8: Major obstacles to obtaining satisfactory redress .....	71

## Key conclusions

The Directorate-General for Health and Consumers of the European Commission has commissioned a study to identify key issues faced by consumers in obtaining redress for mass claims/mass issues where multiple consumers have claims against the same seller/provider of services because of the same type of infringement of the consumer protection rules, which was conducted by Civic Consulting of the Consumer Policy Evaluation Consortium (CPEC). The study reaches the following main conclusions:

- ⇒ *There are a significant number of mass claims/issues reported from Member States, of which only a part have been subject to a collective redress proceeding.* In the case of large-scale, very low-value claims (so-called “scattered mass claims”), but also for a significant number of low- to medium-value claims, it is likely that only a small proportion of the affected consumers take action and are compensated. The incidence of mass claims/issues in EU Member States can serve as a proxy for identifying the number of relevant cases where at least a proportion of the affected consumers are likely not to have obtained satisfactory individual redress and therefore the collective damage suffered by the affected consumers in total has not been fully compensated.
- ⇒ *The most relevant sector concerning observed mass claims/issues is the financial services sector.* This is the assessment of non-business stakeholders in view of the difficulty for consumers to obtain redress in mass claims/mass issues. Also, collective redress cases and other mass claims/mass issues are most often reported from this sector. Complaints data from the UK underline, however, the importance of the telecommunications sector as source of potential mass claims/mass issues. Other very relevant sectors are other consumer goods, package travel/tourism and transport.
- ⇒ *The study has identified a total of 25 potential obstacles preventing consumers from obtaining satisfactory redress in mass claims/mass issues. The costs of litigation are the most important obstacle.* Other very important obstacles are: the formal requirements of existing mechanisms; the length of judicial proceedings; the lack of awareness/information among consumers; and the fact that in some countries no collective redress mechanism exists. Obstacles that are relevant in a cross-border context include language barriers, and the lack of knowledge/information concerning legislation, collective redress mechanisms and collective claims brought in other Member States.
- ⇒ *Obstacles to obtaining satisfactory redress lead to significant adverse immediate economic consequences for consumers.* These include: a) Consumers are subject to uncompensated loss; b) Economic behaviour of consumers can be distorted; and c) Efficiency gains of ADR schemes and collective redress mechanisms compared with individual legal action are not fully exploited. ADR schemes are most relevant for a subset of low- to medium-value mass claims in which liability is relatively easy to establish. Potentially, collective redress mechanisms are more broadly applicable, including for complex high-value claims, and also for very low-value claims (the latter mainly when intermediaries can take action without necessarily involving con-

sumers directly). Therefore more substantial efficiency gains for consumers are foregone if collective redress is unavailable or prevented by obstacles.

- ⇒ *There is a possibility that obstacles to the use of collective mechanisms prevent the occurrence of potential inefficiencies associated with these mechanisms.* Potential inefficiencies include the possibility of an increase in enforcement costs for consumers with little in return, and the bringing of less meritorious claims. However, the experience with existing collective redress mechanisms indicates that so far these problems have not been of relevance in the European context. Potential inefficiencies depend to a large extent on the design of the collective mechanisms and a failure to have safeguards preventing or mitigating such problems.
- ⇒ *Obstacles to obtaining satisfactory redress may also lead to adverse immediate economic consequences for businesses.* These include: a) Distortion of incentives for businesses to avoid infringements of Consumer Law; b) Harming business strategies using contractual warranties; and c) Efficiency gains of collective redress mechanisms for businesses are not fully exploited. A scale economy effect of collective redress is also relevant for the business's side, but it is certain to be smaller than on the side of the consumers. However, in the case of a multitude of individual claims (for example, related to a high-value mass claim/mass issue), obstacles to collective redress may cause additional costs to the affected business, as individual litigation is likely to lead to incoherence and uncertainty of legal consequences of business decisions and practices.
- ⇒ *Economic consequences of obstacles to obtaining satisfactory redress are likely to be more serious in cross-border situations, and are likely to lead to more distortions of consumer behaviour.* Due to higher costs of legal redress in cross-border transactions, the threshold amount below which rational consumers will refrain from pursuing enforcement of rights and remedies is expected to be higher than in the national context. Because of the low probability of cross-border redress actions, ex-ante quality commitments of sellers and provider of services are less likely to be effective in Member States other than those where the good/service is produced and sold. In this context of uncertainty, consumers might be strongly deterred from engaging in cross-border transactions at all.

## Executive summary

In its Consumer Policy Strategy for 2007-2013 the European Commission underlined the importance of effective mechanisms for seeking redress and announced that it would consider action on collective redress mechanisms for consumers. The Directorate-General for Health and Consumers of the European Commission has therefore commissioned a study to analyse the problems faced by consumers in obtaining redress for mass claims/mass issues where multiple consumers have similar claims against the same seller of goods or provider of services. The study has been conducted by Civic Consulting of the Consumer Policy Evaluation Consortium (CPEC), which has also prepared a complementary study concerning the evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union.<sup>1</sup>

This study consists of two Parts: Part I: Main report – contains the main results of the study; Part II: Consumer attitudes towards available means of redress – contains an analysis of evidence on the consumer behaviour towards available means of redress, based on the results of four focus group discussions with consumers, and on Eurobarometer data.

### Incidence of consumer mass claims in the EU

For the purposes of this study, data on mass claims/mass issues that occurred during the study period (roughly the last decade) has been collected from the following sources:

- Cases of collective redress brought before the courts of Member States where such mechanisms exist provide some data on the incidence of relevant mass claims/issues. A total of 326 cases from 10 EU Member States were analysed in depth.<sup>2</sup>
- Two surveys addressed to stakeholders' organisations in the EU-27, collected details on major mass claims/mass issues, in which multiple consumers had similar claims against the same seller/provider of services, but did not obtain satisfactory redress.
- This data, as well as mass claims/mass issues documented from other sources (scientific literature and international press) were included in the analysis. Cases were compiled in a database, which is provided in Annex 3 of this report, presenting data on an additional 144 mass claims/issues from 22 Member States.

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<sup>1</sup> Civic Consulting (2008): Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union - Final report, hereafter referred to as Civic Consulting (2008): Evaluation study.

<sup>2</sup> A total of 13 of the 27 EU Member States have already introduced collective redress mechanism (Austria, Bulgaria, Denmark, Finland, France, Germany, Greece, the Netherlands, Portugal, Spain, Sweden, the UK) or are about to do so (Italy). In 10 of them, consumer relevant cases have been brought and are documented in Civic Consulting (2008): Evaluation study, Part III.

The analysis of the data on mass claims/mass issues leads to the following conclusion:

- ⇒ *There are a significant number of mass claims/issues reported from Member States, of which only a part have been subject to a collective redress proceeding. In the case of large-scale, very low-value claims (so-called “scattered mass claims”), but also for a significant number of low- to medium-value claims, it is likely that only a small proportion of the affected consumers take action and are compensated. The incidence of mass claims/issues in EU Member States can serve as a proxy for identifying the number of relevant cases where at least a proportion of the affected consumers are likely not to have obtained satisfactory individual redress and therefore the collective damage suffered by the affected consumers in total has not been fully compensated.*

### **Sectors in which it is most difficult to obtain redress or which are otherwise of relevance**

Sectors in which it is most difficult to obtain redress or which are otherwise of relevance were identified through the following complementary methodological approaches: (1) Stakeholder assessment regarding the relevance of different sectors; (2) Assessment of frequency of observed and/or litigated mass claims/issues by sector; (3) Evaluation of two national datasets of specific relevance. This includes a full time series of more than a decade of a specific type of collective redress action in France, which gives a long-term picture of alleged mass claims/mass issues in a EU Member State. Finally the contractor had access to data from the comprehensive database of complaints collected by the Consumer Direct hotline of the UK Office of Fair Trading, and used this data to identify the incidence of potential mass claims/mass issues in selected sectors for the last available year (2007). On basis of the data collected the study concludes:

- ⇒ *The most relevant sector concerning observed mass claims/issues is the financial services sector. This is the assessment of non-business stakeholders in view of the difficulty for consumers to obtain redress in mass claims/mass issues. Also, collective redress cases and other mass claims/mass issues are most often reported from this sector. Complaints data from the UK underline, however, the importance of the telecommunications sector as source of potential mass claims/mass issues. Other very relevant sectors are other consumer goods, package travel/tourism and transport.*

### **Obstacles preventing consumers from obtaining satisfactory redress**

The availability of redress mechanisms in a given country does not imply that consumers obtain satisfactory compensation concerning mass claims/issues. Several obstacles discourage consumers from bringing claims individually, but also from joining collective redress procedures. The obstacles have been identified through interviews and expert assessments covering 15 Member States, focus group discussions with consumers in four Member States, a survey of stakeholder organisations, and a review of literature on consumer redress. In total, 25 potential obstacles are discussed, relating to five broad categories:

Obstacles relevant for all redress mechanisms

1. Lack of awareness/information among consumers on existing redress mechanisms and on the fact that their rights have been violated
2. Lack of motivation of consumers

Obstacles relevant for all judicial redress mechanisms (individual and collective):

3. Monetary costs of litigation
4. Length of court proceedings
5. Formal requirements of existing mechanisms
6. Complexity of judicial procedures
7. Actions not covered by consumers' legal expenses insurance
8. Inadmissibility of contingency/conditional fee

Obstacles relevant only for judicial collective redress mechanisms

9. Non-availability of collective redress mechanisms
10. Limits on types of entity that can bring collective actions
11. Lack of public support and other mechanisms to finance collective redress actions
12. Limited resources of consumer organisations
13. Lack of expertise of intermediaries to bring actions
14. Lack of judges experienced in case management
15. Entities bringing collective actions have problems in informing affected consumers
16. Difficulties with distribution of the awarded compensation

Obstacles relevant for Alternative Dispute Resolution:

17. Non-availability of ADR schemes
18. Businesspeople/businesses are not affiliated to ADR schemes
19. Difficulties in reaching agreement in ADR schemes that require mutual agreement

Specific obstacles relevant for cross-border claims related to all redress mechanisms:

20. Lack of knowledge of legislation and collective redress mechanisms in other Member States
21. Conflict among national legislations
22. No information about collective claims brought in other Member States
23. Difficulty to identify a defendant in another Member State
24. No standing of bodies to bring claim in another Member State or inability to join claims brought in another Member State
25. Language barriers, travel expenses and difficulties in providing adequate representation

Obstacles preventing consumers from obtaining satisfactory redress can be grouped according to their relevance from a consumer viewpoint. This was done taking into account the following data sources: (1) Assessment of stakeholder organisations from 23 Member States; (2) Focus group discussions in 4 Member States; and (3) Analysis of examples of cases of mass claims/mass issues where not all consumers obtained satisfactory redress. On basis of this analysis the study concludes:

- ⇒ *The costs of litigation are the most important obstacle preventing consumers from obtaining satisfactory redress in mass claims/mass issues.* Other very important obstacles are: the formal requirements of existing mechanisms; the length of judicial proceedings; the lack of awareness/information among consumers; and the fact that in some countries no collective redress mechanism exists. Obstacles that are relevant in a cross-border context include language barriers, and the lack of knowledge/information concerning legislation, collective redress mechanisms and collective claims brought in other Member States.

### **Economic consequences of factors preventing consumers from obtaining satisfactory redress**

The economic analysis conducted in the framework of this study leads to the following conclusions:

#### *Existence of threshold amounts for individual and collective action*

- ⇒ *Obstacles to obtaining satisfactory redress lead to threshold amounts for individual action (both legal action and ADR).* If the individual loss is lower than the threshold amount, rational consumers tend to refrain from action because the costs of individual action outweigh the likely benefits. In consequence, it is unlikely that consumers pursue effective remedies against firms that have infringed on consumer protection legislation in very low value claims. Even in low- to medium-value claims the threshold amounts for individual action lead to a low level of individual enforcement of consumer claims. Effective ADR schemes alleviate this problem to the extent that the disparity between individual costs and benefits is decreased.
- ⇒ *Obstacles to obtaining satisfactory redress also lead to threshold amounts for participation of consumers in collective actions, that are, however, lower than for individual action.* Lower threshold amounts for collective action lead to a higher level of enforcement of consumer claims. However, participation rates in collective actions concerning very low and low-value mass claims remain low, because related costs (in time, effort and money) deter consumers from participating. This does not apply to collective redress mechanisms where consumers do not have to opt in, or for mechanisms that are not aimed at compensating individual consumers (e.g. procedures for skimming-off profits).

*Economic consequences for consumers caused by obstacles to obtaining satisfactory redress*

- ⇒ *Obstacles to obtaining satisfactory redress lead to significant adverse immediate economic consequences for consumers.* These include: a) Consumers are subject to uncompensated loss; b) Economic behaviour of consumers can be distorted; and c) Efficiency gains of ADR schemes and collective redress mechanisms compared with individual legal action are not fully exploited. ADR schemes are most relevant for a subset of low- to medium-value mass claims in which liability is relatively easy to establish. Potentially, collective redress mechanisms are more broadly applicable, including for complex high-value claims, and also for very low-value claims (the latter mainly when intermediaries can take action without necessarily involving consumers directly). Therefore, more substantial efficiency gains for consumers are foregone if collective redress is unavailable or prevented by obstacles.
- ⇒ *There is a possibility that obstacles to the use of collective mechanisms prevent the occurrence of potential inefficiencies associated with these mechanisms.* Potential inefficiencies include the possibility of an increase in enforcement costs for consumers with little in return, and the bringing of less meritorious claims. However, the experience with existing collective redress mechanisms indicates that so far these problems have not been of relevance in the European context. Potential inefficiencies depend to a large extent on the design of the collective mechanisms and a failure to have safeguards preventing or mitigating such problems.

*Economic consequences of the obstacles to obtaining satisfactory redress for businesses*

- ⇒ *Obstacles to obtaining satisfactory redress may also lead to adverse immediate economic consequences for businesses.* These include: a) Distortion of incentives for businesses to avoid infringements of Consumer Law; b) Harming business strategies using contractual warranties; and c) Efficiency gains of collective redress mechanisms for businesses are not fully exploited. A scale economy effect of collective redress is also relevant for the business's side, but it is certain to be smaller than on the side of the consumers. However, in the case of a multitude of individual claims (for example, related to a high-value mass claim/mass issue), obstacles to collective redress may cause additional costs to the affected business, as individual litigation is likely to lead to incoherence and uncertainty of legal consequences of business decisions and practices.

*Economic consequences of the obstacles to obtaining satisfactory redress for the relevant markets*

- ⇒ *Obstacles to obtaining satisfactory redress are expected to have structural effects on consumer markets.* These include: a) Excessive consumption decisions of consumers given the levels of risk of uncompensated losses that prevail; b) Creation of incentives for inefficient behaviour of businesses and implicit subsidy to fraudulent firms; and c) The "race to the bottom" caused by competition among undeterred,

fraudulent market operators. Structural effects are most relevant when obstacles affect all types of redress mechanisms offered by the legal system.

⇒ *Economic consequences of obstacles to obtaining satisfactory redress are likely to be more serious in cross-border situations, and are likely to lead to more distortions of consumer behaviour.* Due to higher costs of legal redress in cross-border transactions, the threshold amount below which rational consumers will refrain from pursuing enforcement of rights and remedies is expected to be higher than in the national context. Because of the low probability of cross-border redress actions, ex-ante quality commitments of sellers and provider of services are less likely to be effective in Member States other than those where the good/service is produced and sold. In this context of uncertainty, consumers might be strongly deterred from engaging in cross-border transactions at all.

# 1 Introduction

In its Consumer Policy Strategy for 2007-2013 the European Commission underlined the importance of effective mechanisms for seeking redress and announced that it would consider action on collective redress mechanisms for consumers.

The Directorate-General for Health and Consumers of the European Commission has therefore commissioned a study to analyse the problems faced by consumers in obtaining redress for mass claims/mass issues where multiple consumers have similar claims against the same seller of goods or provider of services. The study has been conducted by Civic Consulting of the Consumer Policy Evaluation Consortium (CPEC), which has also prepared a complementary study concerning the evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union.<sup>3</sup>

## 1.1 Objectives and scope of the study

The objective of this study is to identify the problems related to consumer redress and evaluate the economic and other possible harm/disadvantages caused thereby on consumers, competitors and on the relevant market. This concerns the following specific tasks:

1. *Collection of evidence on the consumer behaviour towards available means of redress.* The contractor is required to provide evidence on the consumer behaviour towards available means of redress. The study will draw an overview of all possible objective/subjective reasons which may prevent consumers from obtaining redress.
2. *Providing information on real cases/test cases.* The contractor is required to provide information on real cases/examine test cases where consumers were not obtaining satisfactory redress because of the factors identified under task 3.
3. *Identification of factors that prevent consumers from obtaining satisfactory redress.* The contractor should ascertain whether there are factors that prevent consumers from obtaining satisfactory redress when they are sold goods/services which do not comply with consumer protection legislation and/or are sold in a way that is not in compliance with consumer protection legislation, and identify these factors. The contractor should also examine their relative importance from a consumer viewpoint. Concerning the analysis, a special focus will be given to cross-border situations.
4. *Identification of sectors in which it is difficult to obtain redress.* In addition, the contractor will identify the sectors in which it is most difficult to obtain redress or which are otherwise of relevance for the study, for example, because of the large number of consumers affected. The contractor will determine in agree-

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<sup>3</sup> Civic Consulting (2008): Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union - Final report, hereafter referred to as Civic Consulting (2008): Evaluation study.

ment with the Commission the most relevant sectors (such as financial services and holidays markets), and identify the problems faced by the consumers in these sectors. Concerning the analysis, a special focus will be given to cross-border situations.

5. *Examination of the economic consequences of factors and problems identified.* All the factors and the problems identified will be examined for their economic consequences on consumers, competitors and the functioning of the relevant market and the internal market. Concerning the analysis, a special focus will be given to cross-border situations.

## 1.2 Structure of the report

This study consists of two Parts:

Part I: Main report – contains the main results of the study.

Part II: Consumer attitudes towards available means of redress – contains an analysis of evidence on the consumer behaviour towards available means of redress, based on the results of four focus group discussions with consumers, and on Eurobarometer data.

The structure of Part I of the report is as follows:

- Section 2 details the methodology employed for the analysis.
- Section 3 investigates the incidence of consumer mass claims in the EU.
- Section 4 examines the sectors in which it is difficult to obtain redress.
- Section 5 analyses the obstacles preventing consumers from obtaining satisfactory redress.
- Section 6 provides an analysis of economic consequences on consumers, competitors and relevant markets.

The evidence on consumer behaviour towards available means of redress is presented in Part II of this report.

## 1.3 Acknowledgements

Civic Consulting would like to express its gratitude to all supporters, without whom this study would not have been possible; we would like to thank the Ministries and consumer protection authorities, the European Consumer Centres, the consumer organisations and business associations, as well the legal practitioners and academics who provided valuable input through EU-wide surveys.

We are particularly grateful for the time and efforts the Office of Fair Trading dedicated to this study to provide in-depth information on complaints received. Finally, we thank DG SANCO of the European Commission for the support provided throughout the study.

## 2 Methodology

Methodological tools employed for this study include:

- ❑ Collection of data on mass claims/mass issues, based on information provided by stakeholders, desk research and evaluation of relevant databases, including relevant press reports on mass claims/issues;
- ❑ In-depth interviews with stakeholders;
- ❑ Expert assessments concerning obstacles preventing consumers from obtaining satisfactory redress;
- ❑ Complementary EU-wide surveys of business and non-business stakeholders;
- ❑ Focus group discussions with consumers in four Member States (Austria, France, Italy, Portugal);
- ❑ Analysis of exemplary cases of mass claims/mass issues;
- ❑ Economic analysis.

The methodological tools are described in more detail below:

### ***Collecting data on mass claims/mass issues***

In order to collect information on mass claims/mass issues and related problems to obtain satisfactory redress, the contractor reviewed relevant reports, academic papers and studies, and articles in the international press.<sup>4</sup> Information on mass claims/issues was also provided by stakeholders.

On the basis of the information collected, a database on mass claims/mass issues has been developed.<sup>5</sup> This database details for each mass issue identified data related to, among other factors, the sector, the category of law infringement, the total number of consumers harmed, the average damage for each individual consumer, the total damage suffered by all affected consumers, and cross-border aspects, where available. This database is presented in Annex 3 of this report.

In addition, the contractor has analysed for this study collective redress cases documented as part of the evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union.<sup>6</sup>

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<sup>4</sup> Research focused on online sources of information (such online editions of international newspapers, websites of consumer associations, ECC Network websites, FINNET website, websites of regulatory authorities in the field of telecommunications and financial services, websites of other authorities and organisations responsible for consumer issues), as well as online and offline academic publications.

<sup>5</sup> In this study, a mass claims/mass issue is defined as a situation in which 10 or more consumers have suffered damage from the same seller of goods/provider of services because of the same type of law infringement.

<sup>6</sup> See Civic Consulting (2008): Evaluation study.

### ***In-depth interviews***

A total of 52 in-depth stakeholder interviews concerning obstacles and means available for redress in nine Member States have been conducted, typically with representatives of the Ministries of Justice and Consumer Protection, a consumer organisation, a business organisation, a judge, and a lawyer.<sup>7</sup> The data collected through these interviews has been used for all elements of the analysis, but was especially helpful for the analysis of obstacles preventing consumers to obtaining satisfactory redress. A total of 14 additional interviews in six Member States have been conducted to collect data on specific exemplary cases of mass claims/mass issues presented (see below).

### ***Expert assessments***

Expert assessments concerning obstacles preventing consumers from obtaining satisfactory redress in mass claims/mass issues was collected from the team of legal experts that analysed the situation in 15 Member States.<sup>8</sup>

### ***Surveys***

Two complementary EU-wide surveys of business and non-business stakeholders were circulated to collect additional data on problems in obtaining redress for mass claims/issues (see Annex 2 for a lists of respondents).<sup>9</sup> Respondents to the surveys include stakeholders from Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

### ***Focus group discussion***

The focus group discussions were conducted in May 2008 in four EU Member States, namely Austria, Italy, France and Portugal. The focus groups allowed us to examine the relative importance of the factors identified from a consumer viewpoint, and also provided evidence of consumer behaviour towards all available means of redress (see Part II of this report).

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<sup>7</sup> The interviews were conducted to collect data for this study and for the complementary evaluation of collective redress mechanisms. The detailed list of interviewees is included in Civic Consulting (2008): Evaluation study, Part II – country studies.

<sup>8</sup> Austria, Bulgaria, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Lithuania, the Netherlands, Portugal, Spain, Sweden and the UK.

<sup>9</sup> Written statements of stakeholders were also taken into consideration in the analysis.

***Exemplary cases***

The results of the analysis of selected example cases were used to assess the relative importance of the obstacles identified and to assess the economic consequences of problems faced by the consumers in the affected sectors for consumers, competitors and the functioning of the internal market (see Annex 5 of this report).

***Economic analysis***

An economic analysis was employed to examine factors and problems identified for their economic consequences on consumers, competitors and the functioning of the relevant markets.

### **3 Incidence of consumer mass claims in the EU**

*Description of task provided in TOR: The contractor is required to provide information on real cases [...] where consumers were not obtaining satisfactory redress [...]*

#### **3.1 Overview**

This section discusses in three sub-sections:

- ❑ The relevance of data on the incidence of consumer mass claims/issues;
- ❑ The issue of inadequate redress in mass claims/issues; and
- ❑ The data on the incidence of mass claims/issues that has been collected in the framework of this study.

#### **3.2 The relevance of data on the incidence of consumer mass claims/issues**

In Consumer Law, enforcement of rules and adequate remedies against infringement are crucial to the smooth functioning of consumer markets. Given the dispersed nature of the harmful effects of infringing behaviours and practices, sometimes a single infringement by a seller or a service provider may cause damage to multiple consumers. At the same time, in many such mass issues consumers suffer a low level of individual loss. Therefore, by reason of the peculiarities of the dispersed effects of the illegal practices and the features of the affected parties, the traditional enforcement mechanisms of private law and litigation face significant obstacles when multiple aggrieved consumers seek redress against one particular businessperson or company for an infringement of the law.

In theory, consumers who suffer a detriment because of a mass claim/mass issue<sup>10</sup> could obtain redress through different means, such as collective redress mechanisms, individual negotiations with seller/service provider, ADR schemes or individual litigation through ordinary court procedures. Each of the above-mentioned means of redress has specific features that may facilitate or impede multiple aggrieved consumers in obtaining satisfactory compensation for damage suffered.

It could be expected, when speaking of mass consumer-related issues, that collective redress mechanisms would be an effective means for seeking compensation. Indeed, as will be shown in a later section of this report (see section 6), collective actions may achieve some economies of scale in litigating claims, and may contribute to reducing the incentive problems that impede independent legal action by individual consumers. It can therefore be expected that consumers in countries that do provide a collective redress mechanisms suffer a reduced detriment arising from mass claims/issues, com-

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<sup>10</sup> For the purposes of this study, a mass claim/issue is defined as a situation where multiple consumers (here understood as meaning 10 or more consumers) suffer an individual damage through a business-to-consumer commercial transaction with the same seller of goods or provider of services because of the same type of infringement of consumer protection legislation.

pared with countries that do not have such mechanisms. This reduction of consumer detriment (that is, the consumer benefit) through collective redress mechanisms has been analysed in depth in a separate report by Civic Consulting and Oxford Economics.<sup>11</sup> One factor that determines the reduction of consumer detriment through a given collective redress mechanism in practice is its effectiveness and efficiency. Clearly a mechanism that is hardly or not at all used because of its real or perceived impracticality or related financial risk, as is the case, for example with the UK competition action or the French joint representative action for investors,<sup>12</sup> cannot reduce the consumer detriment caused by the infringement of consumer protection legislation. Currently, collective redress mechanisms in the EU are used only to a limited extent. In total, the above-mentioned study identifies 326 documented cases of collective redress for the study period (roughly the last decade) in those EU Member States that have introduced a collective redress mechanism. Reasons for this relatively limited use of collective redress mechanisms in the EU include the existence of obstacles limiting their effectiveness and efficiency, and the very recent introduction of such mechanisms in some Member States.<sup>13</sup>

In addition, other factors may impede aggrieved consumers in seeking compensation through individual means of redress, that is, individual court procedures or ADR schemes, or in cases that involve a cross-border aspect. Specific obstacles to the use of all types of redress mechanism are identified in section 5 of this report.

If obstacles to the use of consumer-related redress mechanisms were to be reduced or eliminated, it is likely that the number of consumer redress cases, and in particular collective redress cases, would increase, with the theoretical upper limit being the total number of consumer-relevant mass claims/mass issues occurring. It is therefore crucial to know the incidence of consumer-relevant mass claims/issues that occur in EU Member States.

### **3.3 Inadequate redress for mass claims/issues**

As already mentioned, consumers who suffer a detriment in a mass claim/issue could obtain redress through different means. The potential economic effects of obstacles to satisfactory redress for consumers are most severe in cases where all means of redress are not available at all or are of only limited relevance in practice (because of

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<sup>11</sup> See Civic Consulting (2008): Evaluation study, Part I.

<sup>12</sup> See Civic Consulting (2008): Evaluation study.

<sup>13</sup> The dates of introduction of the relevant collective redress mechanisms in EU Member States are as follows: Austria (first case filed in 1994), Bulgaria (1999, 2006), Denmark (2008), Finland (2007), France (1973, 1992, 1994), Germany (2002, 2004, 2005), Greece (2007), Italy (probably 2009), Netherlands (2005), Portugal (1995), Spain (2000), Sweden (2003), United Kingdom (1998, 2000). For a detailed analysis of the reasons for the limited use of the existing collective redress mechanisms, also see Civic Consulting (2008): Evaluation study.

the obstacles to redress encountered), so that a large number of affected consumers with justified claims are not fully compensated for their individual damage.<sup>14</sup>

In practice, however, there are some methodological difficulties in identifying the extent to which redress is not satisfactory for individual consumers and in providing relevant statistical data. This is mainly related to the fact that it is difficult to define precisely what a “justified claim” is in the absence of a court decision, and the perspective of what is justified or not is likely to differ significantly between representatives of different stakeholder groups, for example, between consumer organisations and business associations. Also, the degree of justification for a claim is likely to differ for individual consumers who suffered from a transaction with the same seller of goods/provider of services because of the same type of infringement of legislation, that is, some consumers may have more justified claims than others. Therefore in this study the collective perspective is assumed, and the full collective damage suffered by the affected population of consumers as a consequence of a transaction with the same seller of goods/provider of services because of the same type of infringement of legislation is considered. The experience with existing consumer-related redress mechanisms clearly indicates that only some of the affected consumers are likely to take individual action, depending on the value of the claim and the obstacles encountered in obtaining redress. Under a certain threshold amount rational consumers are likely to refrain from taking action at all, because of the transaction costs involved. Even above this threshold, only in very exceptional high-value cases, for example involving financial services, all or at least most of the victims are likely to seek redress individually (for a discussion of threshold amounts, see section 6.2.3). In the case of large-scale, very low-value claims<sup>15</sup> (so-called “scattered mass claims”), but also for a significant number of low- to medium-value claims,<sup>16</sup> it is likely that only a small proportion of the affected consumers take action and are compensated.<sup>17</sup> The incidence of mass claims/issues in EU Member States can serve as a proxy for identifying the number of relevant cases where at least a proportion of the affected consumers are likely not to have obtained satisfactory individual redress, and therefore the collective damage suffered by the affected consumers in total has not been fully compensated.

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<sup>14</sup> The definition used here to indicate “unsatisfactory redress” – consumers with justified claims that are not fully compensated for their individual damage - has been established by the contractor and is used throughout the study.

<sup>15</sup> Very low-value claims are claims that are less than 300 Euro. See section 4.6.1 of Civic Consulting (2008): Evaluation study, Part I.

<sup>16</sup> Low- to medium-value claims are claims that are comprised between 300 Euro and 17,000 Euro. See section 4.6.1 of Civic Consulting (2008): Evaluation study, Part I.

<sup>17</sup> See section 6.2.3 of this report and Civic Consulting (2008): Evaluation study, Part I.

### 3.4 Data on the incidence of mass claims/mass issues

For the purposes of this study, data on mass claims/mass issues that occurred during the study period (roughly the last decade) has been collected from the following sources:

- Cases of collective redress in Member States where such mechanisms exist provide some data on the incidence of relevant mass claims/issues. A total of 326 cases from 10 EU Member States were documented and analysed in depth.<sup>18</sup>
- In two surveys addressed to stakeholders' organisations in the EU-27, details on major mass claims/mass issues were collected, in which multiple consumers had similar claims against the same seller/provider of services, but did not obtain satisfactory redress. This data, as well as mass claims/mass issues documented from other sources were included in the analysis, including cases documented in scientific literature and the international press. Cases were compiled in a database, which is provided in Annex 3 of this report,<sup>19</sup> presenting data on an additional 144 mass claims/issues from 22 Member States.

The analysis in the previous sub-sections leads to the following conclusion:

1. ***There are a significant number of mass claims/issues reported from Member States, of which only a part have been subject to a collective redress proceeding.*** In the case of large-scale, very low-value claims (so-called "scattered mass claims"), but also for a significant number of low- to medium-value claims, it is likely that only a small proportion of the affected consumers take action and are compensated. The incidence of mass claims/issues in EU Member States can serve as a proxy for identifying the number of relevant cases where at least a proportion of the affected consumers are likely not to have obtained satisfactory individual redress and therefore the collective damage suffered by the affected consumers in total has not been fully compensated.

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<sup>18</sup> See Civic Consulting (2008): Evaluation study, Part III - collective redress cases collected.

<sup>19</sup> Please note that the inclusion in the database does not indicate any judgment on the merits of a specific case.

## 4 Sectors in which it is most difficult to obtain redress or which are otherwise of relevance

*Description of task provided in TOR: The contractor will identify the sectors in which it is most difficult to obtain redress or which are otherwise of relevance for the study, e.g. because of the large number of consumers affected. The contractor will determine, in agreement with the Commission, the most relevant sectors (such as financial services and holidays markets), identify the problems faced by the consumers in these sectors, and examine their economic consequences on consumers, competitors and the functioning of the internal market.*

### 4.1 Overview

In specific sectors of the economy, it can be more difficult to obtain satisfactory redress in mass claims/issues (e.g. because causality may be difficult to prove, as is often the case in the pharmaceuticals sector), or the number of consumers affected by a mass issue may be high (as is frequently the case in the telecommunications sector). This depends on a wide variety of factors, including that existing collective redress mechanisms may not cover a specific sector (for example, securities), or that the likelihood of mass claims/issues could be greater in some sectors, for example because a service involves new technologies, etc. For the purposes of this study, sectors in which it is most difficult to obtain redress or which are otherwise of relevance for the study are identified through the following complementary methodological approaches:

- ❑ Stakeholder assessment regarding the relevance of different sectors. This is basically an expert assessment, based on data on complaints and mass claims/issues available to the stakeholders consulted, which include consumer organisations, consumer protection authorities and law firms.
- ❑ Assessment of frequency of observed and/or litigated mass claims/issues by sector. This assessment is based on the mass claims/issues documented in the database developed for this study (see Annex 3), and a database of collective redress cases developed for a separate study.<sup>20</sup>
- ❑ Finally, two national datasets of specific relevance were evaluated. This includes a full time series of more than a decade of a specific type of collective redress action in France,<sup>21</sup> which gives a unique long-term picture of alleged mass claims/mass issues in a EU Member State. And finally the contractor had access to data from the comprehensive database of complaints collected by the Consumer Direct hotline of the UK Office of Fair Trading, and could use this data to identify the incidence of potential mass claims/mass issues in selected sectors for the last available year (2007).

All listed approaches provide insight as to the relevance of different sectors where mass claims/issues have been observed.

<sup>20</sup> See Civic Consulting (2008): Evaluation study, Part III.

<sup>21</sup> French actions for the financial reparation of the consumer collective interest.

## 4.2 Existence of mass problems/issues and their observance in different sectors

When trying to identify sectors in which it is most difficult to obtain redress or which are otherwise of relevance for the study, it is important to make a clear distinction between, on the one hand, the existence of mass consumer problems/issues, and, on the other hand, the observance of mass consumer problems/issues. It is possible that mass consumer problems are in practice easier to detect in consumer services than in the sale of consumer goods. For services such as package travel or insurance services it is often quite easy to identify when the legal rights of a large group of consumers have been infringed. In addition, it is also relatively easy to identify the specific consumers involved. For example, in the case of a specific package tour where a flight was delayed for many hours, all the consumers who are affected are precisely known to the operator.

In the sale of consumer goods, the observation of mass problems is more difficult. When a consumer good is defective, there are in fact two alternative explanations. First, the reason may be simply individual, which means that other similar products are not defective. The second possibility is, however, that all the products in the same production batch carry the same defect. In practice, it is often difficult to observe when a defect is only individual, or when it is question of a much larger problem which has clear collective effects. A consumer who has bought a defective product is in most cases unable to find out whether his or her problem is unique, or whether there are hundreds, or even thousands, of other consumers who have faced similar problems.

In addition, a consumer may be unsure whether the product in question is really defective or not. A seller or producer may try to convince the consumer that the observed defect is caused by the use or misuse of the product. Even if a seller or producer admits that an individual product is defective, there is often little incentive to openly state that this is a mass problem.<sup>22</sup>

In most Member States a systematic consumer complaint handling and registration system at the national level does not exist. For this reason it is very difficult to obtain objective information on the collective dimension of complaints, including those relating to defective products. In addition, independent product tests are not available in all Member States. In the discussion regarding the settlement of mass consumer claims/issues, the focus has often been on consumer services (for example, telecommunications, financial services, tourism). It has to be noted that these are also the

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<sup>22</sup> The following example can be used to illustrate the situation. In a Nordic country the television broadcasting system was digitalized during the last years, leading to the need for households to purchase a digital receiver for every television set. Many models of the digital receivers had reportedly had constant problems with subtitles (foreign movies are generally presented in original language, with translation in subtitles). However, despite the fact that these problems had occurred to many consumers, producers or importers did not voluntarily inform consumers about these problems, and continued marketing these appliances. Finally, test results indicated that many receivers were defective, with the problems with subtitles being the most frequent defect. This example shows rather clearly the problems related to observance of mass problems/issues in the sale of consumer goods. Without extensive testing systems, organized by consumer organisations or authorities, it is in practice very difficult for consumers to find out whether a defect in a product is typical for all similar products.

sectors where the collective aspects of a dispute are relatively easy to recognise. It is possible that in other sectors, where the collective dimension of a problem is less easy to detect, such as in the sale of consumer products, there might exist a significant number of “invisible” mass problems/issues. The following analysis of data concerning relevant sectors therefore relates only to the observed cases, which are likely to be the tip of the iceberg rather than providing the complete picture. It is obvious that more comprehensive and standardised data collection procedures concerning complaint documentation and handling are required across Member States, including regarding a possible collective dimension of specific problems.<sup>23</sup>

### **4.3 Frequency of observed mass claims/issues reported by sector**

The following sub-sections describe the sectors and the nature of infringements of the observed mass claims/issues compiled in the database presented in the Annex.<sup>24</sup> Data from 22 Member States has been included in the mass claim/mass issue database: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and the UK. In addition, data collected for the purposes of the evaluation of the effectiveness and the efficiency of collective redress mechanisms in the EU is taken into consideration and flows into the analysis in this section.<sup>25</sup>

#### **4.3.1 Financial services**

Mass claims/issues in the sector of financial services have been reported for a number of Member States, including, Austria, Belgium, Bulgaria, the Czech Republic, Denmark, France, Finland, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Spain, Sweden, and the UK.

Main law infringements reported in this sector are summarised in the following table.

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<sup>23</sup> It is notable that the recently introduced consumer scoreboard of the European Commission includes a section on consumer complaints, thereby indicating the recognition of this need at EU level.

<sup>24</sup> Infringements of competition law were only considered in exceptional cases, as the issue of competition law infringements is subject to the recently published White Paper on Damages Actions for Breach of the EC antitrust rules (COM(2008) 165 of 2.4.2008) and related supporting documentation.

<sup>25</sup> This includes country reports, country interviews and the database on collective redress cases. See Civic Consulting (2008): Evaluation study.

**Table 1: Main law infringements reported in the financial services sector**

Infringement
Fraudulent estimation of price of shares
Fraud committed with exchange rates of foreign currencies
Illegal charges collected by banks
Consumers have been charged bank interchange fees at a level not based on objective criteria, such as costs borne by banks for the development and functioning of the payment system
Loss suffered by shareholders/policyholders in the case of bankruptcy of company
Lack of payment of interest; Lack of reimbursement
Unfair terms and conditions in an insurance contract, imposing additional costs on insured consumers or giving insurance companies strong rights and little liability
Unfair terms in brokerage contracts - clauses limiting brokers' responsibility for any damage inflicted on their customers; exclusion of consumers' right to a refund of fees paid in advance in the case of early termination of contract
Loss of investments as a result of fraud
Fees for unsolicited financial services
Misleading information regarding financial services and the high risk of investments
Charging consumers for the policy costs of loan insurance agreements that banks sign with insurance companies

Source: Database compiled by Civic Consulting

#### **4.3.2 Telecommunications**

The telecommunications sector is often reported as a sector in which multiple consumers suffer from the same damage caused by the same seller of goods/provider of services because of the same type of infringement of the law.

Data on observed mass claims/issues reveals that in this sector mass consumer claims have occurred in the majority of the Member States for which cases were collected. This includes Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Luxembourg, Poland, Portugal, Spain, Sweden, and the UK. The main law infringements reported for this sector are summarised in the table on the next page.

**Table 2: Main law infringements reported in the telecommunication sector**

Infringement
Misleading advertisement that a service offered via the internet will be provided free of charge
Misleading advertisement for free telephone calls or mobile phone connected services
Lack of information required by Distance Selling Directive 97/7/EC
Illegal use of personal data
Unreasonably overcharging consumers for telecommunication services
Failure to supply telecommunication services of a satisfactory standard/quality
Unfair commercial practices - hidden prices of services offered on internet sites, sending bills for alleged provided services without prior agreement with consumers
Unfair terms in contracts for telecommunication services, imposing unreasonable additional charges/obligation for payments on consumers, even if the supplier defaulted or suspended service
Unfair terms in contract for provision of satellite television services

Source: Database compiled by Civic Consulting

#### 4.3.3 **Package travel/tourism (excluding transport)**

Cases in which multiple consumers suffered damages in the tourism sector (including package travel, holidays and tours - but excluding transport - and timeshare) are reported from a number of countries, including, Austria, Belgium, the Czech Republic, Finland, France, Greece, Ireland, Malta, the Netherlands, Slovenia, Spain, and Sweden. The main law infringements reported in this sector are summarised in the table below.

**Table 3: Main law infringements reported in the package travel/tourism (excluding transport) sector**

Infringement
Personal injuries caused by improper contractual performance
Unfair commercial practices in selling package travel – this may involve, e.g. pressure exerted on consumers to sign contracts, provide credit card details, and pay deposits
Misleading information about prices of travel and holidays
Unfair contract terms - imposing on consumers high cancellation fees; exclusion of legal liability of travel agencies in cases of improper performance of their contractual obligations
Unfair commercial practices regarding timeshare properties
Unreasonable overcharging for services supplied to foreign tourists
Unilateral alteration of contract without observing the consumer's right of withdrawal
Unilateral alteration of date and destination of trip
Failure to supply paid-in-advance services/holidays/tour
Supply of services of a lower quality than stipulated
Non-performance of a rent contract
Denial of right to withdraw from a holiday club contract
Refusal of refund and imposition of additional fees if consumers withdraw from contract

Source: Database compiled by Civic Consulting

#### 4.3.4 *Transport*

Consumers often appear to be affected by the same infringements of law in the transport sector. Consumer-related mass claims/issues have occurred predominantly in the civil aviation sector. Mass issues have been noted for several Member States, including Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Poland, Spain, Sweden, and the UK. The main infringements reported in this sector are summarised in the table below.

**Table 4: Main law infringements reported in the transport sector**

Infringement
Denial of rights and lack of information in case of flight cancellation
Denial of rights in case of flight delays
Denial of rights in case of luggage problems
Unfair terms in air travel contracts
Excessive service fees for provision of flight tickets
Unreasonable charging of consumers' credit cards for non-existent damage on rented car
Charging consumers for full tolls for a motorway even when all the requirements for a road of this class have not been met

Source: Database compiled by Civic Consulting

#### 4.3.5 *Postal services*

No mass claims/issues were reported for this sector.

#### 4.3.6 *Energy and water supply, heating*

Mass claims/issues concerning public power and water utilities are reported from a number of Member States, including, Bulgaria, Germany, Italy, Portugal, Spain, and Sweden. The main law infringements reported in this sector are listed in the table below.

**Table 5: Main law infringements reported in the energy and water supply, heating sector**

Infringement
Supply of electricity, water or power of a quality or with characteristics that do not meet standards
Unreasonable overcharging of services
Outage for significant period of time

Source: Database compiled by Civic Consulting

#### 4.3.7 *Food services/products*

Cases in which multiple consumers suffered damages when purchasing food products or receiving/using food services from the same supplier were reported from a number

of Member States, including, Belgium, Bulgaria, Cyprus, the Czech Republic, Luxembourg, the Netherlands, Spain, Sweden and the UK. The main law infringements reported in this sector are summarised in the table below.

**Table 6: Main law infringements reported in the food services/products sector**

Infringement
Marketing of dangerous food and drinks
Misleading information about food quality
Failure to deliver ordered and prepaid products
Unfair commercial practices in offering products/services - aggressive solicitations by telephone
Personal injuries caused by dangerous food services/products
Misleading information about discounts of goods in supermarkets

Source: Database compiled by Civic Consulting

#### **4.3.8 Pharmaceuticals and cosmetics**

Cases of multiple affected consumers who purchased pharmaceutical products are reported from a number of Member States, including Austria, Bulgaria, Finland, the Netherlands Spain, and the UK. The main law infringements reported in this sector are summarised in the table below.

**Table 7: Main law infringements reported in the pharmaceutical and cosmetics sector**

Infringement
Unfair commercial practices
Personal injuries caused by contaminated blood products or pharmaceuticals

Source: Database compiled by Civic Consulting

#### **4.3.9 Other consumer goods**

Multiple consumers appear to have incurred damage in purchasing a variety of consumer goods, including furniture, electronic products, computers and computer equipment, DVDs, domestic appliances, etc. Cases in this respect were reported from a number of Member States, including, Austria, the Czech Republic, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Poland, Slovenia, Spain, Sweden, and the UK. The main law infringements reported in this sector are summarised in the table below.

**Table 8: Main law infringements reported in other consumer goods sectors**

Infringement
Misleading advertising
Other unfair commercial practices - false impression that a prize was won; aggressive solicitations by telephone
Failure to deliver ordered and prepaid goods
Significant delay in delivery of goods
Lack of response to consumers' demands/lack of contact with seller
Refusal of reparation during the warranty term
Providing warranty shorter than two years
Sending invoices for unsolicited goods
Selling defective or goods that do not meet standards
Non-conformity of goods
Unfair contract terms imposing additional costs/fees/charges on consumers
Refusal of price refund for defective goods
Infringements of data protection law by installing unsolicited software ("digital rights management")

Source: Database compiled by Civic Consulting

#### **4.3.10 Construction**

Mass claims/issues are reported concerning construction as well as home improvement services from a number of Member States, including Finland, Sweden and the UK. The main law infringements documented in this sector are summarised in the table below.

**Table 9: Main law infringements reported in the construction sector**

Infringement
Improper performance of contractual obligations
Lack of transparency of contract
Unfair commercial practices
Unfair contract terms imposing additional costs/fees/ charges on consumers

Source: Database compiled by Civic Consulting

#### **4.3.11 Games of chance**

According to the data gathered, in some Member States, including Austria, Belgium, Germany and Greece, a number of consumers were affected by illegal games of chance and lotteries. The main law infringement reported in this sector is summarised in the table below.

**Table 10: Main law infringements reported in relation to games of chance**

Infringement
Misleading advertising of illegal lottery/gambling
Unfair commercial practices - false impression that a prize was won followed by a request for payment of charges and/or taxes for delivery of bogus prize

Source: Database compiled by Civic Consulting

#### 4.3.12 *Scams and pyramid schemes*

Cases of multiple consumers affected by scams and pyramid schemes are reported for a number of Member States, including the Czech Republic, Ireland and the UK. The main law infringements reported in this sector are summarised in the table below.

**Table 11: Main law infringements reported in relation to scams and pyramid schemes**

Infringement
Unfair commercial practices - false impression that a prize was won followed by a requirement to call a telephone number at a very high call price
Unfair commercial practices - request for paying cost of bogus vehicle matching service
Prize-draw and sweepstake scams
Cross-border lottery scams
Work-at-home and business-opportunity scams
Premium-rate telephone prize scams
Miracle health and slimming cure scams
African advance fee frauds/foreign money making scams
Clairvoyant and psychic mailing scams
Property investor scams
Pyramid-selling and chain-letter scams
Bogus holiday club scams
Internet dialler scams
Career opportunity scams
High-risk investment scams
Internet matrix-scheme scams
Loan scams

Source: Database compiled by Civic Consulting

#### 4.3.13 *E-Commerce*

Mass claims involving consumers who have incurred damage when purchasing via the internet are reported from a number of Member States, including Austria, Estonia, and France.

The main law infringement reported in this sector is summarised in the table below.

**Table 12: Main law infringements reported in the e-commerce sector**

Infringement
Failure to deliver goods ordered and paid for via internet

Source: Database compiled by Civic Consulting

#### 4.3.14 *Other sectors*

Data collected revealed few infringements that affected multiple consumers in sectors other than the ones analysed above. Such infringements have been reported from a few Member States including Austria, Belgium, France, Germany, Luxembourg, Portugal, Spain, Sweden and the UK.

The main law infringements reported are summarised in the table below.

**Table 13: Main law infringements reported in other sectors**

Infringement
Misleading advertising of magazine subscriptions
Misleading advertising of services, including entertainment services
Misleading information in matching services for second-hand vehicles
Failure to deliver prepaid tickets
Variation of ticket agents' booking fees
Unfair commercial practices - in coin-collecting delivery of unsolicited goods
Infringements of contract for car repair services
Infringements of contract for real estate agency

Source: Database compiled by Civic Consulting

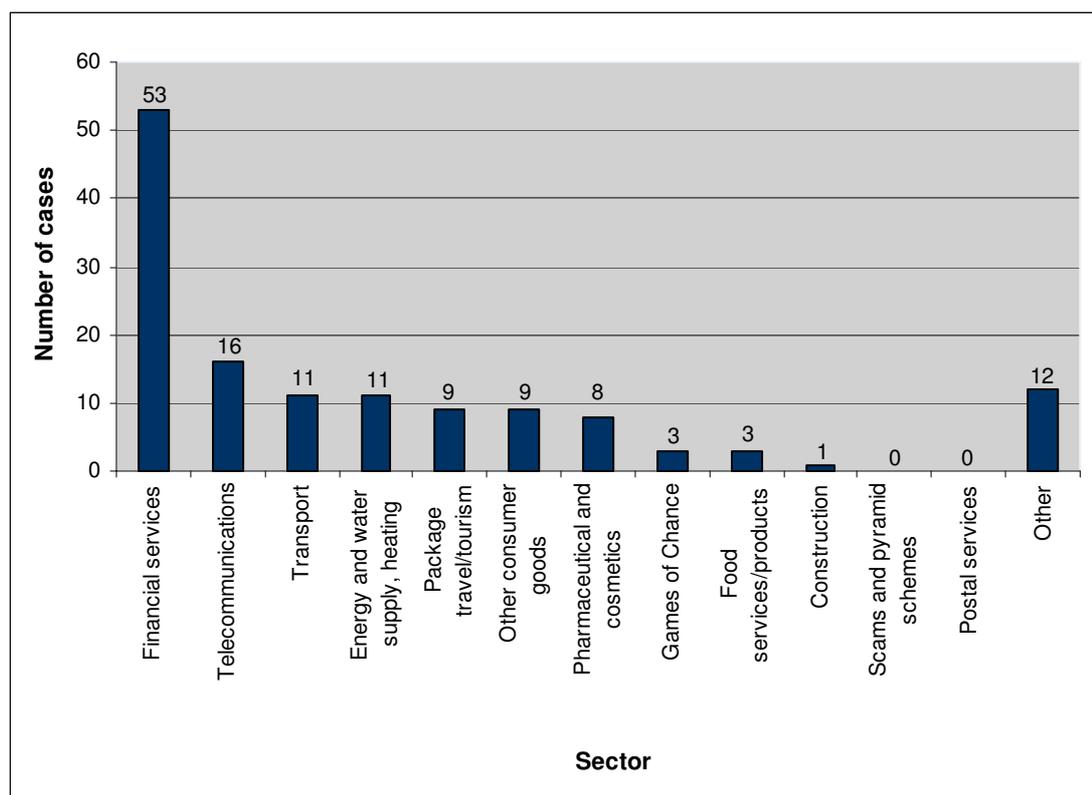
#### 4.4 Relevance of sectors

##### 4.4.1 Number of mass claims/issues documented in the EU

###### Collective redress cases

The following graph provides an overview of the number of documented collective redress cases per sector:

**Figure 1: Number of collective redress cases per sector**



Source: Data collection by Civic Consulting (see Civic Consulting (2008): Evaluation study).

Note: Figure includes 136 collective redress cases only, out of a total of 326 cases. The other 190 cases relate to the French actions for the financial reparation of the consumer collective interest under Article L. 421 of the Consumer Code, which are presented separately (see Figure 4).

Most of the documented collective redress cases (other than the French actions for the financial reparation of the consumer collective interest, which is discussed separately) relate to the financial services (including insurance) sector (39%). Collective actions have also most often been brought in the telecommunications (12%), transport (8%), energy and water supply, heating (8%) package travel/tourism (7%), and marketing of other consumer goods (7%) sectors.

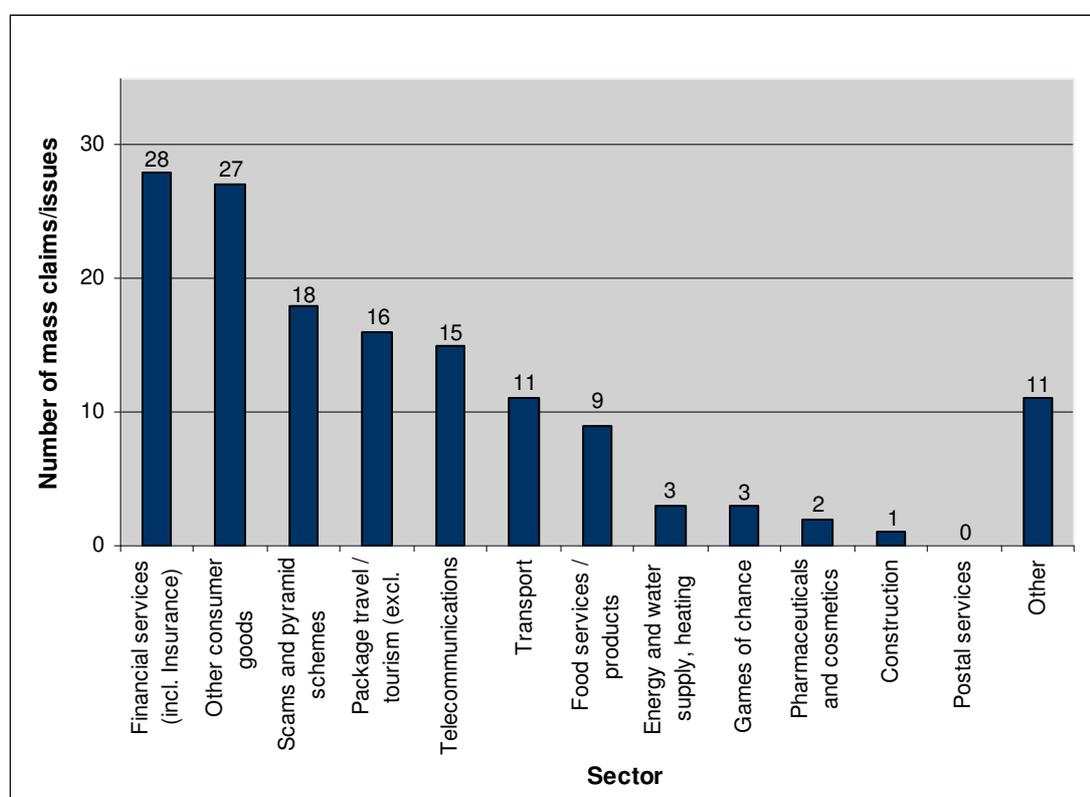
Although not as frequently as in the above-mentioned sectors, collective redress cases have been also documented in the pharmaceuticals and cosmetics sector, the selling of food services/products, games of chance sector, and the construction sector.

Collective redress cases brought under current mechanisms do involve at least some cross-border aspects in nearly 10 percent of the documented cases for which relevant information was available.

**Mass claims/issues that did not result in a documented collective redress case in the EU**

Figure 2 below presents sectoral data concerning 144 reported mass claims/issues in the database during the last decade that did not result in a documented collective redress case in the EU.

**Figure 2: Sectors in which mass claims/issues were reported most often**

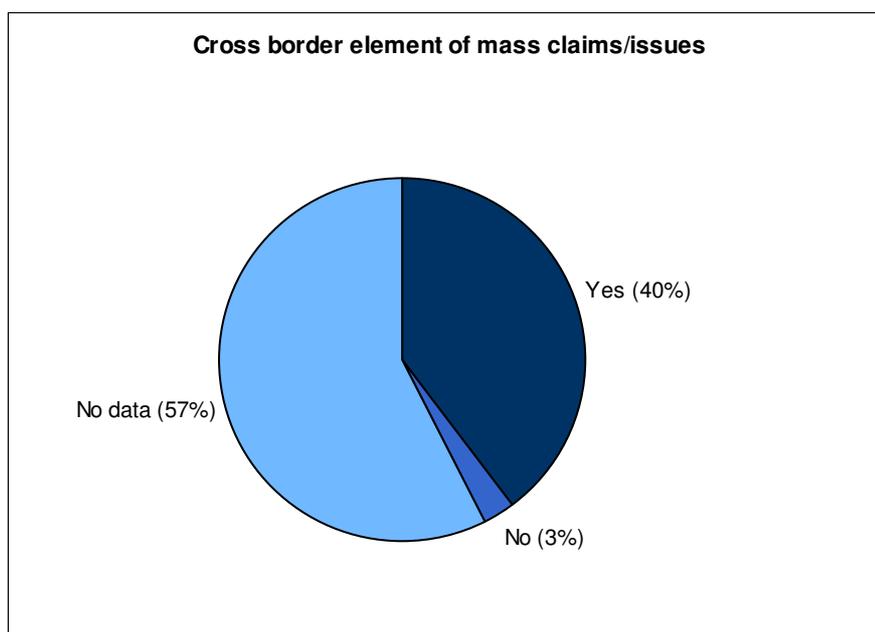


Source: Data collection by Civic Consulting (see Annex 3). Figure based on 144 mass claims/issues.

As the figure above illustrates, close to 20% of the total number of mass claims/issues are reported to occur in the financial services sector (including insurance), and a similar proportion is related to the sale of consumer goods other than food and pharmaceuticals/cosmetics. The data collected on mass claims/issues also reveals that scams and pyramid schemes, package travel, telecommunications, transport, and food services sectors are fairly relevant when considering the frequency of mass claims/issues collected by sector.

Figure 3 below indicates that most mass claims/issues compiled in the database for which such information was available involve a cross-border dimension. However, information on the cross-border element of the mass claims/issues is available only for little more than 40% of the mass claims collected. This, and also the fact that a significant number of mass claims included in the database were reported by European Consumer Centres that specifically support consumers in redress concerning cross-border transactions,<sup>26</sup> is likely to lead to an overrepresentation of cross-border cases in the sample.

**Figure 3: Cross-border element of mass claims/issues collected**



Source: Data collection by Civic Consulting (see Annex 3)

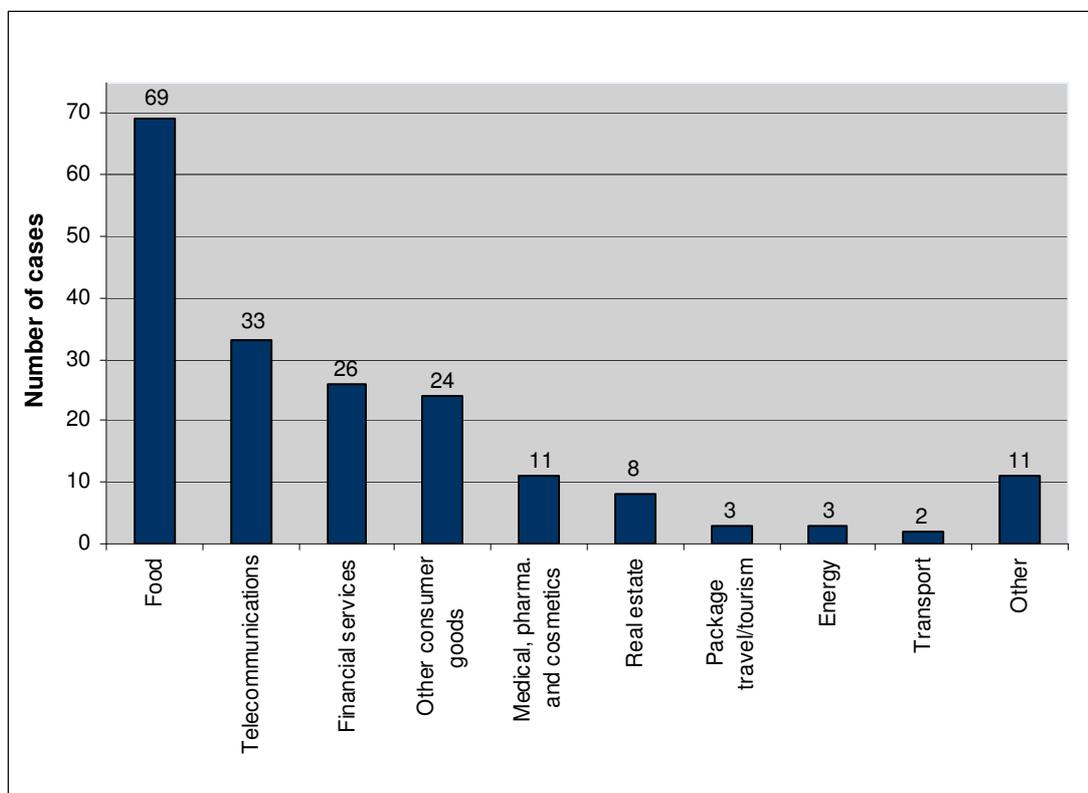
<sup>26</sup> See [http://ec.europa.eu/consumers/redress\\_cons/webcenters\\_en.htm](http://ec.europa.eu/consumers/redress_cons/webcenters_en.htm).

**4.4.2 Number of mass claims/issues documented in specific countries**

**France: Actions for the financial reparation of the consumer collective interest**

The data presented in the figure below provides data concerning collective actions brought by the French consumer organisation UFC-Que Choisir. This organisation brought 190 actions for the financial reparation of the consumer collective interest to Court during the period January 1997 – October 2007 (excluding the 5 actions related to environmental issues), representing a well-documented dataset of collective redress actions over a period of more than 10 years.

**Figure 4: Sectors in which collective redress cases under the action for the financial reparation of the consumer collective interest under Article L.421-1 of the Consumer Code were brought**



Source: Compiled on the basis of data provided by UFC - Que Choisir. Figure based on 190 collective redress cases brought by the consumer organisation UFC-Que Choisir under Article L.421-1 of the Consumer Code (action for the financial reparation of the consumer collective interest).

The analysis of the frequencies of the sectors in which actions for the financial reparation of the consumer collective interest were brought by UFC-Que Choisir reveals that more than a third of the cases concern claims related to the food sector. However, this is likely to be largely due to the specific attention the organisation assigns to food issues. In other Member States consumer organisations often do not have legal standing for cases related to food law infringements, since food law usually forms part of public law.

Claims related to telecommunications, financial services, and other consumer goods represent, respectively, 17%, 14% and 13% of the total number of actions brought by the consumer association under the mechanism. Out of the 190 actions, only 2 involve (partly) a cross-border element.<sup>27</sup>

### **United Kingdom: Potential mass claims from the Consumer Direct database**

The Consumer Direct database represents a broad dataset of complaints, which can provide useful information on the sectors in which potential mass claims occur most often in the UK. Consumer Direct is a telephone and online consumer advice service, operated by the Office of Fair Trading (OFT). All contacts to Consumer Direct are registered in a database that constitutes a single, national source of data on consumer complaints against, and issues with, businesses.<sup>28</sup>

The database is organised by sector (for example, “BM telecommunications”, “FJ internet services”, “DA personal banking”), for which a series of “product/goods/service” are identified. For instance, 7 “product/goods/service” are listed for the “BM telecommunications”, namely “(BM01) telephone services (land line)”, “(BM02) mobile phones (hardware)”, “(BM03) mobile phones (service agreements)”, “(BM04) premium-rate services”, “(BM05) remote messaging services”, “(BM06) phone downloads”, and “(BM99) other”. For each “product/goods/service”, a series of “complaint types” are listed. For example, a complaint received against a specific trader in the telecommunications sector, and related to “(BM01) mobile phones (service agreements)”, will be registered in one of the 24 complaint types, such as “(02A) substandard services”, “(08A) Verbal misrepresentation/misdescription”, “(02D) customer service”, “(06A) failure to observe cancellation rights”. The Consumer Direct database therefore allows the identification of the number of complaints under each specific complaint type and against a specific trader in a given sector.

Due to the time constraint and the complexity of the data processing, the OFT provided Civic Consulting with an extract of this database that identified complaints for the period 1 January to 31 December 2007 for a selection of sectors<sup>29</sup> and concerning all traders

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<sup>27</sup> One case related to tourism and one related to food.

<sup>28</sup> Office of Fair Trading (2007): Usage and efficacy of the CD database for TSS. A case study analysis of the usage and efficacy of the Consumer Direct database for Local Authority Trading Standards Services.

<sup>29</sup> The OFT provided Civic Consulting with data for the following sectors: BM Telecommunications, FJ Internet facilities, FG Holidays, FE Time share, DE Ancillary credit business, DG Insurance, DA Personal banking, DB Hire and

for which the number of complaints registered was higher than a given number.<sup>30</sup> The traders were not identified by name, but complaints were listed separately by trader (listed as trader 1, trader 2, ...).

For the purposes of this study, a mass claim/issue is defined as a damage suffered by 10 or more consumers caused by the same seller of goods/provider of services because of the same type of infringement. A number of complaints equal or higher than 10 under the same “complaint type” and against the same trader in a given sector was thus considered as being a possible mass claims/issue. Obviously, this can only be a rough indicator, as it is possible that, although the complaint related to the same “sector”, the same “product/goods/service”, the same “complaint type” and the same trader, the subject of the complaint is not identical. It must also be assumed that multiple counting of the same complaint from the same consumer may occur in a limited number of cases.<sup>31</sup> However, even when taking into account these limitations, the data provided by the OFT is likely to be the most comprehensive dataset available concerning the extent of potential mass claims/mass issues in an EU Member State.

Results of the analysis concerning the selected sectors are presented in the graph on the next page:

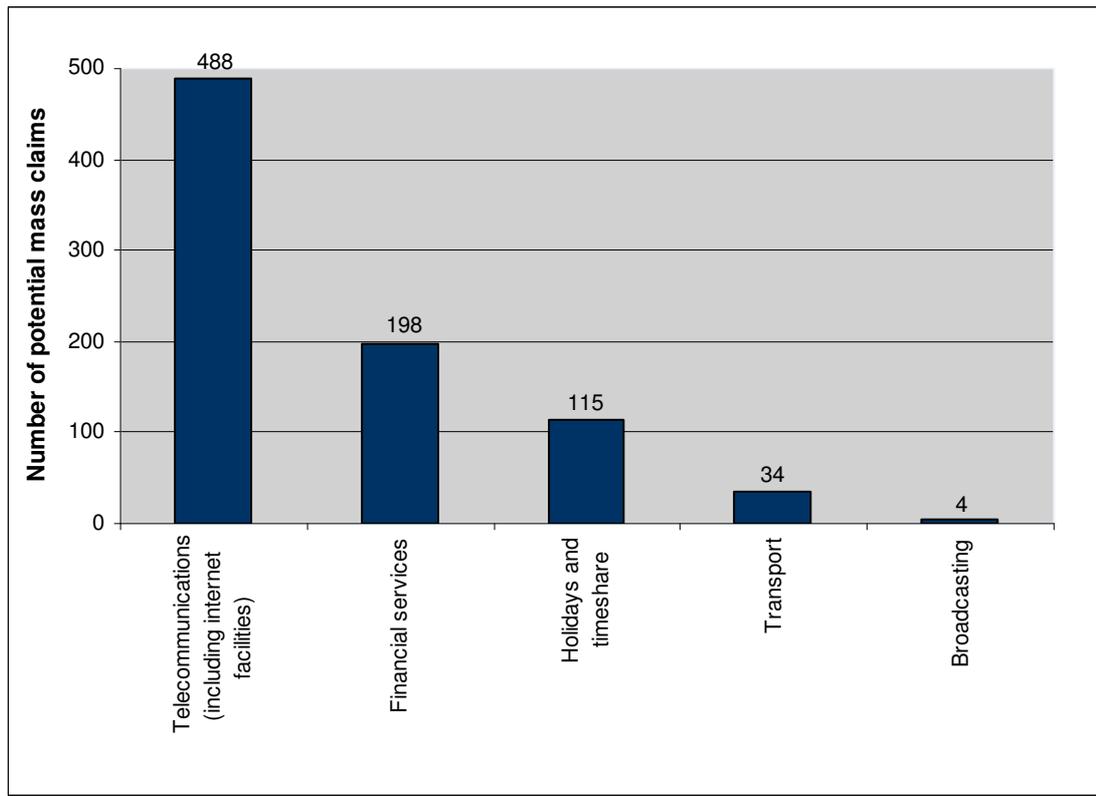
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Unsecured credits, DL Mortgages and secured credit, DN Pensions, EM Transport, and HA Broadcasting. These categories were allocated by Civic Consulting to 6 main sectors, as shown in Figure 5.

<sup>30</sup> Data for the Telecommunications sector include statistics for traders for which more than 500 complaints have been registered; for Internet facilities, Holidays, Time share, Personal Banking, Ancillary credit business, Insurance, Personal banking, Hire and Unsecured credits, Transport, and Broadcasting, more than 50; for Mortgages and secured credit, and Pensions, more than 5.

<sup>31</sup> If a consumer contacts Consumer Direct again about the same complaint the advisor should locate the original case and add the additional information. However, this may not be always the case, particularly if the consumer denies previously contacting Consumer Direct in an attempt to gain different advice or if the advisor cannot locate the original case. According to the OFT, these would be in a minority but cannot necessarily be discounted.

**Figure 5: Number of potential mass claims/issues by sector, as documented by the Consumer Direct database, Office of Fair Trading (United Kingdom)**

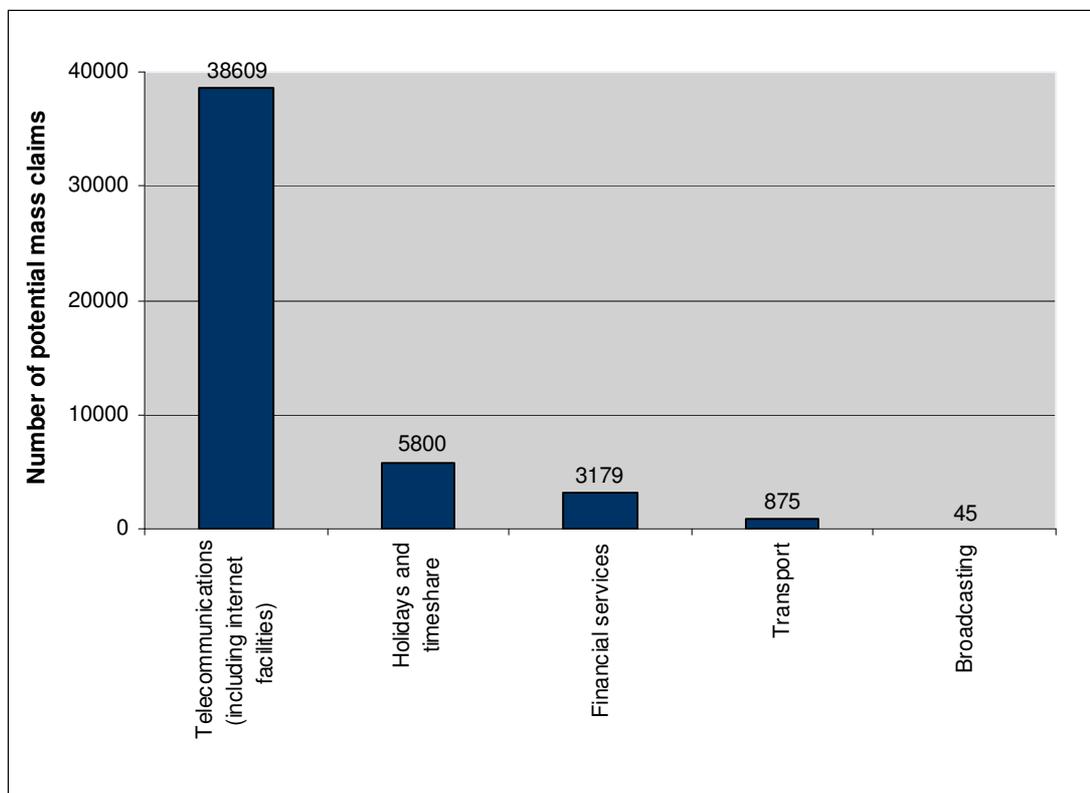


Source: Compiled on the basis of data provided by the Office of Fair Trading. Figure based on 839 potential mass claims/issues.

The frequency of mass claims/issues by sector in Figure 5 reveals that the number of potential mass claims/issues is very high for the telecommunications sector (including internet facilities), and fairly high for the financial services and holidays and timeshare sectors.

The total numbers of individual complaints to which these potential mass claims/issues relate are presented in Figure 6 below.

**Figure 6: Number of individual complaints by sector related to potential mass claims/issues, as documented by the Consumer Direct database, Office of Fair Trading (United Kingdom)**



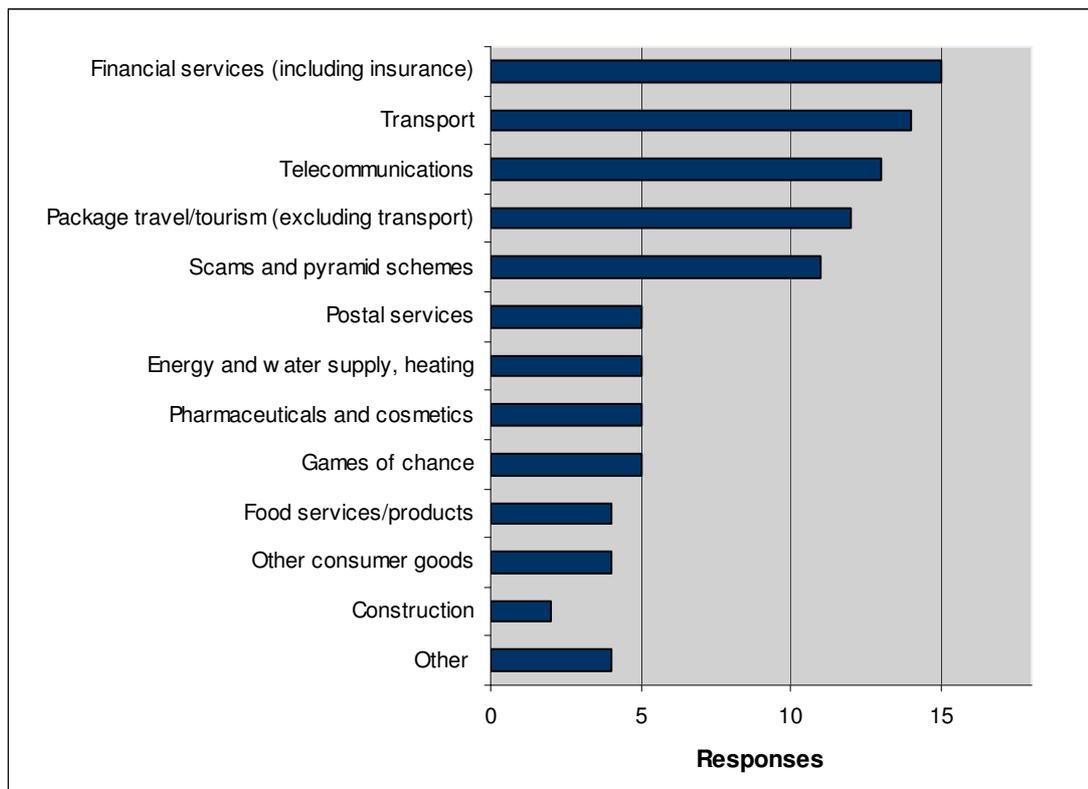
Source: Compiled on the basis of data provided by the Office of Fair Trading. Figure based on 48,508 complaints related to 839 potential mass claims/issues.

Figure 6 indicates that potential mass claims (that is, complaints of the same category by 10 or more consumers concerning the same trader) involve a very high number of consumers in the telecommunications sector (including internet facilities). On average, a potential mass claim/issue listed in Figure 5 related to about 80 complaints received by Consumer Direct in the telecommunications sector, to 50 complaints in the holidays and timeshare sectors, and fewer than 20 complaints in the financial services sector.

#### **4.4.3 Assessment of stakeholders**

Through an EU-wide survey, stakeholders provided their assessment concerning the sectors in which it is most difficult to obtain redress for consumers. The results are presented in the figure below.

**Figure 7: Sectors in which it is most difficult for consumers to obtain redress in mass claims/mass issues as perceived by non-business stakeholders**



Source: Data obtained from the surveys of non-business organisations and business organisations.  
Note: None of the business stakeholders provided assessment.

Figure 7 reveals that non-business stakeholders (business stakeholders did not provide any assessment on this aspect) consider that the sectors of financial services (including insurance), transport, telecommunications, package travel/tourism (excluding transport), and scams and pyramid schemes are sectors that are very relevant in this respect. Most other sectors were also considered to be relevant by at least some stakeholders.

#### 4.5 Conclusions

Table 14 below summarises the relevance of the sectors according to the different sources presented in this section.

**Table 14: Summary of data concerning sectors, in which it is more difficult to obtain satisfactory redress in mass claims/issues than in others, or where larger number of consumers are affected by mass claims.**

Sector*	A. Stakeholder assessment	B. Frequency of mass claims/issues in the EU		C. Frequency of mass claims/issues in selected MS***		Sum*** (A+B)	Rank	Summary assessment
		Collective redress cases	Other mass claims	France: actions under Article L.421-1	UK: number potential mass claims			
	Difficulty to obtain satisfactory redress							<i>Sector considered to be ...</i>
	Very relevant sector = 1, Fairly relevant sector = 2, Less relevant = 3, N/a = no data available							
Financial services (including insurance)	1	1	1	(2)	(2)	3	1	<i>Very relevant</i>
Telecommunications	1	2	2	(2)	(1)	5	2	<i>Very relevant</i>
Other consumer goods	2	2	1	(2)	(N/a)	5	2	<i>Very relevant</i>
Package travel/ Tourism (excluding transport)	1	2	2	(3)	(2)	5	2	<i>Very relevant</i>
Transport	1	2	2	(3)	(3)	5	2	<i>Very relevant</i>
Scams and pyramid schemes	1	3	2	(N/a)	(N/a)	6	6	<i>Fairly relevant</i>
Food services /products	2	3	2	(1)	(N/a)	7	7	<i>Fairly relevant</i>
Energy and water supply, heating	2	2	3	(3)	(N/a)	7	7	<i>Fairly relevant</i>
Games of chance	2	3	3	(N/a)	(N/a)	8	9	<i>Fairly relevant</i>
Pharmaceuticals and cosmetics	2	3	3	(3)	(N/a)	8	9	<i>Fairly relevant</i>
Postal services	2	3	3	(N/a)	(N/a)	8	9	<i>Fairly relevant</i>
Construction**	3	3	3	(3)	(N/a)	9	12	<i>Less relevant</i>

Source: Data obtained from stakeholder surveys, evaluation of collective redress cases and other mass claims/mass issues documented, data provided by UFC-Que Choisir and Office of Fair Trading

\*Not including "other" sector

\*\* The "construction" category includes the French actions related to real estate.

\*\*\*UK and French data could not be included in calculation for ranking for consistency reasons

The data presented above leads to the following conclusion:

2. ***The most relevant sector concerning observed mass claims/issues is the financial services sector.*** This is the assessment of non-business stakeholders in view of the difficulty for consumers to obtain redress in mass claims/mass issues. Also, collective redress cases and other mass claims/mass issues are most often reported from this sector. Complaints data from the UK underline, however, the importance of the telecommunications sector as source of potential mass claims/mass issues. Other very relevant sectors are other consumer goods, package travel/tourism and transport.

## 5 Obstacles preventing consumers from obtaining redress

*Description of task provided in TOR: The contractor should ascertain whether there are factors that prevent consumers from obtaining satisfactory redress when they are sold goods/services that do not comply with consumer protection legislation and/or are sold in a way that does not comply with consumer protection legislation and identify these factors. The contractor should also examine their relative importance from a consumer viewpoint.*

### 5.1 Overview

This section:

- Gives an overview of main obstacles faced by consumers in obtaining satisfactory redress for mass claims/issues;
- Gives a detailed analysis of each obstacle; and
- Draws conclusions regarding the relative importance of obstacles preventing consumers from obtaining satisfactory redress in mass claims/issues.

### 5.2 Potential obstacles preventing consumers from obtaining satisfactory redress

The availability of redress mechanisms in a given country does not imply that consumers obtain satisfactory compensation concerning mass claims/issues. Several obstacles discourage consumers from bringing claims individually, but also from joining collective redress procedures. The following section presents an overview of potential obstacles preventing consumers from obtaining satisfactory redress. The obstacles have been identified through interviews and expert assessments covering 15 Member States, focus group discussions with consumers in four Member States, a survey of stakeholder organisations, and a review of literature on consumer redress (see section 2, methodology).<sup>32</sup>

In total, 25 potential obstacles are discussed, relating to five broad categories:

#### Obstacles relevant for all redress mechanisms

1. Lack of awareness/information among consumers on existing redress mechanisms and on the fact that their rights have been violated
2. Lack of motivation of consumers

#### Obstacles relevant for all judicial redress mechanisms (individual and collective):

3. Monetary costs of litigation

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<sup>32</sup> Only obstacles confirmed by several sources have been included in the assessment. Specific sources are only indicated when a feature of an obstacle relates to a specific mechanism or is otherwise exceptional, or when that additional information is available from the source specified.

4. Length of court proceedings
5. Formal requirements of existing mechanisms
6. Complexity of judicial procedures
7. Actions not covered by consumers' legal expenses insurance
8. Inadmissibility of contingency/conditional fee

Obstacles relevant only for judicial collective redress mechanisms

9. Non-availability of collective redress mechanisms
10. Limits on types of entity that can bring collective actions
11. Lack of public support and other mechanisms to finance collective redress actions
12. Limited resources of consumer organisations
13. Lack of expertise of intermediaries to bring actions
14. Lack of judges experienced in case management
15. Entities bringing collective actions have problems in informing affected consumers
16. Difficulties with distribution of the awarded compensation

Obstacles relevant for Alternative Dispute Resolution:

17. Non-availability of ADR schemes
18. Businesspeople/businesses are not affiliated to ADR schemes
19. Difficulties in reaching agreement in ADR schemes that require mutual agreement

Specific obstacles relevant for cross-border claims related to all redress mechanisms:

20. Lack of knowledge of legislation and collective redress mechanisms in other Member States
21. Conflict among national legislations
22. No information about collective claims brought in other Member States
23. Difficulty to identify a defendant in another Member State
24. No standing of bodies to bring claim in another Member State or inability to join claims brought in another Member State
25. Language barriers, travel expenses and difficulties in providing adequate representation

The next section describes in detail the nature of these potential obstacles, their relevance and the persons/categories of people affected. It also provides a brief summary of the economic significance of each of the obstacles for consumers. As obstacles are related to each other and they are often present simultaneously, they may reinforce each other and lead to economic consequences for consumers, competitors and the relevant market that will be treated in more detail in section 6.

### **5.3 Difficulties to obtain redress by obstacle**

#### **5.3.1 Obstacles relevant for all redress mechanisms**

##### **1. Lack of awareness/information among consumers on existing redress mechanisms and on the fact that their rights have been violated**

###### *Nature of obstacle:*

Consumers may not seek redress for damage simply because either they are unaware that their rights have been violated or they lack information about available redress mechanisms.

Lack of awareness among consumers can be of different types:

(a) Lack of information about law. The lack of information about consumers' rights and legal enforcement mechanisms is reported as a significant reason for consumers' passive behaviour in seeking redress. For example, consumers are sometimes not even aware that collective redress mechanisms exist in their country, and they also have little knowledge about ADR schemes, how they work, and when they can be used.<sup>33</sup>

(b) Lack of awareness of consumer protection law infringements and/or defects of goods and services (so called "information asymmetry").<sup>34</sup> In some cases, due to lack of specific knowledge, consumers may be unsure about whether the purchased good or service is in fact defective or not. In other cases, the adverse consequences of the infringement may manifest themselves only in the future.

(c) Lack of awareness of mass character of the problem. Very often consumers are not aware that other consumers have experienced the same problem because of the same defective product or service (see section 4.2 above). In most of the Member States there is no systematic registration of consumer complaints, and even where it exists, information concerning mass claims is not easily available.<sup>35</sup>

###### *Relevance of the obstacle:*

5% of the respondents to the survey who answered the question regarded the lack of awareness among consumers as the most important obstacle, 6% as the second most important obstacle and 6% as the third most important obstacle. This obstacle is rele-

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<sup>33</sup> This was a consistent theme of the focus group discussions; see Part II of this report. It was also reported by stakeholders interviewed in Bulgaria. See also country report Italy, section 1.7.2, p.26, in Civic Consulting (2008): Evaluation study, Part II.

<sup>34</sup> See, e.g. Van den Bergh, R. and Visscher, L. (2008): The preventive function of collective actions for damages in consumer law. In: Erasmus Law Review, Volume 01, Issue 02, p. 14 (Electronic copy available at: <http://ssrn.com/abstract=1101377>).

<sup>35</sup> Even the very detailed and comprehensive complaints database of the Office of Fair Trading in the UK does so far not allow to easy identification of potential mass claims. A time-consuming filtering procedure was needed to create the overview provided above in section 4.

vant for all types of redress mechanisms - individual redress, collective redress, and ADR schemes.

*People or categories of people affected by the obstacle:*

Although this obstacle may potentially prevent almost all consumers from obtaining collective redress, consumers who are less motivated in searching for information on their rights and mechanisms of enforcement are going to be the most vulnerable.

*Economic significance of the obstacle for consumers:*

Consumers who are unaware of their rights and how to enforce them are unlikely to take any action and seek redress. Thus, consumers will not be compensated for the damage they suffered. Insufficient action on the consumer side and insufficient compensation cause significant consumer detriment, both individually and collectively.

## **2. Lack of motivation of consumers**

*Nature of obstacle:*

In some cases consumers may not take any action to seek redress because they lack motivation.

(a) Rational consumers will often refrain from action because the costs of individual action outweigh the likely benefits (see also obstacle 3). This attitude also depends on country-specific factors such as the availability of “low-threshold” redress mechanisms in the country (e.g. ADR schemes), the efficiency of the court systems and the “litigation culture” of a specific country (see detailed discussion of incentives for consumers in section 6).

(b) Consumers have general expectations about the quality of goods and services which they purchase. For example, consumers who pay little for a specific good or service might rationally expect that the quality of the products is poor and/or that the products could turn out to be defective. In this case, when defects occur, they could decide not to seek for redress, as the probability of defect was partly anticipated by consumers when purchasing the good or service.

(c) In several cases (for example, France and Bulgaria), individual consumers cannot receive compensation for their damages through some of the collective redress mechanisms and thus have little incentive to cooperate with consumer organisations or other entities entitled to bring such actions.

(d) Some consumers may abstain from seeking redress for psychological reasons, because they are ashamed or fear public exposure, or because they are not willing to evoke painful memories from past events.

(e) Social apathy, to some extent, is reported to be a relevant factor in some Member States, for example due to social and economic transition over recent decades.<sup>36</sup> A strong focus on the personal sphere and individual interests appears to affect consumer attitudes towards redress litigation.

(f) The perceived imbalance of power between consumers and firms has a significant impact on the motivation to seek compensation for damage. The impression “*we are very small and they are very big*”<sup>37</sup> is often aggravated by difficulties experienced when communicating with companies. Aggrieved consumers have reported that in cases of dissatisfaction with products or services it has been difficult to contact sellers or services providers (for example, because information provided by call centres is not helpful, or they receive no reply to letters or e-mails). This lack of communication seems to discourage consumers in their intention to proceed further with claims for damages.<sup>38</sup>

*Relevance of the obstacle:*

19% of the respondents considered this obstacle to be the third most important obstacle. The absence of trust in the national court system was considered to be the most important obstacle by 3% of the respondents. The lack of consumer motivation for seeking redress is an obstacle relevant for all means of redress mechanisms - judicial (individual and collective) and ADR schemes. In particular, it is noted as an impediment for bringing collective actions.

*People or categories of people affected by the obstacle:*

It is difficult to distinguish a particular group of affected persons, as this appears to be an obstacle for many types of consumer.

*Economic significance of the obstacle for consumers:*

Consumers may refrain from seeking redress. This leads to increased levels of uncompensated consumer loss.

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<sup>36</sup> Source: Country research and interviews, Bulgaria.

<sup>37</sup> Focus group discussion Portugal.

<sup>38</sup> Emphasised in several of the focus group discussions, see Part II of this report.

### 5.3.2 **Obstacles relevant for judicial redress mechanisms (individual and collective)**

#### **3. Monetary costs of litigation**

*Nature of the obstacle:*

The high amount of litigation costs is frequently reported as a very significant obstacle preventing consumers from seeking individual redress<sup>39</sup>. For example, in Finland, the average total legal expenses for individual redress through ordinary court procedures vary between 19,000 – 27,000 Euro in cases which have been decided after an appeal.<sup>40</sup> Since, in some Member States ADR schemes are free of charge or require low admission fees, the high amount of litigation costs appears to be an obstacle predominantly for individual and collective judicial redress mechanisms. Individual consumers who decide to claim for damages have to pay court and lawyer's fees, as well as experts' remuneration, which may significantly exceed the amount of claimed compensation. Hence, it is reasonable to expect that consumers will abstain from claiming.<sup>41</sup>

Perceived litigation costs can be even higher than actual costs. The actual amount of legal costs remains unknown until the end of judicial procedure (that is, the final judgement or settlement), up to the moment a decision or a settlement is reached, it is uncertain for a consumer whether and to what extent litigation costs will be compensated. In most EU countries, the consumer bringing the claim will normally be liable for the other party's costs if the claim is unsuccessful.<sup>42</sup> The "loser-pays" principle may act as a disincentive for individual consumers from filing damage claims;<sup>43</sup> in particular, for low-value claims the costs of a legal proceeding can greatly exceed the expected benefits.

Behavioural economics uses the term "hyperbolic discounting" to indicate that individuals generally prefer immediate small gains to high but uncertain gains in the future. This reasoning can be easily applied in the present context. Consumers have to face upfront legal costs (in terms of time and money) for seeking redress and, if they think that reward occurs very much into the future, they are likely to excessively discount the compensation that they might obtain from the claim. Since the reward is not certain, risk aversion might reduce even further the likelihood that consumers seek redress.

The availability of small claims procedures, which reduces the costs associated to litigation, may reduce the significance of this obstacle. In addition, the loser pay rule may

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<sup>39</sup> Source: Country research and interviews, Austria, Bulgaria, Finland, France, The Netherlands, Sweden; stakeholder surveys (see Figure 8); and focus group discussions (see Part II of this report).

<sup>40</sup> See country report Finland in Civic Consulting (2008): Evaluation study, Part II.

<sup>41</sup> Van den Bergh, R. and Visscher, L. (2008): The preventive function of collective actions for damages in consumer law. In: Erasmus Law Review, Volume 01, Issue 02, p. 5, (Electronic copy available at: <http://ssrn.com/abstract=1101377>). See also section 6 of this report.

<sup>42</sup> See Civic Consulting (2008): Evaluation study, Part I.

<sup>43</sup> Source: Country research and interviews Spain; stakeholder survey.

not apply under a small claims track, as it is the case in the United Kingdom. However, even in the countries where such procedures exist, there is still a threshold under which a rational consumer does not seek redress. In the UK, the threshold for claims to be brought before the small claims courts has been estimated by stakeholders to be 300 Euro. In Denmark, the legislator estimated the value below which individual litigation is unreasonable at DKK 2,000 (264 Euro).<sup>44</sup>

Collective mechanisms profit from economies of scale (in the preparation of the case, the filing and the litigation itself) and reduce the cost an individual consumer has to bear when he or she claims for damages. However, per-capita costs of starting and pursuing a legal action may still be relevant, and discourage consumers (or their lawyers) from filing suits against the fraudulent firms. For example, under the German Capital Market Claims Act, only the "common costs" that arise in the collective part of the procedure (e.g. expert evidence on liability issues) are shared pro rata between the claimants, and, in principle, the litigation fees remain the same as under individual redress as the matter will be returned to the courts where the litigation started to decide upon the individual cases.<sup>45</sup>

The uncertainty about the judicial outcome also compromises to a large extent the possibility for consumer organisations to make sufficient use of certain collective redress mechanisms. For example, under the Dutch Act on Collective Settlement of Mass Damages, the negotiation of the settlement can be very expensive and represent an actual deterrent to this procedure because of the uncertainty as to whether the expenses for the negotiations can ever be recovered or as to whether they are lost because no settlement can be reached.<sup>46</sup> Furthermore, collective redress mechanisms involve additional preparatory costs, which are not recoverable under the "loser-pays" principle, even if the damages have been awarded (collection of information, coordination, court hearings etc). Collective actions require that the claims are collected, checked and documented by the staff of the consumer organisation before any file can be prepared. This is the case, for example, of the traditional representative actions under the German Legal Advice Act and under the UK Competition Act 1998.<sup>47</sup> The Italian group action also requires the consumer associations to advertise the group action, collect the mandates, manage the file and to negotiate in the conciliation proce-

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<sup>44</sup> See Civic Consulting (2008): Evaluation study, Part I.

<sup>45</sup> Also, under German Capital Market Claims Act, the lead plaintiff's lawyer bears the related internal costs of the proceedings, but does not receive a higher remuneration than the other claimants' lawyers, who do not play an active role in the collective procedure. This may be a reason explaining why claimants (or their lawyers) have decided to avoid the procedure. See country report Germany in Civic Consulting (2008): Evaluation study, Part II.

<sup>46</sup> See country report Germany and country report The Netherlands in Civic Consulting (2008): Evaluation study, Part II.

<sup>47</sup> See country report Germany and country report United Kingdom in Civic Consulting (2008): Evaluation study, Part II. Also the interviews conducted with stakeholders in the UK revealed that the internal cost for organising the collective action, may deter the consumer association from bringing claims under the Competition Act.

dure after a judgment on the ground of liability has been made.<sup>48</sup> Consumer organisations have to be able to contact the claimants during the lawsuit if any aspect of the case turns out to be unclear, which may involve additional costs.

*Relevance of the obstacle:*

11% of the respondents to the survey who answered the question regarded this obstacle as the most important obstacle, 33% as the second most important obstacle and 13% as the third most important obstacle. This obstacle is relevant for any judicial mechanism for redress, individual and collective litigation.

*People or categories of people affected by the obstacles:*

Litigation costs are deemed to be an impediment for consumer redress in most of the Member States analysed, concerning both consumers and intermediaries such as consumer organisations.

*Economic significance of the obstacle for consumers:*

The monetary costs of litigation prevent consumers from seeking judicial redress. According to a 2004 Eurobarometer survey,<sup>49</sup> 73% of respondents would not go to court below a certain threshold because it was too expensive in relation to the cost of the product or service. High cost of the legal procedure was the justification given most frequently in Germany, Belgium and the United Kingdom.<sup>50</sup> According to the same survey, those people who are less educated were more likely to mention the cost of the legal procedure (76% compared with 72% for those with more education). Focusing only on those who responded that they would never go to court, whatever the amount (16%), 53% would not do so because it was considered to be too expensive in relation to what the product or service is worth. This opinion is widely shared in Germany (62%), Denmark and Luxemburg (60% each), and France and Sweden (58% each).

Insufficient redress on the consumers' side results again in significant under-compensation, both individually and collectively.

**4. Length of court proceedings**

*Nature of obstacle:*

Litigations for claiming damages often provide for three instance procedures and can last for years.<sup>51</sup> ADR schemes for redress are usually faster than judicial procedures. For example, in Portugal, under ADR schemes for consumers, the maximal time delay

<sup>48</sup> See country report Germany and country report Italy in Civic Consulting (2008): Evaluation study, Part II.

<sup>49</sup> Special Eurobarometer 195: European Union Citizens and access to justice (Fieldwork: September 2003, Publication: October 2004), p.32.

<sup>50</sup> 81%, 79% and 78% respectively, of those people ready to go to court for an amount between 100 to 1,000 Euro.

<sup>51</sup> See Civic Consulting (2008): Evaluation study, Part II. In some cases litigations for claiming damages may provide even five instances, e.g. in the German KapMuG procedure (see country report Germany in Civic Consulting (2008a): Evaluation study, Part II).

for a final decision is 2 months. In the United Kingdom, the Financial Ombudsman Service resolved 81% of the cases within 6 months (excluding mortgage endowment complaints) in 2007 (year ended 31 March). In Spain, the Consumer Arbitration System's maximum duration is four months since the designation of the members of the Arbitration Panel.<sup>52</sup>

The length of judicial proceedings has a significant discouraging impact on consumers and their intermediaries when considering the possibility of claiming damages. Collective redress mechanisms are generally considered to be extremely time-consuming.<sup>53</sup> This not only affects the legal procedure itself, but also the preparatory process: For instance, filing a joint representative action may require a written mandate from each and every affected consumer.<sup>54</sup> Consumer associations must in these cases contact and gain relevant evidence from each consumer who has potentially been damaged.

*Relevance of the obstacle:*

5% of the respondents to the survey who answered the question regarded this obstacle as the most important obstacle, 21% as the second most important obstacle and 16% as the third most important obstacle. According to a 2004 Eurobarometer survey,<sup>55</sup> a third of the people surveyed would not go to court below a certain threshold because they thought that the legal procedure was too long. According to the same survey, in France, Italy and Greece, a high percentage of people considered that the legal procedure was too long: 44% for France and 42% for the other two countries. Those who were better educated tended to justify themselves by saying that the legal procedure was too long (39% for the most educated compared with 28% for the least). Focusing only on those who responded that they would never go to court, whatever the amount (16%), 31% would not do so because the procedure was considered to be too long. The highest percentages sharing this point of view were seen in Italy (41%) and France (36%). This obstacle is relevant to judicial redress procedures, both collective and individual, and is reported in a significant number of Member States. This obstacle is less significant for ADR proceedings, which are deemed to be faster than judicial procedures for redress.

*People or categories of people affected by the obstacle:*

Almost every consumer or consumer organisation may be affected.

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<sup>52</sup> See country report Portugal, country report Spain, and country report United Kingdom in Civic Consulting (2008): Evaluation study, Part II. See also country report Italy.

<sup>53</sup> Some collective redress mechanisms even involve five-instance procedures, e.g. in the German KapMuG procedure (see country report Germany in Civic Consulting (2008): Evaluation study, Part II).

<sup>54</sup> E.g. Article L. 422-1 to L. 422-3 of the French Consumer Code, or Article 189 of the Bulgarian Law on Consumer Protection.

<sup>55</sup> Special Eurobarometer 195: European Union Citizens and access to justice (Fieldwork: September 2003, Publication: October 2004), p.32.

*Economic significance of the obstacle for consumers:*

As both individual and collective procedures require a relevant amount of time, and consumers are unlikely to benefit from any redress for months, even years, they may be significantly discouraged from taking legal action.<sup>56</sup> The length of the proceeding and the awareness by consumers of this deficiency may then leave a large number of consumers uncompensated for their losses.

**5. Formal requirements of existing mechanisms**

*Nature of obstacle:*

Each redress mechanism is characterised by certain specific formal requirements, some of which may discourage consumers from seeking redress.<sup>57</sup> Collective redress mechanisms are usually reported to be more “formal” than individual redress mechanisms and, in particular, than alternative dispute resolution schemes.<sup>58</sup>

A very basic but frequently reported problem is the difficulty consumers have proving their claims. This relates both to the quantification of damage (material and immaterial), to the strictness of the formal requirements concerning suitable evidence, and to the difficulty to establish the causality. For instance, for low-value purchases, it is very unlikely that the majority of consumers will keep documentation of the transactions (receipts or tickets for the purchased goods or services). Lack of evidence of the actual damage suffered is deemed to be a serious impediment in collective redress actions.<sup>59</sup>

*Relevance of the obstacle:*

22% of the respondents to the survey who answered the question regarded this obstacle as the most important obstacle. None of the respondents mentioned this obstacle when asked about its relevance as the second most important obstacle or the third most important obstacle. Formal requirements characterise both individual and collective judicial redress actions. The obstacle has been acknowledged as an impediment to consumer action in several Member States.

*People or categories of people affected by the obstacle:*

This obstacle may predominantly affect the following categories of people:

(a) Consumers who incur low-value damages, and thus consider going through all the procedural formalities an unworthwhile inconvenience;

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<sup>56</sup> See Part II of this report.

<sup>57</sup> See Part II of this report.

<sup>58</sup> As confirmed e.g. through country research and interviews Spain.

<sup>59</sup> For example, see Annex 5, exemplary case C: Telecommunication sector (France). See also Civic Consulting (2008): Evaluation study, Part I.

(b) Consumers who may find it difficult to comply with all the formalities, due to lack of information, education or experience;

(c) Consumers who do not want to spend time and mental effort in meeting procedural formalities.

*Economic significance of the obstacle for consumers:*

If the formal requirements of existing redress mechanisms, especially the need to quantify the loss that a consumer or a group of consumers has incurred, deter individuals and intermediaries from taking legal action, this again results in a sub-optimal level of compensation and loss of consumer welfare.

## **6. Complexity of judicial procedures**

*Nature of obstacle:*

One of best-known features of judicial procedures for damages is their complexity. The complexity of legal actions for redress is due to the following factors: (a) intricacy of the procedure itself; (b) other administrative or judicial procedures that must be performed before or together with the main redress procedure, either as a mandatory requirement or in order for the redress action to be more effective.<sup>60</sup>

Since judicial redress mechanisms are complex and not easy to use, consumers usually need legal representation or assistance. This is especially true for collective redress mechanisms. As a general rule, collective actions are technically difficult in terms of collecting information, coordinating and managing the whole procedure. The particular nature of collective actions increases the monetary and non-monetary costs of the procedures.<sup>61</sup> For instance, in the Netherlands, the available mechanism for collective redress of mass claims requires preliminary settlement between the consumer organisation and the party that infringed consumer protection law.<sup>62</sup>

*Relevance of the obstacle:*

None of the respondents to the survey who answered the question regarded this obstacle as the most important obstacle. However 6% of the respondents considered this obstacle to be the second most important obstacle and 16% to be the third most important obstacle. A 2004 Eurobarometer survey<sup>63</sup> found that 23% of the people surveyed would not go to court below a certain threshold because the process was found to be too complicated. Those who were better educated were slightly more likely than others to consider the legal procedure too complicated (24% compared with 22% for

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<sup>60</sup> See e.g. country report Bulgaria in Civic Consulting (2008): Evaluation study, Part II.

<sup>61</sup> See, for example, exemplary case C: Telecommunication sector (France).

<sup>62</sup> See country report The Netherlands in Civic Consulting (2008): Evaluation study, Part II.

<sup>63</sup> Special Eurobarometer 195: European Union Citizens and access to justice (Fieldwork: September 2003, Publication: October 2004), p.32.

those who are less educated). Focusing only on those who responded that they would never go to court, whatever the amount (16%), 27% would not do so because the procedure was considered to be too complicated. The frequency of this response reaches 38% in Finland, 33% in Luxemburg and 32% in France. Complexity of procedures has been reported as a relevant obstacle for seeking judicial redress from several Member States.

*People or categories of people affected by the obstacle:*

The complexity of redress procedures affects consumers and intermediaries such as consumer organisations. Even well-informed and educated consumers, or experienced organisations, may be discouraged to seek redress due to this factor, including because of doubts concerning the efficiency and effectiveness of judicial proceedings.<sup>64</sup>

*Economic significance of the obstacle for consumers:*

Because of the complexity of legal redress procedures, consumers need adequate legal representation and advice before bringing an action. The need for professional expertise increases significantly the monetary costs of litigation for individual consumers. Even well-informed and educated consumers may therefore be discouraged from starting an action. The complexity of the procedures is particularly great for collective redress mechanisms, so even well-resourced consumer organisations may be discouraged from filing a case. Inactivity on the consumer side leaves a large number of consumers uncompensated for their losses and reduces consumer welfare.

**7. Actions not covered by consumers' legal expenses insurance**

*Nature of obstacle:*

When consumers have access to legal expenses insurance, this can reduce the risk of litigation. However, in some cases the legal expenses insurance does not cover all types of judicial action. For instance, it may exclude investors' claims.<sup>65</sup>

*Relevance of the obstacle:*

None of the respondents to the survey viewed this obstacle as a relevant obstacle. This obstacle is nonetheless relevant for all judicial means of redress.

*Persons or categories of persons affected by the obstacle:*

All consumers from Member States where legal expenses insurance has limited coverage.

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<sup>64</sup> For example, see Annex 5, exemplary case C: Telecommunication sector (France) and country report United Kingdom in Civic Consulting (2008): Evaluation study, Part II. See also Mulheron, R. (2008): Reform of collective redress in England and Wales: A perspective of need, p.33.

<sup>65</sup> See focus group discussions, and country report Germany in Civic Consulting (2008): Evaluation study, section 1.6.5, question 7.

*Economic significance of the obstacle for consumers:*

Insurance is a means for consumers to cover their litigation risk. Because of the “loser-pays” principle, which is the rule in most EU Member States, risk-averse consumers may refrain from taking legal action when legal expenses insurance is not available. As discussed above (see obstacle 2 “lack of motivation of consumers”), the hyperbolic discounting bias causes consumers to excessively discount the reward that they might obtain from a claim. Therefore, even when legal expenses insurance is available, the insurance premiums might be considered too high compared to the potential benefits that consumers could obtain from a future legal action. The disincentive to file claims due to the non-availability of legal expenses insurance may result in uncompensated losses for consumers.

**8. Inadmissibility of contingency/conditional fee***Nature of obstacle:*

Contingency fees are lawyers’ fees that are granted as a percentage of the damages awarded. Conditional fees are lawyers’ fees that are paid in case of success, but that are not related to the damages awarded. These fees are typical in common-law legal systems, widely used in the UK and the US. They are considered effective tools to finance legal action when potential plaintiffs, such as an average consumer, may have binding liquidity constraints and cannot afford the cost of legal proceedings, especially when cases are complex.<sup>66</sup> However, lawyers may choose to bring only the claims which are most likely to succeed or which require minimal preparatory work. Traditionally, in civil law legal systems, contingency and conditional fees are inadmissible and this is often deemed to be a relevant impediment for mass claims.<sup>67</sup> No direct correlation between the effectiveness of a collective redress mechanisms and the use of conditional fees could be proven, as no hard data is available in this respect. However, the interviews conducted with stakeholders in the United Kingdom revealed, for example, that a consumer organisation brought a collective action only because conditional fees made this possible.

*Relevance of the obstacle:*

This is a problem in countries where collective redress mechanisms are available but contingency and conditional fees are not permitted.

*Persons or categories of persons affected by the obstacle:*

Consumers and their intermediaries.

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<sup>66</sup> See, on this and other functions of contingent fees, Garoupa, N. and Gomez, F. (2008): Cashing by the Hour: Why Large Law Firms Use Hourly Fees instead of Contingent Fees. In: Journal of Law, Economics & Organisation.

<sup>67</sup> See Civic Consulting 2008 (Evaluation study) for a more detailed analysis.

*Economic significance of the obstacle for consumers:*

The inadmissibility of contingency and conditional fees increases the litigation risk for the claimant. The lack of possibility to link lawyer fees to the result of the legal action discourages consumers from going to court and seeking compensation for the damage suffered.

### **5.3.3 Obstacles relevant only for judicial collective redress mechanisms**

#### **9. Non-availability of collective redress mechanisms or lack of awareness of filed collective actions**

*Nature of the obstacle:*

(a) Non-availability of collective redress mechanisms. Collective redress mechanisms for damages suffered by consumers have been introduced in 13 EU Member States so far.<sup>68</sup> In 14 Member States such mechanisms do not exist. In countries where individual consumers cannot participate in collective actions, they can seek redress only on an individual basis. Since individual judicial procedures often involve high litigation costs (court and lawyers' fees) that may be disproportionate to the claimed amount, the lack of collective redress mechanisms is considered to be an obstacle for consumers for seeking compensation in very low- and low- to medium-value claims, especially in cases in which ADR schemes are either not available, or the infringing firm does not accept the outcome of an arbitration procedure.

(b) Lack of awareness of filed collective actions. Consumers may not join a pending procedure for collective redress simply because they are unaware of its existence. There are several reasons for this lack of awareness, including the lack of information networks between the people involved in the proceedings, for instance, solicitors of mass claims, as well as difficulties experienced by consumer associations in informing affected consumers about the ongoing redress proceedings. In some countries (for example, Germany and the UK), however, official websites exist where all mass claims under a specific collective redress mechanism are registered. There is so far no evidence available that would allow assessing whether the availability of such websites has a significant impact on the number of consumers joining the actions.

*Relevance of the obstacle:*

This is a major obstacle for collective redress, affecting 14 Member States. 49% of the respondents to the survey who answered the question regarded the non-availability of collective redress mechanisms as the most important obstacle, 6% as the second most important obstacle and 6% as the third most important obstacle.

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<sup>68</sup> See Civic Consulting 2008 (Evaluation study). The figure includes Italy, where the new law introducing a collective redress mechanism was not yet in force at the time of finalising this study.

*People or categories of people affected by the obstacle:*

All consumers involved in mass claims/mass issues, especially where these claims are individually small and scattered (large-scale very low- and low-value claims) and therefore it is not likely that consumers will seek redress on an individual basis.

*Economic significance of the obstacle for consumers:*

Collective redress mechanisms may allow for significant economies of scales and reduce the per-capita costs of litigation, thereby reducing the threshold for consumers to engage in judicial litigation (see section 6 of this report). For example, the Austrian representative action *Sammelklage nach österreichischem Recht* leads to a significant reduction in litigation costs compared to individual actions in ordinary courts.<sup>69</sup>

**10. Limits on types of entity that can bring collective actions**

*Nature of obstacle:*

The existing collective redress systems in the EU often give the right to file collective actions for damages to only a limited number of legal entities. If those legal entities that possess the legal standing decide against starting a legal action, consumers are prevented from using the instrument of a collective action to obtain redress for the damage suffered in a mass claim /mass issue.

*Relevance of the obstacle:*

None of the respondents to the surveys regarded limits on the types of entities that can bring a claim as the most important obstacle. However, 9% considered this obstacle to be the second most important obstacle and 16% to be the third most important obstacle. The restriction on the legal entities entitled to bring redress actions is relevant for collective redress mechanisms in several Member States.<sup>70</sup>

*People or categories of people affected:*

All individuals and entities that have no right to file collective actions for damages.

*Economic significance of the obstacle for consumers:*

The limitation on the number of legal entities entitled to file collective actions for damages suffered by a multitude of consumers may reduce to some extent the possibility for consumers to participate in a collective legal action to obtain compensation for the damage suffered in a mass claim/issue, if the entity decides not to bring a collective

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<sup>69</sup> This is illustrated by the following example: If 16 consumers would file a total claim of 55,000 Euro in ordinary courts in Austria, the total litigation fee for the 16 consumers would amount to 176,000 Euro (11,000\*16). In contrast, an action brought under the Austrian representative action would induce a litigation cost of 65,000 Euro (or 4,062 Euro per consumer). Source: Austrian Consumer Information Association (VKI).

<sup>70</sup> This obstacle has been reported from Austria, Finland, Italy, Spain and the UK.(Source: stakeholder survey and country report Finland in Civic Consulting (2008): Evaluation study, Part II.

action. For example, under the UK Competition Act, only one consumer association may bring a collective action for damages. So far, this consumer organisation has brought one collective action only, and it does not seem keen to bring such other actions in the future.<sup>71</sup>

## **11. Lack of state support and other mechanisms to finance collective redress actions**

### *Nature of obstacle:*

State financial support for collective actions, as well as other financing mechanisms, such as contingency/conditional fee (see above), legal expenses insurance (see above), and financing by a litigation financing company, removes or reduces the impact of monetary costs of litigation for damage claims.

State funds, if available at all, are generally insufficient to finance a significant number of collective redress actions, both in terms of number and size of the actions.<sup>72</sup> In some Member States, for example, Austria, Bulgaria and Germany, qualified consumer organisations are entitled to receive financial support, which is partly available for collective litigation. However, these resources are rarely sufficient,<sup>73</sup> and may also compete with other budgetary demands of the organisation. When financial support is provided to individual consumers, as a rule only economically disadvantaged consumers may apply for legal aid, which makes the scope of application of this kind of support extremely limited.<sup>74</sup> Legal aid obviously plays a role only where individual claims are joined in group actions under the German Capital Market Model Claims Act or the UK Group Litigation Order, or where individuals bring or participate in group actions, which is possible only in Bulgaria, Denmark, Portugal, Spain and Sweden.

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<sup>71</sup> Source: Country research and interviews, United Kingdom.

<sup>72</sup> See country report Sweden, country report the Netherlands and country report United Kingdom in Civic Consulting (2008): Evaluation study, Part II. The Swedish and the United Kingdom reports indicate that there is no direct public funding of group actions (section 1.6.1., question 7 of both country reports). In the Netherlands the Act on legal support (Wet op de rechtsbijstand) only allows for public support for consumer organisations if that consumer organisation cannot be expected to bear the costs of the procedure from its own resources or income (cf. Article 12 para. 1). The main consumer organisation – the Consumentenbond – most likely has too high resources to qualify for public support, whereas special interest groups founded to act in a specific case are excluded from public support (cf. Article 12 para. 2 limb d). Moreover, support is excluded where the consumer organisation may be expected to act itself or together with other organisations (Article 12 para. 2 limb g). In literature the near absence of (financial) public support for consumer organizations in the Netherlands is criticised. (see country report the Netherlands, section 1.6.1., question 7, p. 39 in Civic Consulting (2008): Evaluation study, Part II).

<sup>73</sup> In Austria, for example, collective redress actions of the consumer organisation VKI are financed by the relevant Ministry only up to a value of the claim of 100,000 Euro (above this threshold, a litigation financing company has to be involved).

<sup>74</sup> For example, in the United Kingdom, the budget of the Legal Services Commission is quite limited considering the high litigation costs of the English legal system. The study did not research the importance of legal aid in the different Member States. An empirical research in this area would be very useful.

The financing of collective actions by litigation financing companies remains the exception in the European Union.<sup>75</sup> This has been reported to be of major relevance in Austria only.<sup>76</sup>

*Relevance of the obstacle:*

None of the respondents to the survey who answered the question regarded this obstacle as the most important obstacle. It was mentioned as the second most important obstacle by 3% of the respondents. The scarce state financial support for collective redress actions is reported from several Member States.<sup>77</sup>

*Persons or categories of persons affected by the obstacle:*

The lack of state financial support, and of other financing mechanisms, to file collective actions affects mainly consumers' intermediaries.

*Economic significance of the obstacle for consumers:*

As previously explained, the monetary costs of litigation may lead consumers and intermediaries to refrain from seeking redress (that is, when the costs of an action outweigh the benefits). Lack of state financial support, and of other financing mechanisms, for redress actions may result in an insufficient number of redress actions and thus insufficient compensation.

## **12. Limited resources of consumer organisations**

*Nature of obstacle:*

Consumer organisations and other entities that have the right to seek redress on behalf of multiple consumers often have very limited financial resources, which do not allow them to cover litigation costs of collective redress procedures. For the same reasons, consumer organisations and other representative entities sometimes cannot afford to have qualified staff for managing cases that involve large number of consumers and large amount of damages.

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<sup>75</sup> In this case the company carries all the risk of losing the case. This practice allows consumers on the one hand to seek redress with zero risk. On the other hand, they have to renounce to approximately one third of the compensation if the case is won.

<sup>76</sup> For example, see Annex 5, exemplary case A: Package holiday sector (Austria). According to VKI, without the financing of the costs of litigation by a litigation financing company, it would have been difficult or even impossible for the consumer organisation to bring the case to court. In Germany, the Consumer Centre of Hamburg has now made a first arrangement with a company that is financing lawsuits in order to be able to sue a telecommunication services provider.

<sup>77</sup> Bulgaria, the Netherlands, Portugal, Sweden, and the UK (Source: stakeholder survey and country reports in Civic Consulting (2008): Evaluation study, Part II).

*Relevance of the obstacle:*

None of the respondents to the survey who answered the question regarded this obstacle as the most important obstacle. 6% of respondents viewed this obstacle as the second most important obstacle and 3% as the third most important obstacle. The lack of resources of consumer associations and other intermediaries is reported from a large number of Member States.<sup>78</sup>

*People or categories of people affected:*

Consumer organisations and other intermediaries.

*Economic significance of the obstacle for consumers:*

If monetary and non-monetary costs of litigation prevent consumer organisations from representing a group of damaged consumers and bringing collective actions, this may lead to consumers remaining uncompensated for the damage that they have suffered.

**13. Lack of expertise of intermediaries to bring actions**

*Nature of obstacle:*

In most of the Member States that have introduced collective redress mechanisms, they are relatively new instruments. Therefore, there may be a shortage of experienced and qualified lawyers who can assist consumers and intermediaries in bringing collective redress cases. Consumer organisations and other entities entitled to file collective actions may, because of this reason or lack of financial resources (see above), be short of trained and experienced personnel capable of bringing such actions.

*Relevance of the obstacle:*

3% of the respondents to the survey who answered the question regarded this obstacle as the most important obstacle, and 3% as the second most important obstacle. The potential lack of expertise of consumer representatives to bring collective actions is reported as a relevant impediment from several Member States.<sup>79</sup> For example, in Portugal, the lack of knowledge and experience on the part of the lawyers and judges involved, and the lack of best practices that has built up in relation to how to bring such cases were reported to be significant obstacles.<sup>80</sup>

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<sup>78</sup> These include Austria, Bulgaria, Belgium, Ireland, the Netherlands, Malta, France, Portugal, Spain and the United Kingdom (Source: stakeholder survey, country research and interviews, country reports in Civic Consulting (2008): Evaluation study, Part II).

<sup>79</sup> These include Austria, Bulgaria, the Netherlands, Portugal, Spain, Sweden, and the UK (Source: country research and interviews, country reports in Civic Consulting (2008): Evaluation study, Part II).

<sup>80</sup> See country report Portugal in Civic Consulting (2008): Evaluation study, Part II.

*People or categories of people affected by the obstacle:*

Consumer organisations and other intermediaries.

*Economic significance of the obstacle for consumers:*

If the lack of expertise of intermediaries in bringing collective actions leads to difficulties for consumers to get appropriate legal representation and obtain successful redress, this results again in under-compensation and loss in consumer welfare.

#### **14. Lack of judges experienced in case management**

*Nature of obstacle:*

The relative novelty of collective redress mechanisms might find also the judges unprepared. Litigations in which multiple consumers have similar claims against the same seller or service provider require specific skills and qualifications of judges in charge of hearing such cases.<sup>81</sup> The lack of familiarity with consumers' matters and case management of collective redress actions may prevent consumers from obtaining redress quickly and effectively.

The potential lack of expertise of the judges can also impact consumers' trust in the effectiveness and efficiency of domestic legal systems.

*Relevance of the obstacle:*

The lack of judges' expertise affects all judicial collective redress procedures. It is reported by stakeholders in a limited number of Member States.<sup>82</sup>

*People or categories of people affected by the obstacle:*

Any consumer, consumer association or other entity entitled to seek redress on behalf of the consumers.

*Economic significance of the obstacle for consumers:*

If the lack of judges' experience and competence in dealing with collective redress actions leads to lengthy proceedings this could be expected to discourage consumers and consumers' associations from bringing action, leading again to under-compensation and reduction of consumer welfare.

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<sup>81</sup> See also Tzankova, I.N, and Lunsingh Scheurleer, D.F. (2007): Class Actions, Group Litigation and Other Forms of Collective Litigation - Dutch Report. The Globalization of Class Actions Oxford Conference of 13 & 14 December 2007, p. 6, [http://www.law.stanford.edu/display/images/dynamic/events\\_media/Netherlands\\_National\\_Report.pdf](http://www.law.stanford.edu/display/images/dynamic/events_media/Netherlands_National_Report.pdf). The authors mention that "civil law judges are traditionally less familiar and comfortable with case management and had to get used to the dynamics of mass litigation".

<sup>82</sup> These include Bulgaria and Portugal (Source: Country research and interviews).

## **15. Entities bringing collective actions have problems in informing affected consumers**

### *Nature of obstacle:*

Identifying the number of claimants at the outset of the collective redress procedure, as well as informing them about the possibility of seeking redress, can be a significant obstacle.<sup>83</sup> This is especially valid for opt-in collective proceedings, in cases in which the consumer representative who has started the action has to identify potential claimants and inform them of the filed action.

In France consumer associations are not allowed to contact consumers directly (for example, by sending personal letters) and can only use print media (TV and radio announcements are excluded)<sup>84</sup> to attract consumers' attention. This clearly hampers good communication between consumers and their potential representatives. In this context, the use of electronic means of communication (dedicated websites) may simplify the process of contacting and informing interested parties. However, the websites that have been developed so far to contact interested consumers in joining an action do not appear to have fully reached their purpose. In the United Kingdom, the consumer association Which? created a dedicated website in order to bring a collective action under the Competition Act, however relatively few consumers registered a claim on this website.<sup>85</sup> In France, the consumer association UFC-Que Choisir developed a specific website to encourage consumers to join an action to obtain redress for damages which allegedly emerged from antitrust agreements between mobile telephone operators. According to the consumer association, more than 200,000 persons registered on the website, but only 12,521 consumers joined the actions (because uncomplete files had to be rejected), whereas the total number of affected consumers, as reported by the consumer association, is significantly higher (20 million).<sup>86</sup>

When the initiative for bringing an action on behalf of multiple consumers is left to lawyers, they can face additional problems in informing potential claimants. In France, according to law and to professional ethics rules, lawyers are not allowed to campaign for clients and advertise their services, and any public attempt to approach consumers potentially affected by a mass claim can be regarded as an infringement of professional ethic.<sup>87</sup>

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<sup>83</sup> Mulheron, R. (2008): Reform of collective redress in England and Wales: A perspective of need, p. 23-24.

<sup>84</sup> See country report France in Civic Consulting (2008): Evaluation study, Part II; stakeholder survey.

<sup>85</sup> See country report United Kingdom in Civic Consulting (2008): Evaluation study, Part II.

<sup>86</sup> See Annex 5, exemplary case C: Telecommunication sector (France).

<sup>87</sup> Magnier, V. (2007): Class Actions, Group Litigation & Other Forms of Collective Litigation – France, p.24-27. The Globalization of Class Actions Oxford Conference of 13 & 14 December 2007, [http://www.law.stanford.edu/display/images/dynamic/events\\_media/France\\_National\\_Report](http://www.law.stanford.edu/display/images/dynamic/events_media/France_National_Report).

*Relevance of the obstacle:*

None of the respondents to the survey mentioned this obstacle. However, the country research and interviews reveal that the difficulty in contacting and informing potential claimants is particularly relevant for collective redress mechanisms. This problem is explicitly reported from a number of Member States.<sup>88</sup>

*People or categories of people affected:*

Consumers and consumer representatives.

*Economic significance of the obstacle for consumers:*

The costs and difficulties in identifying consumers who have been affected by an unlawful practice, and the cost of gathering information from them may significantly increase the costs of a collective action and discourage intermediaries from starting one. For example, in Spain, the cost of advertisements in mass media during the proceedings (required by Section 15 LEC) is reported to prevent consumer organisations from bringing more actions.<sup>89</sup>

**16. Difficulties with distribution of the awarded compensation***Nature of obstacle:*

The process of distributing the compensation awarded by the judge following a collective action between the affected parties may be far from being simple, informal, or inexpensive.<sup>90</sup> The distribution of the damages awarded is particularly problematic in cross-border cases. The absence of mechanisms to transfer compensation awarded in one country to foreign consumers is reported, for instance, in a Canadian case where monetary compensation was awarded also to UK consumers but was never transferred to them, as there was not procedure for such eventuality.<sup>91</sup>

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<sup>88</sup> These include Belgium, France and the UK (source: Country research and interviews).

<sup>89</sup> See country Report Spain in Civic Consulting (2008): Evaluation study, Part II. The significance of these costs was also reported by stakeholders during the interviews conducted in the United Kingdom and France.

<sup>90</sup> For example, in Spain, when the claim is for monetary compensation, the judgment has to determine which consumers has to benefit from it and, when such determination is impossible because affected consumers are undetermined or hardly determinable, it has to specify the details, characteristics and requirements of consumers that are necessary to demand payment. As courts do not have sufficient information to fix such details, characteristics and requirements when they pass their decisions, it is possible that some affected consumers do not fulfil the established requirements and therefore they cannot benefit from the decisions. In Portugal, there are suggestions of difficulties in identifying the intended recipients as well as in ensuring that court awards are enforced.

<sup>91</sup> Source: Country research and interviews, United Kingdom.

*Relevance of the obstacle:*

This problem is explicitly reported from a limited number of Member States.<sup>92</sup>

*People or categories of people affected by the obstacle:*

Consumers in countries where there is no efficient mechanism for the distribution of damages awarded by courts.

*Economic significance of the obstacle for consumers:*

If problems in the distribution of the compensation awarded by the court results in consumers not receiving appropriate compensation, or any compensation at all, this could discourage consumers from participating in an action in the first place, leading to a sub-optimal level of compensation and decrease in consumer welfare.

### **5.3.4 Obstacles relevant for Alternative Dispute Resolution**

#### **17. Non-availability of ADR schemes**

*Nature of obstacle:*

ADR mechanisms may not exist in all sectors of the industry, so the possibility to resolve cases through out-of-court proceedings is not always available.

*Relevance of the obstacle:*

In most countries, ADR mechanisms are limited to particular lines of business.<sup>93</sup> This is explicitly reported from a limited number of Member States.<sup>94</sup>

*People or categories of people affected:*

All consumers involved in mass claims/mass issues, especially where these claims are individually small and scattered (large-scale very low- and low-value claims).

*Economic significance of the obstacle for consumers:*

If the lack of effective and efficient ADR mechanisms in a country results in inactivity on the consumers' side, this may lead to significant uncompensated losses, particularly also when other redress mechanisms are not available (for example, collective redress mechanisms) or too costly for consumers (i.e. individual actions in ordinary courts), especially for low-value claims (see above).

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<sup>92</sup> These include Portugal and the UK (source: Country research and interviews). See also country report Portugal, section 1.6.1., question 8, p. 22, in Civic Consulting (2008): Evaluation study, Part II.

<sup>93</sup> See Civic Consulting (2008): Evaluation study, Part I.

<sup>94</sup> See, for example, country report Spain (section 1.6.3., question 18), country report France (section 1.7.2.) in Civic Consulting (2008): Evaluation study, Part II.

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### **18. Businesses are not affiliated to ADR schemes**

*Nature of obstacle:*

Not all businesses are affiliated to relevant ADR schemes that exist in a specific country, so the possibility to resolve cases through out-of-court proceedings does not always exist.

*Relevance of the obstacle:*

This obstacle regards ADR mechanisms. It has been reported from Spain.<sup>95</sup>

*People or categories of people affected:*

All consumers.

*Economic significance of the obstacle for consumers:*

If not all businesses are affiliated to the relevant ADR schemes, this increases uncertainty concerning their effectiveness. Consumers who wish to obtain compensation for a damage suffered may be forced to use judicial redress, with related consequences (see above).

### **19. Difficulties in reaching agreement in ADR schemes that require mutual agreement**

*Nature of obstacle:*

ADR schemes are aimed at resolving disputes between consumers and businesses. In some cases ADR bodies are taking binding or non-binding decisions. Other types of ADR, however, require a mutual agreement between the opposing parties. The efficiency of this type of ADR mechanisms is highly dependent on how easy it is to reach a mutual agreement. That is also why sometimes consumers find mediation less attractive than, for example, arbitration, because they prefer an arbitrator to make a decision.<sup>96</sup>

*Relevance of the obstacle:*

This obstacle is specific for ADR as a means of consumers' redress aimed at seeking mutual agreement between consumers and businesses.

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<sup>95</sup> See country report Spain, section, 1.6.3., question 18, p.44, from Civic Consulting (2008): Evaluation study, Part II.

<sup>96</sup> Focus group discussion France.

*People or categories of people affected:*

All consumers.

*Economic significance of the obstacle for consumers:*

If persistent difficulties in reaching agreements lead to inefficient ADR schemes, consumers may decide to ignore the schemes and instead use judicial redress, with the related consequences concerning costs etc. (see above).

### **5.3.5 Specific obstacles relevant for cross-border claims related to all redress mechanisms**

#### **20. Lack of knowledge of legislation and available redress mechanisms in other Member States**

*Nature of obstacle:*

Lack of knowledge of both substantive and procedural legislation of other Member States is deemed a problem in cross-border cases. Besides facing difficulties in determining which national law shall apply in a cross-border case, consumers may lack information on the substantive and procedural set of rules to be applied. Also, in some cases affected consumers are unaware of the fact that collective redress mechanisms are available in another Member State.<sup>97</sup>

*Relevance of the obstacle:*

The lack of knowledge of legislation and available redress mechanisms in other Member States is relevant for the all types of redress mechanism when claims have a cross-border dimension.

*People or categories of people affected by the obstacle:*

Consumers and consumer organisations as well as their legal representatives may be affected by this obstacle.

*Economic significance of the obstacle for consumers:*

The economic consequences of poor knowledge about legislation and the existence of redress mechanisms in other Member States are similar to the effects of the lack of information within national boundaries (see obstacle 1). However, the cross-border dimension amplifies the effects of the lack of information about consumer rights and

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<sup>97</sup> Source: country research and interviews, the Netherlands and stakeholder survey (Austria, Belgium, Denmark, France, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom). A Belgian stakeholder also mentioned that psychological reasons (e.g. "it is too far", "too complicated", "I cannot do anything about it") may also prevent consumers to seek redress in cross-border cases.

available means of redress, because of language barriers, translation costs, and unfamiliar legal systems in other Member States.<sup>98</sup>

## **21. Conflict among national legislations**

### *Nature of obstacle:*

In cross-border cases questions concerning the applicable law may arise.<sup>99</sup> Legal uncertainty due to the diversity in the substantive rules of collective redress, but also in the legal treatment of court proceedings across jurisdictions, reinforce the disincentives to bring actions for consumers.

### *Relevance of the obstacle:*

Questions concerning the applicable law can be relevant for the all types of redress mechanism when claims have a cross-border dimension.

### *People or categories of people affected:*

All consumers and intermediaries involved in cross-border cases.

### *Economic significance of the obstacle for consumers:*

If potential conflicts among national legislations and resulting potential difficulties to obtain redress deters consumers from engaging in cross-border shopping, this may imply losses to consumer welfare as the potential benefits of a consumer internal market cannot be reaped.

## **22. No information about collective claims brought in other Member States**

### *Nature of obstacle:*

Sometimes affected consumers do not know that a collective action for damages caused by the same firm has been brought in other country. When consumers are not informed about the initiation of a collective action in another Member State, they cannot participate in the action and potentially benefit from the damages awarded. The lack of information on collective redress procedures pending in other Member States is for a number of reasons. First, communicating information across national borders is difficult because of language barriers, different access to media and newsworthiness of the relevant facts. Second, as was already analysed above (obstacle 15), entities entitled to bring claims can find it difficult to inform potentially affected parties in their own country. This is even more complicated in the cross-border context.

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<sup>98</sup> Source: country research and interviews, The Netherlands.

<sup>99</sup> This is confirmed by stakeholder survey (Luxembourg, Spain, United Kingdom); country research and interviews, The Netherlands.

*Relevance of the obstacle:*

The lack of information about collective actions in other Member States is relevant for collective redress mechanisms and reported from a number of Member States.<sup>100</sup>

*People or categories of people affected:*

All consumers and intermediaries involved in cross-border cases.

*Economic significance of the obstacle for consumers:*

If consumers are unaware of collective actions brought in other Member States, they are not able to join them. If affected consumers consequently also refrain from individual action (which is difficult in a cross-border context), they are likely to remain uncompensated for their losses.

**23. Difficulty to identify a defendant in other Member State***Nature of obstacle:*

Sometimes consumers and their intermediaries experience difficulties identifying and contacting the company or businessperson that caused the damage, especially when the company in question is located abroad.

*Relevance of the obstacle:*

This obstacle is relevant for all redress mechanisms with a cross-border dimension. It has been reported from a significant number of Member States.<sup>101</sup> This obstacle is particularly relevant for scams cases and bogus companies.<sup>102</sup> For example, a German consumer organisation reported “some difficulty in enforcing claims concerning unserious companies situated abroad with only p.o. box addresses”.<sup>103</sup> This obstacle was also mentioned by a Portuguese consumer association in relation to a case related to the sale of telephone ring tones.

*People or categories of people affected:*

Consumers and intermediaries.

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<sup>100</sup> These include France, Germany, Italy, Luxembourg and the United Kingdom. (Source: stakeholders survey, country research and interviews).

<sup>101</sup> These include Austria, Finland, France, Germany, Ireland, Luxembourg, Portugal and the United Kingdom (Source: stakeholders survey, country research and interviews).

<sup>102</sup> For example, an Irish stakeholder mentioned that by the time needed to gather evidence to justify a police investigation, the Spanish bogus company (a holiday club) had disappeared.

<sup>103</sup> Source: Der Verbraucherzentrale Bundesverband - <http://www.vzbv.de/go/dokumente/254/5//index.html> (last visited on 14.10.2008).

*Economic significance of the obstacle for consumers:*

Even when consumers are aware of the possibility of initiating a redress procedure abroad, they may find it difficult to identify the defendant in another Member State and are thus hindered from seeking redress. Consumers' inactivity may result in an insufficient compensation and loss in consumer welfare.

**24. No standing of bodies to bring claim in other Member State or inability to join claims brought in another Member State**

*Nature of obstacle:*

Sometimes domestic procedural rules for judicial redress do not entitle entities from other Member State to bring claims before national judicial authorities. This restriction may prevent consumer organisations from claiming damages or joining ongoing judicial procedures in other Member States when the same fraudulent practice has affected multiple consumers from both Member States.

*Relevance of the obstacle:*

The inability of consumer organisations/representatives to bring claims in other jurisdictions is reported from several Member States.<sup>104</sup>

*People or categories of people affected:*

Consumers and consumer associations.

*Economic significance of the obstacle for consumers:*

If procedural rules applicable in one Member State do not entitle entities from other Member States to bring claims before domestic judicial authorities, the right of redress and the possibility to obtain fair compensation are limited. Restrictions on the types of entities that can bring collective actions in cross-border cases may leave a proportion of the affected consumers under-compensated for their loss.

**25. Language barriers, travel expenses, and difficulties in obtaining adequate representation**

*Nature of obstacle:*

Language barriers are a significant problem in cross-border consumer cases. They make it difficult for public authorities and consumer associations from one Member State to communicate official information about the filed actions (court notices and other papers), as well as information about the possibility to join the ongoing redress

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<sup>104</sup> These include Belgium, Denmark, Italy, Portugal, Spain and Sweden (Source: stakeholder survey, country research and interviews).

action to potential affected consumers in other Member States. Consumers, when receiving documents printed or written in a language unknown or unfamiliar to them, may simply ignore them, and it is not very likely that they will make the effort to understand or translate the documents. If consumers are informed about the collective action and decide to join it, they might also incur in travel expenses and can face difficulties in obtaining adequate representation of their interests because of the geographical distance, language and cultural differences.

*Relevance of the obstacle:*

This obstacle is reported from several Member States<sup>105</sup> and is relevant for most consumer cross-border cases.

*People or categories of people affected by the obstacle:*

Consumers and intermediaries.

*Economic significance of the obstacle for consumers:*

Language barriers, travel expenses and the need to find adequate representation are all factors that significantly increase the costs of bringing an action in a foreign country, for both individual actions and collective actions. Moreover, geographical distances, language barriers and cultural differences are likely to affect the relationship between consumers and their legal representatives and increase the agency costs (see section 6). Due to the additional costs, individual or collective actions in other Member States often may outweigh the potential benefits and prevent consumers from claiming for damages in Member States other than their country of origin.

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<sup>105</sup> These include Finland, France, Denmark, the Netherlands and the United Kingdom (Source: stakeholder survey, country research and interviews).

#### 5.4 **Relative importance of obstacles from a consumer viewpoint**

Obstacles preventing consumers from obtaining satisfactory redress can be grouped according to their relevance from a consumer viewpoint. This was done taking into account the following data sources:

- ❑ Assessment of stakeholder organisations from 23 Member States;
- ❑ Focus group discussions in 4 Member States; and
- ❑ Analysis of examples of cases of mass claims/mass issues where not all consumers obtained satisfactory redress.

This data is presented in the following sub-section.

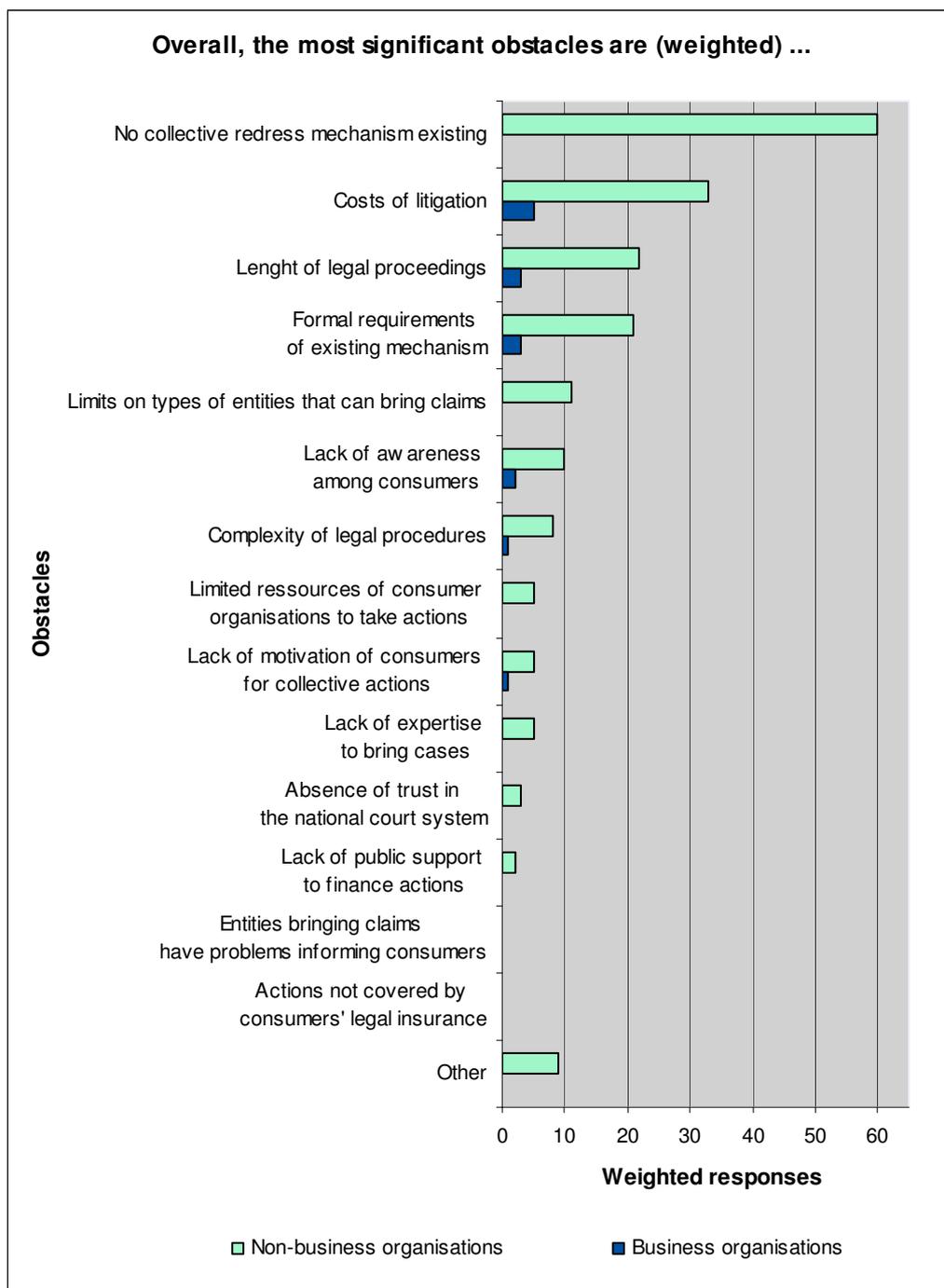
##### 5.4.1 **Assessment of stakeholders**

Figure 8 below presents the assessment of business and non-business stakeholder organisations<sup>106</sup> concerning the question: *What are the major obstacles faced by consumers in your country wishing to obtain redress for mass claims/mass issues where multiple consumers had claims against the same seller/provider of services because of the same type of infringement?*

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<sup>106</sup> See Annex 2 for the list of respondents.

**Figure 8: Major obstacles to obtaining satisfactory redress in mass claims/mass issues as perceived by stakeholders**



Source: Surveys of non-business organisations and business organisations. Note: Weights refer to the order of importance of obstacles, as assessed by stakeholders, i.e. obstacles mentioned as most important are given a weight of 3, obstacles mentioned as second most important are given a weight of 2, and obstacles mentioned as third most important are given a weight of 1.

The survey results indicate that several obstacles were considered to be very important, including:

- No collective redress mechanism existing
- Costs of litigation
- Length of legal proceedings
- Formal requirements of existing mechanism.

Other factors that were relatively frequently mentioned as relevant obstacles and can therefore be considered fairly important include the following:

- Limits on types of entity that can bring claims
- Lack of awareness among consumers
- Complexity of legal procedures

Finally, stakeholders were asked to assess major obstacles faced by consumers wishing to obtain redress for cross-border mass claims/mass issues. Obstacles most frequently chosen were:

- Lack of knowledge of foreign redress mechanisms
- Lack of knowledge of foreign legislation
- Language barriers
- No information about claims brought in other Member States

#### **5.4.2 Focus group discussions**

Focus group discussions with consumers were conducted in four Member States (Austria, France, Italy and Portugal<sup>107</sup>), to get a better understanding of how consumers approach the issue of obtaining redress and to evaluate their experience. All participants had previously experienced a conflict with a seller/service provider that could not be amicably solved.<sup>108</sup> They were asked about the obstacles they felt they faced when seeking redress generally. Obstacles mentioned in relation to a consumer complaint included:

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<sup>107</sup> These Member States were selected to take into consideration a balanced geographical coverage and the availability of collective redress mechanisms (collective redress mechanisms are available in Austria, France and Portugal and a new mechanism is to be introduced in Italy).

<sup>108</sup> Consumers who participated in the focus groups were randomly selected consumers according to age and gender who previously had a dispute with sellers/service providers which could not get amicably solved and who already had some practical experience with individual or collective actions or who intended to take action either individually or as part of a group of consumers. The focus group discussions involved 10 consumers in Austria, 8 in France, 6 in Italy and 9 in Portugal.

- ❑ The cost of taking action, and the fact that, in some cases, the cost would be unknown until the case was resolved;
- ❑ Lack of legal knowledge about rights and how to enforce them;
- ❑ The time it could take to prepare a complaint or case, and to have it resolved;
- ❑ The risk of spending time and/or money and not receiving adequate compensation;
- ❑ The imbalance of power between the individual and the company against whom they had a complaint

Detailed results of the focus groups are presented in Part II of this report.

### **5.4.3 Relevance of obstacles in example cases**

For this study four cases of mass claims/issues from different sectors have been analysed. These are:

- Case A – Package travel (Austria/Germany)
- Case B – Financial services (Spain/Portugal)
- Case C – Telecommunications (France)
- Case D – Financial services (Ireland)

Two of the example cases have a cross-border aspect (cases A and B) and the other two are domestic mass issues (cases C and D). They are documented in detail in Annex 5.

In case A the following obstacles for consumers in obtaining satisfactory redress were identified:

- Litigation costs of individual court procedures
- Limited resources (financial) of the consumers' association to finance the litigation costs of collective redress procedure
- No relevant ADR scheme in the travel sector

Analysing the data on relevant obstacles gathered from the analysis of case B, it appears that, in general, with these particular mass issues aggrieved consumers have obtained satisfactory redress, with one exception concerning collective actions before a provincial Court of Appeals. However, according to the interview partners, in the course of seeking redress, affected consumers have faced some difficulties that can be summarised in the following way:

- Entities bringing claims do not have right on standing in individual procedures
- Lack of experience and expertise in bringing collective actions
- Lack of judges experienced in case management
- Litigation costs of individual court procedures

- Limited resources (financial and human) of the consumers' association to bring collective actions
- No effective ADR scheme available in financial sector
- Difficulties in reaching agreement for participation in ADR schemes
- Non-admissibility of individual redress for immaterial damage in collective actions
- Lack of legal knowledge of consumers for seeking individual redress when legal representation is not necessary (low-value claims)
- Lack of information about the legislation in other Member States in cross-border mass issues
- Lack of knowledge of collective redress mechanisms in other Member States in cross-border mass issues.

In case C the following obstacles for obtaining satisfactory redress appear to have been relevant. These are as follows:

- Formalities of judicial redress procedures - consumers experienced difficulties in providing evidence for their claims
- Complexity of individual court procedures
- Lack of consumers' knowledge about which court is competent to hear their cases
- Litigation costs of individual court procedures
- Limited resources (financial and human) of the consumer organisation to manage collective actions that have many claimants
- Consumer organisation experienced impediments and limitations in the process of informing the aggrieved consumers for collective redress procedure
- No effective ADR scheme

Finally, in case D, in which a large number of consumers were affected and faced a strong obstacle to obtain redress, according to the available information, there was only one affected consumer who made a complaint to the Financial Services Ombudsman of Ireland and, according to the collected data, this consumer received adequate compensation both for economic and non-economic damage. All other the aggrieved consumers, the precise number of which was unknown to the interview partners, have remained passive and did not seek any redress. The interviewees suggested that the main reasons for this consumer behaviour could be that:

- Litigation costs of individual redress would be disproportionately high for such low damages (25 Euro)
- Individual court procedure is too long and it is not worthwhile to go through it for such low damages
- Lack of motivation among consumers due to low amount of damages

- There is no relevant collective redress mechanism in financial (insurance) sector
- Lack of relevant/adequate ADR scheme for mass issues

In conclusion, the data gathered from the four example cases reveals that a limited number of obstacles faced by consumers in seeking redress can be considered to be very important. These include:

- Costs of judicial litigation
- Limited resources (financial and human) of consumer organisations to manage collective actions with many claimants
- No relevant/adequate ADR scheme for mass issues

Other obstacles that can be considered to be fairly important obstacles, based on the analysis of the example cases, are:

- Lack of awareness/information among consumers
- Formal requirements of existing mechanism

## 5.5 Conclusions

Summarising the data on obstacles faced by affected consumers in seeking redress for mass issues collected from stakeholders' survey, the example cases, and relevant literature, the obstacles can be ranked according to their importance as follows.

**Table 15: Ranking of obstacles that prevent consumers from obtaining satisfactory redress**

Obstacle	A. Stakeholder assessment	B. Focus groups	C. Example cases	Sum (A+B+C)	Rank	Summary assessment
	Very important = 1, Fairly important = 2, Less important/not mentioned = 3					
Costs of litigation	1	1	1	3	1	Very important
Formal requirements of existing mechanism	1	1	2	4	2	Very important
Length of judicial proceedings	1	1	3	5	3	Very important
Lack of awareness/information among consumers	2	1	2	5	3	Very important
No collective redress mechanism	1	2	3	6	5	Very important
Limited resources of consumer organisations to take actions	3	3	1	7	6	Fairly important
Lack of motivation of consumers	3	1	3	7	6	Fairly important
Limits on types of entities that can bring claims	2	3	3	8	8	Fairly important
Complexity of legal procedures	2	3	3	8	8	Fairly important
Entities bringing claims have problems informing consumers	3	2	3	8	8	Fairly important
Lack of expertise to bring cases	3	3	3	9	11	Less important
Lack of trust in the national court system	3	3	3	9	11	Less important
Lack of public support to finance actions	3	3	3	9	11	Less important
Actions not covered by consumers' legal expenses insurance	3	3	3	9	11	Less important
Other obstacles considered relevant (not included in questionnaire)		Imbalance of power between individual/company	No adequate ADR scheme for mass issues			Fairly important

Source: Stakeholder survey, focus group discussions in four MS and analysis of example cases  
The data presented in this section leads to the following conclusion:

3. ***The costs of litigation are the most important obstacle preventing consumers from obtaining satisfactory redress in mass claims/mass issues.*** Other very important obstacles are: the formal requirements of existing mechanisms; the length of judicial proceedings; the lack of awareness/information among consumers; and the fact that in some countries no collective redress mechanism exists. Obstacles that are relevant in a cross-border context include language barriers, and the lack of knowledge/information concerning legislation, collective redress mechanisms and collective claims brought in other Member States.

## 6 Economic consequences of factors preventing consumers from obtaining satisfactory redress

*Description of task provided in TOR: The study will examine the economic consequences of these factors for consumers, competitors and the functioning of the relevant market. Concerning the analysis, a special focus will be given to cross-border situations.*

### 6.1 Introduction

European rules on consumer protection, and the implementing rules in the various national legal orders that arise from the European directives in this field govern, at least partially, many if not most of the transactions and economic interactions affecting safety and health, and also economic welfare of consumers in Europe. How these rules and the remedies they contain are effectively enforced decisively shape how the behaviour of firms and consumers respond to the incentives set out in the substantive standards and rules. The crucial role of enforcement is by no means exclusive of European Consumer Law, nor of Consumer Law more generally. It is definitely also true for most areas in Public and Private Law. In the context of Consumer Law, however, this role is probably more prominent due to two reasons:

- ❑ First, the effectiveness of the traditional model of enforcing rights and remedies among private parties, namely private litigation among equally situated parties before ordinary civil courts, does not seem to fit well many of the features of the typical interaction between firms and consumers in need of legal redress;
- ❑ Second, the interplay between public and private enforcement seems highly significant in the context of Consumer Law, much more than in the central areas of Private Law (e.g. commercial contracts) and Public Law (e.g. criminal actions against citizens and the corresponding sanctions).

This relevance explains why some less traditional modes of enforcement of consumers' rights and remedies have been introduced in different jurisdictions, which specifically address the collective aspects relevant for many consumer claims. On the one hand, this refers to the Directive on injunctions for the protection of consumers' interests and its national implementation, which relates to infringements harmful to the collective interests.<sup>109</sup>

On the other hand, this refers to a wide variety of collective redress mechanism for damages introduced in 13 EU Member States so far.<sup>110</sup> Such mechanisms exist in order to sue another party, typically a firm having engaged in production or distribution of goods or services or having participated in commercial practices in the market, to

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<sup>109</sup> See, Directive 98/27/EC of the European Parliament and of the Council, of 19 May 1998, on injunctions for the protection of consumers' interests. "Collective interests" for the purposes of this Directive mean interests which do not include the cumulation of interests of individuals who have been harmed by an infringement.

<sup>110</sup> For an overview, see Civic Consulting (2008): Evaluation study.

claim damages for a loss incurred by a group of consumers. Other Member States lack such kind of collective redress mechanism.

The purpose of this section is to provide an analysis of the economic consequences of obstacles preventing consumers from obtaining satisfactory redress in mass claims/mass issues for consumers, businesses and relevant markets. To understand the origins and factors of unsatisfactory redress for consumers concerning mass claims/issues, it is first necessary to review briefly the obstacles that individual consumers face when problems arise with a product or service.

## **6.2 General problems of redress in Consumer Law**

### **6.2.1 *The need for private redress***

In modern developed economies, consumer goods and services, and the commercial practices that are related to them, tend to be produced and distributed in large amounts and to a large number of consumers. One single behaviour by a firm – for example, a safety decision concerning the design of a product, a marketing campaign, a clause in a standard form contract – is likely to affect in the same way (or closely so) a significant number of consumers in a similar position: consumers of the risky product, addressees of the marketing campaign, contracting parties of the same firm etc.

When a problem arises with the product, the marketing campaign or the contract clause, substantive rules in European and national legal systems are likely to provide remedies for the affected consumers, including compensation for the resulting loss. These remedies, however, are typically granted on an individual basis to the individual consumers and, according to the conventional modes of enforcing legal rights granted by law to individuals in their private sphere, the remedies have to be pursued individually and on a case-by-case basis in front of the relevant adjudicator, traditionally a court of law, and in some areas, an ADR scheme such as an arbitration body, be it of a private, quasi-governmental, or governmental nature.

From an economic perspective, one purpose of the legal remedies granted to consumers is to deter firms from engaging in the kind of behaviour that is deemed undesirable to the physical and financial well-being of consumers.<sup>111</sup> In order to achieve this goal of deterring undesirable firm behaviour, the remedies need to be perceived by the firms engaged in business as effective and truly applicable to each and every firm who is in the situation of making the choices – regarding product safety and quality, the amount of information provided in a marketing campaign, or in the substantive adequacy of a

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<sup>111</sup> It is true that compensation of aggrieved consumers is also economically relevant, but this function could be achieved, at least theoretically, through other – less costly in terms of the ratio of Euro paid in compensation to Euro spent in running the compensation system – schemes different than the courts and the legal system, such as public compensation funds or insurance. This leaves, from the point of view of economic theory, incentives, and thus deterrence of firms so that the harm to consumers does not occur in the first place, as the most relevant goal in this and related areas. This is a general issue in the economic literature concerning liability. See, Shavell, S. (1987), *Economic Analysis of Accident Law*, Harvard University Press, Cambridge (MA) and London.

contract term – that may impact consumer welfare. This means that the remedies have to be in practice able to be effectively pursued against the firm standing behind the product, the campaign or the unfair contract term.

### **6.2.2 *Incentive problems of individual redress***

Individual consumers face very serious obstacles and incentive problems that make optimal enforcement of consumer rights and remedies (including obtaining satisfactory redress for damages) through individual legal action difficult. The first group of obstacles that have already been discussed in detail in the previous sections 3 and 5 concerns informational deficiencies. Infringement of Consumer Law and resulting damages may not be detected by the affected consumers, due to a wide variety of circumstances. First, long-tail effects may exist, meaning that a fraction, even a substantial one, of the adverse consequences of the infringement may manifest themselves only after a substantial period of time, making infringement detectable only years after the event. Second, the negative effects of the firm decision may be only a low-probability event; such is the case with a pharmaceutical that has significant side effects for only small number of patients. Finally, the loss for the consumer may not be manifest to many consumers. This may be the case, for instance, if an advertisement is misleading and manipulates the economic behaviour of the consumer.

Moreover, even if the infringement itself is detected by many or most consumers, they may not be adequately informed about the legal consequences of the infringement and the remedies provided to them by Consumer Law, and they may also lack knowledge about possible redress mechanisms. Due to these varied informational deficiencies the individual consumer does in many cases not have an actual and effective chance of legal action against the firm to obtain damages for the loss incurred.

In addition to these informational problems, even if the affected consumers, or at least some of them, are aware of the loss suffered as a consequence of the infringement of Consumer Law by the firm, and are also adequately informed about the legal rights and remedies applicable in the circumstances, these informed consumers may rationally decide to forego legal actions and the ensuing remedies. The reason would be that the costs of individual legal action outweigh the benefits of such legal action. Remaining passive appears then to be the more rational approach. The individual loss incurred by the consumer considering legal action may be small, even trivial (however high it may be in the aggregate), but this high aggregate loss is something that the individual consumer will rationally not include in his or her calculations when deciding whether or not to pursue legal action. Moreover, the private benefit of initiating legal proceedings is not certain, but based on probability, that is, there is a degree of uncertainty of the outcome. The potential benefit needs to be discounted by the probability that the firm, in the end, is not found liable, due to factual or legal reasons. On the cost side, however, there are the fixed costs of litigation, both monetary (lawyers' fees and, eventually, court fees) and non-monetary (time and inconvenience) associated with a legal action (these and other factors influencing the transaction costs of redress are discussed in detail in section 5). Even if the rule that the loser pays the legal costs serves to alleviate

the impact of monetary costs on the decision to bring a lawsuit, it is often likely that the costs would outweigh the benefits, and thus the individual consumer would be better off individually by refraining from legal action. The mode of the individual action does not significantly alter the incentive problem of consumers. It may favourably influence, under some circumstance and to some extent, the balance of costs and benefits for the individual consumer facing the decision to take legal action, but it does not essentially and dramatically change the nature of the problem. For instance, if instead of an individual court action one thinks of an ADR scheme with lower costs associated for the consumer – both less monetary cost to initiate the claim for redress and less non-monetary cost in the form of less time and inconvenience for the consumer – it is clear that the balance of costs and benefits may be somewhat different, and tilted now towards more action for redress. But the incentive problem of the individual consumer facing the decision to initiate action does not disappear; it may be only alleviated to the extent in which the disparity between individual costs and benefits is somewhat decreased.

### **6.2.3 Threshold amounts for individual action**

The costs of litigation therefore lead to threshold amounts for individual action. A threshold amount for individual legal action is the minimum amount of loss that would make a consumer bring a problem with a product of service to court. According to a 2004 Eurobarometer survey citizens of the EU 15 would be more inclined to go to court for 500 to 1,000 Euro than for lesser amounts.<sup>112</sup> For the present study, threshold amounts have been explored further with focus group research in four Member States and additional interviews/expert assessments in 15 EU Member States. The research confirms that the threshold amount for individual legal action differs by country (for example, because of the existence of small claims procedures), and can be expected to be in the range of several hundred Euro (for simple cases) to more than 10,000 Euro (for complex legal issues).<sup>113</sup>

From the research it appears that there is also a threshold amount to use an ADR scheme (if one is available). Estimates of the threshold for claims under which a rational consumer would refrain from seeking redress through an ADR scheme are often in the range of 50 to 200 Euro of loss incurred (depending on the ADR scheme and the country).<sup>114</sup>

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<sup>112</sup> Special Eurobarometer 195: European Union Citizens and access to justice (Fieldwork: September 2003, Publication: October 2004), p.29.

<sup>113</sup> The focus group discussions conducted for this study in four Member States (Austria, France, Italy and Portugal) indicated threshold amounts for individual legal action perceived by the participants as being between 1,000 to up to 15,000 Euro in Italy and Portugal, whereas some participants in France and Austria declared to be willing to take action already for lower amounts of several hundred Euro, in France even one hundred Euro, see Part II of this study. See also section 4.3.3., EQ6, and section 4.6.1 of Civic Consulting (2008): Evaluation study, Part I.

<sup>114</sup> This threshold amount may be a result of minimum values of claims that some ADR schemes require (e.g. in Denmark the Consumer Complaints Board's general threshold is that the price of the goods or service in question shall

The consequence of these thresholds is that remedies are likely to be not pursued individually for very low value claims, in which the individual loss is lower than the threshold for both ADR and individual court action. And also for low- to medium-value claims rational consumers may refrain from taking individual action, depending on the circumstances of the case and the availability and accessibility of appropriate redress mechanisms. This has been confirmed by the results of a parallel study concerning the evaluation of existing collective redress mechanisms in the EU.<sup>115</sup> Individual action concerning mass claims/mass issues seems to be more often pursued in the case of high value claims, as they occur, for example, in the area of financial services. This has been illustrated, for example, in the Dexia case in the Netherlands and the Telekom case in Germany, where many thousands of consumers took individual legal action to obtain damages for their alleged losses.<sup>116</sup>

This leads to the following conclusion:

4. ***Obstacles to obtaining satisfactory redress lead to threshold amounts for individual action (both legal action and ADR).*** If the individual loss is lower than the threshold amount, rational consumers tend to refrain from action because the costs of individual action outweigh the likely benefits. In consequence, it is unlikely that consumers pursue effective remedies against firms that have infringed on consumer protection legislation in very low value claims. Even in low- to medium-value claims the threshold amounts for individual action lead to a low level of individual enforcement of consumer claims. Effective ADR schemes alleviate this problem to the extent that the disparity between individual costs and benefits is decreased. However, the incentive problem of the individual consumer facing the decision to initiate action does not disappear.

#### **6.2.4 Positive externalities of individual legal actions**

Legal action does not only provide private benefits, in the form of a damage payment, to the individual consumer who decides to bring an action. Legal action, if successful, also serves to produce two types of (at least initially) non-rival and non-excludable benefit (in other words, positive externalities):

- a) The action creates a beneficial precedent favouring parties in similar circumstances (that is, other consumers who also intend to claim damages benefit from it); and
- b) The action serves to enforce the substantive rules of Consumer Law by imposing costs in the form of adverse consequences – damages, and other

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exceed more than DKK 800 (107 Euro). It also requires that the consumer pays a fee of DKK 150 (20 Euro), which is refunded if the complaint is successful. For Portugal the threshold amount for individual ADR was estimated to be 50 Euro, and for the Netherlands to be 100 to 200 Euro. See also Civic Consulting (2008): Evaluation study (Evaluation Study).

<sup>115</sup> See section 4.6 of Civic Consulting (2008): Evaluation study.

<sup>116</sup> See country reports Netherlands and Germany, Civic Consulting (2008): Evaluation study.

monetary consequences, but also reputational losses – on firms infringing their legal duties, thus providing incentives for that firm or other comparable firms, to “play by the rules” and thus benefit all consumers in a similar position (that is, other consumers who intend to purchase a similar product or service in the future benefit from the deterrence effect on firms).

These collective benefits in precedent and enforcement – which constitute a “public good” in the economic sense of the term – are not taken into account in the individual decision of consumers on whether to take legal action or not. This is a well-known failure, where sub-optimal incentives exist for individual consumers to contribute – here through legal action – to the provision of the collective good (the so-called collective action failure).<sup>117</sup>

An interesting aspect relates to the quantitative dimension of the underlying infringement of Consumer Law. Are the problems of individual enforcement of Consumer Law affected by the number of individual consumers affected by a mass claim/mass issue? Problems related to collective goods are likely to be more acute, and lead to a larger disparity with the socially desirable outcomes, when the size of the group of affected individuals increases.<sup>118</sup> The rational reluctance of consumers to bring individual claims is also likely to be aggravated the higher the number of affected consumers is. The reason would lie in the fact that the costs for the consumer plaintiff to bring an action are not exogenous, but depend on the stakes of the case for the defendant. And the larger the group of affected consumers, the more serious the consequences of losing the case for the firm, and thus, the more the latter would likely be willing to invest in the individual case in terms of better and more expensive lawyers, more expert witness etc. This would also potentially raise the costs for the consumer who may decide to file a suit. For a given level of damages, the balance will be even more tilted towards refraining from legal action. Lack of information, at least to some extent, may, however, be somewhat alleviated by the magnitude of the problem: one would expect that, the more consumers are affected by the same problem (defective product, misleading marketing campaign, unfair contract clause) the more information will be available for individual consumers, and public attention will be greater, both with respect to the underlying facts and to the legal consequences of the infringement of Consumer Law.

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<sup>117</sup> In economic theory a collective action failure arises when the choice or decision of a collective – formed by individuals behaving rationally – determines an outcome that is inferior in terms of the resulting welfare for the members of the collective to other feasible outcomes: See Olson M. (1965): *The Logic of Collective Action*, Harvard University Press. For a general and formal presentation of the collective action problems, see Sandler, T. (1992): *Collective Action. Theory and Applications*, University of Michigan Press and Mueller, D. (2003): *Public Choice III*, Cambridge University Press.

<sup>118</sup> In formal terms, the negative effect of group size on efficiency of provision of collective goods depends on the technology for the provision of the good, and also the characteristics of the group – homogeneity, endowments, and so on – but there are many settings in which the conjecture by Olson that group size aggravates the problems has been confirmed: See Sandler, T. (1992): *Collective Action. Theory and Applications*, University of Michigan Press, p. 49 and following.

### 6.2.5 *Incentive problems of collective redress*

For the reasons summarised in the preceding sub-section, dispersed individual actions by consumers are not likely to adequately enforce legal remedies for harm or loss incurred as a result of Consumer Law infringements by firms affecting a large number of consumers, especially for very low value claims. To overcome this deficiency several European countries have introduced collective redress mechanisms for damages. They adopt different formats:<sup>119</sup>

- Group actions, in which individual actions are literally grouped into one procedure (other than through a traditional joinder of plaintiffs in similar cases);
- Representative actions, in which one individual or an organisation represents a multitude of individuals;
- Test-case procedures, in which a case brought by one or more people leads to a judgment that forms the basis for other cases brought by people with the same interest against the same defendant; and finally
- Procedures for skimming-off profits, in which a defendant who infringes the rules against unfair competition or unfair commercial practices is held liable to reimburse the illegally obtained profits.

These collective redress mechanisms often intend to exploit the significant economies of scale in the process of preparing and litigating a case, which may reduce the cost of legal action per Euro of expected payment in damages. The economies of scale in preparing the case and also the public attention raised by a collective action (at least, with some likelihood, enhanced compared with the level to be expected under scattered individual claims) also likely reduce the information costs for individual consumers who may decide to form or join a group of plaintiffs, both on issues of fact, and on availability and operation of legal remedies.

Collective actions, in a cost-benefit calculation for the individual consumer, are therefore likely to shift the balance (at least somewhat) in favour of initiating legal action by forming or joining a group, or by contributing to the suit brought by a consumer organisation or an ombudsman. In spite of that, the availability of collective redress in a given legal system will not entirely eliminate the rational disincentives for individual consumers to take part in collective litigation.

Even if reduced compared with the alternative of individual legal action, the fraction of the cost (monetary and otherwise) of collective litigation that falls upon a given individual under these procedures may be higher than the expected benefit in terms of the per capita share of total damages awarded to the group. If this is the case, a consumer would rationally opt not to join the group of plaintiffs, and if a sufficient number of consumers behave similarly, the collective suit may become infeasible. As the costs of litigation are, to a significant extent, invariant to the number of consumers in the litigating

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<sup>119</sup> See Civic Consulting (2008): Evaluation study

group, there may be a critical point in membership below which the collective suit becomes uneconomical for the remaining group of consumers.<sup>120</sup>

### **6.2.6 Threshold amounts for collective action**

From the analysis in the previous section it can be concluded that for collective redress mechanisms threshold amounts are likely to be lower than for individual litigation. The tendency of lower threshold amounts for collective actions was confirmed by the focus group discussions conducted for this study.<sup>121</sup> However, even in cases where consumers do not bear any litigation costs when they opt-in, the participation rate is often very low.<sup>122</sup> This suggests that a certain threshold also exists for collective redress actions that do not involve any costs for consumers.<sup>123</sup> This threshold relates to other costs, namely, other monetary (e.g. provision of documents)<sup>124</sup> and non-monetary costs (e.g. time involved).<sup>125</sup> Based on this experience it can be expected that threshold amounts would also exist for collective ADR schemes (as they are available in Finland and Sweden). Again, this is caused by transaction costs, both monetary (e.g. postage) and non-monetary (e.g. time for requesting compensation after a decision was taken under the ADR scheme).<sup>126</sup>

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<sup>120</sup> The risk of this unfavourable outcome is alleviated when the per-capita (for the participant) and fixed costs of the collective redress mechanism are lower. If this is effectively the case with some kinds of collective ADR mechanism, then it is likely that the participation rate, and thus the level of actions for redress would be higher, at least insofar the degree of complexity of the case would allow for an arbitration procedure.

<sup>121</sup> Participants of the focus groups in France, Italy, and Portugal indicated thresholds for participation in collective actions that were significantly lower than the amounts estimated for individual action. The focus group in Austria was inconclusive in this respect.

<sup>122</sup> The country reports of the Evaluation study concluded that in most cases only a very small number of the consumers represented, and generally no more than 10 %, would have initiated individual litigation, if no collective redress system was in place.

<sup>123</sup> For example, actions under the German Legal Advice Act and the UK Competition Act, and also the Austrian and Greek test-case procedures, are procedures that do not involve any litigation costs for consumers at all. Also where group actions are brought by representatives, consumers usually face no risk of being charged with litigation fees. This is the case in Finland, Italy, the Netherlands, Portugal, Sweden and Spain. In Denmark, there is a limited risk to the consumer to be ordered to pay litigation fees, even if the group action is brought by a representative. Still, there is the advantage of the explained limitation and predictability of the litigation risk, and also the advantage that the “common costs” are shared between the claimants. See section 4.4.3., EQ6, Civic Consulting (2008): Evaluation study.

<sup>124</sup> For example in Case C (see Annex 5), the burden of proof represented a significant obstacle for consumers: many consumers had lost their documents proving the amount paid during the subscription. These consumers refused to pay again to have a copy.

<sup>125</sup> This was also illustrated by the football shirts case in the UK. The country interviews revealed that only several hundred consumers joined the action brought by a consumer association whereas many more were affected. One of the reasons given to explain this low participation rate was that consumers did not want to bother to register and that consumers might not be interested to seek redress for low-value claims.

<sup>126</sup> See section 4.6.2. c) of Civic Consulting (2008): Evaluation study.

Although collective litigation is capable of reducing the costs of coordination among consumers in order to jointly contribute to the provision of a public good for the group,<sup>127</sup> this is no guarantee of successful avoidance of the above-mentioned problems of individual vs. collective interests. This is particularly visible in the case of suits initiated by, for example, consumer organisations. Even if individual consumers can join in the proceedings, and possibly thereby increase the probability of victory of the collective suit, it may be in the private interest of the consumer to refrain from joining in, and wait and see if the suit is successful. In this case, the consumer would join later in the case (if this is possible under the collective redress mechanism, as is the case, for example, in Spain), to enjoy a fraction of the total award without having contributed to its provision. Alternatively, a consumer could start an individual claim benefiting from the legal precedent in his or her favour financed by the consumer organisation.

This problem is not to be expected only in cases led by consumer organisations. Also in other forms of collective redress action, consumers may be tempted by this wait-and-see strategy in order to save the costs of sharing in the collective action, while being able to personally enjoy some of the public good elements of the action, particularly the likelihood that a favourable decision in the collective case will improve the expected recovery in a later individual action.

The above considerations are, however, not relevant for those collective redress mechanisms, where consumers do not have to opt in, or collective redress mechanisms that are not aimed at compensating individual consumers (such as representative actions benefiting consumer organisations or procedures for skimming-off profits).

But even in these cases other problems of collective actions still remain an issue. The fact that in many cases collective redress mechanisms shift the financial risks of litigation from the consumer to an intermediary (for example, a consumer organisation or ombudsman), creates new incentive problems. Although consumer organisations and public bodies such as consumer ombudsmen may seem to be better suited to bear the risks of litigation, the associated costs often discourage these intermediaries from engaging in legal action, as this may divert necessary funds and staff resources for other activities. The inadmissibility of contingency fees in many European countries can make the financing of actions difficult, given that contingency fees are widely perceived as a way to finance legal action by potential plaintiffs, who may face liquidity constraints with respect to the cost of legal proceedings, especially in complex cases.<sup>128</sup> Public financing of collective actions, where it exists at all, is also limited.

This leads to the following conclusion:

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<sup>127</sup> In reality, three public goods are of relevance here: the total damage award, which would be an impure public good, and the pure public goods consisting of the beneficial precedent and the deterrence effect on firms.

<sup>128</sup> See, on this and other functions of contingent fees, Garoupa, N. and Gomez, F. (2008): *Cashing by the Hour: Why Large Law Firms Use Hourly Fees instead of Contingent Fees*. In: *Journal of Law, Economics & Organisation*.

**5. *Obstacles to obtaining satisfactory redress also lead to threshold amounts for participation of consumers in collective actions, that are, however, lower than for individual action.*** Lower threshold amounts for collective action lead to a higher level of enforcement of consumer claims. However, participation rates in collective actions concerning very low and low-value mass claims remain low, because related costs (in time, effort and money) deter consumers from participating. This does not apply to collective redress mechanisms where consumers do not have to opt in, or for mechanisms that are not aimed at compensating individual consumers (e.g. procedures for skimming-off profits). Obstacles specific to collective redress can create incentive problems with respect to the intermediary bringing the claim, caused by the associated costs for coordination and litigation.

### **6.3 Immediate economic consequences of the obstacles to obtaining satisfactory redress for consumers**

The analysis in the previous sections has illustrated that the obstacles to obtaining redress influence the balance of costs and benefits of taking action and lead to threshold amounts for claims under which a rational consumer would refrain from seeking redress. Even if the aggregated loss of all consumers in a mass claim/mass issue is very substantial, a rational consumer will not take action if his or her individual loss is lower than these threshold amounts, be it by bringing an individual legal action or (often with a lower threshold amount) by participating in a collective action or in an ADR scheme (where available). This indicates that there is a need to analyse the economic consequences of obstacles to obtaining satisfactory redress, by taking into account the differences between the available means of redress. The following sections focus on the immediate economic consequences of the obstacles to obtaining satisfactory redress for consumers.

#### **6.3.1 *Losses and inefficiencies for consumers caused by obstacles to obtaining satisfactory redress***

The following losses and inefficiencies can be identified as economic consequences of obstacles to obtaining satisfactory redress for consumers:

- ❑ Consumers are subject to uncompensated loss;
- ❑ Economic behaviour of consumers can be distorted;
- ❑ Efficiency gains of ADR for consumers are not fully exploited;
- ❑ Efficiency gains of collective redress mechanisms for consumers are not fully exploited.

These losses and inefficiencies are discussed in more detail in the following sub-sections:

***Loss for consumers: Uncompensated financial and other detriment***

When consumers, in the face of infringements of consumer protection legislation that cause them some level of harm, financial or otherwise, cannot enjoy a sufficient level of redress against the infringing firms due to one or more of the obstacles discussed in section 5, they will be subject to uncompensated loss, of varied nature depending on the character of the underlying Consumer Law violation. They may experience losses of various kinds, including:

- ❑ *Physical harm* due for example to malfunctioning products or defective services. In these cases, depending on the degree and nature of the harm, individual action is more likely to be rationally pursued by consumers;
- ❑ *Financial losses* due to excessive pricing or undue charges, unsatisfactory or uncompleted transactions, contract terms that produce outcomes reducing the welfare of the consumer, and so forth. This would definitely reduce the overall well-being of consumers, perhaps in an important way if one considers the aggregate effect across a large number of affected consumers. In fact, it is plausible to expect that the smaller the per capita effect – which will prevent individual action from providing redress once it is under the relevant threshold amount – and the larger the number of consumers involved, the more serious the negative effect on consumer welfare. This is true for mass torts, massive fraudulent schemes, etc.

These uncompensated losses (which contribute to the overall loss in consumer welfare) do regularly occur, for example, in a situation where consumers are affected by very low value mass claims, but can also occur in the case of low- to medium-value or even high-value mass claims where issues of liability may be very complex. Research conducted by the Office of Fair Trading (OFT) indicates that annual revealed consumer detriment associated with consumer problems (based on financial loss) in the UK alone was in the order of £6.6 billion, or €8.3 billion at current exchange rates.<sup>129</sup>

***Loss for consumers: Economic behaviour can be distorted***

Obviously, the behaviour of consumers in the future will be affected as a result of these uncompensated losses: consumers will anticipate, to some degree at least, the lack of redress and thus the smaller – even negative, in some cases – net welfare to be expected from the consumer transaction, and thus their economic behaviour can be distorted, depending on how much the consumers need the good or service (elasticity of demand) and on the situation of other firms on the market.

Structural effects on consumer markets caused by distorted consumer behaviour are examined below (see section 6.5).

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<sup>129</sup> Overall value of revealed consumer detriment in the UK economy over the last 12 months, see OFT 2008: Consumer detriment - Assessing the frequency and impact of consumer problems with goods and services. In its assessment of consumer detriment, the study does not differentiate between losses caused by individual problems and losses caused by mass problems.

***Loss for consumers: Efficiency gains of ADR for consumers are not fully exploited***

As stated above, of all redress mechanisms discussed here, the baseline case of individual legal action has the highest threshold amount concerning the individual loss, under which a rational consumer would refrain from taking action. The level of the threshold is affected by obstacles such as the length of court proceedings, high lawyer fees etc., which directly increase the costs of litigation and/or the attractiveness of individual legal action. Obstacles that increase the costs of individual litigation and reduce its attractiveness may lead to increased consumer losses, as the participation rate for individual legal action can be expected to be reduced and the number of consumers who do not obtain satisfactory redress in mass claims/mass issues will rise accordingly, if no other means of redress are available.

ADR may provide significant efficiency advantages compared with individual judicial redress, and this is reflected in lower threshold amounts. As already mentioned, estimates of the threshold for claims under which a rational consumer would refrain from seeking redress through an ADR scheme are often in the range of 50 to 200 Euro of damage suffered. A rational consumer will participate in an ADR scheme rather than file an individual legal action, because the associated costs – monetary and non-monetary – for the consumer are lower (although not zero). This may lead to reduced consumer losses, as overall participation rates in redress may increase, as would the level of deterrence associated with redress, as perceived by the potentially infringing firms. ADR mechanisms of a collective form could also produce reductions in per-case costs of resolving disputes over the benchmark of pure individual redress of the same kind of cases: the sharing of services and time of the necessary actors in the proceeding can provide scale economies in mass claims/mass issues (see next section).

However, in practice, formal ADR schemes (individual and collective) have significant limitations, both concerning their applicability for very low-value mass claims/mass issues, and concerning their applicability for high-value mass claims involving complex questions of liability.<sup>130</sup> ADR schemes are most relevant for a subset of low- to medium-value mass claims in which liability is relatively easy to establish, therefore limiting the efficiency gains attainable. In cases where ADR schemes are applicable in principle, obstacles such as the unavailability of ADR schemes, their real or perceived weaknesses (for example, a lack of impartiality), and a lack of participation of firms in the schemes may prevent the efficiency gains described from materialising.

***Loss for consumers: Efficiency gains of collective redress mechanisms for consumers are not fully exploited***

Collective redress mechanisms provide efficiency advantages compared to individual redress, and this is again reflected in lower threshold amounts. A rational consumer will

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<sup>130</sup> See Civic Consulting (2008): Evaluation study.

instead participate in a collective action, because the associated overall costs for the consumer are lower.

Efficiency gains of collective redress mainly result from the high fixed costs associated with enforcing legal rules through the court system – both to the parties and to the public, given the important level of public subsidy in litigation. This implies the presence of economies of scale that can be exploited if the high fixed costs can be spread over a large number of individual cases arising from the same – or very similar – set of factual circumstances, even if they affect different individual consumers: the sharing of legal services by lawyers and other legal professionals, the sharing of judicial and experts' time, the reduction in time taken by litigation from both claimants and defendants, bringing down the costs per case and per euro of compensation, or per unit of increased deterrence of the undesirable behaviour. Thus, collective redress mechanisms can, in principle, allow societies to attain a given degree of enforcement at lower cost, both to the parties involved (including the consumer) and to the public, or, equivalently, allow to attain higher levels of enforcement for the same amount of total cost.

A number of obstacles to obtaining satisfactory redress that have been identified and analysed in section 5 of this study are particularly relevant for collective redress mechanisms. These obstacles, including the lack of any collective redress mechanism, harm the efficiency gains that these mechanisms are able to provide to consumers. Potential efficiency gains for consumers from collective redress include:

- ❑ *Decrease in costs of gathering and disseminating information for consumers:* The fact that a single organisation (a consumer association, an ombudsman, a private Law firm representing the group of consumers) is in charge of coordinating the claims of the individual consumers involved reduces the costs of communicating information.
- ❑ *Reduction in litigation costs:* Collective redress mechanisms produce economies of scale in bringing and adjudicating claims by consumers against firms for infringing substantive rules in consumer protection legislation. This means that less is spent if the claim is pooled with other claims in a collective mechanism than if the claim is pursued individually.<sup>131</sup>
- ❑ *Higher level of loss compensation for consumers:* On top of the direct effect on the cost for litigation, an indirect effect over the gross payment is also to be expected. Investment of resources on the side of the claimants increases both the probability of winning and the amount that can be obtained in damages.<sup>132</sup>

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<sup>131</sup> These cost-reducing properties of collective redress mechanisms imply that, in disputes involving monetary compensation, the levels of per capita net consumer recovery are expected to be higher under a collective action than under scattered individual actions. This can be directly deduced from the reduction of the cost component in the net recovery formula (gross per capita payment by defendant minus per capita cost of pursuing the claim).

<sup>132</sup> This can be illustrated by a hypothetical claim regarding a product defect that is suspected to have produced an uncommon and not well-understood health impairment. For each individual consumer, the possibility of financing a scientific study to clarify the nature of the effect, and the causal link with different potential causing factors, is out of the

- *More settlement offers to be expected under collective action:* Claimants and defendants are typically both better off if they settle their disputes before going to a full trial, and thus jointly save most of the costs associated with litigating or handling the claim until the end of the procedure. This explains why many collective redress cases are actually settled after they are filed and presented against the other party.
- *Efficient risk-bearing of failed litigation for individual consumers:* A collective redress mechanism allows individual consumers to pool the risk of losing a case and then having to bear the costs of the defendant under the “loser-pays” principle that governs civil litigation in most European legal systems. When collective action is possible, each consumer pays (depending on the type of collective redress mechanism) at most only an equal share of the total legal costs of the defendant. This amount is, given the scale economies in collective litigation, likely to be lower than the legal costs of the defendant in an individual action had the consumer pursued the claim individually.<sup>133</sup> With several of the collective redress mechanisms currently available in the EU, consumers do not bear any litigation risk at all (which is then borne by the intermediary).

Thus, if collective redress is either not available or seriously hampered by the obstacles analysed in section 5, consumers are denied these efficiency gains of collective redress.

These considerations lead to the following conclusion:

**6. Obstacles to obtaining satisfactory redress lead to significant adverse immediate economic consequences for consumers.** These include: a) Consumers are subject to uncompensated loss; b) Economic behaviour of consumers can be distorted; and c) Efficiency gains of ADR schemes and collective redress mechanisms compared with individual legal action are not fully exploited. ADR schemes are most relevant for a subset of low- to medium-value mass claims in which liability is relatively easy to establish, therefore limiting the efficiency gains attainable. Potentially, collective redress mechanisms are more broadly applicable, including for complex high-value claims, and also for very low-value claims (the latter mainly when intermediaries can take action without necessarily involving consumers directly). Therefore more substantial efficiency gains for consumers are foregone if collective redress is unavailable or prevented by obstacles.

question. The group, however, if sufficiently large, may be able to invest resources in such a study, which may make the claim more likely to prevail, or which may be able to sustain a more generous award of damages due to better knowledge of the true consequences of the use of the defective product.

<sup>133</sup> It is true that this risk may also be transferred if a well-developed market for legal expenses insurance exists: potential claimants may be able to cover the risk of paying defendants’ legal costs by paying the insurance premiums in advance. Such insurance, however, may not exist for a variety of reasons, may be unaffordable to consumers for relatively small claims, due to the administrative costs of insurance, or may be less attractive than the pooling of risks that the collective mechanism allows.

### **6.3.2 Benefits for consumers caused by obstacles to obtaining satisfactory redress**

In the first part of this section the main losses and inefficiencies for consumers caused by obstacles to obtaining satisfactory redress were presented, including the lack of exploitation of potential efficiency gains of other redress mechanisms compared with individual litigation. However, these other redress mechanisms (collective redress and ADR) are not devoid of some inefficiencies. The lack of availability of these redress mechanisms in a legal system, or the lack of effective use of these mechanisms caused by the obstacles analysed in section 5, may prevent these inefficiencies from occurring and could therefore theoretically also result in benefits for consumers. This concerns two potential benefits:

- Enforcement costs do not arise if consumers do not seek redress;
- Potential inefficiencies of collective redress mechanisms can be avoided if obstacles prevent their use.

These benefits are discussed in more detail in the following sub-sections:

#### ***Benefit for consumers: Enforcement costs do not occur if consumers do not seek redress***

In section 6.2 above the shortcomings of individual action in the field of consumer protection were presented and discussed, leading, among other things, to a threshold amount of loss under which it is unlikely that any individual redress action is to be expected, or only in a very limited number of cases. This concerns especially very low value mass claims (that is, many very small and scattered consumer claims), but also to a certain extent low- to medium-value mass claims. Although consumers would, in practice, not find adequate redress – for per capita very minor effects in the case of very low-value claims – no costs will be incurred by consumers in litigation or ADR related costs in the first place.

In contrast, when collective redress mechanisms or ADR schemes are readily available, and are attractive enough for individual consumers to join in the action, the scenario may change substantially. The scattered claims that remained unfiled and unpursued may well find their way in litigation or arbitration. Albeit at a lower per capita cost than under individual enforcement, consumers may now face some costs (in time, effort and money) in presenting and enforcing their claims within the collective redress mechanism or the ADR scheme (depending on the specifics of the mechanisms). It may be, however, that consumers will have to face these costs with little in return. If the recovery is (per capita) very limited, the costs may well outweigh the benefits, even if we add the general or long-term deterrence effect on firms of the threat of the collective redress action, which also in some cases can be minor (for instance, because the collective mechanism does not greatly improve the level of deterrence attainable under public enforcement of consumer protection rules). Consumers may well still pursue their claims, due perhaps to over-optimism, excessive discounting of future costs, or other well-documented biases in human behaviour, even though they are incurring costs that may not be paid off with the expected benefits of litigation or arbitration. The

evaluation of the existing collective redress mechanisms in the EU did not find any evidence that this happens frequently or even sometimes in collective consumer actions.<sup>134</sup> However, there is at least the theoretical possibility that such a problem arises, due to the cost-reducing, and claim-facilitating properties of collective redress mechanisms, and (to a lesser extent) of ADR mechanisms.

***Benefit for consumers: Potential inefficiencies of collective redress mechanisms can be avoided if obstacles prevent their use***

Potential inefficiencies of collective redress mechanisms that can be avoided if obstacles prevent their use, mainly concern the following issues:

- *Less meritorious claims may be brought under collective redress:* In the preceding sections it was implicitly assumed that consumer claims brought, either individually or through a collective redress mechanism, were worthy of consideration and compensation, as resulting from a true infringement of substantive rules of consumer protection legislation. This assumption, however, does not always hold true. If claims can be effectively filed and pursued, and compensation can be obtained, and settlement offers can be extracted from the defendant, it is also possible that unmeritorious claims will be filed in the expectation of obtaining a positive settlement amount from the defendant.
- *Collective actions bring increased agency costs<sup>135</sup>* between consumers, on the one side, and lawyers and consumer organisations, on the other: In individual legal redress (and individual ADR), claimants enjoy an important degree of control over the process. In collective redress schemes the degree of control of each individual consumer over the litigation is limited. The lawyer-claimant relationship ceases to be relevant, and is replaced by the lawyer-collective relationship, or lawyer-consumer association/ombudsman. The agency costs then become crucial, and may lead to a significant risk of disregard of the interests of the individual consumer in the entire process.

It is very difficult to obtain empirical confirmation concerning the potential impact of collective redress on the level and rate of success of unmeritorious claims, given that the true nature of the claim can be only very imperfectly guessed from the result of the litigation or the arbitration, not to say of the settlement, if that is how the action ends.

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<sup>134</sup> In addition, the total number of collective redress cases brought under EU mechanisms so far is so low that it is highly unlikely that any significant increase in overall enforcement costs has been a result of introducing the mechanisms, see Civic Consulting (2008): Evaluation study.

<sup>135</sup> The term “agency costs” refers to those arising in our setting because the incentives of the claimant and its representative are not perfectly aligned with one another. This implies that the principal (the claimant) expects not to be optimally served by the agent (the lawyer) and this may involve costs for the principal, both in terms of sub-optimal performance for the interests of the principal, and in terms of monitoring or supervision cost on the part of the principal to try to reduce the level of sub-optimality in performance. For a working definition of these two broad categories of agency costs, see Hansmann, H. (1996) *The Ownership of Enterprise*, Harvard University Press, Cambridge (MA)-London, p. 35. See also section 4.3.4., EQ 8, b) .

However, the evaluation of collective redress mechanisms in the EU did not find any evidence that would point to significant problems with unmeritorious claims under the existing mechanisms, due to “gatekeeper procedures” in place and the high financial risk involved in collective litigation.<sup>136</sup> In more than 50 interviews conducted with ministries, consumer organisations, lawyers, judges and business associations in those EU countries that have already substantial experience with collective redress cases, the risk of unmeritorious claims did not appear to be a significant concern regarding the existing mechanisms.<sup>137</sup> The same was true concerning agency costs.

This leads to the following conclusion:

**7. *There is a possibility that obstacles to the use of collective mechanisms prevent the occurrence of potential inefficiencies associated with these mechanisms.*** Potential inefficiencies include the possibility of an increase in enforcement costs for consumers with little in return, and the bringing of less meritorious claims. However, the experience with existing collective redress mechanisms indicates that so far these problems have not been of relevance in the European context. Potential inefficiencies depend to a large extent on the design of the collective mechanisms and a failure to have safeguards preventing or mitigating such problems.

#### **6.4 Immediate economic consequences of the obstacles to obtaining satisfactory redress for businesses**

Consumers are not the only agents affected by the availability and relative costs of redress mechanisms for consumers. The firms that have committed an infringement of consumer protection legislation are of course also directly reached by the consequences of redress mechanisms. Of course, not all firms infringing in a given case are the same. They may be infringers because they are scam operators, but they may be so because inadvertently, mistakenly, or due to legal uncertainty they have opted for a course of action that turns out to be in violation of Consumer Law. The following subsection addresses the immediate economic consequences of the obstacles to obtaining satisfactory redress for businesses. Structural market effects will be discussed at a later stage (see section 6.5).

##### **6.4.1 *Losses and inefficiencies for businesses caused by obstacles to obtaining satisfactory redress***

The following losses and/or inefficiencies for businesses can be identified as economic consequences of obstacles to obtaining satisfactory redress:

- Distortion of incentives for businesses to avoid infringements of Consumer Law;

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<sup>136</sup> See Civic Consulting (2008): Evaluation study.

<sup>137</sup> Interviews conducted between December 2007 and May 2008.

- ❑ Harming business strategies using contractual warranties;
- ❑ Efficiency gains of collective mechanisms for businesses are not fully exploited.

These losses and inefficiencies are discussed in more detail in the following sub-sections:

***Loss and inefficiencies for businesses: Distortion of incentives for businesses to avoid infringements of Consumer Law***

When obstacles to obtaining satisfactory redress make redress virtually unavailable for consumers, due to a large gap between individual costs and benefits in filing and pursuing claims, as a result, infringing firms will face, in practice, little or no liability following infringement. This low exposure to liability diminishes the incentives to engage in firm behaviour that complies with the legal requirements for consumer protection.

This not only reduces expected liability costs for firms – which they would, of course, welcome, especially those that are more likely to infringe consumer protection legislation, but more importantly distorts the incentives to avoid infringement, since the adverse consequences of infringement are lower (perhaps even close to zero) than they should otherwise be, thus enhancing the relative appeal of engaging in infringing behaviour. For infringing firms that are fraudulent market participants, the reduction in incentives to comply with the requirements of Consumer Law – from levels that may be already sub-optimal given difficulties in detection – would be the only relevant effect.

For fair market participants that may commit occasional infringements due to inadvertence, negligence, or the uncertainty surrounding the factual or legal situation, the effect of dilution of incentives to comply with consumer protection rules is also present. However, for firms with a national or even international reputation, the decrease in incentives produced by the diminished exposure to liability may well be made up, and even outweigh, by the reputational incentive, especially in the case of mass claims/mass issues.

***Loss for businesses: Harming business strategies using contractual warranties***

For fair market participants the lack of satisfactory (legal) redress for consumers may also harm business strategies using quality signalling devices such as contractual warranties, money-back promises and the like. As is well known in economic theory,<sup>138</sup> when the quality of a product or service is not easily observable by the potential consumers, firms need to resort to different instruments to signal higher levels of quality. One of the most powerful devices to this effect is the product warranty, which is here broadly understood as a legally-binding promise to repair or compensate from lack of conformity or defective quality. Warranties allow quality signalling, but require that the promise contained in the warranty be effectively enforceable in order for the quality

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<sup>138</sup> See a summary of this literature, in connection with the legal rules of the Consumer Sales Directive, Gomez, F. (2002), "Economic Analysis of the Directive", in Bianca, C. M. and Grundmann, S. (editors) The EU Sales Directive Commentary, Intersciantia, Antwerp-Oxford.

commitment to be binding and credible for prospective buyers. If individual actions are so costly that consumers know in advance that no action based on the warranty will in fact be filed and pursued, the use of warranties as quality-signalling tools would be seriously weakened for market participants that are fair but do not have a strong brand recognition (as is the case with many SMEs). Of course, firms can commit voluntarily to very generous money-back-with-no-questions-asked types of policy, but this may not be credible for consumers except when adopted by very reputable firms in the market.

This effect on the use of warranties as quality-signalling devices is mainly relevant as an economic consequence of obstacles to individual redress. It is likely to be less significant with respect to collective redress mechanisms, given the nature of the typical set of circumstances in which collective redress mechanisms are apt to play a role: mass torts, excessive pricing, massive financial or securities fraud, and so on. Here one would not commonly find an underlying problem of asymmetric information on the quality of the product or service that warranties could be improve upon, so that the lack of collective redress mechanisms, or the obstacles that reduce their use, would be much less significant than the problems in individual enforcement for the efficient voluntary use of warranties as strategic tools to communicate credible information on product quality.

***Loss for businesses: Efficiency gains of collective mechanisms for businesses are not fully exploited***

The lack of availability of collective redress, and the presence of obstacles that reduce the effectiveness of collective redress mechanisms, are, for infringing firms, not just welcome loopholes in the legal system that allow them to reduce their exposure to liability. These obstacles, including the lack of any collective redress mechanism, harm the efficiency gains that these mechanisms are able to provide to businesses. Potential efficiency gains for businesses from collective redress mechanisms, and from other collective mechanisms (such as collective ADR schemes) include:

- *Reduction in litigation and transaction costs:* Not only from the side of the consumer, but also from the side of the defendant firm, there could be expected some cost reduction effect of a collective mechanism, which could not be exploited if obstacles prevent the use of collective mechanisms. The above-mentioned scale economy effect is also present on the defendant's side, but it is certain to be smaller than on the side of the consumers, because even when claims are filed individually, this already allows the defendant a substantial spread of fixed costs even when litigation is carried out on a case-by-case basis. The cost-reducing properties of collective redress mechanisms are most relevant in situations where the level of individual harm incurred by consumers is sufficiently high to expect recovery that outweighs the high costs of individual action, leading to a multitude of individual claims by aggrieved consumers, as has been the case, for example, in the Telekom case (Germany), the Dexia

case (the Netherlands) and the WEB case (Austria).<sup>139</sup> If, as may perhaps be expected, the cost reduction on both the claimant's and the defendant's side is higher under a collective ADR mechanism with respect to the benchmark of individualised solution and compensation, the effect can be anticipated to be even stronger under ADR procedures.

- *Reduction of costs caused by the incoherence and uncertainty of legal consequences of business decisions and practices:* A firm that may have allegedly violated Consumer Law and caused harm to consumers would derive substantial benefits from a collective redress mechanism that allows the consequences of the alleged infringement to be determined and closed. For the same amount of money (in present value terms) to be paid by the infringing firm in compensation to consumers, even disregarding litigation or arbitration costs, the true overall impact on the firm of this monetary cost is significantly lower if payment is determined once and the amount is final than if payment is haphazardly fixed in a large number of instances, extended over time, and with considerable uncertainty about the likelihood, chances of success, and expected payments, for new cases in the future. This feature has been aptly called the peace-keeping function of collective redress schemes.<sup>140</sup> There is little doubt that when relevant mechanisms do not exist or obstacles make their use unfeasible, the scenario of a multitude of individual claims brings with it important costs to firms, costs that do not turn to the benefit of consumers as a group.

This leads to the following conclusion:

**8. *Obstacles to obtaining satisfactory redress may also lead to adverse immediate economic consequences for businesses.*** These include: a) Distortion of incentives for businesses to avoid infringements of Consumer Law; b) Harming business strategies using contractual warranties; and c) Efficiency gains of collective redress mechanisms for businesses are not fully exploited. A scale economy effect of collective redress is also relevant for the business's side, but it is certain to be smaller than on the side of the consumers. However, in the case of a multitude of individual claims (for example, related to a high-value mass claim/mass issue), obstacles to collective redress may cause additional costs to the affected business, as individual litigation is likely to lead to incoherence and uncertainty of legal consequences of business decisions and practices.

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<sup>139</sup> See Civic Consulting (2008), Part II, country studies Germany, the Netherlands, Austria.

<sup>140</sup> See, Nagareda, R. (2007), *Mass Torts in a World of Settlement*, University of Chicago Press, Chicago-London, ch. 2.

#### **6.4.2 Benefits for businesses caused by obstacles to obtaining satisfactory redress**

Obstacles to obtaining satisfactory redress can also lead to benefits for businesses. The following potential benefits are explored below:

- ❑ Possible decrease in the number of claims brought by consumers;
- ❑ Possible decrease in the number of non-meritorious claims brought under collective redress mechanisms.

##### ***Benefit for businesses: Possible decrease in the number of claims brought by consumers***

As discussed above, when obstacles to obtaining satisfactory redress make redress virtually unavailable for consumers (be it through individual or collective mechanisms), infringing firms face, in practice, little or no liability as a result of the infringement. This reduces expected liability costs for infringing firms, but also diminishes the incentives for all market participants to engage in firm behaviour that complies with the legal requirements for consumer protection, and therefore this benefit to infringing firms comes with significant structural costs (see below).

##### ***Benefit for businesses: Possible decrease in the number of non-meritorious claims brought under collective redress mechanisms***

As already discussed, there are reasons to expect, at a theoretical level, that collective redress mechanisms may increase incentives to file unmeritorious claims in the expectation of obtaining a positive settlement amount from the defendant. It is very hard to assess the empirical relevance of this consideration, and thus it is difficult to predict whether or not the avoidance of this effect would bring substantial savings and benefits to businesses and firms that may otherwise find themselves at risk of facing unmeritorious collective claims by consumer groups or other intermediaries. In the EU context, this type of problems does not seem to be of relevance, and most existing mechanisms are explicitly designed to prevent unmeritorious claims through a “gatekeeper procedure”.<sup>141</sup> Such an effect, however, remains a possibility that cannot be ruled out with certainty when collective redress mechanisms do not have effective “gatekeeper” procedures, and it should accordingly be mentioned as a potential benefit or gain for firms, when relevant obstacles discussed in section 5 make collective redress mechanisms unfeasible.

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<sup>141</sup> See Civic Consulting (2008): Evaluation study.

**6.5 Long-term economic consequences of the obstacles to obtaining satisfactory redress for the relevant markets**

**6.5.1 *The reactions of consumers on the obstacles to obtaining satisfactory redress***

***Effect on consumers: Excessive consumption decisions given the levels of risk of uncompensated losses that prevail***

Concerning the long-term effects of the obstacles that lead to a lack of adequate consumer redress following infringement of Consumer Law, the level of information on the part of consumers concerning the risks of suffering a loss, and the true levels of the lack of redress if the loss materialises, are the crucial factors. This is well-known in economic theory in the setting of product hazards and risks,<sup>142</sup> and it can be applied to a more general setting of consumer losses arising from infringement of consumer protection rules by the firm along any dimension of the transaction.

This can be illustrated by the following hypothetical example. A potential buyer of a product or service has the same information as the seller on the risk of the transaction producing a loss for the consumer, as well as on the chances that the loss will be redressed. And the consumer knows this for the products and services of firm X,<sup>143</sup> but also of the competing firms Y and Z. If this is the case, any uncompensated or non-redressed loss expected by the consumer will be priced by the consumer in his or her purchase decision, and thus, any deficiency in the product or service and the ex-post redress will imply a matching (in expected value terms) in terms of reduced price. Firms, under these circumstances, will provide the desirable goods and services, regardless of the imperfections in legal redress mechanisms.<sup>144</sup>

However, when consumers do not possess complete information, this rosy picture substantially changes. When the prospective buyer, though correctly informed on the average of the expected level of losses that will not be redressed ex-post for the type of product or service, is uninformed about the individual risk of uncompensated losses for the particular products or services of each individual firm, the outcome is entirely different: Given that consumers are unable to distinguish between firms with lower and higher quality (the former implying a greater amount of uncompensated losses), firms will lack any incentive to offer good quality in terms of lower losses to consumers. In the typical product defect setting, this informational failure can be corrected through the use of contractual warranties that signal the desired levels of quality.<sup>145</sup>

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<sup>142</sup> See, for a summary of this literature, Shavell, S. (1987), *Economic Analysis of Accident Law*, Harvard University Press, Cambridge (MA)-London, ch. 2; Shavell, S. (2007), "Liability for Accidents", in Shavell, S. and Polinsky, A. M. (editors), *Handbook of Law and Economics*, Vol. 1, North Holland, p.130.

<sup>143</sup> Needless to say, this level of information is not observable in real world consumer markets.

<sup>144</sup> This theoretical result is already known for 30 years: See, Spence, A. M. (1977), "Consumer Misperception, Product Failure, and Producer Liability", *Review of Economic Studies*, vol. 44, p. 561; Epple, D. and Ravid, D. (1978), "Product Safety: Liability Rules, Market Structure, and Imperfect Information", *American Economic Review*, vol. 68, p. 80.

<sup>145</sup> See, Shavell, S. (1987), *Economic Analysis of Accident Law*, Harvard University Press, Cambridge (MA)-London, p. 61; Geistfeld, M. (1994), "Manufacturer Moral Hazard and the Tort-Contract Issue in Products Liability", *International Review of Law and Economics*, Vol. 13, p. 247.

In the setting that is discussed here, namely, a situation where obstacles prevent consumers from obtaining satisfactory redress, any promise of quality levels that would be enforceable ex-post is virtually meaningless, as has been discussed before. Only those promises that can be made credible through ex-ante means (such as widespread reputation in the market) will be made by individual firms, and will be believed by consumers. The result may well be that, outside the market segments served by the most reputed firms, who make their quality credible through their high expenditures in brand recognition and similar strategies, only products and services with low levels of quality – meaning here associated with high levels of loss for consumers – can be expected to be found in the market equilibrium.

This result may be expected even if consumers are able to correctly predict the average levels of risk of loss from products and services offered in the market. The situation is aggravated if consumers underestimate the risk of uncompensated losses arising from the transactions on products and services; consumers would not make, even on average, the correct consumption decisions given the levels of quality of products and services that are being offered in the market, and would make excessive consumption decisions which will turn out to their disadvantage, given the levels of risk of uncompensated losses that prevail in consumer markets.

This bleak prediction is well-known (absent legal or regulatory measures that can effectively prevent the outcome) in the economic literature on product hazards.<sup>146</sup>

### **6.5.2    *The reactions of businesses on the obstacles to obtaining satisfactory redress***

#### ***Effect on businesses: Creation of incentives for inefficient behaviour and implicit subsidy to fraudulent firms***

The lack of satisfactory redress of consumer losses, both at the individual and at the collective level, implies a clear reduction of the legal incentives to avoid undesirable behaviour in consumer markets. The reduction in incentives, though general for all market participants, has a differential impact on different firms. For those firms that have a solid and stable reputation, and may infringe consumer protection laws only as a result of inadvertence, negligence or uncertainty in the evaluation of the circumstances, the reduction in liability costs is not very substantial. However, for unscrupulous firms, with little, if any, capital and market reputation at stake, and who routinely infringe Consumer Law, the reduction in expected costs due to inadequate levels of exposure to liability for infringement may reach significant levels. This constitutes an implicit subsidy to the less scrupulous, and more frequent violators of consumer protection rules - a subsidy that, in turn, attracts more firms of this kind into the market.

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<sup>146</sup> See, Spence, A. M. (1977), "Consumer Misperception, Product Failure, and Producer Liability", *Review of Economic Studies*, vol. 44, p. 563-564; Shavell, S. (1987), *Economic Analysis of Accident Law*, Harvard University Press, Cambridge (MA)-London, p. 53-54.

***Effect on businesses: Race to the bottom by fraudulent market operators***

The entry of less scrupulous firm in a given consumer market would be less troublesome if consumers in those markets had complete information concerning the nature of the firm providing goods and services and the full consequences of entering into the transaction. This complete level of information, however, is rarely, if ever, attainable in real-world markets (see above).

Although consumers are responsive to reputational effects on the side of firms, their evaluation of reputation is far from perfect in many circumstances, and therefore they will not be able to sort out the firms that routinely infringe Consumer Law from those who do not commonly engage in such practices.

Moreover, cognitive and behavioural biases on the part of consumers make them, in general, less attentive to the chances of something goes wrong in a given transaction, and thus to the importance of the means for obtaining legal redress for resulting losses. In laboratory settings it has been well documented that some phenomena<sup>147</sup> repeatedly appear in observed individual behaviour. People seem to show bounded rationality, that is, limited capacity to acquire and process information, as revealed by the use of cognitive heuristics that can lead to errors in judgment and decision-making. For instance, the *hindsight heuristic* – that attaches higher likelihoods to events that have actually occurred with respect to the true or actual likelihood – may lead to decisions ex-post facto that do not correspond with the best course before the events happened. Or the *availability heuristic*, that relies excessively on easily available data or information. This leads to reactions that follow too closely, and may be mistakenly, the limited amounts of information that are not hard to recall with immediacy, particularly if the information has been widely publicized or the object of media attention. And finally, the *representative heuristic* may lead to judge events and courses of action too quickly based on how they externally resemble a typical or representative example within the category we are operating. People have also been consistently shown to behave with clear over-optimism when facing less than certain events, that is, to overtly *underestimate probabilities* of bad outcomes affecting them.

Psychologists and economists have also uncovered and experimentally confirmed that:

- ❑ Individuals can suffer from inconsistencies in the valuation of outcomes that are time related, due to *hyperbolic discounting* – too little weight is attached to future and uncertain outcomes in decisions made presently, and excessive weight is given to immediate or present outcomes.
- ❑ Individuals tend to show *loss aversion*, that is, they give special weight and importance to what is presented to them, or is perceived by them to be losses with respect to a given benchmark, compared to the importance they attach to missed opportunities to gain measured against the same baseline.

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<sup>147</sup> See, among many surveys helpful for legal audiences, Cass Sunstein (editor), *Behavioral Law and Economics*, Cambridge University Press, Cambridge, (2000); Christine Jolls and Cass Sunstein, "Debiasing through Law", 35 *Journal of Legal Studies* (2006), p. 199.

- ❑ Moreover, an *endowment effect*, or the valuation of an asset not as it really is, but depending on the set of entitlements owned by the individual over the asset – implies that individuals would ask higher amounts to depart from something they consider their own, than to acquire the same thing from someone else.
- ❑ And finally, a *status quo bias* exists – the reticence to alter the existing state of the world due to attaching some intrinsic value to it – makes existing situations particularly sticky and likely to persist, even if individuals could introduce changes at low cost.

These behavioural features of human conduct can cause that consumers do not optimally respond to the presence of less scrupulous operators in the market. In this case they do not adequately estimate the future costs for them of interacting with such operators, and typically would not adequately “sanction” the infringing practices from such firms by purchasing goods or services elsewhere.

The implicit liability subsidy that obstacles to obtaining satisfactory redress for consumers provide to fraudulent firms may lead to entry by this sort of firms in a consumer market. Competition among them that induces cost-reducing behaviour on their part may well lead to an ever-decreasing level of compliance with consumer protection rules in the market, that is, the above-mentioned “race to the bottom”. It seems likely that the quality of goods and services in the market may decrease to sub-optimally low levels, to the extent that consumers lack information on product or service defects before purchase (and therefore need to rely on effective means of redress) and to the extent that consumer disregard (ex-ante) reputational aspects in their purchasing decisions.

***Effect on businesses: Unfair competition between fair market participants and fraudulent firms***

From what has been presented in the two preceding sub-sections, it seems that those firms active in consumer markets that will be most harmed by the structural effects of obstacles for consumers to obtaining satisfactory redress, both individually and collectively, would be those fair market operators that do not enjoy sufficient levels of reputation and brand recognition that allows them to be beyond the reach of the entry of less scrupulous players and whose behaviour (and levels of quality of their products and services) is considered by consumers to be likely not unaffected by the lack of redress. This, so to speak, intermediate market segment of fair participants (often SMEs) would face, on the one hand, the pressure of undeterred fraudulent firms, who can reduce their costs due to the lower levels of liability exposure. On the other hand, the lack of adequate redress will make it increasingly difficult for them to distinguish their higher levels of quality and compliance with consumer protection rules from those of less scrupulous operators through the availability of redress for losses that may inadvertently and unintentionally occur as a consequence of market transactions. And in this setting, well-known tools to signal quality and separate themselves from those offering lower value, such as contractual warranties, are expected not to be effective in the anticipated expectation of consumers, except for firms that have a well-recognised reputation in this respect among consumers (see above, section 6.4.1).

The considerations in this and the preceding sections lead to the following conclusion:

9. ***Obstacles to obtaining satisfactory redress are expected to have structural effects on consumer markets.*** These include: a) Excessive consumption decisions of consumers given the levels of risk of uncompensated losses that prevail; b) Creation of incentives for inefficient behaviour of businesses and implicit subsidy to fraudulent firms; and c) The “race to the bottom” caused by competition among undeterred, fraudulent market operators. Structural effects are most relevant when obstacles affect all types of redress mechanisms offered by the legal system, leading to deficient levels of enforcement of Consumer Law, and turning the long-term effects of these obstacles on the economic behaviour of consumers into a pressing issue for the functioning of consumer markets, and for economic welfare more generally.

### 6.5.3 ***Economic consequences for specific sectors and markets***

Economic consequences of obstacles for consumers to obtaining satisfactory redress may be different for specific sectors and markets, depending on, among other things, the frequency of occurrence of mass claims/mass issues. In specific sectors of the economy mass claims/mass issues are more frequently observed than in others, for example in financial services, telecommunications, tourism and transport sectors (see section 4 of this report). Depending on the frequency and size of the mass claims in a specific sector (and also on the value of the claim), obstacles to obtaining satisfactory redress can have more or less significant economic consequences for a specific sector or market.

Economic consequences for specific sectors and markets also depend on the interaction of obstacles for consumers regarding the different means of redress relevant, and the resulting level of redress of consumer losses in the specific sector and market.<sup>148</sup> In this respect, differences between Member States seem to be significant, depending on the extent to which the obstacles analysed in section 5 are relevant. Other country-specific factors complicate the picture further. These include:

- ❑ *The degree of public enforcement* (a high level of public enforcement could compensate to a certain extent a lower level of ex-post redress caused by obstacles to satisfactory redress);
- ❑ *The availability of independent consumer information* (for example, independent comparative product and service tests could reduce informational asymmetries and the reliance on ex-post redress);

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<sup>148</sup> This is reflected in the individual perspective of a rational consumer, for whom no specific type of redress mechanism is of relevance, but rather the expected recovery of losses net of costs that any one of them will provide in a specific sector or market. If specific obstacles make one type of redress mechanism unattractive for consumers (e.g. individual legal action) but other effective mechanisms of redress exist, economic consequences for consumers are much more limited in this sector or market, compared with a situation where all means of redress are made unattractive by various obstacles, or are not available at all.

- *Cultural aspects* that may, for example, influence the “litigation culture” (the willingness to sue) as well as the extent to which consumers regard reputational aspects in their purchasing decisions (the latter may depend on, among other things, the purchasing power of consumers, leading to a preference for high priced products and services where reputational aspects are very significant).

When assessing economic consequences of obstacles to obtaining satisfactory redress for specific sectors and markets, a country-specific perspective is indispensable, and research conducted in the framework of this study even indicates that a case-specific perspective is recommendable.

For this study, an in-depth analysis of four exemplary cases of obstacles to redress in mass claims/mass issues was conducted (see Annex 5). The cases illustrate that in some cases of mass claims/issues few economic consequences for competitors (such as changes in market shares) are to be expected, simply because all or most market participants are involved in the mass claim/mass issue. This seems to have been the situation in French case. On the contrary, in the Spanish example case, on the other hand, the economic consequences of the case and of the obstacles to obtaining redress (which are, in practice, difficult to differentiate at this level) were very different for the sectors involved. The case involved several collective redress proceedings against Spanish providers of consumer credit that had financed in advance the costs of language classes at a chain of English schools. After the company became insolvent and a total of more than 130 language schools ceased to operate, consumers were required to continue their credit payments. The case and the related obstacles to obtain redress affected therefore both the financial sector and the educational sector:

- In spite of the large number of both affected consumers and credit providers involved, the economic consequences of the case on credit providers and the consumer credit market was limited, and most consumers who had financed their classes with credit did in the end obtain satisfactory redress.<sup>149</sup> Due the fact that practically most of the large Spanish banks and savings banks were involved in the case, no unaffected banks would exist. As a consequence, banks do not seem to have experienced any changes in market share or were boosted either directly or indirectly as a result of the practices of the defendants. Moreover, the stakes of the case (or cases, if one thinks of the different legal actions pursued) although not unsubstantial for the consumers involved, were very minor with respect to the size of the sector involved.
- The main economic consequences of the case were felt in the educational sector. The lack of consumer confidence that resulted from the case and the related obstacles for affected consumers to obtain redress contributed to the

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<sup>149</sup> In fact, consumers who financed their courses with credit arrangements were in the end better off than those that had paid for their courses in cash or by credit card. Although both had been deprived of their courses, the latter did not receive any compensation because the English schools had disappeared, whereas the former received compensation equal to the part of the credit that they had paid after the schools had been closed down.

crisis of the English language school sector in Spain, which was already in a difficult situation caused by a fall in demand and fierce competition. As a consequence, a number of other language schools went bankrupt.

The Spanish example case illustrates that economic consequences of the obstacles to obtaining redress often contribute to general economic trends in a specific sector and are closely interrelated. It is impossible to assess whether or not the crisis of the English language sector in Spain would have reached a similar dimension if the case and the resulting lack of consumer confidence had not occurred.

This leads to the following conclusion:

10. ***Economic consequences of obstacles for consumers to obtaining satisfactory redress for specific sectors and markets depend on a variety of factors.*** These include the frequency of occurrence of mass claims/mass issues, the interaction of obstacles and the resulting level of redress of consumer losses in the specific sector and market, as well as other country-, sector- and case-specific factors. When assessing economic consequences of obstacles to obtaining satisfactory redress for specific sectors and markets, therefore, a country-specific perspective is indispensable, and research conducted in the framework of this study even indicates that a case-specific perspective is recommendable.

## 6.6 Economic consequences of obstacles to obtaining redress in cross-border situations

### 6.6.1 Specific problems of redress for cross-border transactions

The likelihood of obtaining satisfactory legal redress when something goes wrong with a transaction, causing the consumer a physical or financial loss that can be traced back to the behaviour of the seller or service provider, is one of the factors that affect consumers' decisions to choose a particular good or service. When considering a cross-border transaction, a rational consumer is likely to give more weight, both in the level or amount of transactions, and in the choice of transacting partner, to legal uncertainty and obstacles surrounding the legal enforcement of their rights and remedies than in a purely domestic or national setting. In the domestic context, consumers are more capable of assessing the reliability of both product and provider, due to their higher level of information about, and experience with, national goods, services, and especially, particular firms providing them. In other words, consumers typically can better assess in a purely domestic transaction the expected net benefit that will derive from the transaction to them.

In a cross-border transaction, there are likely to be other relevant factors and instruments relevant to making informed decisions about whether and with whom to transact, given that reputational effects and past consumer experience will be – with the exception of internationally-renowned brands and firms – of much less use to that purpose. Consequently, the need to rely upon other mechanisms, such as legal ones, to dispel lack of trust on the fact that nothing will go wrong with the transaction and, if this happens, he or she will be compensated for the loss, is increased. In summary, the level of

trust by consumers in adequate legal redress is likely to play a bigger role in decision-making in cross-border transactions.<sup>150</sup>

In section 5 above, we have already specified obstacles that can be expected to lead to substantially higher overall costs for obtaining redress by a consumer concerning a cross-border transaction. This is true, for obvious reasons, at the level of individual action, either before a court or in an ADR scheme. In the case of individual redress, both litigation and ADR schemes will likely present costs to the cross-border consumer that exceed any reasonable expected recovery that the consumer may anticipate. The costs already mentioned in the national market setting are multiplied here by distance, language considerations, and lack of familiarity with rules and procedures in another Member State. Individual redress would seem much less of an alternative than in the national context, except in very exceptional circumstances.

This proposition still holds even if one takes into account that the consumer, due to the protection granted by art. 16 of Regulation 44/2001 on Jurisdiction, and the Recognition and Enforcement of Judgements in Civil and Commercial Matters (the Brussels I Regulation), is able to rely on the Courts of his or her own country of residence to initiate a legal action for redress against the firm domiciled in a foreign jurisdiction. No doubt that this rule somewhat alleviates the cost increase of individual redress in the cross-border transaction setting, but it does not eliminate it, given that, in order to enforce the judgment against the foreign seller that has caused the physical or financial loss to the consumer, he or she would need to make use of foreign courts and procedures, with the costs and inconvenience summarised above.<sup>151</sup>

In the case of collective redress mechanisms, the potential effects of obstacles mentioned earlier in this study are multiplied in the presence of cross-border elements in the infringement of consumer protection rules. Monetary costs, lack of information, discomfort and inconvenience are surely more serious when they relate to redress procedures in another Member State. The agency costs present in collective mechanisms (referring to both lawyers and consumer organisations and associations) are also very

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<sup>150</sup> Some commentators have argued that in Europe it is the jurisdictional issue - and related procedural matters - that carries most, if not all, the weight in affecting consumer decisions on transacting cross-border: See, Wagner, G. (2002), "The Economics of Harmonization: The Case of Contract Law", 39 *Common Market Law Review*, p. 1017; Wagner, G. (2005), "The Virtues of Diversity in European Private Law", in Smits, J. (ed.), *The Need for a European Contract Law. Empirical and Legal Perspectives*, Europa Law Publishers, Groningen, p. 19. One would expect that consumers, who are typically not legal experts, are concerned, and thus their decisions are affected by, what they perceive is likely to be the expected outcome in terms of legal redress, which is influenced by both jurisdictional and other procedural matters, but also substantive rights and remedies.

<sup>151</sup> It remains to be seen to what extent two recently adopted Regulations that aim to facilitate cross-border procedures will change this picture. These are Regulation 896/2006, creating a European order for payment procedure (that is available both for cross-border and domestic litigation), and Regulation 861/2007, establishing a European Small Claims Procedure (which will be available to litigants as an alternative to the procedures existing under the laws of the Member States). These two Regulations shall apply respectively on 12 December 2008 (with the exception of articles 28 to 31) and on 1 January 2009 (with the exception of article 25). For further information see [http://ec.europa.eu/civiljustice/case\\_to\\_court/case\\_to\\_court\\_ec\\_en.htm](http://ec.europa.eu/civiljustice/case_to_court/case_to_court_ec_en.htm).

likely to be more acute when consumers are located in a different Member State, perhaps with weak contacts with the coordinators of the collective action.

Moreover, both at the individual and at the collective redress level, the inertia of the consumer is likely to be aggravated. The above-discussed “public good” effects of consumer action for redress – favourable precedent and deterrence for firms on future occasions – are even further removed from the consumer than they are in the national context: they will essentially happen in the jurisdiction of another Member State, and the chances that the individual consumer may be able to recapture even a very small fraction of those collective benefits are much lower in the cross-border setting than in the purely domestic scenario.

### **6.6.2 *Immediate economic consequences of the obstacles to obtaining satisfactory redress for consumers in cross-border situations***

In section 5 above, and in the preceding sub-section, we have described the added costs that are likely to be faced by consumers seeking redress for losses resulting from a transaction or interaction with a firm located in a different Member State. The joint effect of information, motivation and monetary costs that are all higher – possibly significantly higher – in the cross-border setting than in a purely domestic scenario, pose even greater obstacles to the satisfactory functioning of both individual and collective redress mechanisms.

Ex-post redress of losses following a consumer transaction is not only in itself more costly and likely to be less effective when it has to operate across national borders, but it is also perceived by consumers that way. In the eyes of most European consumers, in case a problem appears with a product or service, they expect that it will be more cumbersome, more expensive, and ultimately, less satisfactory in net terms to obtain redress and compensation through legal means when the underlying transaction is a cross-border one. This, in turn, is expected to raise, for cross-border consumer transactions compared with those within a national market, the threshold amount below which a rational consumer is likely to not pursue enforcement of rights and remedies (for a discussion of threshold amounts, see above, section 6.2.3).

Moreover, consumers are also aware that functional alternatives to effective ex-post redress (essentially, credible ex-ante quality commitments through non-legal means) are less likely to operate smoothly across national borders: reputation, brand recognition, and expected repeat transactions are of less use to consumers when dealing with sellers and service providers in other Member States.

It is true that the cross-border setting does not alter, either for individual or collective redress mechanisms, the essential nature of the obstacles identified for both kinds of mechanism, nor the most important implications of obstacles impeding the effectiveness of those mechanisms. It does, however, reinforce or magnify some of the obstacles and also aggravate some of the distortions already identified in the national setting. The combination of both forces identified above – the likely higher relevance of legal redress for decision-making of a rational consumer in that context, due to the lower effectiveness of the market functional equivalents, on the one side, and the higher

costs of legal redress, and thus lower likelihood of its occurrence, on the other – point towards a higher distortion in behaviour in the context of cross-border trade as a consequence of the obstacles to obtaining satisfactory redress. It can be expected that the level of distortion, and the negative effects thereof, would be more serious in this setting.

The basic economic implications, as far as their nature goes, remain valid for direct cross-border transactions. Consumers will experience in such transactions uncompensated losses of a diverse nature, and they expect them to be higher than in the national context. This will negatively affect the demand for goods and services from sellers and service providers in other Member States. Also, the cost-reducing properties of ADR schemes and of collective redress mechanisms are likely to be lower in this setting, even on a larger scale, given that the inertia of consumers is expected, for reasons explained in the previous sub-section, to be even higher than in the national context. The fixed costs of the litigation or the arbitration will probably be higher when there are consumers from other Member States in the group, although their inclusion will also mean that those higher costs may be spread over an even larger number of consumers benefiting from the collective action. All in all, the overall extra costs, if one takes into account all jurisdictions involved, are thus likely to be higher. It is therefore probable that collective redress in cross-border cases (where effective mechanisms are available), will be more relevant for high-value claims (such as those related to securities) than for low- to medium-value claims.

### **6.6.3 *Immediate economic consequences of the obstacles to obtaining satisfactory redress for businesses in cross-border situations***

A lack of deterrence of undesirable behaviour towards consumers caused by insufficient levels of redress by consumers against wrongs suffered is no less important when a proportion of the affected consumers are located in a different or in several different Member States. The incentives for firms operating across borders in Europe, in order to comply with consumer protection legislation, and to reach the – at least what we assume to be – optimal level of consumer welfare that results from the adherence to that legislation, will be correspondingly distorted downwards.

Economies of scale in enforcing consumer protection rules from collective mechanisms are also real when a proportion of the aggrieved consumers are in different Member States. Cross-border transactions by consumers are not uncommon in Europe, especially in some countries,<sup>152</sup> and collective schemes would be able to organise redress in a more cost-effective way, ensuring a lower expenditure for the same level of compensation to consumers. The unavailability of such schemes, or their practical ineffectiveness due to the increased obstacles in cross-border situations, would prevent the efficient exploitation of those cost savings.

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<sup>152</sup> According to the 2006 Eurobarometer Special Report 252: Consumer protection in the Internal Market, 26% of all Europeans had performed a cross-border purchase elsewhere in the Union in the past year. This figure was highest in Luxembourg (67%), Austria (56%), Denmark (54%) and Sweden (54%).

It is, however, likely that the firms with presence in a larger number of markets and that, in any case, would be more likely to face significant exposure to liability or to adverse consequences (due to their size or their international recognition and reputation), are the ones that may benefit most from more actual and effective use of collective redress mechanisms in this context. They are the firms facing higher costs of taking part in litigation and arbitration at the individual level, and they will also incur the most serious costs of protracted litigation in various countries leading to incoherent and contradictory solutions for the same underlying set of circumstances. The (limited) experience of securities litigation across the Atlantic shows how those firms that actually benefit from enlarged access to diverse capital markets, are also those that can benefit more from the “peace-keeping” function of collective redress mechanisms.<sup>153</sup> This is also emphasised by the fact that an innovative collective redress mechanism introduced in the Netherlands in 2005 (the Act on Collective Settlement of Mass Damage) was used to conclude several large settlements involving firms with a presence in a large number of markets (Shell and Dexia).<sup>154</sup>

On the other hand, it is likely that those firms operating in a significant number of national markets enjoy substantial brand recognition and can make use of ex-ante reputation-related instruments to make up, at least in part, for the ineffectiveness of legal redress mechanisms. This is much less of an option for smaller firms with, at best, domestic brand recognition.

#### **6.6.4 Long-term economic consequences of the obstacles to obtaining satisfactory redress for the functioning of the internal market in cross-border situations**

Transactions involving consumer goods and services that take place over national borders face, compared with purely domestic consumer markets, added costs of different kinds, related to the functioning of legal systems. Some costs arise from the heterogeneity of applicable rules and standards.<sup>155</sup> In this study, additional costs have emerged and have been described that mainly derive from obstacles to, and the lack of, effective redress for consumers, that may enable them to receive adequate compensation for loss incurred following the cross-border transaction. Reducing barriers of this nature to promote the formation and flourishing of a vigorous European market would plausibly

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<sup>153</sup> See, National reports on transnational securities cases in France, Germany and the Netherlands. On some of these cases, see Nagareda, R. (2008), “Aggregate Litigation across the Atlantic and the Future of American Exceptionalism”, Vanderbilt University Law School Public Law and Legal Theory Working Paper, n° 08-05, available at <http://ssrn.com/abstract=1114858>.

<sup>154</sup> See Civic Consulting (2008): Evaluation study, country report The Netherlands.

<sup>155</sup> See, for an economic analysis of some of the costs of legal heterogeneity, Ribstein, L., and Kobayashi, B. (1996) “An Economic Analysis of Uniform State Laws”, 25 Journal of Legal Studies, p. 137; Gomez, F. (2008) “The Harmonization of Contract Law in Europe: A Law and Economics perspective”, 4 European Review of Contract Law, p. 92. The issue of legal heterogeneity is very relevant when considering options for policy instruments for increasing consumer cross-border transactions. See, Ganuza, J. and Gomez, F. (2008), “Optimal Harmonized Standards to Promote Cross-Border Trade”, Universitat Pompeu Fabra Department of Economics and Business Working Paper.

produce relevant efficiency gains. These gains are both static and dynamic. At least since Coase,<sup>156</sup> economists know that transaction costs are real costs of taking economic actions, and that they are not necessarily subordinate in importance to technological or other types of economic cost.

A decrease in the transaction costs involved in cross-border commercial activity entails a reduction of real costs in the economy, a direct and tangible social benefit. This reduction in costs of economic activity may be captured in welfare terms to a greater or lesser degree by producers or by consumers, depending on market structure and on the elasticity of demand for the different goods and services experiencing the reduction in transaction costs.

There is also a dynamic gain resulting from this reduction in transaction costs of cross-border commercial relations between firms and consumers. Reduced transaction costs imply an enhanced chance of entry, and thus enhanced competition in each of the affected national markets. As is well-known from standard economic theory, most gains from increased competition would finally accrue to consumers.

Because of the low probability of cross-border redress actions caused by the discussed obstacles to redress, ex-ante credible quality commitments related to legal instruments such as warranties are less likely to be effective in countries other than those where the good/service is produced and sold. In this context of uncertainty, consumers might be deterred from engaging in cross-border transactions at all. Evidence shows that this situation is quite common in several sectors of the economy. Thus, obstacles for consumers to obtain redress in other Member States are likely to contribute to a reduction of direct cross-border consumer transactions and competition in the internal market.

The preceding remarks, however, should not be taken to imply that improvements in consumer redress would by themselves produce a dramatic change in the removal of actual barriers to consumer cross-border trade in Europe. Even with a reduction of obstacles to obtaining redress, and relatively effective legal redress schemes in place, cross-border transaction costs in at least some consumer markets may remain high.

This leads to the following conclusion:

**11. *Economic consequences of obstacles to obtaining satisfactory redress are likely to be more serious in cross-border situations, and are likely to lead to more distortions of consumer behaviour.*** Due to higher costs of legal redress in cross-border transactions, the threshold amount below which rational consumers will refrain from pursuing enforcement of rights and remedies is expected to be higher than in the national context. Because of the low probability of cross-border redress actions, ex-ante quality commitments of sellers and provider of services are less likely to be effective in Member States other than those where the good/service is produced and sold. In this context of uncertainty, consumers might be deterred from engaging in cross-border transactions at all.

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<sup>156</sup> See, Coase, R. H. (1990), "The Firm, the Market and the Law", University of Chicago Press, Chicago-London.

## **Annex 1: Questionnaire to stakeholders**

**COLLECTIVE REDRESS IN THE EUROPEAN UNION  
PROBLEM ANALYSIS**

\*

**SURVEY OF NATIONAL BUSINESS STAKEHOLDERS**

**Please fill in questionnaire no later than  
15. May 2008**

*(and return this questionnaire by email in Word-Format to [redress@civic-consulting.de](mailto:redress@civic-consulting.de).*

*Please do not pdf the questionnaire)*

***Please answer the questions to the extent that they are applicable to you***

In its Consumer Policy Strategy for 2007-2013 the European Commission underlined the importance of effective mechanisms for seeking redress and announced that it would consider action on collective redress mechanisms for consumers.

The Health and Consumer Protection Directorate General of the European Commission has commissioned a study which will evaluate the effectiveness and efficiency of collective redress mechanism in the EU, as well as a study which will analyse the problems faced by consumers in obtaining redress for mass claims/mass issues where multiple consumers have similar claims against the same seller/provider of services.<sup>1</sup>

The information you will provide through this questionnaire will be used in these two studies. The Commission will use the results of these studies as well as the information provided by stakeholders and interested parties in order to decide whether, and if so, to which extent, an initiative on collective redress is required at EU level.

If you have any further questions, do not hesitate to contact:

*Rémi Bêteille (redress@civic-consulting.de) Phone: +49 30 2196 2287 Fax: +49 30 2196 2298*

**1. Please identify yourself:**

a. Please identify the name of your organisation:

*Please specify*

b. Please identify the type of your organisation:

*Please select from the dropdown menu  
If Other, please specify*

c. Please identify the country in which you are located:

*Please specify*

d. Questionnaire completed by:

*Name, position, contact details*

<sup>1</sup> For more information: [http://ec.europa.eu/consumers/redress\\_cons/collective\\_redress\\_en.htm](http://ec.europa.eu/consumers/redress_cons/collective_redress_en.htm)

## A. PROBLEMS IN OBTAINING REDRESS FOR MASS CLAIMS/MASS ISSUES

2. During the past ten years, have there been cases in your country where multiple consumers<sup>2</sup> had claims against the same seller/provider of services because of the same type of infringement?

*Please select from the dropdown menu*

*Comments*

**If Yes:** Of these mass claims/mass issues, were there any in which consumers did not obtain satisfactory redress<sup>3</sup>?

*Please select from the dropdown menu*

*Comments*

**If Yes:** Please provide details on the major mass claims/mass issues in your country during the past ten years, where multiple consumers had similar claims against the same seller/provider of services, but did *not* obtain satisfactory redress.

Example of mass claim/issue no. 1, in which consumers did <i>not</i> obtain satisfactory redress	
<i>Year</i>	<i>Please specify</i>
<i>Name of mass claim/issue</i>	<i>Please specify</i>
<i>Brief description of mass claim/issue</i>	<i>Please specify</i>
<i>Sector</i>	<i>Please select from the dropdown menu If other, please specify</i>
<i>Category of law infringement</i>	<i>Please select from the dropdown menu If other, please specify</i>
<i>Total number of consumers harmed</i>	<i>Please specify</i>
<i>Average damaged suffered by an individual consumer (please describe and also specify average damage in Euro)</i>	<i>Please specify</i>
<i>Total damage suffered by all affected consumers (in Euro)</i>	<i>Please specify</i>
<i>Redress mechanism used</i>	<i>Please select from the dropdown menu If other, please specify</i>
<i>Reasons why consumers did not obtain satisfactory redress</i>	<i>Please specify</i>
<i>Economic impact on businesses and market</i>	<i>Please specify</i>
<i>YES, claim had cross-border aspect</i>	<input type="checkbox"/> <i>If Yes, please specify</i>
<i>YES, further information available</i>	<input type="checkbox"/> <i>Please specify the source</i>

<sup>2</sup> Here understood as meaning 10 or more consumers.

<sup>3</sup> “Not obtaining satisfactory redress” meaning that multiple consumers with justified claims were not fully compensated for their individual damage, because of the obstacles listed under questions 5 and 6 below.

<b>Example of mass claim/issue no. 2, in which consumers did not obtain satisfactory redress</b>	
<i>Year</i>	<i>Please specify</i>
<i>Name of mass claim/issue</i>	<i>Please specify</i>
<i>Brief description of mass claim/issue</i>	<i>Please specify</i>
<i>Sector</i>	<i>Please select from the dropdown menu If other, please specify</i>
<i>Category of law infringement</i>	<i>Please select from the dropdown menu If other, please specify</i>
<i>Total number of consumers harmed</i>	<i>Please specify</i>
<i>Average damaged suffered by an individual consumer (please describe and also specify average damage in Euro)</i>	<i>Please specify</i>
<i>Total damage suffered by all affected consumers (in Euro)</i>	<i>Please specify</i>
<i>Redress mechanism used</i>	<i>Please select from the dropdown menu If other, please specify</i>
<i>Reasons why consumers did not obtain satisfactory redress</i>	<i>Please specify</i>
<i>Economic impact on businesses and market</i>	<i>Please specify</i>
<i>YES, claim had cross-border aspect</i>	<input type="checkbox"/> <i>If Yes, please specify</i>
<i>YES, further information available</i>	<input type="checkbox"/> <i>Please specify the source</i>
<b>Example of mass claim/issue no. 3, in which consumers did not obtain satisfactory redress</b>	
<i>Year</i>	<i>Please specify</i>
<i>Name of mass claim/issue</i>	<i>Please specify</i>
<i>Brief description of mass claim/issue</i>	<i>Please specify</i>
<i>Sector</i>	<i>Please select from the dropdown menu If other, please specify</i>
<i>Category of law infringement</i>	<i>Please select from the dropdown menu If other, please specify</i>
<i>Total number of consumers harmed</i>	<i>Please specify</i>
<i>Average damaged suffered by an individual consumer (please describe and also specify average damage in Euro)</i>	<i>Please specify</i>
<i>Total damage suffered by all affected consumers (in Euro)</i>	<i>Please specify</i>
<i>Redress mechanism used</i>	<i>Please select from the dropdown menu If other, please specify</i>
<i>Reasons why consumers did not obtain satisfactory redress</i>	<i>Please specify</i>
<i>Economic impact on businesses and market</i>	<i>Please specify</i>
<i>YES, claim had cross-border aspect</i>	<input type="checkbox"/> <i>If Yes, please specify</i>
<i>YES, further information available</i>	<input type="checkbox"/> <i>Please specify the source</i>

*If you can provide more relevant examples, please provide them in a separate document.*

**3. Please estimate the annual number of mass claims/mass issues where multiple consumers from your country have similar claims against the same seller/provider of services.**

- a. Please estimate the total annual number of mass claims/mass issues where multiple consumers have claims against the same seller/provider of services because of the same type of infringement (i.e. all such claims/issues):

*Please select from the dropdown menu*  
*If possible, estimate the total amount involved in Euro*

- b. Please estimate the annual number of where multiple consumers have claims against the same seller/provider of services because of the same type of infringement, but do not obtain satisfactory redress (where the seller/provider is also located in your country):

*Please select from the dropdown menu*  
*If possible, estimate the total amount that was not claimed in Euro*

- c. Please estimate the annual number of mass claims/mass issues where multiple consumers have claims against the same seller/provider of services because of the same type of infringement, but do not obtain satisfactory redress (where the seller/provider is located in another EU Member State):

*Please select from the dropdown menu*  
*If possible, estimate the total amount that was not claimed in Euro*

**4. Are there some sectors of industry/trade in which it is currently more difficult for consumers to obtain redress in mass claims/mass issues than in others, or which are otherwise of specific relevance, e.g. because of the large number of consumers potentially affected?**

*Please select from the dropdown menu*  
*Comments*

**If Yes:** Please specify the *sectors* in which it is more difficult for consumers to obtain redress in mass claims/mass issues in your country:

- Financial services (including insurance)
- Telecommunications
- Package travel/tourism (excluding transport)
- Transport
- Postal services
- Energy and water supply, heating
- Food services/products
- Pharmaceuticals and cosmetics
- Other consumer goods
- Construction
- Games of chance
- Scams and pyramid schemes
- Other. *Please specify*

*Comments*

Please also specify the *category of law infringement* concerning which it is more difficult for consumers to obtain redress in mass claims/mass issues in your country:

- Law on misleading advertising
- Other unfair commercial practices law
- Law on sales and guarantees
- Product liability law
- Distance/doorstep selling law
- Other consumer protection law
- Securities law
- Other financial services law
- Competition law
- Data protection law
- Other. *Please specify*

*Comments*

**5. Are there any obstacles faced by consumers in your country wishing to obtain redress for mass claims/mass issues where multiple consumers had claims against the same seller/provider of services because of the same type of infringement?**

*Please select from the dropdown menu*

*Comments*

If Yes, what are the major obstacles faced by consumers in your country wishing to obtain redress for mass claims/mass issues where multiple consumers had claims against the same seller/provider of services because of the same type of infringement?

a. Most important obstacle is:

*Please select from the dropdown menu*

b. Second most important obstacle is:

*Please select from the dropdown menu*

c. Third most important obstacle is

*Please select from the dropdown menu*

*Comments*

6. **More specifically, are there any obstacles faced by consumers in your country wishing to obtain redress for cross-border mass claims/mass issues, where the seller/provider of services is located in another EU-Member State?**

*Please select from the dropdown menu*

*Comments*

**If Yes**, what are the major obstacles faced by consumers in your country wishing to obtain redress for cross-border mass claims/mass issues:

- a. Most important obstacle is:

*Please select from the dropdown menu*

- b. Second most important obstacle is:

*Please select from the dropdown menu*

- c. Third most important obstacle is:

*Please select from the dropdown menu*

*Comments*

7. **Please assess the economic consequences of the obstacles listed in the previous questions 5 and 6 that are faced by consumers in your country wishing to obtain redress for mass claims/mass issues.**

- a. Economic consequences of the obstacles for the affected consumers are ...

*Please select from the dropdown menu*

*Please specify*

- b. Economic consequences of the obstacles for competitors (of the companies against which there are mass claims/mass issues) are ...

*Please select from the dropdown menu*

*Please specify*

- c. Economic consequences of the obstacles for the functioning of the relevant markets are ...

*Please select from the dropdown menu*

*Please specify*

- d. Economic consequences of the obstacles for the functioning of the EU internal market are:

*Please select from the dropdown menu*

*Please specify*

## **B. ASSESSMENT OF IMPACT ON BUSINESS OF COLLECTIVE REDRESS MECHANISMS CURRENTLY EXISTING IN EU MEMBER STATES**

This section is only relevant for business associations located in one of the EU countries that already have introduced a mechanism of collective redress<sup>4</sup> (i.e. Austria, Bulgaria, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Lithuania, The Netherlands, Portugal, Spain, Sweden, United Kingdom, see Annex).

The aim of this section is to collect data on the impact of existing collective redress mechanisms on business. In the case that there is more than one collective redress mechanism in your country, please describe the overall impact on your member companies. In the case that an assessment only refers to one of the collective redress mechanisms currently existing in your country, please specify the mechanism by referring to the name of the mechanism as provided in the Annex. Wherever possible, we would kindly ask you to support your statements with evidence available to you. Please only comment on collective redress mechanisms in the country that you are located in.

**8. Information costs: Do the collective redress mechanisms in your country impose requirements on your member companies (in terms of being informed about the existing collective redress mechanisms that lead to additional costs)?**

- a. Please assess additional information costs of your member companies related to the existing collective redress mechanisms:

*Please select from the dropdown menu*

*Please justify your assessment and provide evidence for any additional costs*

- b. Do these costs weigh in heavily on Small and Medium Enterprises (SMEs) that are members of your business association?

*Please select from the dropdown menu*

*Please justify your assessment*

**9. Litigation costs and related insurance costs: Are costs for your member companies for legal insurance (for litigation and for damages) and the litigation costs under the existing collective redress mechanism(s) in your country unreasonable<sup>5</sup>?**

- a. Please assess additional insurance costs of your member companies related to the existing collective redress mechanisms:

*Please select from the dropdown menu*

*Please justify your assessment and provide evidence for any additional costs*

- b. Please specify whether litigation costs related to the existing collective redress mechanisms in your country are unreasonable according to the experience of your member companies:

*Please select from the dropdown menu*

*Please justify your assessment*

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<sup>4</sup> See definition in Annex.

<sup>5</sup> Please note that this question does not relate to any additional costs that may occur to your members because of collective redress proceedings in other countries (e.g. class actions in the US).

- 10. Is the *economic impact* on your member companies against whom actions have been brought under the collective redress mechanisms in your country proportionate to the alleged harm caused by their conduct?**

*Please select from the dropdown menu*  
*Please justify your assessment*

- 11. Has the collective redress mechanisms in your country until now led to the *closing down* of one or more of your member companies?**

*Please select from the dropdown menu*  
*Please justify your assessment*

- 12. Do the collective redress mechanisms in your country have an impact on the *competitive position* of your member companies in comparison with their non-EU rivals?**

*Please select from the dropdown menu*  
*Please justify your assessment*

- 13. Do the collective redress mechanisms in your country provoke *cross-border investment flows* (including relocation of economic activity to Member States which do not have any collective redress mechanisms)?**

*Please select from the dropdown menu*  
*Please justify your assessment*

- 14. Do the differing approaches on collective redress between the EU Member States result in actual and/or future obstacles to *trade* between Member States?**

*Please select from the dropdown menu*  
*Please justify your assessment*

- 15. Do the differing approaches on collective redress between the EU Member States result in appreciable *distortions of competition*?**

*Please select from the dropdown menu*  
*Please justify your assessment*

## ANNEX: LIST OF COLLECTIVE REDRESS MECHANISMS IN EU MEMBER STATES

Covered by the study are consumer-relevant collective redress mechanisms for damages. These are:

- Group actions where individual actions are literally grouped into one procedure (other than through a traditional joinder of plaintiffs in similar cases);
- Representative actions, where one individual or an organization represents a multitude of individuals;
- Test case procedures, where a case brought by one or more persons leads to a judgment that forms the basis for other cases brought by persons with the same interest against the same defendant; and finally
- Procedures for skimming-off profits, where a defendant who infringes the rules against unfair competition or unfair commercial practices is held liable to reimburse the illegally produced profits.

Not covered are injunctive actions (unless these include a possibility for the consumer to obtain monetary damages as a result of the action for injunction) and procedures based on criminal law.

According to these criteria, the following consumer-relevant collective redress mechanisms have been identified in EU Member States:

Country	Name of mechanism	Legal basis
Austria	Sammelklage nach österreichischem Recht	§227 Code of Civil Procedure
Bulgaria	Collective Action for damages to collective consumers' interests	Art. 54 of the Law on Consumer Protection and Trade Rules 1999 (entered into force on 06.04.1999, abrogated on 09.06.2006)
	Collective action for damages to the collective consumers' interests	Art. 188 of the Law on Consumer Protection 2006
	Collective action for damages suffered by consumers	Art. 189 of the Law on Consumer Protection 2006.
Denmark	Class action under Danish law	Section 254 of the Administration of Justice Act
Estonia	Joinder of parties represented by the Consumer Protection Board	Art 37 (4) Consumer Protection Act, CPA
Finland	Group action for compensation in consumer disputes ( <i>Ryhmäkannelaki</i> )	Finnish Group Action Act (Ryhmäkannelaki) (444/2007)
	Group complaint in the consumer disputes board ( <i>Kuluttajariitalautakunta</i> )	Consumer Dispute Board Act (8/2007) and Consumer Dispute Board Decree (188/2007).
France	Actions for the financial reparation of the consumer collective interest under Article L. 421 of the Consumer Code	Article L. 421 of the Consumer Code
	Joint representative action for consumers	Articles L. 422-1 to L. 422-3 of the Consumer Code
	Joint representative action for investors	Articles L. 452-2 to L. 452-3 of the Monetary and Financial Code
Germany	Gewinnabschöpfungsklage – recovery of ill-gotten gains	§ 10 UWG
	Sammel- or Musterklage	Article 1 § 3 No. 8 RberG, German Law Governing Legal Advice
	Group actions in the capital market	Kapitalanleger-Musterverfahren
Greece	Injunctive mechanism which offers the possibility to consumers to obtain monetary damages	Art. 10 par. 16 of Law 2251/1994 (new article 10 was introduced by Law 3587/2007 which entered into force on 10.7.2007)
Italy	Collective action	Capo XXI, Missione 24- Diritti sociali, solidarietà sociale e famiglia, Art. 53-ter (Disciplina dell'azione collettiva risarcitoria a tutela dei consumatori), Legge finanziaria 2008, 24. Dezember 2007, n. 244.
Lithuania	Representative action for the protection of public interest	Part 5 of Article 49 of the Civil Procedure Code

The Netherlands	Act on collective settlement of mass damage (Wet collectieve afwikkeling massaschade; WCAM)	The Act implemented Articles 7:907-910 in Title 15 of Book 7 of the Dutch Civil Code (CC), which Title concerns agreements determining the legal relationship between parties (vaststellingsovereenkomst). Furthermore, Articles 1013-1018 were added to the Code of Civil Procedure (CCP).
Portugal	Popular action (Acção popular)	Art. 1 (2) of Law 83/95
Spain	Action in defense of rights and interests of consumers	a. Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil; Ley 26/1984, de 19 de julio, General para la defensa de los consumidores y usuarios, codified by the Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el Texto Refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias b. Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil; Ley 7/1995, de 23 de marzo, de Crédito al consumo c. Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil; Ley 22/1994, de 6 de julio, de Responsabilidad civil por daños causados por productos defectuosos, codified by the Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el Texto Refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias d. Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil, Ley 7/1998, de 13 de abril, sobre condiciones generales de la contratación
	Injunction and damages	a. Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil; Ley 26/1984, de 19 de julio, General para la defensa de los consumidores y usuarios, reversed by the Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el Texto Refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias b. Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil, Ley 26/1984; Ley 7/1998, de 13 de abril, sobre condiciones generales de la contratación
	Group action	Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil; Ley 26/1984, de 19 de julio, General para la defensa de los consumidores y usuarios, reversed by the Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el Texto Refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias
Sweden	Group proceedings act	Group Proceedings Act of 2002 (Lag 2002:599 om grupprättegång, GrL). The Legislative Commission Report (SOU 1994:151) Government Bill (Prop. 2001/02:107).
United Kingdom	Group litigation order	Civil Procedure Rules Part 19 III - and in relation to costs Part 48 - and Practice Directions
	Competition action	S. 47 B Competition Act 1998

## **Annex 2: List of respondents to the questionnaires**

### **List of respondents to the business questionnaire:**

Austrian Savings Banks Association  
Amway Hellas & SIA O.E.  
Associazione Nazionale fra le Imprese di Assicurazione (ANIA)  
Bundesverband deutscher Banken e.V.  
Chamber of Commerce of Luxembourg  
Confederation of Netherlands Industry and Employers (VNO-NCW)  
DAS Legal Expenses Insurance Company Limited  
Febelfin (Fédération belge du secteur financier)  
Fédération des Entreprises de Belgique  
Federation of Finnish Financial Services  
German Confederation of Skilled Crafts /Zentralverband des deutschen Handwerks (ZDH)  
German Insurance Association (GDV)  
Hellenic cement industry association  
Phosphoric fertilizers industry SA (PFI SA)  
Spanish Banking Association  
Mouvement des Entreprises de France (MEDEF)  
Swedish Bankers' Association  
The Central Chamber of Commerce of Finland

### **List of respondents to the non-business questionnaire:**

Altroconsumo  
Austrian Bar  
Camps Advocatuur Enschede Netherlands  
Cohen Milstein Hausfeld & Toll LLP  
Consiglio Nazionale Forense  
Consumer Protection Association Czech Republic (SOS)  
Consumer Protection Board of Estonia (CPB)  
Danish Consumer Ombudsman  
DECO - Associação Portuguesa para a Defesa do Consumidor  
Department for Business, Enterprise and Regulatory Reform (BERR)

Dirección General de Seguros y Fondos de Pensiones/ State Office of Insurance and Pensions Funds (DGSFP)

E.K.PI.ZO Consumer association

ECC Belgium

ECC Finland

ECC France

ECC Germany

ECC Ireland

ECC Italy

ECC Luxembourg

ECC Malta

ECC Slovakia

ECC Spain

ECC Sweden

ECC United Kingdom

Financial Services Authority - United Kingdom (FSA)

Financial Services Authority - Malta

Financial Supervision Authority - Estonia

Hungarian Energy Office (HEO)

Insurance Supervisory Commission

König-Ermacora-Lässer & Partner Rechtsanwälte

L.C. Rodrigo Abogados

Law firm NautaDutilh

Tilburg University

Ministry of Justice, Finland

Ministry of the Economy of the Republic of Slovenia, Consumer Protection Office

National Authority for Consumers Protection, Romania

Office of Fair Trading, United Kingdom

Ritchie Neill, Solicitors, Edinburgh, Scotland, UK

State Consumer Rights Protection Authority, Latvia

Studio Avvocato Bonino, Italy

Studi Legale Ambrosio e Commodo

Suomen Asianajajaliitto - Finnish Bar Association

UFC Que Choisir

Verbraucherzentrale Bundesverband e.V., Federation of German Consumer Organisations

Verein für Konsumenteninformation (VKI)

Which? Limited

## **Annex 3: Mass claims/issues documented**

## AUSTRIA

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
	Lottery	According to complaints received by ECC Austria, many Austrian consumers received dubious letters and emails in English announcing great winnings to the addressee. The prize notices usually bear names of existing foreign lotteries such as "European Lotteries", " El Gordo de la Primitiva", "Loterias y Apuestas del Estado (LAE)", "EuroMillones". Consumers are requested to pay a service charge or other charges or taxes for the delivery of the bogus lottery prizes. After these charges are paid, the consumers never receive the prize. ECC Austria received several complaints with an average value of several hundred thousand Euro.	GAMES OF CHANCE	LAW ON MISLEADING ADVERTISING OTHER UNFAIR COMMERCIAL PRACTICES LAW		Several hundred thousand Euro				Reported from ECC Austria to the EC
	Distance selling company	According to complaints received by ECC Austria, the distance selling company contacts consumers regularly with written notifications of winnings as well as via aggressive telephone-marketing (cold-calling). The average value of such misleading notifications is several hundred thousand euros.	OTHER CONSUMER GOODS	LAW ON MISLEADING ADVERTISING OTHER UNFAIR COMMERCIAL PRACTICES LAW		Several hundred thousand Euro				Reported from ECC Austria to the EC
	Foreign Tour-Operators	ECC Austria received complaints concerning two German tour-operators concerning unfair practices (trip to a restaurant in order to receive some prize - in fact: selling of goods/ package travels) missing information about the right to withdraw from the contract or unilateral changes by the tour-operator to the itinerary, breaching the Package-Travel-Directive. If a consumer does not agree to the changed itinerary the company ignores the demands for reimbursement of the down payment. The average value of such complaints is € 400.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	LAW ON MISLEADING ADVERTISING OTHER UNFAIR COMMERCIAL PRACTICES LAW		400 Euro			YES	Reported from ECC Austria to the EC

2006 - 2007	Services on the internet	<p>ECC Austria has received an almost innumerable number of complaints relating to several online-companies, who offer specific services on the internet. Over the last 2 years, there has been a considerable increase of cases involving services advertised on internet pages (free sms; life-prognoses, homework for school pupils, horoscopes, tax-services, route-planner, IQ-tests, etc.). The common theme of these cases is based on misleading advertisement that the service will be provided free of charge, and also lacks certain information (according to the Distance Selling Directive 97/7/EC: written or on a permanent data medium) on the consumer's right to withdrawal. Some companies argue that the contract in fact is free of charge for two weeks and automatically extends into a non-free contract. This information is also just given in the terms and conditions on the website. The consumer gets an email-confirmation of his application with his password, without any further information about his cancellation rights and the price of the service.</p> <p>After about one month (and the expiry of the withdrawal -period), the first invoice is usually sent to the consumer - followed by a number of reminders and letters from attorneys or debt collecting agencies, if not paid. The consumer's argument (extension of withdrawal -period due to insufficient information on the initial right to withdrawal) is regularly ignored by the companies. These misleading advertisements mainly affect adolescent consumers who are the main focus of these companies' activities. In addition, the companies sometimes address consumers via personal data collected on other websites and send invoices or even reminders to consumers, who never applied for their service and sometimes do not even have an internet access. Most of the companies are located in Germany, but more and more of these companies are moving their headquarters to Great Britain.</p> <p>Some companies are based in Switzerland. In fact these companies seem to be German companies referring to German law in their terms and conditions, using German bank account and working with German lawyers and German debt collecting agencies. Obviously, these companies are trying to avoid the Acquis Communautaire by moving outside the European Union. There have also been companies in Luxemburg that, nowadays operate out of Luxemburg. ECC Austria received several hundred complaints over the last 2 years with an average value of € 90.</p>	TELECOMMUNICATIONS	LAW ON MISLEADING ADVERTISING  OTHER UNFAIR COMMERCIAL PRACTICES LAW	Several hundred	90 Euro			YES	Reported from ECC Austria to the EC
2007	Distance selling company	According to a report from ECC Austria, ECC Austria received numerous complaints concerning the non delivery of ordered goods from the German company. There are numerous equal complaints. Consumers ordered goods via the websites of the company, but the goods were not delivered. When consumers claimed their money back the company simply ignored the demands and mostly did not reimburse the money.	OTHER	LAW ON SALES AND GUARANTEES  OTHER				OTHER	YES	<a href="http://www.europakonsument.at/Europakonsument/ek_detail.asp?lang=EN&amp;category=&amp;id=32912">http://www.europakonsument.at/Europakonsument/ek_detail.asp?lang=EN&amp;category=&amp;id=32912</a>

**BELGIUM**

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2007	Media company	This case concerns a company which sells magazines. According to complaints received by ECC Belgium, the consumer is approached by a doorstep seller. The seller tells him he can try out the magazines for six months for free (test-subscription, terminable). When the consumer signs the order form, he subscribes to a paying subscription of 24 months, non-terminable. This is not clear in the general conditions. The seller has given him misleading information.	OTHER	DISTANCE/DOORSTEP LAW ON MISLEADING ADVERTISING						Reported from ECC Belgium to EC
2005	Timeshares	The case was reported by ECC Belgium. The consumer was on holiday in Spain. He was approached by a seller who invites him to take part in a game. Naturally he wins the first prize. The seller invites him to go with him to a resort where he can pick up his prize. Once there, the consumer has to attend a presentation concerning holidays and he is told that it is a perfect opportunity to sign a contract now in order to go on holidays in the future at a very low price. The consumer is put under pressure to sign the contract and to pay an advance. Afterwards, when the consumer receives the brochure, he realises that the information, given to him orally, was misleading. The consumer was not the only one at the presentation. He saw other persons, signing the same contract, at the resort.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	LAW ON MISLEADING ADVERTISING  OTHER UNFAIR COMMERCIAL PRACTICES LAW					YES	Reported from ECC Belgium to EC
Since 2003	Distance selling company 1	According to ECC Belgium, a lot of consumers from France and the UK contacted the ECC Belgium directly or via another ECC concerning the misleading advertising they received. The document the consumers received said they had won a prize. When you read all the information on the document you can see that the consumer has to buy a product if he wants to be registered to a lottery and the winner will be chosen by drawing lots. Even if the consumer reads this document attentively, he may still believe that he has won without any conditions. This document is very misleading. A lot of French consumers introduced a judicial procedure against this firm. This firm has been convicted several times.	GAMES OF CHANCE	LAW ON MISLEADING ADVERTISING	Hundreds of consumers			COLLECTIVE REDRESS	YES	Reported from ECC Belgium to EC
	Distance selling company 2	ECC Luxembourg sent ECC Belgium several complaints against this Belgian firm. This firm sells wine to consumers. Consumers were contacted by phone. They pressured consumers until they convinced them. When the consumers received the bottles of wine, they saw that the quality was not as good as the sellers had told them. The contract provided the possibility to cancel it. According to the complaints received by the ECC, when the consumers sent back the document in order to cancel the contract, the firm did not answer.	FOOD SERVICES / PRODUCTS	OTHER UNFAIR COMMERCIAL PRACTICES LAW  LAW ON MISLEADING ADVERTISING					YES	Reported from ECC Belgium to EC

2006	Webtrader	<p>According to ECC Belgium, a lot of consumers received an invoice from a German firm. This firm told them that their child had concluded a contract on their website and that they had to pay about € 100. The website is not clear, the price is not clearly indicated. When consumers subscribe to it, to obtain "free sms" they do not see they have to pay for these "free sms". Other consumers received an invoice from this firm though they had never concluded contracts with them. The site is not very secure: any person can register anybody on this website.</p>	TELECOMMUNICATIO NS	OTHER UNFAIR COMMERCIAL PRACTICES LAW		100			YES	Reported from ECC Belgium to EC
				LAW ON MISLEADING ADVERTISING						
2007	IT company	<p>According to reports, two founders of a IT company, together with 19 other defendants are accused of fraud, more specifically that from 1995 until the firm went bankrupt in 2000 they created fictitious turnover to push up the price of the share. Initially it worked perfectly, because at the height of its popularity. In 2000, the Flemish company was worth around 10.67 billion euros. When the decline began with revelations in an article in the Wall Street Journal, it subsequently appeared that no less than 372 million dollars, or 70% of turnover from 1998, 1999 and 2000, had to be scrapped. The many thousands of Flemish investors who became rich through their shares are the victims. When the company went bankrupt they together lost hundreds of millions of euros. They have grouped together around Deminor, a firm of solicitors with a tradition of defending small investors, and around the consumer organisation Test Aankoop. In total Deminor, which is defending the investors, is aiming for 200 million euros in compensation.</p> <p>Another group of investors has not yet calculated a figure. Deminor joined a "private" claim with the criminal proceedings (as a so-called "civil party") against some of the former directors. The consumer organisation Test-Aankoop assisted Deminor in contacting the shareholders. Circa 11000 shareholders originally identified themselves. Of these 11 000 shareholders, only circa 5000 finally granted Deminor the authority required to represent them in the proceedings. To do so, a standard form was made available on the websites of Test-Aankoop and Deminor. 2000 were members of Test-Aankoop, and Test- Aankoop takes the costs of the proceedings at its expense. Only one out of three of the Deminor clients finally granted the requested authority. The Deminor clients had to advance a limited sum to cover the costs of the proceedings, as contingency fees are prohibited under Belgian law. The fact that all shareholders had to be approached individually and had to be asked to share the costs, was perceived as an obstacle to collective litigation by Deminor.</p> <p>The actual trial in these criminal proceedings only started more than five years after the company went bankrupt, and this has also been mentioned as one of the reasons why only 5000 shareholders in the end granted Deminor the authority required.</p>	FINANCIAL SERVICES (INCL. INSURANCE)	SECURITIES LAW	11000 shareholders		Hundreds of millions of euros	INDIVIDUAL REDRESS		<a href="http://www.standaard.be/Artikel/Detail.aspx?artikelId=GQ2K7941&amp;word=collectieve+w+apens">http://www.standaard.be/Artikel/Detail.aspx?artikelId=GQ2K7941&amp;word=collectieve+w+apens</a> ; <a href="http://www.law.stanford.edu/display/images/dynamic/events_media/Belgium_National_Report.pdf">http://www.law.stanford.edu/display/images/dynamic/events_media/Belgium_National_Report.pdf</a> ; <a href="http://errwpc.umd.umich.edu/public/a/s/j/asj4751.2007.18b.txt">http://errwpc.umd.umich.edu/public/a/s/j/asj4751.2007.18b.txt</a>

1993-1998	Beer cartel	According to a press release from the European Commission, the European Commission fined several companies for a total of over € 91 million for participating in two distinct secret cartels on the Belgian beer market between 1993 and 1998. The infringements included market sharing, price fixing and information exchange. They affected the horeca sector (i.e. hotels, restaurants and cafes) as well as the retail sector (i.e. supermarkets and other food shops), including the sale of private label beers.	FOOD SERVICES / PRODUCTS	COMPETITION LAW						<a href="http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/1739&amp;format=HTML&amp;aged=0&amp;language=EN&amp;guiLanguage=en">http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/1739&amp;format=HTML&amp;aged=0&amp;language=EN&amp;guiLanguage=en</a>
2007	Travel agency	According to complaints received by ECC Belgium, there was a significant number of claims concerning the cancellation of flights due to problems between the selling agency and the airline company.	TRANSPORT	OTHER CONSUMER PROTECTION LAW	90	Between 120 and 400 Euro	About 100000 Euro	OTHER	YES	Stakeholder survey
2006	Airline company	According to complaints received by ECC Belgium, there was a significant number of claims concerning a flight which was cancelled. The passengers received no care at all, but were told to come back 5 days later for the next flight	TRANSPORT	OTHER CONSUMER PROTECTION LAW	About 40 consumers contacted ECC Belgium	About 100 Euro	Consumers chartered a bus for 4000 euro and the price of the tickets back was about 2700 euro for the 40 persons.	NONE	YES	Stakeholder survey

**BULGARIA**

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2004	Dangerous components of drinking water	According to a newspaper report, consumers allegedly suffered a non-pecuniary damage, namely personal injuries, resulting from some components of drinking water dangerous for health, for instance in water supplied in Haskovo city. Although a consumer organisation manifested its intention to file a collective action for damages, neither collective, nor individual redress mechanisms have been used so far.	ENERGY AND WATER SUPPLY, HEATING	OTHER				NONE		Country Study (Bulgaria)
2007	Overcharging of water supply services	According to a newspaper report, in Sofia city, consumers allegedly suffered a pecuniary damage consisting in unreasonable overcharging of water supply services. There is no data for either collective redress mechanisms, or multiple individual claims to have been used so far.	ENERGY AND WATER SUPPLY, HEATING	OTHER	Approximately 2 000 000 consumers.			NONE		Country Study (Bulgaria)
2007	Roaming charges	According to a newspaper report, a significant number of consumers incurred a pecuniary damage from unreasonable overcharging of mobile phone services, for instance roaming charges. Cases were reported that a Bulgarian mobile operator had calculated roaming charges for local telephone calls that were made between persons located in Bulgaria but living very close to the border with neighbour countries, e.g. Greece and Romania. There is no data for either collective redress mechanisms, or multiple individual claims to have been used so far.	TELECOMMUNICATIONS	OTHER UNFAIR COMMERCIAL PRACTICES LAW				NONE		Country Study (Bulgaria)
2007	Overcharging of telecommunication services	According to the source, multiple consumers suffered damage from overcharging of telecommunication services ensuing from abuse of dominant market position. For example, offering Internet access to its own customers and to customers of its sub-providers under significantly different tariff plans, and hindering the access to telecommunication cable net. There is no data for either collective redress mechanisms, or multiple individual claims to have been used so far.	TELECOMMUNICATIONS	OTHER				NONE		Country Study (Bulgaria)

## CYPRUS

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2001	False discounts in supermarkets	According to a media report, in Cyprus, the trade description law states that a product can only be sold at a discount if it has been on the shelves at its original price for at least three months beforehand or for at least one month continuously with its price clearly displayed. But there are cases of misleading advertising of the discounts. For example, if a supermarket claims to be giving 70 per cent discounts on certain products, but in fact it turns out the original price was inflated just before the discount was introduced, then the consumer is being misled to believe that he or she is making a bargain purchase, when in fact he or she is not. Consumers watch adverts in good faith, believing that a chicken being advertised for 49 cents is in fact 49 cents, yet in small print underneath the ad, it specifies that this is only valid if you spend over £40, or says you should call for more details.	FOOD SERVICES / PRODUCTS	LAW ON SALES AND GUARANTEES  LAW ON MISLEADING ADVERTISING					NO	<a href="http://www.hri.org/news/cyprus/cmnews/2001/01-12-07.cmnews.htm#05">http://www.hri.org/news/cyprus/cmnews/2001/01-12-07.cmnews.htm#05</a>

CZECH REPUBLIC

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
	Timeshare	According to complaints received by ECC Czech Republic, the typical case is based on the contract which was signed at a presentation organized by a travel agency. The company sells memberships in a Club in Spain. The contract itself is only a graphically arranged form, which appears to be credible and which basically only states that the applicant is applying for X number of months membership in the Club. Then it states the length of membership, the code of the apartment, the number of weeks that the applicant can spend at the vacation spot, a list of vacation spots and the price of membership. The contract is always signed with a company whose seat is registered in the Register of Companies in the British Virgin Islands or Isle of Man. After the consumer withdraws from the contract the Czech company says that the money has already been transferred and the Club never answers. There were some successful legal actions against the Czech travel agency, but because of the high costs of the proceedings, there were not many. Czech law does not allow for collective legal actions.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	OTHER UNFAIR COMMERCIAL PRACTICES LAW		The value of the cases ranges from 800 Euro to 3.000 Euro.			YES	Reported from CPC Czech Republic to EC
2006-2007	Insurances	According to a media report, the Consumers Defence Association of the Czech Republic (SOS) receives many complaints about insurance companies, but very few are taken to court because it is a demanding process for an individual. Insurance contracts tend to give the insurance companies strong rights and low liability. The general public does not understand the conditions [of the contract] well, and insurance advisers do not explain them to the customers fully. The problem was particularly noticeable when the contract comes up for renewal as many people sign new contracts that are less advantageous than their previous ones, while under the mistaken impression they are getting a better deal. They lose their bonuses and other advantages in this way very often. According to the Consumers' Defense Association of the Czech Republic (SOS), there are also several problems for consumers relating particularly to automobile insurance. One example is that the insurance costs can be recalculated yearly in relation to the car value.  The vast majority of the insurance companies do not do this automatically and don't inform the consumers about this possibility.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER CONSUMER PROTECTION LAW						<a href="http://www.cbw.cz/en/buyer-beware:-contracts-give-insurers-%91low-liability%92/6367.html?search=consumers">http://www.cbw.cz/en/buyer-beware:-contracts-give-insurers-%91low-liability%92/6367.html?search=consumers</a>

2008	Discrimination by currency exchange offices	According to a press release from the Consumers Defence Association of the Czech Republic (SOS), the association has recently done a survey which confirmed the fact that there exists two types of exchange offices - one at the touristically attractive areas designed to "benefit" from tourists and the one more hidden providing better services and offering bigger value for your transactions, however, outside of the touristic places. Foreign tourists, who are visiting the Czech Republic and wishing to exchange money, are more likely to end up in the first type of exchange office which may try to take advantage of the fact that tourists don't understand Czech. Furthermore, the exchange rates may be a subject of negotiations. Czechs are usually informed of this by a little notice which may not be, as is often the case, translated into English.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER CONSUMER PROTECTION LAW					YES	<a href="http://www.consumers.cz/">http://www.consumers.cz/</a>
2007	Package travels	According to a press release from the Consumers Defence Association of the Czech Republic (SOS), the association brought a suit against a travel agency. Main points are: (1) Incomplete prices of journeys in adverts (customer eventually pays much more than expected, so it is not possible to compare prices in different travel agencies). The SOS analysed trade terms of ten travel agencies. Beside the biggest problem (prices of journeys are not presented completely (2) they don't include taxes, etc.) the SOS discovered other wrongs: font size of trade terms is too small (3) discourages from reading it cancellation fee is according to the SOS too high and inadequate, factual shortening of tours (4) late departures (or early arrivals) with irresponsible travel agencies for this situation (unless it is caused by objective reasons), irresponsibility of travel agencies for provided services (eg. broken air condition). SOS has also drawn attention to other business practices it considers unfair, unethical or illegal.  One practice that clashes with both consumer protection law and the Civil Code is that some agencies include travel insurance in the prices of their tours without giving clients the opportunity to decline it or to buy it separately.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	OTHER UNFAIR COMMERCIAL PRACTICES LAW  OTHER CONSUMER PROTECTION LAW						<a href="http://www.consumers.cz">http://www.consumers.cz</a>
2007	Lottery	According to a press release from the Consumers Defence Association of the Czech Republic (SOS), the association has been recently contacted by consumers who were called by unknown people who announced them that they had won in a lottery. The only condition to get the money was to call on a number - but with higher tariffication.	SCAMS AND PYRAMIDS SCHEMES	OTHER UNFAIR COMMERCIAL PRACTICES LAW						<a href="http://www.consumers.cz/news.php?show=30">http://www.consumers.cz/news.php?show=30</a>
2007	Consumer credit	According to a press release from the Consumers Defence Association of the Czech Republic (SOS), the association initiated criminal prosecution of the representatives of a financial services company. The company provides consumer credits, but the contract contains a lot of disadvantages for consumers conditions, such as high contractual fines or unlimited taking out of client's accounts. What the SOS criticizes most is a way of solving disputes between the company and its clients. The biggest problem is related to premature loan pay-offs that are initially set up to be paid in instalments. Only when consumers start paying off the loans do they realize the disadvantages of the contracts. When consumers decide to pay off loans earlier than originally agreed to in the contract, firms usually charge fees that are sometimes too high. In some cases, consumers end up paying up to 100 percent total annual interest on a single loan.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER CONSUMER PROTECTION LAW	150-200					<a href="http://www.consumers.cz/news.php?show=30">http://www.consumers.cz/news.php?show=30</a> and stakeholder survey

2007	Out-of-standard mobile phones	According to a press release from the Consumers Defence Association of the Czech Republic (SOS), the association initiated prosecution against the former representative of a company which runs a few internet shops. The company used to sell mobile phones which were not in accordance with technical regulations and in addition were not even supposed to be sold in the Czech Republic. The SOS has more than 200 complaints from dissatisfied clients. The total damage is several hundred thousand crowns.	OTHER CONSUMER GOODS	LAW ON SALES AND GUARANTEES	More than 200		Several hundred thousand crowns		<a href="http://www.consumers.cz/news.php?show=40">http://www.consumers.cz/news.php?show=40</a>
2007	Misleading advertising for free calls	In a press release from the Consumers Defence Association of the Czech Republic (SOS), the association points out the tricks of telecommunication companies which lure clients on the basis of misleading information in advertisements about calling prices. The problem is "weekend calling for free". The client can really call for free during the weekend, but only after he has spent his free minutes as part of his tariff. The fact is that this last important information is not told in the advertisement. This situation can cause that the client spends these tariff-minutes during the weekend while the consumer thinks that he/she is calling for free; these free minutes are then missing during working days. In the end, the client spends much more money than he/she expected.	TELECOMMUNICATIONS	LAW ON MISLEADING ADVERTISING					<a href="http://www.consumers.cz/news.php?show=50">http://www.consumers.cz/news.php?show=50</a>
2007	Currency exchange	According to a study conducted by the European Consumer Centre for the Czech Republic, infringements of consumer rights when changing money are relatively common and occur in various forms. Banks do not provide visible information about commission or charges for money changing, even though they are obliged to. In bureaux de change, customers often receive inadequate information (they are told the commission, but not about the amount of any further charge), which can be misleading (the claims that money changing is free of charge only apply to sales; a different rate is charged than that declared. The use of an exceptionally bad exchange rate for direct payments in euro (by as much as 30%), non-issue of confirmation of payments in euro and the exchange rate applied.	FINANCIAL SERVICES (INCL. INSURANCE)	LAW ON MISLEADING ADVERTISING					<a href="http://www.efk.hu/pdf/Moneychanging.pdf">http://www.efk.hu/pdf/Moneychanging.pdf</a>
2007	Food quality	According to a media report, there are many complaints relate to food quality. In many cases, consumers do not have a guarantee that the food they are consuming is of the declared quality. For example, there is a problem with cheese substitutes made of vegetable oils.	FOOD SERVICES / PRODUCTS	LAW ON SALES AND GUARANTEES					<a href="http://www.cbw.cz/en/consumer-watchdog-finds-its-teeth/3901.html?search=consumers">http://www.cbw.cz/en/consumer-watchdog-finds-its-teeth/3901.html?search=consumers</a>

DENMARK

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2003	Bank	According to the Danish Consumer Ombudsman, several banks had charged house owners a fee that was not agreed on in the contract. The court found the fee unlawful.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW		Approximately 100 Euro		OTHER		Stakeholder survey
2000	Insurance company	According to a report presented during a conference, a large number of shareholders who had suffered losses after the collapse of an insurance company thus attempted to claim against the failed insurance company's management, auditors and issue bank via two associations created for the purpose, but the associations' action was denied by the courts because the formation of associations without personal liability is deemed to constitute a circumvention of the rules on legal costs under Danish law.	FINANCIAL SERVICES (INCL. INSURANCE)	SECURITIES LAW						<a href="http://www.law.stanford.edu/display/images/dynamic/events_media/Demark_Legislation.pdf">http://www.law.stanford.edu/display/images/dynamic/events_media/Demark_Legislation.pdf</a> (cf. UFR 2000: 575 H)
2004	Media company	According to the Danish Consumer Ombudsman, consumers were charged for telephone calls they allegedly had made to providers of a telex service. The telex companies did not have any prior agreement with the consumers and the court found that it was illegal for them to send out bills without such a prior agreement. Many consumers had however paid the company because they thought they were obliged to do so.	TELECOMMUNICATIONS	OTHER UNFAIR COMMERCIAL PRACTICES LAW		50-200 Euro		OTHER	YES	Stakeholder survey
2003	Credit provider	According to the Danish Consumer Ombudsman, a number of consumers entered into lease agreements which were in fact masked credit agreements. The court found that because the consumers did not receive all the required information when entering into the contracts they were entitled to a refund of some of the money paid.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER UNFAIR COMMERCIAL PRACTICES LAW		Approximately 200-400 Euro		INDIVIDUAL REDRESS	NO	Stakeholder survey

ESTONIA

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2007	Web trader	According to complaints received by ECC Estonia, a web trader sells computer-related goods via Internet in Estonia but is not willing to meet its obligations (the ordered and prepaid goods are not delivered to consumers). ECC Estonia has received 13 complaints against the web trader since the beginning of the year 2007. ECC Estonia has managed to solve most of the cases in favour of the consumer, i.e. the trader has delivered the order or refunded the money, but unfortunately the new complaints are still coming in. At the moment there are 5 cases still pending. During the proceeding of the cases, ECC Estonia has consulted with its host organisation – the Consumer Protection Board and police authorities to consider all possible measures in solving the problems with this web trader. As most of the consumers have been Finnish, ECC Estonia has informed ECC Finland with the objective to warn Finnish consumers. The relevant warnings have been published on ECC Finland's website. The average value of the consumers' claims has been € 77.	OTHER	LAW ON SALES AND GUARANTEES  OTHER	13	77			YES	Reported from ECC Estonia to EC
2007	E-commerce (ordered goods not delivered)	According to the Estonian Consumer Protection Board, consumers ordered during several months goods (mainly goods for babies and small children) from an Estonian E-store. The ordered and prepaid goods never arrived and trader did not reimburse the paid money.	OTHER	DISTANCE/DOORSTEP SELLING LAW	103 complaints submitted to CPB	Approximately 2000 EEK (128 EUR)	Approximately 200 000 EEK (12 820)	INDIVIDUAL REDRESS	NO	Stakeholder survey
2007-2008	Interactive game	According to the Estonian Consumer Protection Board, a number of consumers participating in the interactive TV-game did not understand, if they got contact with the transponder or not, but they had to pay the participation fee of 15 crowns per phone call anyway. Lot of consumers called several times during one minute.	TELECOMMUNICATIONS	OTHER UNFAIR COMMERCIAL PRACTICES LAW	70 complaints submitted to CPB	2857 EEK (182 EUR)	200 000 EEK (12782 EUR)	INDIVIDUAL REDRESS	YES	Stakeholder survey

## FINLAND

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
	Online store	According to complaints received by ECC Finland, 14 complaints against a German online store that targets its marketing at consumers in Finland through a Finnish website: the most common problem is non-delivery of goods that have been paid for and the trader does not reply to demands.	OTHER CONSUMER GOODS	OTHER	14 complaints				YES	Reported from ECC Finland to EC
	Online store	According to complaints received by ECC Finland, 10 complaints against a French online store, also targeting its marketing at consumers in Finland through a Finnish website: problems vary but generally the trader does not	OTHER CONSUMER GOODS	OTHER	10 complaints				YES	Reported from ECC Finland to EC
	Online store	According to complaints received by ECC Finland, 10 complaints against an Estonian online store for purchase of DVD-discs: as above, non-delivery and the trader cannot be reached.	OTHER CONSUMER GOODS	OTHER	10 complaints				YES	Reported from ECC Finland to EC
	Health Capsules	According to complaints received by ECC Finland, Finnish consumers have had major problems with certain Swedish or Danish companies offering health capsules and the like, advertising a free sample when in fact by returning the sample form the consumer is bound to membership or otherwise a continuous contract. The consumers have no way of contacting these companies.	PHARMACEUTICALS AND COSMETICS	DISTANCE/DOORSTEP SELLING LAW					YES	Reported from ECC Finland to EC
	Free Ringtones	According to complaints received by ECC Finland, several EU-based companies (e.g. from the Netherlands and Sweden) are offering Finnish consumers free ringtones or other mobile phone connected services. They lure the consumers by advertising services as free of charge, in a way that the consumers do not become aware that they are in fact participating in a system where they allow the trader to send them text messages, each costing € 2 (with no realistic way of freeing themselves of the contract). The billing is organized through the mobile phone operator so that the consumers do not even know who their counter part is - nor that they are involved with a trader outside Finland.	TELECOMMUNICATIONS	DISTANCE/DOORSTEP SELLING LAW					YES	Reported from ECC Finland to EC

2005	IQ-test	According to complaints received by ECC Finland, the consumers made the test on the service provider's website but were not informed that they would have to pay about 49 € for completing the test. The Consumer Agency and municipal consumer advisors received hundreds of complaints from consumers with request of a refund	OTHER CONSUMER GOODS	LAW ON MISLEADING ADVERTISING	Data not available	49 €	Data not available	ADR SCHEME	YES	Stakeholder survey
2005	Web trader	According to complaints received by ECC Finland, Finnish consumers ordered alcohol from trader's website, paid for them but never received the ordered product. The Finnish customs confiscated the products as the trader did not have a tax representative in Finland. The trader's website stayed open and made it possible for tens if not hundreds of consumers to make payments for products that would perhaps never arrive. Trader was an Estonian company. Some two years later a court ruling in favour of the trader was given.	OTHER CONSUMER GOODS	OTHER UNFAIR COMMERCIAL PRACTICES LAW	Data not available	50 - 100 €		ADR SCHEME	YES	Stakeholder survey

## FRANCE

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
	Web trader 1	According to complaints received by ECC France, French consumers bought goods from a German seller, by the intermediary of eBay. The seller does not deliver saying that he has a problem with his supplier, but the situation remains unchanged for more than a year. ECC France has received 15 complaints of this nature, but believe that more than 100 consumers might be affected. An amicable settlement has not been possible, as there was no way of contacting the German seller. Some consumers have started individual civil actions, others have brought criminal complaints. The French Supervisory Authority for Fair Competition and Consumer Protection (DRCCRF) has initiated an inquiry in cooperation with its German counterpart.	OTHER CONSUMER GOODS	OTHER	ECC France has received 15 complaints of this nature, but believes that more than 100 consumers might be affected.			INDIVIDUAL REDRESS	YES	Reported from ECC France to EC
	Real estate	According to complaints received by ECC France, a French real estate seller offers properties to German clients, presenting himself as being the owner of the properties concerned, although in fact he is only an intermediary who holds a 'selling promise'. Consumers are asked to sign a 'buying promise' and to make a down payment of more than 10 % of the total purchase price for the property. However, the purchase never goes through and consumers have difficulties recovering the down payment.	OTHER	OTHER UNFAIR COMMERCIAL PRACTICES LAW	Between 2002 to 2004, the ECC 20 complaints concerned the real estate seller.				YES	Reported from ECC France to EC
	Insurance agent	According to complaints received by ECC France, French consumers, advised by an insurance agent, contracted loans on quite large amounts with a German company. The company was supposed to launch a revolutionary drink which would be able to regulate the user's alcohol level in blood. Loans had a one-year term and an 8 % p.a. interest rate, but interests have not been paid out or only in part, and the invested money has not been returned to the investors at the end of runtime.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW					YES	Reported from ECC France to EC
	Airline company	According to complaints received by ECC France, there are a number of complaints against a airline company concerning non-respect of Reg. 261/2004 in cases of flight delays: the company does not respect its obligations to assist its passengers and refuses any kind of payback for costs caused to passengers by the delay. In cases of flight cancellations, the company generally refuses to pay the compensation (foreseen in Art. 7 of Reg. 261/2004), arguing that cancellation is due to 'exceptional circumstances' (including technical incidents, staff strikes, bad weather). In cases of overbooking, the company systematically denies compensation to passengers: the company does not inform them of their rights, but distributes vouchers (€ 75) that may be used to reduce the cost of their next flight. The company is of the view that in taking these vouchers, passengers are renouncing any right to other compensation.	TRANSPORT	OTHER CONSUMER PROTECTION LAW					YES	Reported from ECC France to EC

Airline company	According to complaints received by ECC France, the company regularly cancels flights from Nice, Bales or Geneva, if they're under-booked, but the company refuses to compensate the passengers concerned for the supplementary costs due to cancellation	TRANSPORT	OTHER CONSUMER PROTECTION LAW					YES	Reported from ECC France to EC
Web trader 2	According to complaints received by ECC France, approximately a dozen European consumers concerning a company that is based in Monaco but uses a French phone number. On its websites, the company offers reservations for hotels in Europe. Clients have to indicate their bank card details to make a reservation. Sometimes, the reservation is immediately followed by a notice from the company saying that the requested hotel is fully booked and that the company will propose alternatives in conformity with its general contract terms. In other cases, this notice comes later by email or by phone. The proposed alternatives generally do not conform to the client's expectations and the consumers wish to cancel their reservation. However in most cases the bank card references have already been used for the booked hotel or for 'administrative fees'. Consumers have difficulties recovering these expenses. Generally, ECC France was not able to reach an amicable settlement and consumers were not reimbursed.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	DISTANCE/DOORSTEP SELLING LAW	12				YES	Reported from ECC France to EC
Genealogy services	According to complaints received by CPC France, a Dutch company, offers personal genealogy services to French consumers by distance-selling, promising to pay back the purchase price if the client is not satisfied. There are two types of consumer complaints: non-performance (10 complaints, total value € 590) and misleading advertisement (concerning inexact contents of the chronicle; total value € 1.160).	OTHER	OTHER CONSUMER PROTECTION LAW	10	59	590		YES	Reported from CPC France to EC
			LAW ON MISLEADING ADVERTISING			1160			

	Capital investment	<p>A French media company was converted from a local water company to a global media conglomerate in a specific acquisition programme. According to articles published by American law firms, it was revealed that several securities fraud class actions were filed in the US on behalf of all the shareholders worldwide (that had bought shares in the relevant period) alleging that the company shares traded in Paris and New York had had artificially high prices due to misrepresentations made by the company. On March 22, 2007, the United States District Court for the Southern District of New York, granted class certification, but restricted the class to persons from the United States, France, England and the Netherlands. Shareholders from Germany and Austria were held not to be eligible to participate in (and to be bound by) a securities class action brought in US courts under US law.</p> <p>The reason behind this distinction was that foreign class members are free to export their securities fraud claims to the US as long as they reside in countries that are likely to enforce a class action judgment from a US court.</p>	FINANCIAL SERVICES (INCL. INSURANCE)	SECURITIES LAW				COLLECTIVE REDRESS	YES	<p><a href="http://www.sbclasslaw.com/sb_2007_summer.pdf">http://www.sbclasslaw.com/sb_2007_summer.pdf</a>, p. 1.</p> <p><a href="http://www.lw.com/Resources.aspx?page=ClientAlertDetail&amp;publication=1898">www.lw.com/Resources.aspx?page=ClientAlertDetail&amp;publication=1898</a>.</p>
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GERMANY

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2004-2006	Air transport	According to the Conciliation Body for Long-Distance Travel (die Schlichtungsstelle Mobilität ) at Verkehrsclub Deutschland e.V. (VCD), from December 2004 to November 2006 the Conciliation Body received 2369 complaints from passengers against companies for air transport regarding flight delays, cancellations, problems with luggage etc. 553 of complaints conciliation proceedings were not carried out because of the refusals of air companies to cooperate and participate in the proceedings.	TRANSPORT	OTHER CONSUMER PROTECTION LAW	553			ADR SCHEME		Die Schlichtungsstelle Mobilität beim Verkehrsclub Deutschland e.V. (VCD) - <a href="http://www.schlichtungsstelle-mobilitaet.org/fileadmin/user_upload/redakteure/Presse/06_1207_HG_ZweiJahre_SchliIMob.pdf">http://www.schlichtungsstelle-mobilitaet.org/fileadmin/user_upload/redakteure/Presse/06_1207_HG_ZweiJahre_SchliIMob.pdf</a>
2007	Travel agency	According to a report by ECC Austria, numerous tourists booked flights to Morocco and paid the price in advance. At the airport they were informed that there had been no reserved flights - moreover some flights did not exist at all. Consumers bought flight tickets via the travel agency and paid for them but were refused to board because the company did not transfer the money to the airlines. The Public Prosecution Service of Düsseldorf is investigating in a preliminary proceeding for fraud and delaying insolvency. Other procedures seem to be opened in Belgium and Spain where the company has (had) offices.  There is data about Dutch consumers affected, and the same company was reported to be involved in cases concerning Belgian consumers.	TRANSPORT	OTHER CONSUMER PROTECTION LAW  OTHER					YES	<a href="http://www.europakonsument.at/Europakonsument/ek_detail.asp?lang=EN&amp;category=&amp;id=31906">http://www.europakonsument.at/Europakonsument/ek_detail.asp?lang=EN&amp;category=&amp;id=31906</a>

GREECE

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
	Lottery	According to complaints received by CPC Greece, Greek consumers received letters from Spanish lottery companies promising that they had won money in a lottery. In fact the information concerning the amount of money was misleading. Furthermore the companies asked for personal data including the bank account number in order to credit the prize. To credit the money the lottery companies claimed that it was necessary to send money in advance as a guarantee for the prize. The requested money varies but it adds up to thousands of Euro.	GAMES OF CHANCE	LAW ON MISLEADING ADVERTISING			Thousands of Euro		YES	Reported from CPC Greece to EC
	Timesharing	According to complaints received by CPC Greece, a Greek company offered timeshare products to foreign visitors. In order to attract the attention of the consumers they received small gifts (radios, t-shirts, DVDs, etc.). Afterwards they were brought either to a hotel or to the company's premises to convince them to sign the timeshare contracts. Some consumers signed the contract even though they did not receive any pre-contractual information. After signing the consumers realised that they had no right of withdrawal from the contract. Furthermore the period of the timeshare product was 35 months, which means that it was out of the scope of Directive 94/47/EC. The consumers paid € 750 to € 1.000 in advance. The total amount of the damage was € 4.000 for a six weeks period.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	LAW ON SALES AND GUARANTEES  OTHER CONSUMER PROTECTION LAW          OTHER UNFAIR COMMERCIAL PRACTICES LAW		4000 Euro			YES	Reported from CPC Greece to EC

IRELAND

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
	Insurance company	An insurance company, without any notification in the policy documents, charged its policy holders €25 when they changed their policy, for example changing the insured car. One consumer found that unjustified, filed action before the Ombudsman and sought compensation. The Ombudsman ruled that the insurance company not only had to refund the single consumer who had started the action but also every single insuree who had been charged that fee during the last six years. The insurance company appealed this verdict at the High Court. The judge decided that the power of the Ombudsman was confined to the single consumer who had complained. So, the Ombudsman was not entitled to order the company to compensate every aggrieved consumer. This meant that every affected consumer had to bring an individual claim for damages. Finally, the Ombudsman accepted the verdict. However he decided to refer this case to the Ministry of Finance for possible legislative measures.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW				ADR SCHEME		Civic Consulting /stakeholder interviews
2006 - 2007	Vehicle Matching Service	According to complaints received by ECC Ireland, individuals advertise their cars for sell either online or in magazines such as "Car Matching Services". A short time after the advertisement is published the individual receives a call from a person that says they match buyers with sellers and have someone who is looking for the individuals particular car. They say that the service cost €118. After the money is paid the consumer is unlikely to ever hear from the company again.	SCAMS AND PYRAMIDS SCHEMES	OTHER UNFAIR COMMERCIAL PRACTICES LAW	43	118 Euro	5,074 Euro	INDIVIDUAL REDRESS	YES	Stakeholder survey
2007	Airline company	According to complaints received by ECC Ireland (19 complaints in 2007, which were all referred to the Irish NEB - National Enforcement Body - for intervention under Reg. 261/04), a flight from New York to Shannon Airport in Ireland was delayed, then cancelled. Passengers were stranded in New York for 5 days and while they were given accommodation, no financial compensation was offered or given despite the ECC and Irish NEB agreeing that no 'extraordinary circumstances' existed. All simple complaints to ECC were forwarded to the Irish NEB. No compensation has been given.	TRANSPORT	LAW ON SALES AND GUARANTEES		600 Euro compensation per passenger; various amounts for refund of purchase of alternative tickets.				Reported from ECC Ireland to EC
2003/2004/2005	Travel agency	According to complaints received by ECC Ireland, UK based company distributed scratch cards in newspaper and magazines offering free holidays. On closer inspection the free holiday promotion cost consumers a minimum of €130 to travel with others. There were also problems with restrictive time limits and confusion over flights from Dublin. The holiday destinations are Spain and the Canary Islands.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	LAW ON MISLEADING ADVERTISING	369	130 Euro	No exact figure is available due to the way cases were recorded at this time by the ECC Ireland but but if you were to average out the amounts I would say that this figure was in or around €47,970	NONE	YES	Stakeholder survey

2002/ 2003/ 2004	Holiday club	According to complaints received by ECC Ireland, while on holidays in many spanish resorts, consumers were approached by individuals on the street and given a scratch card. When they scratched the card they would win a prize. In order to claim the prize they would have to travel to a location with the individual by taxi. Generally these locations were remote and in order to leave a taxi would have to be ordered for you. Once at the location the consumer was informed that in they received their prize, they would have to listen to a short presentation on the holiday club packages available and view the apartments available. Many consumers asked to leave but were pressured into providing their credit card details first for a deposit on the holiday clubs. Many of these meetings would be over 4 to 5 hours long and the consumers felt that they had not other option but to hand over these details.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	OTHER UNFAIR COMMERCIAL PRACTICES LAW	69	The average suffered by consumers would be €1500 but in many cases the loss was over €5000 per person. The €1500 figure would represent deposits paid to these companies.	No exact figure is available due to the way cases were recorded at this time by the ECC Ireland but average out the amounts ran into the hundreds of thousands.	NONE	YES	Stakeholder survey
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ITALY

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2006	Car Hire Company	According to ECC Italy, ECC Italy received claims against a well-known hire company (11 claims). In 2006, ECC Italy tried to close them without success. They are now advising consumers to go on and address to an ADR body. All the complaints are similar: the car hire company - without any prior notice or explanation - charges the consumers' credit card. This generally occurs at the end of the hire period. The employee inspects the car when it is returned but says nothing. Once back home consumers find they have been charged explained as being due to car damage (even if consumers had taken out the relevant car insurance). The value of these claims ranges from € 160 to € 400. Sometimes the company charges the card several times over more than two months.	TRANSPORT	OTHER UNFAIR COMMERCIAL PRACTICES LAW		Between 160 Euro and 400 Euro				Reported from ECC Italy to EC
2003	Dairy company	Due to an alleged fraudulent financial scheme between a giant Italian international dairy company, and its banks and auditors, the company collapsed in 2003 with losses totalling € 15 billion. € 4 billion of the company's bank account had disappeared in a myriad of off-shore entities. Some 115.000 investors from several countries were concerned and suffered damages by the loss of their investments. The Italian Consumers Association 'Altroconsumo' has, with the support of the Belgian consultancy company 'Deminor', collected and organised claims of approximately 3.000 Italian consumers against two audit companies allegedly responsible for the financial collapse of the company. In addition, in a procedure pending at the Court of Rome, four international banks face claims for damages totalling € 300 million. Some European and US investors have initiated a class action in a U.S. Court (NY). The class action recently (19/07/2007) led to a partial 1st settlement (\$ 50 million). Actions under Italian Law seem to be much more complicated, time-consuming and expensive due to the lack of a collective/ group action instru	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW	115.000	It depends on how many bonds every single consumers bought. In lots of cases consumers had invested hundreds of thousands of euros.			YES	Various sources, including <a href="http://www.tagesanzeiger.ch/dyn/news/wirtschaft/631784.html">http://www.tagesanzeiger.ch/dyn/news/wirtschaft/631784.html</a> <a href="http://www.monde-diplomatique.fr/2004/02/RAMONET/10686">http://www.monde-diplomatique.fr/2004/02/RAMONET/10686</a>

2004-2005	Anti-piracy CD software	According to a media report, in 2004 an antivirus supplier detected in music CD produced by a music company, the presence of a "digital rights management" software (a device to prevent copying), which software behaves like a virus. It is installed without users being aware of its presence, it is very difficult to remove, and hides inside a PC potentially allowing other software and malware to wreak havoc. Consumers, who thought they were buying a music CD, instead, received spyware that can damage a computer, subject it to viruses and expose the consumer to possible identity crime. The company released a patch which "solves the problem" and by doing so, the company admitted and confirmed that it had committed an abuse against all the customers who have, in good faith, bought its products. To add insult to injury, customers (quite unbelievably) are forced to ask the company's permission to uninstall the DRM software, and get back into control of their own computer systems.	OTHER CONSUMER GOODS	DATA PROTECTION LAW						<a href="http://www.alcei.org/?p=22">http://www.alcei.org/?p=22</a>
		In November 2005 the Electronic Frontiers Italy (ALCEI) filed to the Commander in Chief of the Fraud Contrast Group of the Financial Police in Italy (Guardia di Finanza) a claim that the behavior of whoever decided, inside the company, to use such a dangerous DRM system (and of anybody else who behaves similarly) is criminally liable, besides being unethical and fraudulent. The possible charges range from arbitrarily "self-made" justice, intentional damage to computer systems, and diffusion of software that damages information and communication systems.								
2003	Food company	According to ECC Italy, bonds of the company, that should not have been sold to consumers, were largely distributed and were not reimbursed when the company went into liquidation.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW	35.000	15.000 - 20.000 Euro	Around 800.000.000 Euro were reimbursed to individual consumers by the involved banks but affected investors were a lot	ADR SCHEME	YES	Stakeholder survey
	Argentinian bonds case	According to a working paper abstract, in the Argentinian bonds case, the Argentinian insolvency, wiped out EU 12 billion euro in bonds owned by 450,000 Italians. Consumer organizations have filed a legal action against the banks, because they failed to inform customers, as prescribed by law, that the investment was a high-risk one.	FINANCIAL SERVICES (INCL. INSURANCE)	SECURITIES LAW	450000 Italians		12 billion euro			<a href="http://papers.ssrn.com/sol3/papers.cfm?abstract_id=706302">http://papers.ssrn.com/sol3/papers.cfm?abstract_id=706302</a>

2003	Black-out	According to a report by a consumer protection centre, the Italian blackout of 28 September, 2003 caused the disconnection of 32 millions households. In some parts of the country the average duration of the outage was above 1000 minutes lost per LV customer. 30.000 of them claimed pecuniary and nonpecuniary damages from the company and the transmission network operator. While claims against the network operator were generally rejected, most of those filed against the company were successful. However, appeal courts seem to impose to customers heavier burdens of proof, disallowing damages already granted in the first instance. The company's general conditions for electricity supply list the causes that allow the supplier to cut power: objective danger, organizational reasons (e.g. repairs, maintenance and rebuilding of facilities), security reasons, force majeure. In these cases clients cannot claim damages or terminate the contract. However, Italian case law suggests that suppliers' liability is judged according to general rules on contractual liability contained in the civil code.	ENERGY AND WATER SUPPLY, HEATING	OTHER CONSUMER PROTECTION LAW		32 million households		INDIVIDUAL REDRESS		<a href="http://eprints.biblio.unin.it/archive/00001396/01/energyandconsumersfinalreportjuly2007.pdf">http://eprints.biblio.unin.it/archive/00001396/01/energyandconsumersfinalreportjuly2007.pdf</a>
2000	Agreements between automotive insurance companies	According to a consumer organisation, in 2000 the Italian Antitrust declared that in Italy an agreement between insurance companies existed to raise the prices. In fact from 1996 to 2001, as Istat (the National Statistical Institute) said, the insurance's prices increased over 80%, and continued to raise every year. The Italian Antitrust has fined the insurance companies (39) for over 350 millions of Euro. The declared anticompetitive behaviour of the companies gave the possibility to obtain redress for multiple consumers. But in Italy did not exist a collective redress system, so every single consumer, individually, had to go behind the judge (Giudice di Pace) asking for redress.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER UNFAIR COMMERCIAL PRACTICES LAW	Millions of consumers	Every single consumer paid, on the average, 20% more than the ordinary annual premium for the automotive insurance	The Antitrust fined the insurance companies for over 350 millions of Euro	INDIVIDUAL REDRESS		Stakeholder survey

2008	Telecom - not requested services	According to a consumer organisation, during the last years, lots of consumers had received telephone bills boosted by a series of not requested services, dialer, connection to the internet.	TELECOMMUNICATIONS	OTHER CONSUMER PROTECTION LAW	Millions of consumers	It is various, from few euros to thousands of euros	200 millions of euros (only for dialer)	INDIVIDUAL REDRESS	NO	Stakeholder survey
1999	Calculation of charged and payable interests on bank deposits	According to ECC Italy, a different method for the calculation of charged and payable interests on bank deposits was applied by banks, taking unfair advantage. Namely, it was used a different timeframe for the capitalization of interests	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER UNFAIR COMMERCIAL PRACTICES LAW	All bank current accounts were involved, although only those with negative balance were affected, since the uncorrect calculation method was the one applied on debit balances. Many professionals were affected since they often have a debit balance on the current accounts.	1000-3000 Euro	Unknown since many consumers did not complain or did not report the damage suffered to consumer organisations or other subjects	INDIVIDUAL REDRESS ADR SCHEME		Stakeholder survey

## LUXEMBOURG

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
	Websites	According to complaints received by ECC Luxembourg, the consumers inscribe themselves on internet sites. They don't notice that they have to pay for the service as the price is hidden, mostly just mentioned in GTC and no credit card for payment is asked for.	TELECOMMUNICATIONS	LAW ON MISLEADING ADVERTISING  OTHER	Not known, Number of complaints dealt by ECC Luxembourg: 179	50 - 100 EUR		INDIVIDUAL REDRESS		Stakeholder survey
	Euro set	According to complaints received by ECC Luxembourg, a firm sent a questionnaire concerning the Euro to consumers. By filling out the questionnaire consumers ordered a euro set for € 9,90. When they receive the ordered set the trader also sent non-ordered goods. While consumers send the goods back they receive other goods again. Value: € 30 to € 300.	OTHER	OTHER UNFAIR COMMERCIAL PRACTICES LAW		Between 30 and 300 Euro.				Reported from ECC Luxembourg to EC
	Invoices for never ordered goods	According to complaints received by ECC Luxembourg, consumers received invoices but never ordered goods. Trader never gives explanations why consumers get those invoices or does not react. Value: less than € 100.	OTHER CONSUMER GOODS	OTHER UNFAIR COMMERCIAL PRACTICES LAW		Less than 100 Euro				Reported from ECC Luxembourg to EC
	e-Commerce	According to complaints received by ECC Luxembourg, goods ordered over the internet were paid but not delivered. Cases solved after ECC intervention. Value: less than € 500.	OTHER CONSUMER GOODS	OTHER	LAW ON E-COMMERCE	Less than 500 Euro				Reported from ECC Luxembourg to EC
	Wine selling	According to complaints received by ECC Luxembourg, the trader sells wine. Goods are paid for but not delivered. Complaints left unanswered. Value: less than € 1.000.	FOOD SERVICES / PRODUCTS	DISTANCE/DOORSTEP SELLING LAW		less than 1.000 Euro				Reported from ECC Luxembourg to EC
	Furniture 1	According to complaints received by ECC Luxembourg, consumers ordered a new sofa and made a down payment. The seller never delivered the furniture and went insolvent. The amount of the down payments varied from € 300 to € 2500.	OTHER CONSUMER GOODS	OTHER UNFAIR COMMERCIAL PRACTICES LAW		Between 300 Euro and 2500 Euro.				Reported from ECC Luxembourg to EC
	Electronic product	According to complaints received by ECC Luxembourg, consumers bought an electronic product (computer, DVD player, TV...). The product was defective and the consumers asked the company for repair under guarantee. The trader tells the consumer that he has to ask the producer of the goods for the application of the guarantee and does not want to be involved in this procedure. Value: € 100 to € 600.	OTHER CONSUMER GOODS	LAW ON SALES AND GUARANTEES		Between 100 Euro and 600 Euro.				Reported from ECC Luxembourg to EC
	Furniture 2	According to complaints received by ECC Luxembourg, there are a lot of traders selling sofas from shops on the border of Luxemburg but in Belgium. ECC Luxembourg has fewer complaints than before but has received a lot of complaints over the years. The consumers go to the traders' shops because they are promised reductions from 50-70 %. Consumers normally wanted to retract or the goods were defective. Value: € 500 to € 1000.	OTHER CONSUMER GOODS	LAW ON SALES AND GUARANTEES		Between 500 and 1000 Euro			YES	Reported from ECC Luxembourg to EC

	Unexpected length of contract and fees	According to complaints received by ECC Luxembourg, trader offers consumer the possibility to contact/meet other people. This service has to be paid for a certain period. If the consumer doesn't cancel the contract it is automatically prolonged for the same time period according to the GTC, which is not noticed by the consumer as the clause is hidden. Furthermore, the trader advertises its services with an offer of 29€/per month but contracts are all concluded for 6 months minimum without other indication than in GTC.	OTHER	LAW ON MISLEADING ADVERTISING	Not known, Number of complaints dealt by ECC Luxembourg: 10	175 EUR		INDIVIDUAL REDRESS	YES	Stakeholder survey
	Air company	According to complaints received by ECC Luxembourg, a significant number of complaints (more than 10) concern the non-respect of air passenger rights. No response from trader or always the same answer (force majeure, technical problems, weather...). Value: less than € 500.	TRANSPORT	OTHER CONSUMER PROTECTION LAW		Less than 500 Euro			YES	Reported from ECC Luxembourg to EC
	Car reservation	According to complaints received by ECC Luxembourg, the trader asks the consumer to sign a document in order to make "only" a reservation of a car. But this document clearly states that it is a contract. The trader also asks the consumer to sign documents in order to get a loan in Belgium. Value: € 10.000 to € 20.000.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW		Between 10.000 to 20.000 Euro			YES	Reported from ECC Luxembourg to EC
2005 - 2006	Furniture 3	According to complaints received by ECC Luxembourg, a significant number of complaints (more than 10) concern unfair and aggressive commercial practices of a seller of furniture in Belgium in 2005/2006. Consumers are contacted by phone. The trader informs the consumer that they have been picked from the phone book, and are the lucky winner of a prize. The consumer has the choice between different prizes he can pick up in the shop of the trader. When the consumer comes into the shop (generally a couple), he is asked to look at the furniture in the shop. The Prices are very expensive but the seller is willing to offer big price reduction in order to let consumer think he gets a real bargain. The prices vary from € 800 to € 3500. Value: € 800 to-€ 3.500.	OTHER CONSUMER GOODS	OTHER UNFAIR COMMERCIAL PRACTICES LAW		Between 800 and 3.500 Euro			YES	Reported from ECC Luxembourg to EC
2006 - 2007	Financial services	According to complaints received by ECC Luxembourg, a number of complaints (more than 10) concern unsolicited financial services in 2006/2007. Consumers who had a credit card (revolving credit) from a French based supermarket chain were informed that, from now on, a new MasterCard service was added on their card and that this new service would cost € 12 per year. The first year was free (via a voucher). Value: € 12.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW		12 Euro			YES	Reported from ECC Luxembourg to EC

1985-2000	Beer cartel	According to a press release by the European Commission, the European Commission fined three Luxembourg brewers a total of € 448,000 for their participation in a market sharing cartel affecting the Luxembourg "on-trade" or "horeca" sector (hotels, cafes and restaurants). The brewers agreed to guarantee each other's exclusive purchasing arrangements with horeca customers and took steps to restrict penetration of the Luxembourg horeca sector by foreign brewers. The cartel lasted from October 1985 to February 2000.	FOOD SERVICES / PRODUCTS	COMPETITION LAW					<a href="http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/1740&amp;format=HTML&amp;aged=0&amp;language=EN&amp;guiLanguage=en">http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/1740&amp;format=HTML&amp;aged=0&amp;language=EN&amp;guiLanguage=en</a>
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## MALTA

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2003	Tour Operator	According to a consumer association, in 2003 five separate claims were made before the Consumer Claims Tribunal relating to various shortcomings during a package tour to Canada. At least 10 consumers were involved.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	OTHER CONSUMER PROTECTION LAW	More than 10			ADR SCHEME		Stakeholder survey
2007	Tour Operator	According to a consumer association, in 2007 at least 15 consumers filed complaints relating to package tour to Orlando. They were are not aware whether this group proceeded with their claim.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	OTHER CONSUMER PROTECTION LAW	More than 15					Stakeholder survey
Late 1990s - ongoing	Aggrieved policyholders	According to Malta Financial Services Authority, there is a significant number of claims concerning alleged mis-selling of life insurance policies. Over a span of years, a foreign life insurance company (which had the necessary approvals to market its products in Malta) was particularly active in promoting and selling its life products(mainly endowment with profits policies) in Malta. At the time, its bonus rates were quite generous and the estimated benefits which were being calculated for prospective policyholders were based on the premise that the same bonus rates would continue to be declared at the same levels. Many policyholders bought these life products, possibly lured by the prospect of receiving substantial payments on the policy's maturity. However, its declared bonus rates fell dramatically (as a result of market conditions) and it is likely that the majority of these policies would only be paying a fraction of the estimated benefits promised at time of sale. The regulatory scenario in which these policies had been sold was not robust as it is today in so far as conduct of business rules are concerned.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW	Unknown (possibly over a hundred)	Unknown - depends on policy maturity date	Unknown	OTHER	YES	Stakeholder survey

THE NETHERLANDS

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2006	Camping Rent	According to ECC Netherlands, in 2006, ECC Netherlands received 11 complaints in total from German consumers against a trader situated in the Netherlands. The consumers rented a permanent place on a camping site which belonged to the Dutch trader. These consumers were all harmed by the same trader and by the same type of infringement. They are lessees of a permanent place at the camping site. The lease agreement is extended from year to year. The trader informed the consumers by a letter dated 25 August 2006 that, because of a restructuring measure, their annual places would be cancelled and that their annual places had to be completely vacated on 1 January 2007, in some cases, substitute places were offered. In reaction to the letter the consumers made an objection by letter to the cancellation with reference to the 18-months cancellation period and made a damages claim of € 1.250,- from the RECRON-conditions. Since in the Netherlands there is an ADR body regarding these types of cases, ECC Netherlands has forwarded the cases to the Complaints Board of Leisure. The Complaints Board of Leisure gave a binding decision in most of these cases. It decided i.a., that any substitute offer has to be an offer for a comparable place and that the consumers are entitled to a compensation of € 1.250,-. Value ranges from € 1.000 to € 2.000.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	OTHER CONSUMER PROTECTION LAW	11	1250	13750	ADR SCHEME	YES	Reported from ECC Netherlands to EC
2007	Beer cartel	According to a press release by the European Commission, the European Commission has fined Dutch brewers a total of €273 783 000 for operating a cartel on the beer market in The Netherlands. Between at least 1996 and 1999, the four brewers held numerous unofficial meetings, during which they coordinated prices and price increases of beer in The Netherlands. Any person affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages, submitting elements of the published decision as evidence that the behaviour took place and was illegal.	FOOD SERVICES / PRODUCTS	COMPETITION LAW						EU Commission - <a href="http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/509&amp;format=HTML&amp;aged=0&amp;language=EN&amp;guiLanguage=en">http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/509&amp;format=HTML&amp;aged=0&amp;language=EN&amp;guiLanguage=en</a>
2001	Bicycle cartel	According to a press release from the Netherlands Competition Authority, in April 2004, the Netherlands Competition Authority ( <i>Nederlandse Mededingingsautoriteit</i> ) imposed fines on three bicycle manufacturers. The competition authority held that it had been established that the three manufacturers coordinated their behaviour, for instance by determining recommended retail prices for the cycling season 2001. In 2005 this infringement was upheld in the administrative appeal, but the fines were reduced by 10% - to EUR 26,557,000 (from EUR 29,685,000).	OTHER CONSUMER GOODS	COMPETITION LAW						Nederlandse Mededingingsautoriteit - <a href="http://www.nmanet.nl/english/home/News_and_Publications/News_and_press_releases/2005/NMa_Confirms_Infringement_of_Prohibition_on_Cartels_by_Bicycle_Manufacturers.asp">http://www.nmanet.nl/english/home/News_and_Publications/News_and_press_releases/2005/NMa_Confirms_Infringement_of_Prohibition_on_Cartels_by_Bicycle_Manufacturers.asp</a>

## POLAND

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2007	Mortgage Loans	According to a press release by the Office of Competition and Consumer Protection, in 2007, banks in Poland sanctioned mortgage loans in the total amount of nearly PLN 60 billion, i.e. almost 46% more than in the previous year. The average amount of a loan was PLN 182 thousand. The Office of Competition and Consumer Protection carried out an inspection of mortgage loans. It covered more than 300 standard form agreements, rules and regulation, fees and charges tables and loan insurance agreements of 19 banks. Infringements have been found in each of the inspected banks – the Office has challenged more than 40 clauses. The OCCP had also numerous objections as regards the loan insurance agreements that banks sign with insurance companies. In such a case, consumers are frequently charged with the policy costs, in spite of the fact that they are neither a party to the agreement, nor its beneficiary. This means that the borrower pays premiums due under an agreement which secures only the bank.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW  OTHER UNFAIR COMMERCIAL PRACTICES LAW				NONE		<a href="http://www.uokik.gov.pl/en/press_office/press_releases/art116.html">http://www.uokik.gov.pl/en/press_office/press_releases/art116.html</a>
2007	Illegal tolls	According to a press release by the Office of Competition and Consumer Protection, the company has the concession for the construction and exploitation of a motorway between Katowice and Kraków. There are no alternative public roads of comparable standard linking the two cities. Drivers willing to use the motorway must pay a toll, which the company has the right to establish or change. In return for their money, consumers should be able to drive a road of a motorway standard, i.e. a dual-carriageway road dedicated to passenger vehicles only, etc. In October 2007, the President of the OCCP launched the antimonopoly proceeding on receiving complaints from consumers who were forced to pay full toll for driving a section of the motorway which was under repair. During the proceeding, the President of the OCCP established that from January to September 2007 a section of the motorway was indeed under repair, which slowed down and significantly hindered the traffic.  In the peak of the roadworks, drivers from both directions had to travel almost 1/3 of the motorway on a single-carriageway and the driving time was over 20% longer. In spite of this the company charged consumers the full toll. In the opinion of the Office, the charge had been established assuming that the motorway complies with all the requirements provided for a road of this class. The company may not charge the full toll for a motorway which does not meet the relevant standards as a whole. The President of the Office of Competition and Consumer Protection ordered the company to change the practice and imposed a fine of PLN 1.3 million. Drivers who have paid the full toll for the motorway may file consumer complaints on general terms and claim a refund of a part of the costs. Local consumer ombudsmen provide free legal assistance in this scope.	TRANSPORT	OTHER				ADR SCHEME		<a href="http://www.uokik.gov.pl/en/press_office/press_releases/art113.html">http://www.uokik.gov.pl/en/press_office/press_releases/art113.html</a>

2007	Cable TV providers	<p>According to a press release by the Office of Competition and Consumer Protection, cable TV providers violate consumer interests, as shown by the complaints received by the Office of Competition and Consumer Protection (OCCP). The contracts the providers sign with subscribers include clauses which have been questioned by the court and entered in the Register of Abusive Clauses. The President of the OCCP issued decisions ordering a number of cable TV operators to change their unlawful practices. The information gathered shows that the providers reserve themselves the right to change the monthly fee without prior notice to the subscribers. Consequently, consumers learn about the price rise only when they have received the bill displaying the new amount payable and are left without any possibility to withdraw from the contract.</p> <p>This practice is illegal as consumers should be notified of the charge change early enough to have a chance to terminate the contract. Furthermore, the operators reserve themselves the possibility to change the channels on offer due to force majeure, which they interpret to include also technical reasons. Subscribers are deprived of the right to terminate the contract, which results in them paying for services different from the ones they had agreed to. Moreover, the contracts restrict consumer rights to make complaints, e.g. due to undue performance of the contract. The contracts determine that consumers must report a failure within 5 days of its occurrence. The law provides for much longer limitation periods, e.g. 12 months of the last day of the accounting period in which the service was provided improperly or was supposed to be provided.</p>	TELECOMMUNICATIONS	OTHER CONSUMER PROTECTION LAW						<a href="http://www.uokik.gov.pl/en/press_office/press_releases/art82.html">http://www.uokik.gov.pl/en/press_office/press_releases/art82.html</a>
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2006	Brokerage services	<p>According to a press release by the Office of Competition and Consumer Protection, the sample contracts used by all brokerage houses controlled by the OCCP included provisions violating the interests of the consumers. Some of the brokerage houses reserve the right to refuse to sign the contract with the consumer, without giving any justification. This is contradictory to the fact, that the offer to conclude a contract as presented by the brokerage houses concerns general public and unlimited number of consumers. Such provisions should be considered as contradictory to good practice principles. Some of the brokerage houses include the clause that limits their responsibility for any damage inflicted on their customers. This clause violates the provisions of the Civil Code that requires compensating in full such damages. Moreover some of the contracts are constructed in a way that makes it possible to exclude responsibility of the brokerage house for the damages resulting from the investment decisions based on the broker's recommendation, even though the broker was guilty of negligence.</p> <p>It is common for brokerage houses (to exclude their responsibility in a situation, when the client order was not processed due to the improper functioning of the internet or phone services. Some of the brokerage houses declare that they cannot be responsible for any damage resulting from the clients' losing their personal protective measures (password, card, etc), even though the client in question informed the brokerage house about this fact. It is OCCP opinion that the procedures for handling complaints clearly favours the brokerage house. According to these procedures, the customer can lodge a complaint about negligence of execution or undue execution of the order within a week of the order date. The brokerage house has the right to lodge a complaint even within two months after the date the transaction is executed. It is OCCP opinion that the penalty fee applied by a brokerage house of a value of 0.5% for each day of payment delay in case of orders with deferred payment also violates the interests of the customer.</p> <p>After a year the value of the due fee will reach 180% of the initial sum. Therefore almost double the initial sum due. The fee, therefore, is in much excess of what can be reasonably expected. The economic interests of the customers are also infringed by the clause applied by a brokerage house, according to which the brokerage house does not repay the fees charged. In this way the client, who pays a fee for one year in advance does not get any reimbursement if he terminates the contract earlier. It is very common – and illegal in the light of some court rulings – to for brokerage houses make a reservation that any possible disagreements will be settled by the court competent for the seat of the brokerage house. Such clauses are applied by a number of brokerage houses.</p>	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER CONSUMER PROTECTION LAW						<a href="http://www.uokik.gov.pl/en/press_office/press_releases/art47.html">http://www.uokik.gov.pl/en/press_office/press_releases/art47.html</a>
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2007	Interchange bank fee	According to a press release by the Office of Competition and Consumer Protection, banks collect a commission on each card transaction at a shop - the so-called interchange fee. In Poland this fee amounts to 1-2%. This money is an important source of revenue for the card-issuing banks (the annual revenue is over 400 million PLN). Following a complaint by the Polish Organization of Trade and Distribution, since 2001 the Office of Competition and Consumer Protection has been examining the agreements on the setting of the interchange fees. The proceedings conducted showed that the level of the interchange fee was not based on objective criteria, such as costs borne by banks for the development and functioning of the payment system, but was determined by way of an agreement of entrepreneurs who communicated with each other in order to obtain additional revenue from each transaction made with Visa and MasterCard cards. As OCCP established, artificially raised costs of transaction handling, borne by shops accepting cards may mean higher costs for consumers.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW				NONE		<a href="http://www.uokik.gov.pl/en/press_office/press_releases/art72.html">http://www.uokik.gov.pl/en/press_office/press_releases/art72.html</a>
2006	Misleading packages	According to a press release by the Office of Competition and Consumer Protection, a company mislead consumers with respect to the actual parameters of its TV sets. The proceedings of the Office for Competition and Consumer Protection against the company, initiated in May 2006, proved that the company violated collective consumer interests by providing its clients with unreliable information. The OCCP contested all the TV set packages produced and marketed by the company since 2004 (over 37 thousand in total). The Office found that the packages have been used for advertising purposes and, moreover, that in many stores only packed TV sets have been displayed for the clients to see. The producer uses TV packages which mislead consumers as regards one of the essential features of the product, i.e. the size of the screen. The OCCP found that the information contained on the TV packages might lead consumers to believe that the screen is larger than it is in reality.	OTHER CONSUMER GOODS	LAW ON MISLEADING ADVERTISING				NONE		<a href="http://www.uokik.gov.pl/en/press_office/press_releases/art88.html">http://www.uokik.gov.pl/en/press_office/press_releases/art88.html</a>

**PORTUGAL**

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2006	Stamps	According to a consumer organisation, a significant number of claims relate to fraud with tangible goods (stamps). Two Spanish companies sold stamps to investors, assuring interests and profits (with a rebuyal) a lot above the market's average.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW	5758	Data not available	62 491 532,79 Euro	COLLECTIVE REDRESS	YES	Stakeholder survey
1998	Concert	According to a consumer organisation, a great and magnificent performance was announced, for the quality of performers and costumes. Few days before the show, consumers were informed that main and well known performers would not be present.	OTHER	LAW ON MISLEADING ADVERTISING	Approximately 8000	75 Euro	Approximately 600 000 000 Euro	COLLECTIVE REDRESS		Stakeholder survey

## SLOVENIA

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
	Furniture and house appliances	According to complaints received by ECC Slovenia, a shopping-centre for furniture and house appliances, generated - in relation to similar cases against other traders - over 50% of complaints. The complaints concerned mainly (1) huge delays in delivery of products (more than 6 months); (3) non-conformity of goods (delivery of goods different from the ones that were ordered); (4) misleading customers into signing the contract (their representatives told the consumers they should sign their non-binding offer, however, the consumers were actually signing an order-form/ contract; a few weeks later the consumers received a letter from the trader's lawyer demanding payment of allegedly ordered goods). Usually the goods ordered were furniture-sets (e.g. the whole kitchen, bedroom, living room etc.). Value ranges from € 3.000 to € 8.000.	OTHER CONSUMER GOODS	OTHER UNFAIR COMMERCIAL PRACTICES LAW		Between 3.000 Euro and 8.000 Euro		NONE		Reported from ECC Slovenia to EC
	Tour operator	According to ECC Slovenia, a tour organizer has generated about 40% of complaints against tour organizers to CPC Slovenia. The majority of the complaints concerns a "last-minute package" in which the consumers were supposed to be offered services in the 4* category in various hotels on various locations (Greece, Tunis, etc.). However, the hotels were in very bad shapes and the attitude of the organiser's representatives was unacceptable. In addition, the organizer categorically rejected all of the consumer's written claims after coming back not even responding to them with arguments. The only argument of the trader for rejection was that last-minute arrangements meant lower quality of goods.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	LAW ON MISLEADING ADVERTISING				NONE		Reported from ECC Slovenia to EC
				OTHER CONSUMER PROTECTION LAW						

SPAIN

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
	Bogus Holiday Clubs	According to ECC Spain, the Spanish National Institute for Consumption states that a clear example of different consumers being harmed by the same trader can be found in the "bogus" holiday clubs. Further it provides three examples of cases encoded in 2007 in the ECC data base: same company, same infringement, and same unfair selling method. Consumers from different EU countries are addressed on Spanish soil by these bogus companies through Off premises Commercials (OPCs) offering them fake prizes that must be collected at the presentation desk of the Holiday Club company. Hard selling techniques are used for hours to break consumers' resistance into signing illegal contracts and to force them to make an up front payment of between € 500 to € 6.000 or more. No cooling off period is granted nor are consumers informed of their rights at this point. This is a clear infringement of Spanish Law 26/1991 transposing EU Directive 85/77/CEE. The fact that harmed consumers come from different countries of the EU adds extra difficulties to try out collective redress.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	OTHER UNFAIR COMMERCIAL PRACTICES LAW  DISTANCE/DOORSTEP SELLING LAW					YES	Reported from ECC Spain to EC
2002	Time-sharing	According to a report from ECC Austria, mid November 2001 a fraudulent timeshare network has been disbanded by the Spanish authorities. Thousands of European consumers, especially British and German, are alleged to have been its timeshare victims. These timeshare companies are all located in Canary Islands, in particular on the Tenerife South Coast (Playa las Américas, Adeje, Arona, etc) but it would appear that there is other timeshare companies implicated in the Costa del Sol (Málaga, Marbella, etc).	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	OTHER CONSUMER PROTECTION LAW			Thousands consumers		YES	<a href="http://www.europakonsument.at/Europakonsument/ek_detail.asp?lang=EN&amp;category=&amp;id=10347">http://www.europakonsument.at/Europakonsument/ek_detail.asp?lang=EN&amp;category=&amp;id=10347</a>

2006	Airline company	According to ECC Spain, a significant number of complaints relate to flight cancellation, after an airline company went bankrupt.	TRANSPORT	COMPETITION LAW	About 500 people	Cost of the flight, about 600€	Aproximately 300.000€	INDIVIDUAL REDRESS	YES	Stakeholder survey
2007	Mobile Phone Services	According to a media report, Spanish consumer association Facua said it has lodged complaints against a number of mobile phone operators with regulators and the government for flouting new EU roaming rules. In a statement, Facua said the operators were in breach of European rules by charging for the full first minute on roaming calls regardless of whether they lasted less time. The complaints were filed with the Spanish government, Spain's competition watchdog and the National Consumers' Institute. Under the new regime, roaming rates cannot exceed 0.49 eur per minute, or 0.29 eur for incoming calls. The method used by the Spanish companies means that, although a call lasts only a couple of seconds, users are charged as though they had talked for a whole minute.	TELECOMMUNICATIONS	OTHER CONSUMER PROTECTION LAW						<a href="http://www.iii.co.uk/investment/detail/?display=news&amp;code=con:VOD.L&amp;action=article&amp;articleid=6230708">http://www.iii.co.uk/investment/detail/?display=news&amp;code=con:VOD.L&amp;action=article&amp;articleid=6230708</a>
2006-2007	Electrical appliances	According to ECC Spain, a significant number of complaints relate to non-delivery of electrical appliances.	OTHER CONSUMER GOODS	LAW ON SALES AND GUARANTEES	Approximately 100	About 600 Euro	60000 Euro	INDIVIDUAL REDRESS	YES	Stakeholder survey
2006-2007	Free promotional objects	According to ECC Spain, a web site was offering free promotional objects to their users. Once consumers registered themselves they were requested for a payment.	TELECOMMUNICATIONS	OTHER UNFAIR COMMERCIAL PRACTICES LAW	Approximately 1000	96 Euro	96000 Euro	INDIVIDUAL REDRESS	YES	Stakeholder survey
1998 to today	Failure to comply with the benefits guaranteed by a life- insuranceee (savings contracts)	According to the Spanish Ministry of Economy and Finance, the benefits guaranteed by an insurance company depended on a variable interest rate which was mentioned in the back part of the insurance policy. This circumstance was ignored by those who were claiming because the amounts guaranteed were mentioned in the back part of the policy but there was no reference about the variability of these amounts.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW	More than 2600		The amount was variable. It depended both on the investments carried out by each of the insured people (unit links) and the interest rate that could be applied at the expiration date of the contract or its redemption value.	ADR SCHEME		Stakeholder survey

SWEDEN

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
	Club in Greece	According to ECC Sweden, ECC Sweden has received 14 cases about a company that denies consumers the right to withdraw from a holiday club contract. The holiday club is member of OTE that prescribe that their members should offer a 15 day cooling off period. The consumers have tried to quit the contract and to get the down payment of 7.000 SEK (€ 800) back. ECC Sweden recommended contacting the holiday club in writing and to refer to OTE's code of ethics. Most of these cases were simple complaints.	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	OTHER CONSUMER PROTECTION LAW					YES	Reported from ECC Sweden to EC
2007	Bogus Holiday Club	According to complaints received by ECC Sweden, approximately 57% of the 34 cases concerning a bogus Holiday Club and received in 2007 by ECC Sweden are related to the 7-days cooling-off period and the right of withdrawal. Mainly, there are two reasons: firstly, the contract stipulates that the trader can charge the withdrawing consumer with an administrative fee of € 1250. ECC Sweden finds it inappropriate to take a fee of this economic importance, both since it rather unbelievable that the consumer's withdrawing causes such high costs to the trader. Also, the administration fee makes the principle of a cooling-off period and a right of withdrawal loose its purpose. Secondly, even if the contract stipulates such a cooling-off period, with a right to withdraw, the consumers still have not been reimbursed at all. Therefore, the right of withdrawal can be said to exist only in theory. The complaints against the company concern the lack of refund to the consumers after they have withdrawn from the contract within the cooling-off period and in accordance with the conditions stipulated in the contract.  Thus, ECC Sweden considers this practice to be misleading for the consumers, and to be both a violation of good market practice and a breach of the contract (value from € 250 to € 5.700, as down-payment; total value of the 34 cases: € 30.584,55).	PACKAGE TRAVEL / TOURISM (EXCL. TRANSPORT)	OTHER CONSUMER PROTECTION LAW  OTHER		Between 250 Euro and 5.700 Euro, as down-payment				Reported from ECC Sweden to EC
	Alcoholic beverages	According to complaints received by ECC Sweden, approximately 13 consumers have contacted ECC Sweden concerning undelivered orders they have placed with a German company selling alcoholic beverages from Germany. There has been some media attention around this company. The problem seems to have arisen due to the subcontracted transport company which has stopped delivering the orders and no one is able to reach the person in charge. The seller has promised to refund all affected consumers, but has failed to do this to date. The orders' values range from approximately € 100 to € 500.	FOOD SERVICES / PRODUCTS	DISTANCE/DOORSTEP SELLING LAW	13	Between 100 and 500 Euro			YES	Reported from ECC Sweden to EC

2003	Bogus lotteries	According to a relevant EEC report (Sweden), compared to 2002, the "miscellaneous" category in Sweden has increased significantly compared to former years. This is due to a large number of cases (about 200) relating to bogus lotteries. Consumers had received letters claiming that they had won very large sums of money in Spanish or Dutch lotteries. To claim their prizes, consumers were required to send money to the company to cover administrative or similar costs. Konsument Europa has also contacted immigrant organisations, given that many consumers with immigrant names have been targeted by the fraudsters. Spain remains the country which is the subject of the highest number of complaints, despite the fall in the number of cases relating to timeshares. This is explained by the problem of bogus lotteries, which are often run by companies based in Spain.	SCAMS AND PYRAMIDS SCHEMES	OTHER UNFAIR COMMERCIAL PRACTICES LAW	About 200					<a href="http://www.konsumenteuropa.se/Documents/Engelska/eng_arssrapport_03.pdf">http://www.konsumenteuropa.se/Documents/Engelska/eng_arssrapport_03.pdf</a>
2001	Repayment certificate	According to complaints received by ECC Sweden, a significant number of complaints (more than 10) concern a "Special offer - get your money back after ten years if you have a repayment certificate of the total purchasing sum."	OTHER CONSUMER GOODS	LAW ON SALES AND GUARANTEES	5000	1000	5000000 Euro	COLLECTIVE REDRESS		Stakeholder survey
2006	Consumers savings	According to complaints received by ECC Sweden, a significant number of complaints (more than 10) concern the repayment of consumers savings.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER FINANCIAL SERVICES LAW	330		10 500 000 Euro	COLLECTIVE REDRESS		Stakeholder survey

UNITED KINGDOM

YEAR	NAME OF MASS CLAIM/ISSUE	BRIEF DESCRIPTION OF MASS CLAIM/ISSUE	SECTOR	CATEGORY OF LAW INFRINGEMENT	TOTAL NUMBER OF CONSUMERS HARMED	AVERAGE DAMAGE INDIVIDUAL CONSUMER (IN EURO)	TOTAL DAMAGE SUFFERED BY ALL AFFECTED CONSUMERS (IN EURO)	REDRESS MECHANISM USED	CROSS-BORDER ASPECT	SOURCE OF DATA
2001	Assurance Society	According to different reports, an assurance society faced serious financial problems during the 1990s. The financial problems resulted from the obligations of the contracts and from miscalculation of the life expectancy of the insured. Some of the insurance products included specific guaranteed sums. These obligations were hard to meet due to the falling interest rates in the late 1990s. In order to avoid bankruptcy the society decided to pay less money than guaranteed to the newly retired. After several court trials the House of Lords finally declared that the company has to fulfil its obligations. That led to bigger financial problems which the company was not able to bear. So they tried to sell the company but purchasers withdrew. Finally the the society closed its doors to new business in 2001 and appointed a new board. At the end of 2001 the company had close to 1 million policyholders. Most of them were British but around 8.000 came from Ireland and 4.000 were Germans. A few from the British insured went to court and they got compensated by pre-trial settlements under strict confidentiality clauses. For the rest, litigation was too cost-expensive and too risky under the British law. The foreign policyholders suffered under the differing opinions of the national authorities above which authority is responsible under the Third Life Directive. At the moment, one claim is pending before Regional Court in Germany and other individual actions are considered being filed for test case purposes before a number of German courts.	FINANCIAL SERVICES (INCL. INSURANCE)	SECURITIES LAW	over 1 million			INDIVIDUAL REDRESS	YES	( <a href="http://www.europarl.europa.eu/comparl/temppcom/equi/report_en.pdf">http://www.europarl.europa.eu/comparl/temppcom/equi/report_en.pdf</a> ); <a href="http://www.tilp.de/coverage.cfm?id=657&amp;p=1">http://www.tilp.de/coverage.cfm?id=657&amp;p=1</a> .
2005	Capital investment company	According to different reports, a capital investment company registered in the Bermudas, listed its shares on the London and the Frankfurt stock exchange. It pretended to have assets of more than € 500 million in Argentina which in fact never existed. Many small investors bought these shares. First, a criminal investigation was started by the Serious Frauds Office in the UK. Subsequently, a Group Litigation Order was issued in England, but investors based outside of the UK (e.g. German investors) mostly did not know about the Group Litigation Order or they did not know which steps to take in order to join the Group Litigation.	FINANCIAL SERVICES (INCL. INSURANCE)	SECURITIES LAW				COLLECTIVE REDRESS	YES	<a href="http://www.sfo.gov.uk/news/prout/pr_444.asp?id=444">http://www.sfo.gov.uk/news/prout/pr_444.asp?id=444</a> ; <a href="http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article745421.ece">http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article745421.ece</a> ;
2007	Milk price-fixing	According to a research paper and a OFT report, a number of supermarket chains pleaded guilty to fixing milk and dairy prices between 2002 and 2003 following a probe by the Office of Fair Trading (OFT). The supermarkets have to pay a total of £116m in fines. The cartel cost the consumer around £270m, according to the OFT. It is expected that consumers will have difficulties in seeking damages because of a lack of purchase proofs.	FOOD SERVICES / PRODUCTS	COMPETITION LAW			£270m	NONE		Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.42.
2004	Vitamin-pricing cartel	According to a research paper and a OFT report, the claimants brought a follow-on action for damages in respect of a vitamin-pricing cartel, for which the defendants had been fined by the EC for infringement of art 81(1) of the EC Treaty. The claimants argued that the defendants cartelists had caused each of the claimants to pay higher prices than would otherwise have been the case for vitamins manufactured and supplied into the UK. The defendants, on the other hand, argued that it was only if they could not succeed in establishing the 'passing-on defence' that the claimants would be able to prove any 'damage'. Consent orders by which proceedings against all defendants were dismissed	PHARMACEUTICALS AND COSMETICS	COMPETITION LAW				INDIVIDUAL REDRESS		Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.57-59.

	Price-fixing of motor vehicle	According to a research paper and a OFT report, both liability and quantum on price-fixing of a particular brand of motor vehicle was at issue. The amount per claimant purchaser would have been approximately £4,000-£5,000 per claimant; approximately 10,000-15,000 claimants were affected; the 'cost-benefit' ratio did not warrant the action being brought. Identifying the asset owners at the outset would have been difficult (but if the class had been able to establish liability for price-fixing, and if the defendant had been ordered to hand over sales records by which to identify class members, identification would have been more straightforward).	OTHER CONSUMER GOODS	COMPETITION LAW	Approximately 10,000-15,000 claimants were affected	Approximately £4,000-£5,000 per claimant;	Between £40,000,000 and £75,000,000	NONE		Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.65.
1999	Telecommunications company	According to a research paper and a OFT report, additional charges were imposed by a supplier. Interest was charged at 'appropriate' rate; clause reworded so as to be charged at 'Barclays Bank base rate' after OFT action.	TELECOMMUNICATIONS	OTHER CONSUMER PROTECTION LAW				NONE		Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.68.
1997	Household products 1	According to a research paper and a OFT report, cancellation fees were imposed on consumer by supplier. Cancellation fee of 30% of the order was charged under the contract; the term was deleted after OFT action.	CONSTRUCTION	OTHER CONSUMER PROTECTION LAW				NONE		Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.68.
1997	Household products 2	According to a research paper and a OFT report, unfair charges were imposed on consumer by supplier. Supplier charged 'survey fee' and 'administration charge' in the event that the supplier was denied access to the customer's premises; these were deleted, and other charges reduced, as a result of OFT action.	OTHER CONSUMER GOODS	OTHER CONSUMER PROTECTION LAW				NONE		Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.68.
1996-1997	Telecommunications company	According to a research paper and a OFT report, payments were required on part of the consumers, even if the supplier defaulted or suspended service. Consumers remained liable for fees throughout any period in which the Network Services was suspended unless the supplier determined otherwise in its discretion; a refund of such charges was required, after OFT action.	TELECOMMUNICATIONS	OTHER CONSUMER PROTECTION LAW				NONE		Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.68.
1996-1997	IT company	According to a research paper and a OFT report, charges for return of goods were to be borne by consumer. Defective goods/parts returned to the supplier had to be transported at the consumer's cost; the consumer was only liable for transport costs where the failure arose from the consumer's misuse, after OFT action.	OTHER CONSUMER GOODS	OTHER CONSUMER PROTECTION LAW				NONE		Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.68.

1997	Security services	According to a research paper and a OFT report, call-out charges were to be borne by consumer. Any visit other than a scheduled maintenance visit would be charged on a 'time and material basis'; a lesser charge could be imposed, after OFT action.	OTHER CONSUMER GOODS	OTHER CONSUMER PROTECTION LAW				NONE	Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.68.
1996-1997	Retailer	According to a research paper and a OFT report, credit notes were issued by supplier instead of refund of purchase price. If product was faulty, supplier could 'issue a credit note to cover the cost'; supplier required to repair/replace/refund purchase price, after OFT action.	OTHER CONSUMER GOODS	OTHER CONSUMER PROTECTION LAW				NONE	Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.68.
1997	Media company	According to a research paper and a OFT report, clauses stated that the supplier was not liable for consequential or 'associated' losses. Supplier sought to exclude all liability for 'any indirect or consequential loss resulting from negligence or any other tort' on the part of the supplier; supplier rendered liable for any foreseeable loss or damage, as a result of rewording by OFT action.	OTHER	OTHER CONSUMER PROTECTION LAW				NONE	Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.68.
1999	Introduction agency	According to a research paper and a OFT report, membership could be withdrawn without refund; fees had to be refunded, less a reasonable amount for costs and expenses incurred in administration and management of the membership, after OFT action.	OTHER	OTHER CONSUMER PROTECTION LAW				NONE	Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.68.
1999	Domestic Services	According to a research paper and a OFT report, if consumer breached and legal action was required by supplier, then consumer liable for supplier's legal fees on a 'full indemnity basis'; consumer only liable for 'all costs allowable by the courts if an award is made in X's favour', after action by OFT.	OTHER CONSUMER GOODS	OTHER CONSUMER PROTECTION LAW				NONE	Mulheron, Rachael Reform of collective redress in England and Wales: A perspective of need, 2008, p.68.
2006	Prize Draw And Sweepstake Scams	According to a OFT report, consumers receive an official looking letter or e-mail notifying them that they have already won a large cash prize, government payout or other major award. To claim the win the recipient must often send a fee of between £5 and £30, variously described as a 'processing', or 'administrative' fee. Or it is implied that an order must be placed from an accompanying mail order catalogue in order to claim the prize. Often in faint small letters on the reverse of the notification, the 'Terms and Conditions' or the 'Official Rules' will explain that the recipient is only being offered the opportunity to enter a prize draw or sweepstakes with a very small chance of winning the major cash payout. Some promoters send a cheque for a nominal sum, but not the promised large win. Others send cheap prizes or nothing at all. Prize draw/sweepstake scams cost the UK public an estimated £60 million a year. An estimated 380,000 adults fall victim to these scams every year.	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING  OTHER UNFAIR COMMERCIAL PRACTICES LAW	380,000 adults fall victim to these scams every year	The mean loss per victim is £160 (the median loss was £33)	An estimated £60 million a year	NONE	Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)

2006	Foreign Lottery Scams	According to a OFT report, consumers receive a letter, telephone call or e-mail telling them that they have won a major cash prize in an overseas lottery. They will often be told to telephone a sales agent who will ask the victim to send money to cover administration, customs and taxes. The winnings do not exist and are never received. Foreign lottery scams cost the UK public an estimated £260 million a year. An estimated 140,000 adults fall victim to these scams every year. The mean loss per victim is £1,900 (the median loss was £42). Three per cent of respondents with experience of this scam had reported it to the Police and a further two per cent had reported it to the local authority Trading Standards Service. One per cent had reported it to either the Office of Fair Trading or Citizens Advice Bureaux. 42 per cent had mentioned this scam to others and mostly to family (23 per cent) or friends (22 per cent).	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING	140,000 adults fall victim to these scams every year	The mean loss per victim is £1,900 (the median loss was £42).	an estimated £260 million a year	NONE		Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)
				OTHER UNFAIR COMMERCIAL PRACTICES LAW						
2006	Work At Home And Business Opportunity Scams	According to a OFT report, a work or business opportunity is advertised in a local newspaper, magazines, shop windows, on lamp posts, on the web or in a letter which claims to offer a quick way to make a lot of money from home without having any qualifications, skills or expertise. The catch is that before starting any work the victim has to pay money up front. This is in the form of a registration fee or to buy goods. After this money has been paid the victim either finds that there is either no work to do or that they will not be paid for any work done. Addressing or stuffing envelopes: a registration fee is payable to join in return for simple advice on how to place similar advertisements to attract other people into the scam. Home assembly kits: a fee is payable to receive a kit for making things from baby boots and aprons to toys. However, the kit is usually inadequate for making the goods required.	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING	An estimated 330,000 adults fall victim to these scams every year	The average loss per victim is £240 (the median loss was £43).	An estimated £70 million a year	NONE		Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)
				OTHER UNFAIR COMMERCIAL PRACTICES LAW						
		The scammer either promises to pay for the goods but then rejects them because they say the work is sub-standard or suddenly tells the victim that he has to sell the goods and when he tries to do so he finds that there is no market for the goods. Promises of a variety of different home work opportunities in return for a fee of £10 to £25 are made, but the victim only receives a directory of other companies who have their own registration fees and a list of shopping catalogues. Work at home and business opportunity scams cost the UK public an estimated £70 million a year. An estimated 330,000 adults fall victim to these scams every year. The average loss per victim is £240 (the median loss was £43). Two per cent of respondents with experience of this scam had reported it to the Office of Fair Trading and the local authority Trading Standards Service. One per cent had reported it to the Police and Citizens Advice Bureaux. Just over half of respondents had discussed this scam with others, mostly with friends (33 per cent) or family (30 per cent).								

2006	Premium Rate Telephone Prize Scams	<p>According to a OFT report, consumers receive a letter, SMS text or automated telephone message telling them that they have won a major prize and urging them to ring or text an 090 premium rate number to find out what they can claim. The impression is given that the recipient has won a large cash prize, holiday, or other valuable award. Calls to the premium rate number cost up to £1.50 a minute and the caller is kept on the line listening to a recorded message for several minutes. Nearly everyone who responds ends up with a cheap 'giveaway' item such as discount vouchers worth less than the cost of the call and may also be charged a delivery fee to receive their 'prize'. Premium rate telephone prize scams cost the UK public an estimated £80 million a year. An estimated 1.08 million adults fall victim to these scams every year. The mean loss per victim is £80 (the median loss was £14). This is higher than would be expected as the maximum cost per call on a premium rate line is £10.50, although very often there are other significant costs associated with claiming some of the prizes.</p> <p>It is possible, however, that some victims called the numbers repeatedly in the hope of finding out that they had won the promised major prize, or were victims on more than one occasion. Two per cent of respondents with experience of this scam had reported it to BT, and one per cent to each of the Police, Office of Fair Trading, the local authority Trading Standards Service and the Consumer Direct Helpline. Just under threefifths had shared their experiences of this scam, 36 per cent with family and friends respectively, and 11 per cent with colleagues.</p>	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING  OTHER UNFAIR COMMERCIAL PRACTICES LAW	An estimated 1.08 million adults fall victim to these scams every year.	The mean loss per victim is £80 (the median loss was £14). This is higher than would be expected as the maximum cost per call on a premium rate line is £10.50, although very often there are other significant costs associated with claiming some of the prizes.	An estimated £80 million a year	NONE		Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)
2006	Miracle Health And Slimming Cure Scams	<p>According to a OFT report, consumers receive a mailing or email promising a health 'miracle'. These pills, lotions, creams and other products will supposedly cure baldness, arthritis, rheumatism, heart disease, multiple sclerosis, Parkinson's disease, cancer, obesity, impotency and other ailments. Or they may promise easy weight loss without the need to diet or exercise. But it is unlikely that they have been properly tested or proven medically effective. Some might even be dangerous. The advertising often includes fake testimonials from 'satisfied customers', unsubstantiated claims about product effectiveness, false claims that the product has been clinically proven in trials, and a worthless 'money back' guarantee. Miracle health and slimming cures cost the UK public an estimated £20 million a year. An estimated 200,000 adults fall victim to these scams every year. The mean loss per victim is £90 (the median loss was £46).</p> <p>Only one per cent of respondents with experience of this scam had reported it to the Police, Office of Fair Trading or Citizens Advice Bureaux. 44 per cent had shared this scam experience with others. 31 per cent had mentioned it to friends and 22 per cent to family.</p>	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING  OTHER UNFAIR COMMERCIAL PRACTICES LAW	An estimated 200,000 adults fall victim to these scams every year	The mean loss per victim is £90 (the median loss was £46)	An estimated £20 million a year	NONE		Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)

2006	African Advance Fee Frauds/Foreign Money Making Scams	<p>According to a OFT report, consumers receive a letter, fax or email from someone who says they need help in transferring money overseas, usually US\$20-30 million. Typically, the writer claims to be a senior government official, an accountant with a state owned corporation, or perhaps a relative of a deposed or dead politician. The writer will tell the recipient he needs to transfer his cash to a bank in their country, and that if the recipient lets him use his or her bank account they can keep a big slice for themselves, usually 25 or 30 per cent. If the recipient replies and gives banking and personal details, they will be sent fake bank statements and similar documents, all intended to prove that the money exists and is heading their way. The scammers will use the information given them to empty the victim's bank account or might convince them to send cash up front by money transfer. African advance fee fraud/foreign money making scams cost the UK public an estimated £340 million a year. An estimated 70,000 adults fall victim to these scams every year.</p> <p>The mean loss per victim is £5,000 (the median loss was £2,858), the second highest across all the scams examined. A reasonably large percentage of respondents with experience of this scam had reported it to Police (nine per cent) compared to other scams. A further one per cent had reported it to the Citizens Advice Bureaux and the local authority Trading Standards Service. 23 per cent had shared it with friends, 22 per cent with family and a comparatively high percentage had also mentioned it to colleagues (15 per cent).</p>	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING  OTHER UNFAIR COMMERCIAL PRACTICES LAW	An estimated 70,000 adults fall victim to these scams every year	The mean loss per victim is £5,000 (the median loss was £2,858), the second highest across all the scams examined.	An estimated £340 million a year	NONE		Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)
2006	Clairvoyant And Psychic Mailing Scams	<p>According to a OFT report, consumers receive a letter from a so-called psychic or clairvoyant promising to make predictions that will change the course of their life forever such as bringing good fortune - for a small fee. Sometimes these mailings are aggressive in tone, saying something bad will happen to the recipient or their relatives if they do not send money to purchase a lucky talisman, crystal, amulet or a set of numbers. Although they are sent out in their millions, the mailings are personalised to make it look as if the recipient has been specifically chosen and is personally known to the sender. Clairvoyant/psychic mailing scams cost the UK public an estimated £40 million a year. An estimated 170,000 adults fall victim to these scams every year. The mean loss per victim is £240 (the median loss was £36). Only one per cent of respondents with experience of this scam had reported it to each of the following: police, Citizens Advice Bureaux, Consumer Direct helpline and the department of trade and industry. 56 per cent of people had mentioned this scam to others.</p> <p>A high percentage of this had been to friends (35 per cent) and family (34 per cent).</p>	SCAMS AND PYRAMIDS SCHEMES	OTHER UNFAIR COMMERCIAL PRACTICES LAW	An estimated 170,000 adults fall victim to these scams every year.	The mean loss per victim is £240 (the median loss was £36).	An estimated £40 million a year	NONE		Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)



2006	Bogus Holiday Club Scams	<p>According to a OFT report, consumers are approached on the street whilst on holiday and given a scratch card which reveals that they have won a 'free' prize or they are phoned at home or receive a letter at home telling them that they have won a 'free' holiday. All they need to do is go to a presentation to collect their prize and learn more about a new holiday venture. They will be made to feel as if they are joining an exclusive holiday club which will offer exciting and great value holidays all over the world in top class accommodation. They will be pressured into signing up on the spot. In reality dates or destinations are not guaranteed and holidays are often not available when and where wanted. Victims later find out that the 'free' holiday isn't free, as they must pay for extras, such as flights and other add-ons and go somewhere they don't want to go at a time that doesn't suit. Bogus holiday club scams cost the UK public an estimated £1.17 billion a year. An estimated 400,000 adults fall victim to these scams every year.</p> <p>The mean loss per victim is £3,030, (the median loss was £601). Two per cent of respondents with experience of this scam had reported it to the Police as well as to the local authority Trading Standards Service and one per cent had reported it to each of the Office of Fair Trading, Citizens Advice Bureaux and Department of Trade and Industry. This was another scam that was very likely to be shared with others, and 40 per cent of this had been to Family and 35 per cent to friends.</p>	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING  OTHER UNFAIR COMMERCIAL PRACTICES LAW	An estimated 400,000 adults fall victim to these scams every year.	The mean loss per victim is £3,030, (the median loss was £601).	An estimated £1.17 billion a year	NONE	Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)
2006	Internet Dialer Scams	<p>According to a OFT report, consumers open a spam e-mail, click on a pop up box or visit a pay-per-view website and unwittingly download dial-up software which changes their computer settings. The rogue dialer connects them to the Internet via an expensive telephone line. They think that they are still connected via their usual Internet connection but in fact they are racking up bills on lines charging more than the standard rate per minute. Internet dialer scams cost the UK public an estimated £60 million a year (This is likely to have fallen, however, with the introduction of tougher sanctions by ICSTIS and Ofcom). An estimated 400,000 adults fall victim to these scams every year. The mean loss per victim is £170, (the median loss was £61). 17 per cent of respondents with experience of this scam had reported it to BT and three per cent had reported it to the Police.</p> <p>Only two per cent had reported it to the Office of Fair Trading as well as their Internet Service Provider, Ofcom (formerly Oftel), and ICSTIS (the premium rate services regulator) whereas one per cent had reported it to both the local authority Trading Standards Service and Consumer Direct Helpline. Overall, this was the most shared and reported scam of all. 79 per cent claimed to have done so, of which 46 per cent was to friends, 38 per cent to family and 18 per cent to colleagues.</p>	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING  OTHER UNFAIR COMMERCIAL PRACTICES LAW	An estimated 400,000 adults fall victim to these scams every year.	The mean loss per victim is £170, (the median loss was £61).	An estimated £60 million a year	NONE	Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)

2006	Career Opportunity Scams	<p>According to a OFT report, there are a significant number of career opportunity scams. Bogus vanity publishers: Consumers see an advert offering to turn manuscripts into successful published books. The publisher will express enthusiasm for their manuscript and its commercial potential, outlining a plan for getting the published version into bookshops. However, they will also explain that for the plan to be put into effect, they will need to pay a fee towards the initial costs of publishing and marketing. The fee may amount to hundreds, even thousands, of pounds. The publisher will say that the fee will soon be recovered when the royalties from book sales start rolling in. The reality is likely to be publication of a relatively small number of copies of the manuscript and the publisher making no real effort at marketing the published book.</p> <p>Bogus invention promotion companies: Consumers see an advert offering free information on how to patent and market inventions. After giving their invention a preliminary review, they will be told that the company needs to do a market evaluation of the idea for a fee that can be several hundred pounds. The 'research' is bogus, and the 'positive' reports are mass produced in an effort to sell clients additional invention promotion and marketing services.</p> <p>Bogus model and casting agencies: Consumers see an advert in a newspaper encouraging them to attend meetings and casting seminars. They may be convinced into parting with money up front. They are promised that the casting agency will take a portfolio of photographs (which are often overpriced and very poor quality) and find them at least one top agency which will offer them a contract. They are told that they could get work in films, brochures and catalogues and promised that if they do not receive the offer of a contract from an agency within a set period of time the money paid will be refunded. No work materialises and victims don't get their money back.</p> <p>Career Opportunity scams cost the UK public an estimated £30 million a year. An estimated 70,000 adults fall victim to these scams every year. The mean loss per victim is £530, (the median loss was £155). This scam had not been reported to any authorities. 56 per cent of respondents with experience of this scam had shared it, but mostly with friends (48 per cent) and to a lesser degree with family (22 per cent).</p>	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING  OTHER UNFAIR COMMERCIAL PRACTICES LAW	An estimated 70,000 adults fall victim to these scams every year.	The mean loss per victim is £530, (the median loss was £155).	An estimated £30 million a year	NONE		Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)
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2006	High Risk Investment Scams	<p>According to a OFT report, consumers are contacted by letter, telephone or e-mail and offered the opportunity to invest money into things like shares, fine wine, gemstones, art or other 'rare' high value items. The promise is that these will rocket in value. But what is offered is often over-priced, very high risk and difficult to sell on. High risk investment scams cost the UK public an estimated £490 million a year. An estimated 90,000 adults fall victim to these scams every year. The mean loss per victim is £5,660, the highest for all the scams mentioned (the median loss was £2,751). A reasonably high percentage of respondents with experience of this scam claimed to have reported it to the Police (nine per cent) and Office of Fair Trading (five per cent). A further one per cent stated reporting it to the local authority Trading Standards Service, Consumer Direct Helpline and Department of Trade and Industry. 55 per cent had shared or reported this scam 34 per cent to friends and 25 per cent to family.</p>	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING	An estimated 90,000 adults fall victim to these scams every year.	The mean loss per victim is £5,660, the highest for all the scams mentioned (the median loss was £2,751).	An estimated £490 million a year	NONE		Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)
				OTHER UNFAIR COMMERCIAL PRACTICES LAW						
2006	Internet Matrix Scheme Scams	<p>According to a OFT report, consumers see a website - or are directed to one via an advert placed on an Internet auction site - that promises the chance of getting a valuable 'free gift', such as a mobile phone, ipod, or palm pilot, by spending £20 on a low-value product such as a mobile phone signal booster, or a CD ROM containing ringtones and games. If the consumer buys the product they become a member and join a waiting list to receive their chosen 'free gift'. The person at the top of the list will be sent their 'free gift' only after a prescribed number of new recruits have signed up – the prescribed number varies according to the choice of 'free gift' but can be as great as 100. Once the 'free gift' has been sent, the other remaining members each move up one place on the waiting list. The person who has moved to the top then has to wait until the prescribed number of new recruits has signed up again in order to receive their 'free gift'. Although it is not compulsory for members to sign up new recruits, they are encouraged to do so in order to move up the waiting list faster.</p> <p>The nature of these schemes means that the number of members who are waiting for their 'free gift' will always far exceed the number of 'free gifts' actually awarded. The vast majority of those who pay their £20 will never receive the 'free gift' because of the ever-increasing and ultimately unsustainable number of additional recruits required to join. Internet matrix scheme scams cost the UK public an estimated £10 million a year. An estimated 70,000 adults fall victim to these scams every year. The mean loss per victim is £110 (the median loss was £54). None of the respondents with experience of this scam had reported it to any authorities. It was however, the second most shared scam and out of the 64 per cent, who had told others, 43 per cent had been to friends and 30 per cent had been to family.</p>	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING	An estimated 70,000 adults fall victim to these scams every year.	The mean loss per victim is £110 (the median loss was £54).	An estimated £10 million a year	NONE		Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)
				OTHER UNFAIR COMMERCIAL PRACTICES LAW						

2006	Loan Scams	According to a OFT report, consumers see an advert in the classified sections of free or local newspapers offering fast loans regardless of credit history. Targets are asked to call a freephone number. They are told that their loan has been agreed but that before they can have the money they will need to pay a fee to cover insurance of the loan. They are asked to pay this advance fee by money transfer. Once this advance fee is paid the victim never hears from the company again and the loan is never received. Loan fee scams cost the UK public an estimated £190 million a year. An estimated 110,000 adults fall victim to these scams every year. The mean loss per victim is £1,810 (the median loss was £376). Six per cent of respondents with experience of this scam had reported it to the Police, three per cent to the Citizens Advice Bureaux, two per cent to their bank and one per cent to the Department of Trade and Industry. Half of respondents had shared or reported this scam. Equal numbers had done so to friends (31 per cent) and family (31 per cent).	SCAMS AND PYRAMIDS SCHEMES	LAW ON MISLEADING ADVERTISING	An estimated 110,000 adults fall victim to these scams every year.	The mean loss per victim is £1,810 (the median loss was £376).	An estimated £190 million a year	NONE		Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, Office of Fair Trading, 2006, (OFT 883)
				OTHER UNFAIR COMMERCIAL PRACTICES LAW						
2001	Inheritance	According to a consumer association, a significant number of claims concern the distribution of the inherited estate between policyholders and shareholders by a company.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER	Thousands		Millions	INDIVIDUAL REDRESS		Stakeholder survey
2006-2008	Bank charges	According to a consumer association, a significant number of claims concern unfair terms imposed for the charging of unauthorised overdraft facilities by a number of companies.	FINANCIAL SERVICES (INCL. INSURANCE)	OTHER UNFAIR COMMERCIAL PRACTICES LAW	Millions. Over 100 000 consumers have already claimed.	Varied from £10 to thousands of pounds	Millions	INDIVIDUAL REDRESS	YES	Stakeholder survey
				OTHER FINANCIAL SERVICES LAW						
2007-2008	Webtrader	According to ECC UK, a significant number of claims concern goods paid by consumers via the Internet and bought from a webtrader. Neither the goods or refunds were received.	OTHER CONSUMER GOODS	LAW ON SALES AND GUARANTEES	14	47,80 Euro	669,33 Euro	ADR SCHEME	YES	Stakeholder survey

## Annex 4: Literature<sup>1</sup>

### *Academic publications:*

- ❑ Werlauff, Erik (2007): Class actions in Denmark, The Globalization of Class Actions Oxford Conference of 13 & 14 December 2007, The United Kingdom, an electronic copy available at: [http://www.law.stanford.edu/display/images/dynamic/events\\_media/Demark\\_Legislation.pdf](http://www.law.stanford.edu/display/images/dynamic/events_media/Demark_Legislation.pdf), last checked in April 2008;
- ❑ Van den Bergh, R. and Visscher, L. (2008): The preventive function of collective actions for damages in consumer law. In: Erasmus Law Review, Volume 01, Issue 02, the Netherlands, an electronic copy available at: <http://ssrn.com/abstract=1101377>, last checked in April 2008;
- ❑ Tzankova, I.N, and Lunsingh Scheurleer, D.F. (2007): Class Actions, Group Litigation and Other Forms of Collective Litigation - Dutch Report, The Globalization of Class Actions Oxford Conference of 13 & 14 December 2007, The United Kingdom, an electronic copy available at: [http://www.law.stanford.edu/display/images/dynamic/events\\_media/Netherlands\\_National\\_Report.pdf](http://www.law.stanford.edu/display/images/dynamic/events_media/Netherlands_National_Report.pdf), last checked in April 2008;
- ❑ Magnier, V. (2007): Class Actions, Group Litigation & Other Forms of Collective Litigation – France, The Globalization of Class Actions Oxford Conference of 13 & 14 December 2007, The United Kingdom, an electronic copy available at: [http://www.law.stanford.edu/display/images/dynamic/events\\_media/France\\_National\\_Report](http://www.law.stanford.edu/display/images/dynamic/events_media/France_National_Report), last checked in April 2008;
- ❑ Sousa Antunes, H. (2007): Class Actions, Group Litigation & Other Forms of Collective Litigation, The Globalization of Class Actions Oxford Conference of 13 & 14 December 2007, The United Kingdom, an electronic copy available at: [http://www.law.stanford.edu/display/images/dynamic/events\\_media/Portugal\\_National\\_Report.pdf](http://www.law.stanford.edu/display/images/dynamic/events_media/Portugal_National_Report.pdf), last checked in April 2008;
- ❑ Storme, Matthias E., and Terryn, Evelyne (2007) Belgian Report on Class Actions, The Globalization of Class Actions Oxford Conference of 13 & 14 December 2007, The United Kingdom, an electronic copy available at: [http://www.law.stanford.edu/display/images/dynamic/events\\_media/Belgium\\_National\\_Report.pdf](http://www.law.stanford.edu/display/images/dynamic/events_media/Belgium_National_Report.pdf), last checked in April 2008;
- ❑ Mulheron, R. (2008): Reform of collective redress in England and Wales: A perspective of need, A Research Paper for submission to the Civil Justice Council of England and Wales, The United Kingdom;
- ❑ Garoupa, N. and Gomez, F. (2008): Cashing by the Hour: Why Large Law Firms Use Hourly Fees instead of Contingent Fees. In: Journal of Law, Economics & Organisation.

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<sup>1</sup>Other literature considered for this study is listed in the Civic Consulting (2008): Evaluation study

***Publications on the websites of consumer associations:***

□ *Austria:*

[http://www.europakonsument.at/Europakonsument/ek\\_detail.asp?lang=EN&category=&id=31906](http://www.europakonsument.at/Europakonsument/ek_detail.asp?lang=EN&category=&id=31906), last checked in May 2008;

[http://www.europakonsument.at/Europakonsument/ek\\_detail.asp?lang=EN&category=&id=10347](http://www.europakonsument.at/Europakonsument/ek_detail.asp?lang=EN&category=&id=10347), last checked in May 2008;

□ *Cyprus:*

<http://www.hri.org/news/cyprus/cmnews/2001/01-12-07.cmnews.html#05>, last checked April 2008;

□ *Czech Republic:*

<http://www.consumers.cz/news.php?show=30>, last checked in May 2008

□ *Estonia:*

[http://www.europakonsument.at/Europakonsument/ek\\_detail.asp?lang=EN&category=&id=31113](http://www.europakonsument.at/Europakonsument/ek_detail.asp?lang=EN&category=&id=31113), last checked in May 2008;

□ *The Netherlands:*

[http://www.consumentenautoriteit.nl/English\\_summary/Press\\_releases/Press\\_release\\_February\\_12\\_2007\\_Consumer\\_authority\\_has\\_plug\\_pulled\\_on\\_website](http://www.consumentenautoriteit.nl/English_summary/Press_releases/Press_release_February_12_2007_Consumer_authority_has_plug_pulled_on_website), last checked in May 2008;

[http://www.nmanet.nl/engels/home/News\\_and\\_Publications/News\\_and\\_press\\_releases/2005/NMa\\_Confirms\\_Infringement\\_of\\_Prohibition\\_on\\_Cartels\\_by\\_Bicycle\\_Manufacturers.asp](http://www.nmanet.nl/engels/home/News_and_Publications/News_and_press_releases/2005/NMa_Confirms_Infringement_of_Prohibition_on_Cartels_by_Bicycle_Manufacturers.asp), last checked in April 2008;

***Publications on the websites of ECC network:***

□ *Austria:*

[http://www.europakonsument.at/Europakonsument/ek\\_detail.asp?lang=EN&category=&id=32912](http://www.europakonsument.at/Europakonsument/ek_detail.asp?lang=EN&category=&id=32912), last checked in April 2008

□ *Belgium:*

<http://194.78.155.134/EN/about/default.asp?h=23>

ECC Network, The European Online Marketplace: Consumer Complaints 2005, [http://www.eccdublin.ie/publications/reports/ecc\\_reports/eur\\_online\\_marketplace\\_2005\\_2.pdf](http://www.eccdublin.ie/publications/reports/ecc_reports/eur_online_marketplace_2005_2.pdf), last checked in April 2008;

***Publications in the international press:***

□ *De Standaard (Belgium):*

<http://www.standaard.be/Artikel/Detail.aspx?artikelId=GQ2K7941&word=collectieve+wapens>, last checked in April 2008;

□ *Newspaper "Sega" (Bulgaria):*

<http://www.segabg.com/online/article.asp?issueid=2580&sectionid=3&id=0000706>, last checked in April 2008;

□ *Newspaper "Standart News" (Bulgaria):*

<http://www.standartnews.com/archive/2005/01/18/interview/index.htm>, last checked in April 2008;

□ *The Czech Business Weekly (Czech Republic):*

<http://www.cbw.cz/en/buyer-beware:-contracts-give-insurers-%91low-liability%92/6367.html?search=consumers> last checked in May 2008;

<http://www.cbw.cz/en/consumer-watchdog-finds-its-teeth/3901.html?search=consumers> last checked in May 2008;

□ *The Times On-line:*

[http://business.timesonline.co.uk/tol/business/industry\\_sectors/banking\\_and\\_finance/article745421.ece](http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article745421.ece), last checked in April 2008;

**Other publications:**

□ *Die Schlichtungsstelle Mobilität beim Verkehrsclub Deutschland e.V. (VCD):*

[http://www.schlichtungsstelle-mobilitaet.org/fileadmin/user\\_upload/redakteure/Presse/061207\\_HG\\_ZweiJahre\\_SchliMob.pdf](http://www.schlichtungsstelle-mobilitaet.org/fileadmin/user_upload/redakteure/Presse/061207_HG_ZweiJahre_SchliMob.pdf), last visited in April 2008;

□ *The Office of Competition and Consumer Protection (Poland)*

[http://www.uokik.gov.pl/en/press\\_office/press\\_releases/art116.html](http://www.uokik.gov.pl/en/press_office/press_releases/art116.html), last checked in May 2008;

[http://www.uokik.gov.pl/en/press\\_office/press\\_releases/art113.html](http://www.uokik.gov.pl/en/press_office/press_releases/art113.html), last checked in May 2008;

[http://www.uokik.gov.pl/en/press\\_office/press\\_releases/art47.html](http://www.uokik.gov.pl/en/press_office/press_releases/art47.html), last checked in May 2008;

[http://www.uokik.gov.pl/en/press\\_office/press\\_releases/art88.html](http://www.uokik.gov.pl/en/press_office/press_releases/art88.html), last checked in May 2008;

[http://www.uokik.gov.pl/en/press\\_office/press\\_releases/art72.html](http://www.uokik.gov.pl/en/press_office/press_releases/art72.html), last checked in May 2008;

□ *The Office of Fair Trading (the United Kingdom):*

Bulletin 7/1999:

[http://www.offt.gov.uk/shared\\_offt/reports/unfair\\_contract\\_terms/oft268.pdf](http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/oft268.pdf), last checked in May 2008;

Bulletin 5/1998:

[http://www.offt.gov.uk/shared\\_offt/reports/unfair\\_contract\\_terms/oft246.pdf](http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/oft246.pdf), last checked in May 2008;

Bulletin 4/1997:

[http://www.offt.gov.uk/deleted6/unfair\\_contract\\_terms/oft\\_202b](http://www.offt.gov.uk/deleted6/unfair_contract_terms/oft_202b), last checked in May 2008;

Bulletin 8/1999:

[http://www.offt.gov.uk/shared\\_offt/reports/unfair\\_contract\\_terms/oft291.pdf](http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/oft291.pdf), last checked in May 2008;

Bulletin 10/1999:

[http://www.offt.gov.uk/shared\\_offt/reports/unfair\\_contract\\_terms/oft313.pdf](http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/oft313.pdf), last checked in May 2008;

Research on impact of mass marketed scams: A summary of research into the impact of scams on UK consumers, (2006) (OFT 883);

- *European Parliament - Committee on the Internal Market and Consumer protection*

Civic Consulting (2007): Briefing paper on consumer confidence in the digital environment, prepared for the European Parliament - Committee on the Internal Market and Consumer protection

## Annex 5: Description of exemplary cases

### Case A: Package holiday sector (Austria)

Case A –main characteristics of the mass claim/issue–	
General Background	
Brief description of alleged mass claim/issue	At the holiday resort of the company M in Turkey, a large number of consumers got ill due to the bad quality of the drinking water (diarrhoea/vomiting). An Austrian consumer organisation organised a collective redress action and 104 consumers joined the action.
Status of the case	The collective action was finalised in Summer 2001 by an amicable settlement on approximately 80% of the claim.
Sector	Package holiday
Category of law infringement	§31e Austrian Consumer Protection Act
Cross-border aspect	Some German consumers were also affected (but not represented by the consumer organisation). There was no detailed information available from the interviewees.
Total number of consumers harmed	Approximately 480
Damage suffered	<p><i>Average damage suffered by individual consumers:</i></p> <ul style="list-style-type: none"> <li>□ 1,683 Euro. The damage consisted in a material damage, warranty claim for the days of illness during the package holiday and an immaterial damage for the pain suffered.</li> </ul> <p><i>Total damage suffered by all affected consumers:</i></p> <ul style="list-style-type: none"> <li>□ More than 175,000 Euro (104 consumers x 1,683 Euro)<sup>1</sup>.</li> </ul>
Redress mechanisms used	
Alternative Dispute Resolution (ADR)	Consumers did not use an Alternative Dispute Resolution scheme because there was no relevant scheme existing.
Individual legal redress	<p>Most affected consumers did not use individual redress procedures because the monetary costs of litigation are very high in Austria. In this case, the individual procedural costs would have amounted to 10,000 Euro for a claim of 1,683 Euro. Therefore generally consumers who do not have a legal insurance refrain themselves from taking individual court actions.</p> <p>Some of the consumers who did not join the collective redress action accepted a good-will (out-of-court) arrangement from the company. In this case, consumers obtained 363 Euro when they could provide a medical certificate and 135 Euro when they could not provide any document. A business association indicated that 300 consumers accepted the good-will arrangement of the company.</p> <p>According to the representative of the company T (defendant), 7 individual redress procedures (representing 22 consumers)<sup>2</sup> were brought to court. All 7 procedures ended with an amicable settlement.</p>
Collective redress	<p>Some consumers took individual action or accepted good-will arrangements out-of-court.</p> <p>The consumer organisation organised a collective redress action based on §31e Austrian Consumer Protection Act, §55 IV JN, and §227 ZPO (<i>Sammelklage nach österreichischem Recht</i>).</p> <p>According to the consumer organisation, 104 consumers (out of approximately 480) joined</p>

	<p>the action organised by the consumer association (according to the defendant, 110 consumers were represented by the consumer organisation). The collective action from the consumer organisation was finalised by an amicable settlement, which took place in Summer 2001, on approximately 80% of the claim. The cost of litigation was financed by the company F – a company that finances legal actions. Consequently, 30% of the compensation received had to be paid to this company as contingency fee. According to the consumer organisation, without the financing of the costs of litigation by the litigation financing company, it would have been difficult or even impossible for the consumer organisation to bring the case to court.</p>
<b>Degree to which consumers did not obtain satisfactory redress</b>	
Degree to which consumers did not obtain satisfactory redress	<p><i>Individual perspective:</i></p> <p>In general terms, consumers represented by the consumer organisation with justified claims obtained a compensation of 53% of their claim for their individual material and immaterial damage. They received only 53% of their claims because of the following two reasons:</p> <ul style="list-style-type: none"> <li>❑ The collective action was finalised by an amicable settlement amounting to approximately 80% of the claim;</li> <li>❑ The action was financed by the company F.</li> </ul> <p>As the consumer organisation had no resources to finance the collective action, the process had to be financed by a litigation financing company. In case of winning by the consumer organisation, 30% had to be paid to this company.</p> <p>The administrative costs borne by the consumer organisation for handling the 104 consumer cases were not recovered by the consumer association. This is a substantial problem for consumer claims with a larger number of consumers. In other cases, the consumer organisation had to ask for governmental subventions to be able to handle a collective claim. According to a representative from the consumer organisation, it would be desirable that the author of the damage would pay the organisational costs, too.</p> <p><i>Collective perspective:</i></p> <p>The total number of consumers who suffered a damage amounts to 480. According to the consumer organisation, only 104 consumers joined the collective action of the consumer organization and obtained 53% of their claim.</p> <p>Some consumers who did not join the collective action organised by the consumer organisation accepted good-will arrangements out-of-court. These were much lower than the average damage suffered: the average damage suffered by an individual consumer was 1,683 Euro, whereas the good-will payment was 363 Euro for consumers who could provide a medical certificate and 135 Euro for consumers who could not provide such documents.</p>
<b>Obstacles that prevented consumers from obtaining redress</b>	
Alternative Dispute Resolution (ADR)	<p>There exists no relevant ADR scheme in Austria for travel claims.</p> <p>Until 1997 the so called <i>Reisebürobeschwerdekommission</i> – a board of consumer protection organisations, the association of travel agents and tour operators and some travel agents – was able to settle 80 to 85 % of disputes. Since 1997 the tourism service centre at the Federal Ministry of Economy and Labour is the only neutral organisation dealing with consumer complaints, but it has never reached the significance of the above-mentioned commission.</p>
Individual legal redress	<p>The main obstacles that prevented consumers from using individual redress were, firstly, the monetary costs of litigation in ordinary proceedings (lawyers and solicitors' fees, experts' fees, "loser pays" rule, etc.). In this case, the procedural costs would have been about 10,000 Euro for each individual consumer for a claim of 1,683 Euro. In such cases, consumers who generally do not have a legal insurance would refrain from taking legal action individually.</p>
Collective redress	<p>The interviewees did not consider that there were specific obstacles that prevented consumers from using this mechanism or from obtaining redress when using this mechanism. The 104 consumers who joined the collective action obtained 53% of their claim. Most of the other consumers accepted good-will arrangements.</p>

	<p>The business associations consider that the compensation was sufficient.</p> <p>A general problem in this context is that the costs borne by the consumer organisation for handling the 104 consumer cases were not recovered by the consumer association. This is a substantial problem for consumer claims involving a large number of consumers. Indeed, the administrative costs involved in the organisation of a collective action are never recovered by the consumer organisation and this may prevent consumer organisations from bringing collective actions to court. In other cases, the consumer organisation had to ask for governmental subventions to be able to handle a collective claim. According to the consumer organisation, it would be desirable that the author of the damage would pay the organisational costs too.</p>
<b>Economic consequences of obstacles preventing consumers from obtaining satisfactory redress</b>	
Impact on businesses and market	<p>The process may have had a general preventive effect on the market. Businesses are now aware that consumers may take collective action to claim their rights against travel package agencies. It also had a specific effect on the sued company. Two years later, the same problem happened again at the company M. This time the consumer organisation was able to reach an out-of-court settlement for the affected consumers without having to take legal action.</p>
For consumers	<p>Consumers did not obtain a full compensation for their damage because:</p> <ul style="list-style-type: none"> <li>❑ They had to transfer 30% of the compensation to the company who financed the action;</li> <li>❑ The collective action was finalised by an amicable settlement which represented approximately 80% of the claim.</li> </ul> <p>It should be noted that a significant number of consumers obtained compensation as a result of the intervention of the consumer association. However, it could be imagined that in other cases, the consumer organisation could not be able to organise a collective action and bring the case to court due to the administrative costs for the consumer association. Because these costs are not recovered by the consumer organisation, such costs may prevent the consumer organisation from bringing a collective action to court, leaving a significant number of consumers uncompensated for their damages.</p>
For competitors and for the relevant sector	<p>The representatives of the business associations pointed out that there were no economic consequences for the competitors and the package holiday sector.</p> <p>One business association felt, that this case was an accident (illness caused by bad water) and not a behaviour or practice considered not in compliance with consumer protection legislation.</p>
For the functioning of the market	<p>The Austrian system of collective redress requires the assignment of the consumer claim to the consumer organisation (<i>Abtretung</i>). The European Court of Justice decided that in case of the assignment of a claim, the specific right of consumers to take legal action at their place of residence no longer applies. This means that general rules of jurisdiction apply and the competent court may be in another Member State, which is problematic. This can impact on consumer confidence when shopping cross-border (if consumers are aware of this problem).</p>
<b>Economic consequences of the mass claim/issue for the defendant</b>	
For the defendant	<p>The tour operator paid a total of 175,000 Euro. The consumers obtained 130,811 Euro in damages and for the legal charges. 30 % of the sum was paid to the company that bore the risk of litigation.</p> <p>The claim had another specific effect on the defendant. Two years later, the same problem happened again at the company M. This time, the consumer organisation was able to reach an out-of-court settlement for the affected consumers without having to take legal action again. Later on, the company M renovated its water supply system.</p> <p>According to a business stakeholder, there was no negative publicity for the tour operator because the case was settled by an amicable agreement.</p>

Organisations interviewed <sup>3</sup>	
Organisations interviewed	<input type="checkbox"/> Defendant <input type="checkbox"/> 2 business associations <input type="checkbox"/> A consumer association <input type="checkbox"/> A European Consumer Centre
Sources	
Sources for further information	<a href="http://www.verbraucherrecht.at">www.verbraucherrecht.at</a>

(1) The interviewees indicated the number of 175,000 EUR because (only) 104 consumers were represented in the collective action and were part of the settlement. It is not clear how high the damage of the other 376 consumers was. This depends e.g. on the number of days consumers were ill and the pain they suffered (diarrhea with or without vomiting etc.). Also, some of them accepted very low good-will arrangements from the company M, so it is hard to calculate/estimate the damage suffered by the remaining 376.

(2) 22 consumers took individual action. Some of them did not take separate actions, but went in small groups (i.e. families) to court. Therefore the total number of procedures is 7.

(3) All interviews took place in July 2008.

**Case B: Financial sector (Spain/Portugal)**

<b>Case B –main characteristics of the mass claim/issue–</b>	
<b>General Background</b>	
Brief description of mass claim/issue	<p>Case B involves English School A, whose central office was located in Barcelona (Spain), owned several schools and franchises in Spain, Portugal, Italy and Poland.</p> <p>The Company A required payment of classes in advance. The schools offered their students different payment methods so it was possible to identify three types of consumers:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Consumers that had paid their courses in cash or by credit card;</li> <li><input type="checkbox"/> Consumers that had entered into education contracts that stated the payment by instalments. Furthermore, they authorised the transfer of their credits to a bank;</li> <li><input type="checkbox"/> Consumers that, in order to finance the education contracts, entered into credit contracts with a credit provider with which the schools had signed a cooperation agreement previously.</li> </ul> <p>In March 2002, the Company A transferred a debt of 22 million Euro to its parent company – the company C. In July 2002, the company C tried to avoid its bankruptcy by selling both its editorial and distance learning businesses to a competitor company –the company P. In August 2002, despite the effort to save the Company A, it was put into temporary receivership.</p> <p>The closing down of the Company A affected 133 language schools (74 own schools and 59 franchises). Their employees –approximately 1200– lost their jobs and their students – approximately 82.000– run out of their courses. Several consumers –approximately 45.000– entered into credit contracts to pay the courses and, as a consequence of the closing down of the schools, they found themselves tied to the credits so they had to continue credit payments in their entirety.</p> <p>At the end of August 2002, the Spanish Ministry of Health and Consumer Affairs stated that consumers did not have to continue credit payments since the schools were not offering their services. Furthermore, it encouraged the regions to investigate whether the schools’ behaviour or practices were contrary to the consumer protection legislation.</p> <p>From October 2002 onwards several Spanish consumers associations brought actions in defence of the rights and interests of consumers against both the English schools and the credit providers. The claimants asked for:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The termination of both the education and the financial contracts;</li> <li><input type="checkbox"/> The refund of the amounts improperly charged by the banks from August 2002 onwards;</li> <li><input type="checkbox"/> The abstention of the banks from continuing asking for the credit payments;</li> <li><input type="checkbox"/> The cancellation of the consumers’ personal details in Registers of debtors.</li> </ul> <p>In general terms, Spanish Courts ruled in favour of consumers in both general and regional actions.</p> <p>Some consumers preferred to bring individual actions and those whose claims were justified obtained satisfactory redress.</p> <p>An exceptional case was the case solved by the Court of Appeals of Sevilla of 22 January 2004. In January 2003, the First Instance Court num. 8 of Sevilla ordered precautionary measures (<i>paralización cautelar</i>) regarding the credits as well as the cancellation of the consumers’ personal details in Registers of debtors. The 5 April 2003, the First Instance Court num. 8 of Sevilla passed a decision that terminated both education and financing contracts and ordered the defendants to refund the amounts improperly charged from August 2002 onwards as well as to abstain from acting in the same way in the future. This decision affected all students that had contracted English courses with the Company A in Spain apart from those who had brought other individual or collective actions because of the same case; those who had contracted the courses not as final consumers but business persons and; finally, those who had credits with a bank different from the defendants. The defendants appealed the court’s decision. The decision of the Court of Appeals of Sevilla of 22 January</p>

	2004 stated the nullity of the First Instance Court proceedings because of procedural reasons.
Status of the case	<ul style="list-style-type: none"> <li><input type="checkbox"/> The Company A closed down in August 2002.</li> <li><input type="checkbox"/> In Spain, claims were filed from October 2002 onwards. Some cases have not been finalised yet.</li> </ul>
Sector	Whereas the representatives of consumers' associations interviewed consider that this case (case B) belongs to the financial services sector, the representative of the banks interviewed considers that it was a case concerning education services connected to financial services where the financial issue was secondary.
Category of law infringement <sup>1</sup>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Law 7/1995, of 23rd March, on Consumer Credit (<i>Ley 7/1995 de 23 de marzo de Crédito al Consumo</i>);</li> <li><input type="checkbox"/> Civil Procedure Act (<i>Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil</i>).</li> </ul>
Cross-border aspect	<p>Collective action in Portugal.</p> <p>After receiving complaints from approximately 1.000 Portuguese consumers, a Portuguese consumers association brought a collective action against both the Company A and some credit providers.</p> <p>On 15 October 2002, the Portuguese consumer association tried to get precautionary measures (<i>providencia cautelar</i>) in order to avoid that banks continue to ask for credit payments and to bring actions against consumers because of their default of payment.</p> <p>In February 2003, the Portuguese consumer association brought a collective action. In January 2006, the First Instance Court ruled in favour of consumers. Its decision terminated both education and financial contracts and condemned the defendants to refund the amounts improperly charged from August 2002 onwards. All defendants appealed. The Second Instance Court stated the nullity of the First Instance Court decision because the tapes of the testimonial witnesses were not audible. The proceedings were repeated and the First Instance Court confirmed its first decision. All defendants appealed again. In April 2008, the Second Instance Court confirmed the First Instance Court decision. This decision was appealed. No decision of the Supreme Court has been passed yet.</p>
Total number of consumers harmed	<p><i>In Spain:</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Approximately 40.000 to 50.000 consumers.</li> </ul> <p><i>In Portugal:</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Approximately 1.000 consumers.</li> </ul>
Damage suffered	<p><i>Average damage suffered by individual consumer:</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Uncertain (depending on the individual consumer: from 70 to 900 €).</li> </ul> <p><i>Total damage suffered by all affected consumers:</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Uncertain.</li> </ul>
<b>Redress mechanisms used</b>	
Alternative Dispute Resolution (ADR)	<p><i>In Spain:</i></p> <p>An uncertain number of consumers used alternative dispute resolution schemes.</p> <p>In Spain, a specific system for the resolution of financial disputes exists. First, consumers should try to reach an agreement with the branch managers. If it is not possible or the solution is not satisfactory, consumers may submit their claims to the Client Ombudsman of their branch office. If it does not exist, individual clients as well as associations and organizations on behalf of their clients or in defence of collective interests may submit their claims against the financial institutions to the Spanish Central Bank Claim System (<i>Servicio de Reclamaciones del Banco de España</i>). If its decision is not satisfactory or the branch office does not accept it voluntarily, consumers may file a claim in Court.</p>

	<p>In this case (case B), although most consumers brought individual or collective actions, some of them submitted their complaints to their branch managers. Most interviewees were of the opinion that regular –not occasional– customers would have reached a satisfactory agreement and branch offices would have been refunded the amounts improperly charged from the closing down of the school onwards.</p> <p>Consumers that did not reach an agreement or a satisfactory agreement as well as consumer associations submitted their claims to the Spanish Central Bank Claim System. Nevertheless, this institution stated its lack of authority to decide the connection between the education and financing contracts. Its main function consisted of controlling the observance of the disciplinary rules by the credit providers. The only ones who could take preventive measures or penalize the banks were consumers’ authorities and Courts. In any case, according to the representative of Spanish consumer association, the number of consumers’ dossiers did not decrease after submitting their claims to the Spanish Central Bank Claim System.</p> <p>Regarding arbitration, some consumer authorities (in particular, the Consumer General Directorate of the Catalan Government –<i>Direcció General de Consum de la Generalitat de Catalunya</i>–) recommended consumers to submit their claims to the Consumer Arbitration system. Arbitration allows the achievement of the same goals that in-court procedures but by means of a more flexible, faster and, in most cases, cheaper procedure. Nevertheless, this scheme requires that both parties accept to submit themselves to the Consumer Arbitration system and the arbitration awards. Although some credit providers accepted to submit themselves to this system, they rejected the awards passed in favour of consumers.</p> <p><i>In Portugal:</i></p> <p>According to the interviewees, there is no information about the use of alternative dispute resolution schemes by Portuguese consumers.</p>
<p>Individual legal redress</p>	<p><i>In Spain:</i></p> <p>An uncertain number of consumers brought individual court actions. Judges applied the rules for the ordinary proceeding –<i>juicio ordinario</i>– or the oral proceeding –<i>juicio verbal</i>– depending on the claimed amount.</p> <p>The ordinary proceeding is a structured proceeding for most expensive and complex matters. It is applied when the claimed amount is higher than 3,000 Euro. The oral proceeding, although not specifically designed to deal with individual consumer claims, seems to be the kind of judicial proceeding apt to channel the most consumer claims due to the typical amounts involved. This proceeding is applied in claims below 3,000 Euro. Its main characteristics are the simplification, the concentration and the rapidity. Moreover, for claims below 900 Euro legal representation is not required.</p> <p>In Spain, whereas actions brought by groups of consumers were solved by means of the ordinary proceeding, most individual actions were solved by means of the oral proceeding. In general terms, it would be possible to say that Spanish consumers obtained satisfactory redress. Courts terminated both education and financial contracts and condemned the banks not to continue asking for the credit payments, to refund the amounts improperly charged from August 2002 onwards as well as to cancel the consumers’ personal details in Registers of debtors.</p> <p>On the contrary, courts did not compensate the immaterial damage (<i>daño moral</i>) consisting of the impossibility of finishing the courses or the impossibility of learning English because of the inability of Spanish consumers to provide evidence on this type of damage.</p> <p>Some interviewees pointed out that the immaterial damage was not caused by the banks but by the language schools. Due to the fact that the representatives of the Company A failed to appear in Court and the company was in a situation of bankruptcy, it was unlikely for Spanish consumers to be able to obtain a compensation for this type of damage.</p> <p><i>In Portugal:</i></p> <p>According to the interviewees, there is no notice about individual actions brought by Portuguese consumers.</p>

<p>Collective redress</p>	<p><i>In Spain:</i></p> <p>An uncertain number of consumers used collective redress procedures (for example, approximately 10,000 consumers were represented in the collective action of Sevilla; about 1,500 consumers were represented in the collective action of Madrid).</p> <p>Several Spanish consumers' brought more than 18 collective actions. Some of them have not been solved yet or have been appealed.</p> <p><i>In Portugal:</i></p> <p>In Portugal, a consumer association brought a collective action on behalf of 1,000 students.</p> <p>In general terms, Portuguese consumers obtained satisfactory redress. Courts terminated both education and financial contracts and condemned the banks not to continue asking for the credit payments, to refund the amounts improperly charged from August 2002 onwards as well as to cancel the consumers' personal details in Registers of debtors.</p>
<p><b>Degree to which consumers did not obtain satisfactory redress</b></p>	
<p>Degree to which consumers did not obtain satisfactory redress</p>	<p><i>Individual perspective:</i></p> <p>Spanish and Portuguese consumers with justified claims received full compensation for their individual material damage. Courts condemned the credit providers to refund the amounts improperly paid from the closing down of the school onwards.</p> <p>Consumers' associations did not claim compensation for consumers' immaterial damage because of the lack of resources to prove them for each individual consumer. Consumers that had brought individual actions were not awarded compensations for their immaterial damage because of their inability to provide evidence on this type of damage. Some interviewees pointed out that this compensation was unlikely because immaterial damage had not been caused by the banks but by the Company A, which was in a situation of bankruptcy and whose representatives had failed to appear in Court.</p> <p><i>Collective perspective:</i></p> <p>In general terms, full population of both Spanish and Portuguese consumers with justified claims received satisfactory redress. The decision of the Court of Appeals of Sevilla of 22 January 2004, where consumers did not obtain satisfactory redress, was the result of the lack of experience of the intermediaries to bring collective actions. It is foreseeable that by rectifying these procedural mistakes Andalusian consumers will obtain satisfactory redress.</p>
<p><b>Obstacles that prevented consumers from obtaining satisfactory redress<sup>3</sup></b></p>	
<p>Main reasons why consumers did not obtain satisfactory redress</p>	<p>In general terms, Spanish consumers obtained satisfactory redress in all collective actions regarding this case. The decision of the First Instance Court of Madrid num. 17 that solved the main case B terminated both education and financial contracts and ordered the banks to refund the amounts improperly charged from August 2002 onwards, not to continue asking for credit payments and to cancel the consumers' personal details in Registers of debtors. This decision would affect all students registered in schools from the Company A as well as the third parties that had signed the financing contracts in order to finance, totally or partially, the English courses. The effects of this decision would extend not only to all affected consumers but also to all schools and credit providers involved in the case (Section 221 Civil Procedure Act<sup>2</sup>).</p> <p>On the contrary, the decision of the Court of Appeals of Sevilla of 22 January 2004 considered that consumer associations did not have legal standing for filing the claim. According to the Court, affected students could have been determined by asking the defendants for the list of contracts that were in force when the school closed down. Therefore, the action brought by the plaintiffs was an action in defence of the collective –not diffuse– rights and interests of consumers. On the other hand, the Court stated that the case should not have been solved by means of the oral proceeding -juicio verbal- but the ordinary proceeding –juicio ordinario.</p> <p>Interviewees considered that consumers did not obtain satisfactory redress because of the decision of the Court of Appeals of Sevilla is exceptional and shows the lack of experience to bring collective actions in Spain.</p>

<p>Alternative Dispute Resolution (ADR)</p>	<p>The main obstacle that prevented consumers from using alternative dispute resolution schemes was the lack of relevant alternative dispute resolution schemes in the financial sector. Although some banks accepted to submit themselves to the arbitration system, they did not accept the arbitration awards passed in favour of consumers.</p> <p>On the other hand, the Spanish Central Bank Claim System (<i>Servicio de Reclamaciones del Banco de España</i>) shows itself to be an inadequate mechanism to protect consumers of financial services because its functions were limited to control the observance of the disciplinary rules by credit providers.</p>
<p>Individual legal redress</p>	<p>The main obstacles that prevented consumers from using individual redress were, firstly, the monetary costs of litigation in ordinary proceedings (lawyers and solicitors' fees, experts' fees, "loser pays" rule, etc.). Nevertheless, in order to encourage access to justice, Law 1/1996, of 10th January, on Legal Aid (<i>Ley 1/1996, de 10 de enero, de Asistencia Jurídica Gratuita</i>) states that for those consumers who have insufficient monetary resources to bring legal actions, justice will be free of charge.</p> <p>Furthermore, although it was not required in oral proceedings, defendants were represented by their lawyers and solicitors. The lack of legal knowledge by consumers, who were not represented by lawyers and solicitors, made them lose their claims.</p> <p>Finally, consumers usually rely on consumer associations to deal with actions that involve a large number of consumers.</p>
<p>Collective redress</p>	<p>The main obstacles that prevented consumers from using this mechanism were those related to the lack of expertise to bring collective actions in Spain: the lack of expertise of intermediaries to bring collective actions, the lack of judges' experience in case management, the equal treatment that the parties received in both individual and collective actions as well as the lack of human and material resources to bring collective actions.</p> <p>The main obstacles that could prevent consumers located abroad from using collective redress are the lack of information about legislation of other Member States as well as the lack of knowledge of collective redress mechanisms in other Member States. It has to be noted that cross-border disputes involves information costs, procedural costs, experts' fees, uncertainty about the final decision, etc. If plaintiffs obtain a partially favourable decision, the Court may order them to pay part of the procedure's costs and the legal representations' fees. Otherwise, if they do not obtain a favourable decision, they must pay the defendant's costs and, in some cases, the travel expenses and a sum by the lost profits. Thus, except in important damages, there exists an imbalance between the damages and both the costs and duration of the procedures. Due to the fact that the amounts involved in the Portuguese case B were small, filing a claim on Portuguese courts was not worthwhile.</p>
<p><b>Economic consequences of obstacles preventing consumers from obtaining satisfactory redress<sup>4</sup></b></p>	
<p>For consumers</p>	<p>As a consequence of the closing down of the Company A, employees lost their jobs and students were deprived of their courses. Students that had financed their courses by credit arrangements found themselves tied to the financing contracts so they had to continue credit payments in their entirety.</p> <p>Furthermore, consumers were deprived of the opportunity of learning English. Representatives of the consumer associations interviewed pointed out that a large number of affected consumers were emigrants that needed to learn English for work.</p> <p>In any case, economic consequences on Spanish and Portuguese consumers were not significant because most of them were refunded the part of the credits that they had paid to the banks despite the closing down of their schools.</p> <p>Due to the lack of both expertise and decisions regarding collective actions, Andalusian consumers did not obtain satisfactory redress (Decision of the Court of Appeals of Sevilla of 22 January 2004) and, as a consequence, they lost the amounts that credit providers had charged improperly from August 2002 onwards. In particular, the Court of Appeals stated the nullity of the proceedings because of procedural reasons and returned the case to the First Instance Court so it is foreseeable that by rectifying the previous procedural mistakes consumers will obtain satisfactory redress.</p>

<p>For competitors and for the relevant sector</p>	<p><i>Regarding the education sector:</i></p> <ul style="list-style-type: none"> <li>□ In Spain:           <p>After the closing down of the Company A, other Spanish language schools closed down. In October 2002, Ac. Language –a company that owned Bt. schools in Catalonia– went to bankruptcy. The closing down of this school affected a total of 12,000 students. In November 2002, the franchises of the company W and the company S in A Coruña closed down because of a situation of bankruptcy. As a consequence, 1,000 students were deprived of their courses. In January 2003, 11 schools of the company O in Barcelona, 4 in Madrid and 1 in Valencia closed down. In February 2003, the franchises of the company W in Ferrol, Ourense, Pontevedra, Santiago and Marbella closed down, as a result 1500 students lost their courses. In February 2003, the schools of the company C closed down. In July 2005, the 42 remaining schools of the company W in Spain closed down.</p> <p>Nevertheless, it has to be taken into account that the crisis of the language sector had begun at the end of 2001 as a consequence of a fall in demand of language courses, an excess supply as well as an aggressive competition between the most relevant language companies. In any case, the lack of confidence of consumers in language schools after the closing down of the Company A contributed to the crisis of the sector.</p> <p>The demand of language courses decreased so much that this type of language schools as well as their financing schemes disappeared. After the so-called “crisis of the English schools”, traditional schools, official language schools or private teachers have been more appealing for consumers.</p> <p>Not only language schools but also computer training schools, the Company A and the company X –a computer training school had emerged– were affected. According to the Spanish Association of Computer Schools –<i>Asociación Española de Centros de Enseñanza de Informática</i> (AECEI)–, from the end of 2002 to the beginning of 2003, a decrease in the number of students in computer training courses was seen as a consequence of the lack of consumers’ confidence in unaccredited studies and, in particular, the closing down of the English language schools.</p> </li> <li>□ In Portugal:           <p>No cases of closing down of other language schools were noticed but rather a decrease of their activities (advertisements, etc.).</p> </li> </ul> <p><i>Regarding the financial sector:</i></p> <p>Most credit providers continued asking for the credit payments after the closing down of the schools of the Company A Regional consumer authorities took disciplinary actions against these credit providers. In some cases, credit providers renounced to ask for the credit payments after negotiating with consumers associations (for example, a Spanish consumer association reached an extrajudicial agreement with two banks located in the region of Aragon, I and Ca).</p> <p>Due to the fact that practically all Spanish banks were involved in this case, no compliant banks would exist. As a consequence, no banks experienced any changes in market share or were boosted either directly or indirectly as a result of the practices of the defendants.</p> <p>In Portugal, no impact on Portuguese banking sector seems to be noticed due the small number of consumers affected as well as the small amounts involved.</p> <p>Practices of the credit providers did not result in a lower quality of both their services and products either. In fact, when comparing consumers who paid their courses in cash or by credit card with those who financed them by credit arrangements, it would be possible to say that the situation of the latter was better off. Although both had been deprived of their courses, the former did not receive any compensation because the Company A had disappeared whereas the latter received compensations equal to the part of the credit that they had paid.</p> <p>Finally, there is no agreement between the interviewees regarding how case B affected consumers’ confidence when purchasing goods and services in the financial sector. Representative of the credit providers considers that consumers’ confidence on financial</p>
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	sector was not affected because consumers were refunded the credit payments from the closing of the schools onwards. In fact, they realised the benefits of asking for personal loans because of the solvency of the banks in situations of crisis. On the contrary, representatives of consumer associations pointed out that today consumers do not rely on banks and, especially, on personal loans.
For the functioning of the market	<p><i>In Spain:</i></p> <p>Although the loss of opportunities to learn English may have affected Spanish tourism, businesses and education, economic consequences for the functioning of the internal market may not be considered significant.</p> <p>Practices of the banks did not distort the internal market because affected consumers were refunded the amounts improperly charged from the closing on the school onwards. Moreover, due to the fact that most Spanish banks were involved in case B no cases of unfair competition were seen.</p> <p>One of the most important consequences of case B and, in general, of the crisis of language schools was the amendment of Section 15 of Law 7/1995, of 23rd March, on Consumer Credit (<i>Ley 7/1995, de 23 de Marzo, de Crédito al Consumo</i>) –regarding the rights of consumers in credits tied to the purchasing of goods and services– that was introduced by the Law 62/2003, of 30th December (<i>Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y del orden social</i>).</p> <p>Furthermore, the Spanish Confederation of Private Schools –<i>Confederación Española de Centros y Academias Privadas</i>– passed a code of ethics as a consequence of the crisis of the language schools. According to this code, schools had to provide by writing information about the total price of the course, the instalments, the method of payment as well as the consequences of the termination of the contract. In case of financing the courses, schools had to provide the personal details of the credit provider, the conditions of the credit and the annual interest rates. Schools could not impose the financing with a specific credit provider or transfer the credit to third parties without the students’ consent. If the school stopped offering their education services or the contract was terminated by a cause not attributable to the students, mechanisms in order to guarantee the devolution of the amounts paid from the date of the termination of the contract would have to be established.</p> <p><i>In Portugal:</i></p> <p>The interviewees pointed out that probably Portuguese consumers’ confidence could have been affected when purchasing language courses in Spain, but not in other countries. Nevertheless, there is no evidence showing that the demand of Portuguese consumers for language courses in Spain decreased.</p>
<b>Economic consequences of the mass claim/issue for the defendant</b>	
For the defendant	<p>The Company A did not suffer economic consequences because it was already in a situation of bankruptcy when the claims were filed. In fact, the Company A as well as other language schools disappeared.</p> <p>Credit providers had to refund the amounts that had previously charged to consumers as well as to cancel their personal details in Registers of debtors. They did not pay compensation for immaterial damage.</p> <p>Regarding the economic consequences on the credit providers as a consequence of a possible reputation damage, representatives of the banks consider that consumers did not put the blame on the banks for their loss of money but on the English schools. On the contrary, consumer associations consider that consumers’ confidence on banks when asking for personal loans may have been affected.</p>
<b>Organisations interviewed<sup>5</sup></b>	
Name of organisations	<ul style="list-style-type: none"> <li><input type="checkbox"/> 2 Spanish consumer associations</li> <li><input type="checkbox"/> A Portuguese consumer association</li> <li><input type="checkbox"/> A Spanish business association</li> </ul>

<b>Sources</b>	
Sources for further information	<ul style="list-style-type: none"> <li>❑ OCU: <a href="http://www.ocu.org/map/src/36601.htm">http://www.ocu.org/map/src/36601.htm</a></li> <li>❑ ADICAE: <a href="http://www.adicae.net/especiales/ACADEMIAS/index.htm">http://www.adicae.net/especiales/ACADEMIAS/index.htm</a></li> <li>❑ FACUA: <a href="http://www.facua.org/es/facua.php">http://www.facua.org/es/facua.php</a></li> <li>❑ DECO PROTESTE: <a href="http://www.DECO.proteste.pt/">http://www.DECO.proteste.pt/</a></li> </ul>

Note: In Spain, there has been more than a hundred collective actions regarding case B. Actions were brought by individual consumers, groups of consumers or consumers' associations. Concerning the collective actions in defence of rights and interests of consumers brought in Spain, several regional consumers associations filed claims against both the Company A and several credit providers. Nevertheless, the main case B was solved on 15 December 2006 by a decision of the First Instance Court num. 17 of Madrid. In general terms, consumers obtained satisfactory redress in both central and regional decisions. In Portugal, consumers also obtained satisfactory redress in both First and Second Instance Courts' decisions.

(1) The stated articles refer to Spanish law.

(2) Judgments entered in connection with claims filed by associations of consumers and users having the procedural standing referred to in section 11, shall comply with the following rules:

- Where the claim is for monetary compensation, or in order to require the defendant to do, abstain to do, or give a specific or generic thing, the judgment shall determine which consumers and users must benefit from it according to the law. Where such determination is impossible, the judgment shall specify the details, characteristics and requirements necessary to demand payment and, where appropriate, to benefit from the enforcement of the judgment if requested by the claimant association.
- If, as a consequence of the judgment, or resolution, an activity or conduct was declared illicit or contrary to the law, the judgment will determine whether, pursuant to the legislation regarding the protection of consumers and users, the declaration has to have procedural effects not limited to those who have been a party to the proceedings.
- If specific consumers or users have been a party to the proceedings, the judgment will have to solve, specifically, their requests. (...)"

(3) In general terms both Spanish and Portuguese consumers obtained satisfactory redress in this exemplary case.

(4) Both Spanish and Portuguese consumers got satisfactory redress in case B.

(5) All interviews took place in July 2008.

**Case C: Telecommunication sector (France)**

<b>Case C –main characteristics of the alleged mass claim/issue–</b>	
<b>General Background</b>	
Brief description of alleged mass claim/issue	<ul style="list-style-type: none"> <li>❑ In a decision of the Competition Council in 2005,<sup>1</sup> the three mobile telephone operators –the companies X, Y, Z– were condemned to high fines because of anticompetitive agreements: respectively 256, 220 and 58 million Euro.</li> <li>❑ The fine is basically an administrative sanction and does not compensate eventual damages suffered by consumers which emerge from the antitrust agreements. Therefore, a consumer association sued all three companies before the French Commercial Court. 12,521 consumers joined the actions.</li> </ul>
Status of the case	In 2006 three actions were filed by a consumer association against the three mobile telephone operators aforementioned. One proceeding is still pending, the others have been abated.
Sector	Telecommunication
Category of law infringement <sup>2</sup>	<ul style="list-style-type: none"> <li>❑ Art. 81 Competition Law;</li> <li>❑ Art. 420-1 Commercial Code.</li> </ul>
Cross-border aspect	No cross border aspect as such.
Total number of consumers allegedly harmed	<ul style="list-style-type: none"> <li>❑ The total number of alleged consumers harmed is estimated to be between 12,521 and 20,000,000.</li> <li>❑ The consumer association launched together with 12,521 consumers three actions against the three operators (4,827 against the company X, 4,087 against the company Y and 3,607 against the company Z). The total number of alleged affected consumers indicated by the consumer association is 20,000,000 (which represents the total number of clients of the three operators at the time of the alleged prejudice).</li> </ul>
Damage suffered	<p><i>Average alleged damage suffered by individual consumers:</i></p> <ul style="list-style-type: none"> <li>❑ 60 Euro (as evaluated by the consumer association).</li> </ul> <p><i>Total alleged damage suffered by all affected consumers:</i></p> <ul style="list-style-type: none"> <li>❑ The total alleged damage is stated to be between 751,260 and 1.2 billion Euro.</li> </ul>
<b>Redress mechanisms used</b>	
Alternative Dispute Resolution (ADR)	No ADR scheme was used by consumers. The representative of the consumer association stated that there exists no adequate scheme in France for this type of claims whereas the representatives of the business sector pointed out that since 2003 there is a mediation scheme called <i>Le médiateur des communications électroniques</i> . <sup>3</sup>
Individual legal redress	Only few consumers initiated an individual redress procedure. The representative of the consumer association mentioned two ongoing individual procedures whereas the business representatives informed that there are around ten individual actions.
Collective redress	<p>Action for the financial reparation of the consumer collective interest under Article L.421-1 of the Consumer Code.</p> <p>In a decision on 30 November 2005, the Competition Council convicted the three mobile phone operators of anticompetitive agreements (for sharing strategic information and for having agreements to stabilise their market shares between 2000 and 2002). The Competition Council fined the companies X, Y and Z respectively 256, 220 and 58 million Euro. In December 2006, the Appeal Court of Paris rejected the appeal formed by the three mobile telephone operators against the decision of the Competition Council of November 2005. In a decision of 29 June 2007 of the Court of Cassation this decision was partially reversed. The Court of Cassation confirmed the existence of illicit entente between the</p>

	<p>operators and maintained the condemnation of a fine of 442 Million Euro decided by the Competition Council (215 Million Euro for the company X, 185 Million Euro for the company Y and 42 Million Euro for the company Z). However, the Court of Cassation rejected the accusation of sharing of strategic information between 1997 and 2003.<sup>4</sup> The fine is basically an administrative sanction and does not compensate eventual damages suffered by consumers which emerge from the anticompetitive agreements.</p> <p>Therefore, the consumer association decided to sue all three companies at the French Commercial Court, considering that the anticompetitive behaviour created a damage for all clients. It gave consumers the opportunity to join the action and encouraged them to do so through a specific website dedicated to the case. The website also provides a tool to enable consumers to calculate the amount of their damage.</p> <p>One claim against the company Z was dismissed by the Court in December 2007. In April 2008, the consumer organisation appealed this decision, together with the 2,267 consumers who had their claim for compensation rejected. The two other procedures have been abated until the judgment in the case against Z is rendered; which is not expected before beginning 2009.</p>
<b>Degree to which consumers did not obtain satisfactory redress</b>	
<p>Degree to which consumers did not obtain satisfactory redress</p>	<p><i>Individual perspective:</i></p> <p>First of all it is important to stress that the cases are still pending. Therefore the degree to which consumers with justified claims may not obtain satisfactory redress can only be estimated at this stage.</p> <p>The claim of the consumer association against the company Z was dismissed by the Court in December 2007. The reasons are twofold:</p> <ul style="list-style-type: none"> <li>❑ The redress mechanism used by the consumer association (action for the reparation of the consumer collective interest) was not accepted by the Court. The judge considered that the consumer association should have used a joint representative action (<i>action en représentation conjointe</i> –joint representative action for consumers under Article L. 422-1 of the Consumer Code) instead of an action for the financial reparation of the consumer collective interest under Article L.421-1 of the Consumer Code.</li> <li>❑ The claim was not considered admissible by the Court because the action was launched with consumers who were previously encouraged to go to court with the association by a process of mass-emailing, in breach of Article L. 422-1 of the French Consumer Code. In this respect, the consumer association was condemned to reimburse the judicial expenses engaged by the company Z up to 6,000 Euro (Case Z, 6 December 2007).</li> </ul> <p>In April 2008, the consumer organisation appealed against this decision, together with the 2,267 consumers whose claim for compensation was rejected. A judgment is expected in the beginning of 2009.</p> <p>The representatives of the consumer association emphasized during the interview that independently to the Court decision, only 12,521 (out of 20 million) consumers had the possibility to join the cases because of legal requirements. Consumers had difficulties to provide the Court with their contracts or bills in order to prove that they had been a client of either one of the mobile telephone operator during the time of the alleged market-sharing agreement (2000-2002). Those who did not keep their bills had to pay a high price to their respective company when asking for a copy (7 Euro per bill). Eventually less than 1% of the affected consumers joined the action.</p> <p><i>Collective perspective:</i></p> <p>Only 12,521 consumers had the possibility to join the cases. The consumer association estimates a total of 20 million affected consumers. Theoretically, 20 million mobile phone service subscribers who could have asked for compensation, representing a global amount of 1.2 billion Euro of compensation, according to the consumer association.</p>

<b>Obstacles that prevented consumers from obtaining redress</b>	
Alternative Dispute Resolution (ADR)	<p>According to the consumer association, there exists no adequate scheme in France for this type of claims whereas the representatives of the business sector pointed out that since 2003 a mediation scheme, <i>Le médiateur des communications électroniques</i><sup>3</sup>, is available to consumers.</p> <p>The business representatives who were interviewed assume that consumers did not use the mediation scheme because of the important communication campaign (mass media, Internet, e-mailing) organised by the consumer association. Through this campaign consumers were incited to let the consumer association bring their cases to a Commercial Court.</p>
Individual legal redress	<p>The representative of the consumer association mentioned the following obstacles which were considered to have prevented consumers from obtaining redress when using individual redress:</p> <ul style="list-style-type: none"> <li>❑ <u>Procedural rules, especially competence ones</u>: Whereas it was within the competence of the <i>juge de proximité</i> at the beginning of the action (simplified proceedings and reduced costs of litigation), a decree of 30 December 2005 determined that the new competent courts to deal with competition matters are the <i>Tribunal de Commerce</i> or the <i>Tribunal de Grande Instance</i> (compulsory barrister, long and expensive proceedings). Some consumers did not know this reform and took action at a court that was not competent.</li> <li>❑ <u>Calculation of the damage</u>: Whereas the association provide the consumers a tool to calculate their damage, it did not communicate the economic analysis/study on which the calculation was based. Consumers therefore encountered great difficulties to justify and explain their very complex calculations.</li> <li>❑ <u>Cost of litigation</u>: The specialised competent court requires consumers to be represented by a lawyer. Therefore the induced legal costs exceeded the claim. On top of these expenses there is also the risk to be condemned to pay the court fees and the litigation costs of the other party ("losing party pays" principle).</li> <li>❑ <u>Cost involved by the obligation to provide evidence</u>: The documents which testify the subscription have not always been kept by consumers and, to obtain a duplicate, the consumer had to pay 7 Euro per document. At least two documents were needed, so that consumer had to pay in total 14 Euro for the copies. This is relatively high when compared to an alleged amount in dispute of 60 Euro.</li> </ul> <p>The representative of the consumer association also regarded the following obstacles as relevant:</p> <ul style="list-style-type: none"> <li>❑ Monetary costs of litigation;</li> <li>❑ Formal requirements of existing mechanism;</li> <li>❑ Complexity of legal procedures;</li> <li>❑ Lack of awareness/information among consumers.</li> </ul> <p>The business representatives interviewed suppose that the main factor explaining why very few consumers brought individually an action to court is the public campaign launched by the consumer association to join its legal action, free of charge.</p>
Collective redress	<p>As the cases are still pending, one can mainly discuss the fact that only 12,521 consumers joined the actions. The consumer association estimates a total of 20 million of consumers harmed. According to the consumer association, numerous consumers demonstrated their support to the collective action; more than 200,000 people registered on the website dedicated to the case, but did not join the action for the following reasons mentioned by the consumer association:</p> <ul style="list-style-type: none"> <li>❑ <u>For consumers, the burden of proof represented a significant obstacle</u>: many consumers had lost their documents testifying the amount paid during the subscription. These consumers refused to pay again to have a copy.</li> <li>❑ <u>For the association, difficulties related to the management of such a large number of cases</u>: due to the limited financial, human and material resources, the association had to fix a date after which no more individual cases were brought to court, all uncompleted files were thus rejected. Moreover, representing "only" consumers, the</li> </ul>

	<p>consumer association could not offer its support to professionals who also suffered a damage (self employed, craftsman, etc).</p> <ul style="list-style-type: none"> <li>❑ <u>Finally, the association was limited by the law in its communication with consumers:</u> according to French law, “the mandate may not be solicited by means of a public appeal on radio or television, nor by means of posting of information, by tract or personalised letter. Authorisation must be given in writing by each consumer”.<sup>5</sup> The collective actions have therefore a limited impact (12,521 consumers participate in the three actions) whereas the alleged number of affected consumers, as mentioned by the consumer association, is substantially higher (20 million).</li> </ul> <p>According to the consumer association, the following obstacles may have refrained consumers from joining the actions:</p> <ul style="list-style-type: none"> <li>❑ Inexistence of a “real” collective action mechanism;</li> <li>❑ Monetary costs of litigation;</li> <li>❑ Limited resources of consumer association to take actions;</li> <li>❑ Formal requirements of existing mechanism;</li> <li>❑ Complexity of legal procedures;</li> <li>❑ Entities bringing claim have problem informing consumers;</li> <li>❑ Lack of awareness/information among consumers.</li> </ul> <p>From a legal point of view, the consumer association did not initiate a joint representative action (as required later from the Court in December 2007) because of its costs and impracticability.</p> <p>According to the representatives of the business sector, the majority of the clients just decided not to take action against their mobile phone operators because most consumers considered that they did not have prejudice, even though the broad public campaign of the consumer association asserted the contrary.</p>
<b>Economic consequences of obstacles preventing consumers from obtaining satisfactory redress</b>	
Impact on businesses and market	Even if the three operators were fined by the Competition Council, the fact that individual consumers have not obtained redress might have resulted in underdeterrence of fraudulent practices in the sector.
For consumers	<p>In a decision rendered on 30 November 2005,<sup>6</sup> the Competition Council fined the three mobile telephone operators for engaging in two kinds of anticompetitive agreements that distorted market competition:</p> <ul style="list-style-type: none"> <li>❑ Sharing of strategic information; and</li> <li>❑ Market share agreements based on jointly-defined targets (between 2000 and 2002).</li> </ul> <p>In a press release of December 2005,<sup>7</sup> the Competition Council reported some negative economic consequences for consumers, resulting from the sharing of strategic information and from the market share agreements:</p> <ul style="list-style-type: none"> <li>❑ On the consequences of the sharing of strategic information for consumers: <i>“From 2000 onwards, the existing information sharing agreement allowed all three operators to monitor the progress of the “market pacification” policy they had adopted, to the detriment of consumers.”</i></li> <li>❑ On the consequences of market share agreements for consumers: <i>“The Council took into account the fact that since the late 1990s, mobile telephones have come to represent a new expense for households, and now account for significant portion of their budgets. It also considered that by colluding, the operators were more easily able to introduce measures that were against the interests of consumers.”</i></li> <li>❑ In the same press release, the Competition Council also states that: <i>“Certain similarities were [...] observed in the commercial policies implemented by the operators [between 2000 and 2002], particularly in terms of acquisition costs and call rates. It was these similarities that led [the consumer organisation] to</i></li> </ul>

	<p><i>hand down its referral, focusing on the operators' simultaneous decision at the beginning of 2001 to start charging for calls in 30-second increments, after the minimum first minute."</i></p> <p><i>"From 2000 onwards, a period which coincided with the end of the race to acquire market share, the three operators simultaneously adopted strategies aimed at consolidating their existing customer bases. This led, among other things, to a hike in prices and the adoption of measures such as giving priority to contracts with commitments over pay-as-you-go cards, or the introduction of billing per 30-second increments after a minimum first minute."</i></p> <p>In addition, according to a statement of the Government, a price evolution of mobile services of 1 to 2% would represent for the three cumulated years 2000, 2001 and 2002 an amount comprised between 295 and 590 million Euro (see Table 2 below).<sup>8</sup> This order of magnitude, as well as the growing importance of communication expenses in household consumption,<sup>9</sup> might be worth considering when evaluating the impact of the anticompetitive agreement on consumer welfare in France.</p> <p>A French consumer association decided to sue the three companies before the French Commercial Court, considering that the anticompetitive behaviour induced a monetary damage for the clients of the mobile telephone operators, and that the total fine of 534 million Euro,<sup>10</sup> an administrative sanction, did not compensate consumers for their individual economic detriment.</p> <p>The consumer association considers that 20,000,000 consumers have suffered an average monetary damage of 60 Euro<sup>11</sup>, as a result of the anticompetitive agreement. This would produce a total damage amounting to 1,2 billion Euro. However, because of the series of obstacles mentioned above, including the difficulty for some consumers to provide a proof of subscription, a significant number of consumers did not join the action organised by the consumer association. 210,000 consumers registered on the website dedicated to the case, and close to 70,000 consumers evaluated their damages on the basis of the online tool. 22,600 consumers completed a form but half of them, incomplete, were rejected.<sup>12</sup> At the end, only 12,521 consumers actually joined the action initiated by the consumer organisation. Considering this number and estimating an average alleged damage of 60 Euro per consumer, the total claim would amount to 751,260 Euro, which appears to be low when compared to the total alleged damage of 1,2 billion Euro advanced by the consumer organisation. In any case, if the consumer association wins, only 12,521 consumers will receive a compensation, leaving a significant number of consumer uncompensated for their individual economic losses.</p> <p>However, it should be remembered that the cases are still pending. The figures listed above should thus be considered with care and as a possible indication of the eventual damage suffered by consumers.</p>
<p>For competitors and for the relevant sector</p>	<p>At the time of the prejudice, the offer of mobile telephone was limited to three operators: X, Y and Z. There were no other competitors in the market than those three operators which were found to be engaged in anticompetitive agreements.</p> <p>The telecommunications sector presents some specific high barriers to entry. More specifically, entry in the mobile telephone market is subject to licence attribution by the State. These statutory barriers might have limited the entry of new firms into the French mobile telephone market. However, according to the Competition Council, the anticompetitive practices have discouraged the entry of new firms in the French mobile telephone market.</p> <p>The total fine of 534 million Euro fixed by the Competition Council (or the total fine of 442 Million Euro, as revised by the decision of June 2007 of the Court of Cassation) seems to be low compared to the total alleged damage of 1,2 billion Euro, as estimated by the consumer organisation. Assuming a total alleged damage of 1,2 billion Euro, and a null or limited individual compensation for consumers, the obstacles preventing consumers from obtaining redress, may result in underdeterrence of potential fraudulent practices in the sector.</p>
<p>For the functioning of the market</p>	<p>Even if the case has no cross-border dimension in itself (i.e if consumers residing in other Member States are not affected), it may have induced some impacts on the functioning of the internal market. Similarly to the argumentation of the previous sub-section, one may advance that due to the presence of a set of defined obstacles (see list of obstacles above-mentioned) refraining most consumers to seek redress, fraudulent firms may be insufficiently deterred</p>

	from engaging in fraudulent practices (i.e. anticompetitive behaviour). And this may have resulted in distortions of competition in the internal market.
<b>Economic consequences of the mass claim/issue for the defendant</b>	
For the defendant	<p>The economic consequences of the alleged mass claim/issue seem to be limited for the three operators. According to business stakeholders, the fine decided by the Competition Council did not imply any changes in market shares. According to the consumer organisation, the use of mobile telephones is so popular and the market so concentrated that the impact is weak.</p> <p>However, business stakeholders were of the opinion that the action brought by the consumer association, and the associated media coverage, did induce negative publicity, mainly because of the negative impact on corporate image, with harmful consequences on the relationships with clients and institutional actors. As an example of the negative image, business stakeholders considered that the terminology used by the consumer association to refer to the case is biased and has a negative connotation in French.</p>
<b>Organisations interviewed<sup>15</sup></b>	
Name of organisations	<input type="checkbox"/> 2 business associations (including one association of operators) <input type="checkbox"/> A consumer association
<b>Sources</b>	
Sources for further information	<input type="checkbox"/> The website of the Competition Council for the decisions: <a href="http://www.conseil-concurrence.fr/user/avis.php?avis=05-D-65">www.conseil-concurrence.fr/user/avis.php?avis=05-D-65</a> <input type="checkbox"/> The website of the consumer organisation UFC-Que Choisir dedicated to the case.

(1) Decision n° 05-D-65 of 30 November 2005 of the Competition Council regarding practices observed in the mobile telephone sector.

(2) The first stated article refers to European Community law, while the second refers to French law.

(3) <http://www.mediateur-telecom.fr/>

(4) Source: Communiqué regarding ruling n° 1020 of 29 June 2007, Court of Cassation, available at:

[http://www.courdecassation.fr/jurisprudence\\_2/chambre\\_commerciale\\_financiere\\_economique\\_574/arrets\\_575/arret\\_no\\_10616.html](http://www.courdecassation.fr/jurisprudence_2/chambre_commerciale_financiere_economique_574/arrets_575/arret_no_10616.html); and L'Expansion, "Cartel des mobiles: les opérateurs définitivement condamnés" (29/06/07), available at: [http://www.lexpansion.com/economie/actualite-high-tech/cartel-des-mobile-les-operateurs-definitivement-condamnes\\_121828.html](http://www.lexpansion.com/economie/actualite-high-tech/cartel-des-mobile-les-operateurs-definitivement-condamnes_121828.html)

(5) Article L422-1 of the French Consumer Code.

(6) <http://www.conseil-concurrence.fr/user/avis.php?avis=05-D-65>

(7) [http://www.conseil-concurrence.fr/user/standard.php?id\\_rub=160&id\\_article=502](http://www.conseil-concurrence.fr/user/standard.php?id_rub=160&id_article=502)

(8) Decision of the Competition Council of 30 November 2005 regarding practices observed in the mobile telephony sector, section 338, page 88.

Table 2: Consumption of mobile telephone services

	31/12/2000	31/12/2001	31/12/2002
Millions of minutes	35437	44419	51844
Evolution in %	+ 72 %	+ 25 %	+ 17 %
Millions of Euro (1)	7 761	10 000	11 768
Evolution in %	+ 44 %	+ 29 %	+ 18 %
(1) * 1% (in millions of Euro)	77,61	100	117,68
(1) * 2% (in millions of Euro)	155,22	200	235,36

Source : Observatoire des mobiles (ARCEP), in decision of the Competition Council of 30 November 2005, page 4. Additional calculations by Civic Consulting.

(9) Communication expenses represented 2,4% of the household consumption in 2000, and 2,7% in 2003 (Source: Decision of the Competition Council of 30 November 2005 regarding practices observed in the mobile telephone sector, section 338, page 88).

(10) The Competition Council fined the companies X, Y, and Z respectively 256 million Euro, 220 million Euro and 58 million Euro. This decision was however revised by the Court of Appeal in June 2007.

(11) The average claim of 60 Euro was calculated on the basis of the information given by consumers when using the online tool for the calculation of their individual damage on the website of the consumer association dedicated to the case.

(12) Source: *Les Echos*, 13/10/06, page 19.

(13) Decision of the Competition Council of 30 November 2005 regarding practices observed in the mobile telephony sector, section 338, page 85.

(14) Communication n° 2004/C 101/07 of the Commission of 27 April 2004 on the guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:101:0081:0096:EN:PDF>).

(15) All interviews took place in July 2008.

**Case D: Insurance sector (Ireland)**

<b>Case D –main characteristics of the mass claim/issue–</b>	
<b>General Background</b>	
Brief description of mass claim/issue	The insurance company Q, without any notification in the policy documents, charged its policy holders 25€ when they changed their policy, for example changing the insured car. One consumer found that unjustified, filed action before the Ombudsman and sought compensation. The Ombudsman ruled that the insurance company not only had to refund the single consumer who had started the action but also every single insuree who had been charged that fee during the last six years. The company Q appealed this verdict at the High Court. The judge decided that the power of the Ombudsman was confined to the single consumer who had complained. Thus, the Ombudsman was not entitled to order the company to compensate every aggrieved consumer. This meant that every affected consumer had to bring an individual claim for damages. Finally, the Ombudsman accepted the verdict. However he decided to refer this case to the Ministry of Finance for possible legislative measures.
Status of the case	In 2007, one policy holder of the company Q has lodged a complaint to the Financial Services Ombudsman of Ireland for being unfairly charged an administrative fee by the aforementioned company. The existence of a sole complainant does not however dismiss the possibility that there might exist other consumers with justified claims who have been charged the underlying unfair administration fee over the past six years.
Sector	Financial Services (Insurance)
Category of law infringement	Breach of insurance policy provisions of the company Q.
Cross-border aspect	No cross-border implication.
Total number of consumers harmed	<ul style="list-style-type: none"> <li><input type="checkbox"/> No precise data available. The Insurance company has thousands of customers with car insurance policies, but there is no information on how many of them have changed their policies, hence have been charged with an administrative fee.</li> <li><input type="checkbox"/> Only one affected consumer has made a complaint so far.</li> </ul>
Damage suffered	<p><i>Average alleged damage suffered by individual consumers:</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 25 Euro<sup>1</sup></li> </ul> <p><i>Total alleged damage suffered by all affected consumers:</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Unknown, since there is no precise data about the number of aggrieved consumers</li> </ul>
<b>Redress mechanisms used</b>	
Alternative Dispute Resolution (ADR)	<p>Gathered data on this case reveals that only one affected consumer has used ADR scheme to obtain redress for damage caused by the company Q. He made a complaint before the Financial Services Ombudsman of Ireland. The Ombudsman found the complaint justified and ruled that the insurance company had to refund unjustified collected fee as well as to pay compensation to the affected consumer.</p> <p>Since there is no information whether this case has had a cross-border aspect, there is no data about the ADR schemes used by consumers in other Member States with regard to the same issue.</p>
Individual legal redress	<p>The research work on the case has not revealed data on individual court actions brought before Irish courts by other consumers for seeking damages from the company Q on the ground of the same infringement.</p> <p>There is no information about individual redress procedures already finished or still pending in other Member States on the same ground.</p>

Collective redress	According to data collected in the course of the case study, it appears that in Ireland there is no relevant collective redress mechanism for damages in the insurance sector which may be applicable to cases such as the underlying case.
<b>Degree to which consumers did not obtain satisfactory redress</b>	
Degree to which consumers did not obtain satisfactory redress	<p><i>Individual perspective:</i></p> <p>When summarising the opinions of the interview partners, a key issue about this case arises. In its judgment, the High Court ruled upon the power of the Ombudsman but not on the substance of the case. It appears to be still disputable whether the fees collected by the company from those consumers who have not made complaints are legal or illegal, hence whether the claims of these consumers would be considered justified or not.</p> <p>Strictly speaking, the consumer who has made a complaint before the Financial Services Ombudsman did receive a full compensation of his individual damage –a refund of the paid fee 25 Euro and compensation for non-economic damage in the amount of 25 Euro. According to the Financial Services Ombudsman, if other aggrieved consumers launched complaint to him, they would be compensated too.</p> <p><i>Collective perspective:</i></p> <p>One can only speculate that besides the sole consumer who lodged a complaint, there might most probably be other affected consumers who did not complain, hence who did not receive satisfactory compensation. Therefore, it is very likely that it is not all consumers with justified claims who have received satisfactory compensation.</p>
<b>Obstacles that prevented consumers from obtaining satisfactory redress<sup>3</sup></b>	
Main reasons why consumers did not obtain satisfactory redress	Only one affected consumer made a complaint and he was compensated. Other aggrieved consumers abstained from seeking redress. The judge decided that the power of the Ombudsman was confined to the single consumer who had complained. The Ombudsman does not have power, without relevant complaints from the consumers, to rule that the insurance company has to refund every single policy-holder who has been charged the same fee during the last six years.
Alternative Dispute Resolution (ADR)	<p>One of the interview partners considers that if the Financial Services Ombudsman had a power to rule that the insurance company has to refund inadmissibly collected fees to all affected consumers that would facilitate to some extent consumers with a low amount of damage in obtaining redress. Most likely, due to the very low amount of damage, the majority of affected consumers in this case had no motivation to undertake any legal actions for seeking compensation.</p> <p>Therefore one can conclude that in this particular case the lack of competence of the Ombudsman to make a decision based on a class of affected consumers may be reckoned as a relevant obstacle faced by the consumers in obtaining redress by means of the ADR scheme. In other words, the main obstacle for obtaining redress through ADR scheme appears to be the lack of relevant redress mechanism for large-scale low value claims in Irish insurance sector.</p>
Individual legal redress	<p>The interview partners almost unanimously pointed the costs of litigation as a main factor which made consumers in this particular case abstaining from seeking redress by means of individual judicial procedures. Moreover, Irish court procedures are considered by the interview partners not only very costly, but also very long and time-consuming. That is why in cases like the present case, with a very low amount of suffered damage, individual redress through court procedure is not attractive for affected consumers.</p> <p>Therefore, the monetary costs of litigations, length of court proceedings and lack of motivation due to a very low amount of damage can be enumerated as relevant obstacles that have prevented Irish consumers from using individual redress for damages.</p>
Collective redress	<p>In Ireland there is no collective redress mechanism for damages that can be applicable to large-scale low-value claims in the insurance sector.</p> <p>Since the mass nature of the issue in this case has been questioned by some of the interview partners, they do not consider non-existence of collective redress mechanism for</p>

	<p>damages to be a relevant obstacle in this particular case.</p> <p>However, they suppose that this means of redress would be more efficient than individual court proceeding in cases when multiple consumers have suffered damage with a very low amount. Hence, speaking in broad terms, its non-existence to some extent can be considered as an obstacle for Irish consumer to obtain redress.</p>
<b>Economic consequences of obstacles preventing consumers from obtaining satisfactory redress</b>	
Impact on businesses and market	According to the opinion of some interview partners, the case does not have impact on business and market.
For consumers	The prevailing opinion is that there are no economic consequences for consumers. The only consumer who made a complained received full refund and compensation for non-economic damage. It is very likely that if other consumers, having considered themselves affected by the same infringement, would have launched a complaint to the Ombudsman, they would have been compensated too.
For competitors and for the relevant sector	<p>The prevailing opinion is that the obstacles that are supposed to have prevented consumers from obtaining redress in this case have no economic consequences for the competitors of the insurance company and for the relevant sector.</p> <p>As a whole, the insurance sector in Ireland is very heavily regulated and if a particular practice is found to be unfair to consumers, when tested before the Ombudsman and/or before courts, it is normally stopped by either administrative intervention or companies in order to preserve their reputation. According to some interview partners, whether or not affected consumers have been compensated makes no difference from a legal or regulatory point of view for the sector.</p> <p>It seems that the doctrine of the Irish insurance sector is to prevent and stop unreasonable and unfair practices from happening in the future, but not to undertake retrospective actions against companies for practices that were not deemed to be unreasonable at the time of their performance.</p> <p>Furthermore, this case is considered by interviewees to be quite narrow. According to the Ombudsman, through this case he has tested the legislation in force. Thus, after the High Court judgment he has asked the Government to consider whether it is necessary to change the legislation and to provide a collective scheme for consumer redress in similar cases.</p>
For the functioning of the market	There is no data showing that the obstacles that prevented consumers from obtaining redress in this case have had an impact on the functioning of the market.
<b>Economic consequences of the mass claim/issue for the defendant</b>	
For the defendant	The most relevant and reliable source of information on the economic consequences of the case for the defendant is the company itself. Referring to rules of confidentiality, the contacted representatives of the company refused to provide data on that matter.
<b>Organisations interviewed and contacted<sup>2</sup></b>	
Name of organisations	<p><i>Organisations interviewed:</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Financial Services Ombudsman of Ireland</li> <li><input type="checkbox"/> A business association</li> </ul> <p><i>Organisations contacted:</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> A consumer association</li> <li><input type="checkbox"/> The company Q<sup>3</sup></li> <li><input type="checkbox"/> The company A<sup>4</sup></li> </ul>

Sources	
Sources for further information	<ul style="list-style-type: none"> <li>❑ <a href="http://www.finfacts.com/irelandbusinessnews/publish/article_10010094.shtml">http://www.finfacts.com/irelandbusinessnews/publish/article_10010094.shtml</a></li> <li>❑ <a href="http://archives.tcm.ie/irishexaminer/2007/10/05/story44406.asp">http://archives.tcm.ie/irishexaminer/2007/10/05/story44406.asp</a></li> <li>❑ <a href="http://www.irishtimes.com/newspaper/finance/2007/1005/1191439478761.html">http://www.irishtimes.com/newspaper/finance/2007/1005/1191439478761.html</a></li> <li>❑ <a href="http://www.rte.ie/business/2007/0521/ombudsman.html">http://www.rte.ie/business/2007/0521/ombudsman.html</a></li> <li>❑ <a href="http://www.independent.ie/business/irish/not-an-average-joe-1378570.html">http://www.independent.ie/business/irish/not-an-average-joe-1378570.html</a></li> <li>❑ <a href="http://www.irishtimes.com/newspaper/finance/2007/1017/1192565608678.html">http://www.irishtimes.com/newspaper/finance/2007/1017/1192565608678.html</a></li> </ul>

Note:

It seems that the approach of the financial services regulatory system in Ireland put larger amounts of damage at stake, particularly the investments, regarding which there are provisions for compensation to be paid and there are sanctions and punishments that can be levied against the companies.

When the amount of damage is very small, like inadmissible insurance administrative charges, then the regulatory system has not really made any provision for compensation of affected consumers. It is likely that the approach of the Irish financial system has not concerned itself with these small types of claims.

However, the industry itself is considered as very heavily regulated and the range of sanctions against companies for behaviour that is inappropriate is deemed to be very wide. In Ireland there is a principle-based regulatory system which allows a lot of discretion on the part of the Financial Services Regulator. Unlike most retail type businesses, insurance companies in Ireland are subject to a number of procedures by means of which they can be pressurized by regulators or even punished by regulators for activities which are not deemed to be in consumers' interests.

(1) Amount of money compensated to the sole consumer who lodged a complaint to the Financial Services Ombudsman.

(2) All interviews took place in July 2008.

(3) Referring to rules of confidentiality, all contacted representatives of the defendant company –the company Q– refused to provide any information or comments on the case with the Financial Services Ombudsman. The only official comment provided by the company states:

*"We welcome the decision of the court that the Financial Services Ombudsman was not in a position to make the decision he made in relation to change of vehicle charges. We have always fully disclosed to our customers the charges, if any, that they have to pay for changes to their policy and there was never any question of hidden charges."*

(4) The company A –the contacted competitor of the company Q– refused to provide any information or comment of the case.