

Public Consultation - Call for evidence on the operation of collective redress arrangements in the Member States of the European Union

Fields marked with * are mandatory.

1. Introduction

The European Commission is assessing how the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law is being implemented in practice.

The Recommendation states that all Member States' legal orders should have collective redress mechanisms in areas where EU law grants rights to natural and legal persons. Examples of such areas are consumer protection, competition, environment, passengers rights, financial services, employment, personal data protection, equality and non-discrimination and fundamental rights. The mechanisms should be fair, equitable, timely and not prohibitively expensive. In the Recommendation the Commission put forward standards aimed at easing access to justice in 'mass harm' situations, in particular to obtain compensation for the damage caused by an infringement of EU law ('compensatory collective redress') or to stop infringements of EU law ('injunctive collective redress'). At the same time the Recommendation sought to provide appropriate procedural safeguards to avoid abusive litigation. The Member States were asked to implement the principles in the Recommendation by 26 July 2015.

The Commission undertook to assess practical experience with implementing the Recommendation by 26 July 2017. The assessment should provide an overview of collective redress mechanisms across the EU and evaluate the Recommendation's impact on access to justice, on the right to obtain compensation and on the need to prevent abusive litigation.

This call for evidence will feed into the assessment. This call for evidence focuses therefore exclusively on practical experience with specific collective redress cases and with mass harm situations where collective redress was not available or not used.

2. Scope and structure of the consultation

According to the Recommendation:

- (a) 'collective redress' means (i) a legal mechanism that ensures a possibility to claim cessation of illegal behaviour collectively by two or more natural or legal persons or by an entity entitled to bring a

representative action (injunctive collective redress); (ii) a legal mechanism that ensures a possibility to claim compensation collectively by two or more natural or legal persons claiming to have been harmed in a mass harm situation or by an entity entitled to bring a representative action (compensatory collective redress);

- (b) 'mass harm situation' means a situation where two or more natural or legal persons claim to have suffered harm causing damage resulting from the same illegal activity of one or more natural or legal persons;
- (c) 'action for damages' means an action by which a claim for damages is brought before a national court;
- (d) 'representative action' means an action which is brought by a representative entity, an ad-hoc certified entity or a public authority on behalf and in the name of two or more natural or legal persons who claim to be exposed to the risk of suffering harm or to have been harmed in a mass harm situation, whereas those persons are not parties to the proceedings;
- (e) 'collective follow-on action' means a collective redress action that is brought after a public authority has adopted a final decision finding that there has been a violation of EU law.

In replying to this questionnaire, please use the above-mentioned terms as defined by the Recommendation to the largest appropriate extent. If you feel it necessary to use different terms and definitions, please provide relevant explanations so that the data collected can be properly compared.

Please note that the meaning of the terms 'claimant', 'defendant' and 'action' as used in this questionnaire is not limited to judicial or other legal proceedings; it also covers out-of-court dispute resolution schemes and settlement negotiations between parties. The term 'claimant' covers person(s) affected/harmed by an infringement of law or entity representing them in the action. The questionnaire has three separate parts: the first concerns actions actually taken; the second and third concern situations in which action might have proven appropriate but has not been taken. Please complete the part appropriate to your case.

The answers you give should apply to up to three cases or situations only. If there are more cases or situations you would like to let us know about, please complete the questionnaire again.

3. Information about the respondent (including transparency and confidentiality questions)

Your contribution may be published on the Commission's website and will include your identity if you have agreed to this.

Please note that regardless of the preference you have indicated, your contribution may be subject to a request for access to documents under Regulation (EC) No 1049/2001 on public access to European Parliament, Council and Commission documents. In such cases the request will be assessed against the conditions set out in the Regulation and in accordance with the applicable data protection rules.

* Please indicate your preference below:



My contribution may be published under the name indicated; I declare that none of it is subject to copyright restrictions that prevent publication.

- ☐ My contribution may be published but should be kept anonymous; I declare that none of it is subject to copyright restrictions that prevent publication

* Please indicate your name and email address

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* You are:

- ☐ Private individual
- ☐ Company
- ☐ Consumer association
- ☐ Other civil society association/Non-governmental organisation
- ☒ Business association
- ☐ Judge
- ☐ National Ministry
- ☐ Enforcement authority (sector-specific or cross sectoral)
- ☐ Other public body and institution
- ☐ Other

* Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?

- ☒ Yes
- ☐ No

* Please give your organisation's registration number in the Transparency Register

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* What is your country of residence? (In the case of legal entities, please select the primary place of business of the entity you represent.)

Belgium

Part 1: Your experience on the implementation of collective redress mechanisms in EU Member States

Question 1: Are you aware of an action that has been brought or settled in an EU Member State since the adoption of the Recommendation?

- ☐ Yes
- ☐ No

Question 2: Are/were you or the entity that you represent participating in the action?

- ☐ Yes
- ☐ No

Please provide additional information if needed

Question 3: Please name the parties to the action:

Members of the group of claimants

An entity representing the claimants

Defendant(s)

.....

Question 4: Area of law concerned:

- ☐ Consumer protection
- ☐ Competition
- ☐ Environment
- ☐

- Passenger rights
- ☐ Financial services
- ☐ Employment
- ☐ Personal data protection
- ☐ Equality and non-discrimination
- ☐ Fundamental rights (please specify)
- ☐ Other (please specify)

Question 5: National or cross-border nature

The action was taken in:

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☐ United Kingdom
- ☐ Other

Please specify if any of the below information applies:

- ☐ All claimants were from the same Member State
- ☐ The claimants were from two or more Member States
- ☐ The defendant was from the same Member State as all the claimants
- ☐ The defendant was from another Member State than all or some of the claimants

- ☐ The defendant was from another Member State than the entity representing the claimants
- ☐ The action was carried out in the Member State in which the claimants were domiciled
- ☐ The action was carried out in the Member State in which the defendant was domiciled
- ☐ The action was carried out by the representative entity from one Member State in another Member State

Please describe any other cross-border elements of the action

Question 6: How was the action funded?

- ☐ Claimants' own funds
- ☐ Funds of the entity representing the claimants
- ☐ Lawyers working for contingency/success fee
- ☐ Legal expenses insurance
- ☐ Third-party financing (loan)
- ☐ Legal aid scheme
- ☐ Public entity budget (e.g. Ombudsman)
- ☐ Other public budget source(s) (please specify)
- ☐ Other (please specify)

Question 7: How much did the action cost? (if unknown, please provide an estimate)

Please provide a cost breakdown, stating the amount and currency each time (if unknown, please provide an estimate):

	Cost + Currency
Cost of preparing the case	
Court/administrative fee	
Lawyer's fees	
Reimbursement of costs of other party in case of loss	
Reimbursement of lawyers' fees of other party in case of loss	
Other costs relating to the action	
Other financial risks relating to the action	

Please provide an explanation of the above and/or any other costs incurred

Question 8: How was the information on the action disseminated to the claimants?

Who disseminated the information?

- ☐ Claimants
- ☐ Court
- ☐ Public authority
- ☐ Entity representing people affected
- ☐ Law firm
- ☐ No information disseminated
- ☐ Other (please specify)

Where was information disseminated?

- ☐ Website
- ☐ Press
- ☐ TV/radio
- ☐ Direct mailing
- ☐ Other (please specify)

Question 9: Duration of the action (if possible please provide specific dates)

If applicable, please specify the length of action in each instance

	Date	Remarks
When did the event giving rise to the action take place?		
When was the action brought?		
When was the final decision issued?		

Question 10: Were interim measures used in the action?

- ☐ Yes
- ☐ No

Question 11: Was the action preceded by a judicial or administrative decision establishing an infringement of law, e.g. by a decision of a court or of a consumer protection, competition or environmental enforcement authority (follow-on action)?

- ☐ Yes
- ☐ No

Question 12: What was the aim of the action?

- ☐ Putting an end to an illegal practice (injunctive collective redress)
- ☐ Seeking compensation for the people affected (compensatory collective redress)

Question 13: Please describe the facts that gave rise to the action

Please specify:

The number of people affected (if unknown, please provide an estimate)

Were these people identifiable?

- ☐ Yes
- ☐ No

Did damage occur?

- ☐ Yes
- ☐ No

Question 14: Type of action undertaken

- ☐ Direct settlement negotiation (no third-party involvement)
- ☐ Out-of-court dispute resolution scheme
- ☐ Administrative proceedings
- ☐ Court proceedings

Question 15: Outcome of the action:

In the case of compensatory collective redress:

- ☐ No compensation awarded
- ☐ Partial compensation awarded but not received
- ☐ Partial compensation awarded and received
- ☐ Full compensation awarded but not received
- ☐ Full compensation awarded and received
- ☐ Compensation was awarded and received, but it was not distributed to all or some of the people affected
- ☐ Case still pending

In the case of injunctive collective redress:

- ☐ Illegal practice was not established
- ☐ Illegal practice was established but not stopped
- ☐ Illegal practice was established and stopped
- ☐ Illegal practice was established, stopped and further prohibited
- ☐ Case still pending
- ☐ Other

Please specify the exact effect of the action on the people affected and/or the other people not involved in the action. In particular, did the action prevent any harm? If so, what is the estimated amount of the harm prevented?

Question 16: Please provide your opinion on the effectiveness of the action:

- ☐ Very good
- ☐ Good
- ☐ Neutral
- ☐ Poor
- ☐ Very poor

If you wish to add any further relevant information, including aspects of the action that, in your view, have been particularly effective, please do so here

Question 17: Please provide your opinion on the efficiency of the action

- ☐ Very good
- ☐ Good
- ☐ Poor
- ☐ Very poor

If you wish to add any further relevant information, including aspects of the action that, in your view, have been particularly efficient, please do so here:

Question 18: Please provide information on any major problems you faced in the course of the action. Please focus in particular on those that created difficulties in gaining access to justice, affected the parties' procedural rights or allowed for frivolous litigation

Where such problems existed, please specify whether they mainly related to:

- ☐ Rules on legal standing
- ☐ Rules on joining the action
- ☐ Rules on admissibility of the action
- ☐ Rules on evidence
- ☐ Excessive costs
- ☐ Complexity of procedure
- ☐ Length of procedure
- ☐ Difficulties in identifying the people affected
- ☐ Difficulties in distributing the received compensation

Please give details of the above or other problems

Do you want to report another case?

- ☐ Yes
☐ No

Part II - Your experience on missed opportunities for injunctive collective redress

Question 19: Are you aware of any illegal practice that affected large numbers of people but where no collective injunction action was taken to stop it?

- ☐ Yes
☐ No

Question 20: If you answered 'yes' to the previous question, please name or describe

The alleged author of the illegal practice

The people affected by the illegal practice

Question 21: Area of law concerned:

- ☐ Consumer protection
☐ Competition
☐ Environmental
☐ Passenger rights
☐ Financial services
☐ Employment
☐ Personal data protection
☐ Equality and non-discrimination
☐ Fundamental rights (please specify)
☐ Other (please specify)

Question 22: National or cross-border nature

The illegal practice took place in:

- ☐ Austria
☐ Belgium
☐ Bulgaria

- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☐ United Kingdom
- ☐ Other

Please specify

- ☐ All people affected were from the same Member State
- ☐ The people affected were from two or more Member States
- ☐ The alleged author of the illegal practice/damage was from the same Member State as all the people affected
- ☐ The alleged author of the illegal practice/damage was from another Member State than all or some of the people affected

Please describe any cross-border elements of the case

Question 23: Please describe the circumstances of the case, if possible specifying the following:

Number of people affected (if unknown, please provide an estimate)

Were these people identifiable?

☐

- Yes
☐ No

Did damage occur?

- ☐ Yes
☐ No

Circumstances of the case

Question 24: What were the reasons for not bringing an action?

- ☐ No availability of injunctive collective redress
☐ Difficulties in identifying the people affected
☐ Difficult access to evidence
☐ Excessive costs
☐ Restrictive procedural rules on legal standing
☐ Restrictive procedural rules on admissibility of the action
☐ The action would have had to be taken in another Member State
☐ Possible benefits stemming from the action would have not outweighed the time and costs involved in taking it
☐ Overall complexity of the procedure
☐ Overall length of the procedure
☐ Compensatory collective redress was taken instead
☐ Individual actions were taken instead

Please give details of the above or other problems

* Do you want to report another case

- ☐ Yes
☒ No

Part III - Your experience on missed opportunities for compensatory collective redress

Question 25: Are you aware of any mass harm situation that affected large numbers of people but against which no compensatory collective redress action was taken?

- ☐ Yes
- ☐ No

Question 26: If you answered 'yes' to the previous question, please describe or name:
The alleged author of the mass harm

The people harmed

Question 27: Area of law concerned:

- ☐ Consumer protection
- ☐ Competition
- ☐ Environment
- ☐ Passenger rights
- ☐ Financial services
- ☐ Employment
- ☐ Personal data protection
- ☐ Equality and non-discrimination
- ☐ Fundamental rights (please specify)
- ☐ Other (please specify)

Question 28: National or cross-border nature

The mass harm situation happened in:

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐

- Latvia
- ☐ Lithuania
 - ☐ Luxembourg
 - ☐ Malta
 - ☐ Netherlands
 - ☐ Poland
 - ☐ Portugal
 - ☐ Romania
 - ☐ Slovak Republic
 - ☐ Slovenia
 - ☐ Spain
 - ☐ Sweden
 - ☐ United Kingdom
 - ☐ Other

Please specify

- ☐ All people harmed were from the same Member State
- ☐ The people harmed were from two or more Member States
- ☐ The alleged author of mass harm was from the same Member State as people harmed
- ☐ The alleged author of mass harm was from another Member State than all or some of the people harmed

Please describe in detail the above or other cross-border elements of the case

Question 29: Please describe the circumstances of the case

Please specify:

The number of people affected (if unknown, please provide an estimate)

Were these people identifiable?

- ☐ Yes
- ☐ No

Did damage occur?

- ☐ Yes
- ☐ No

Circumstances of the case

Question 30: What were the reasons for not bringing an action?

- ☐ No availability of compensatory collective redress
- ☐ Difficulties in identifying the people harmed
- ☐ Lack of interest of the people harmed
- ☐ Difficulties in joining the action
- ☐ Difficult access to evidence
- ☐ Excessive costs
- ☐ Restrictive rules on legal standing
- ☐ Restrictive procedural rules on admissibility of the action
- ☐ The action would have had to be taken in another Member State
- ☐ Possible benefits stemming from the action would have not outweighed the time and costs involved in taking it
- ☐ Overall complexity of the procedure
- ☐ Overall length of the procedure
- ☐ Injunctive collective redress was taken instead
- ☐ Individual actions were taken instead
- ☐ The distribution of compensation would have been excessively difficult or costly
- ☐ Other (please specify)

* Do you want to report another case

- ☐ Yes
- ☒ No

Part IV - Feedback on this public consultation

* Question 31: Did you find this questionnaire clear enough?

- ☐ Yes
- ☒ No

If you answered no, please state what could have been improved:

- ☐ Some questions could have been better drafted
- ☐ The entire questionnaire could have been better drafted
- ☒ Other

Please specify

Insurance Europe welcomes the opportunity to comment on the Call for Evidence. Nevertheless, it is regrettable that the EC has chosen to publish a

consultation in the form of a call for evidence on actual cases, at a time when there is a genuine need to assess the landscape of collective redress mechanisms in the EU and the effectiveness of its 2013 Recommendations. The format chosen makes it very difficult for stakeholders to respond constructively to the process that feeds into the review that the EC is currently undertaking.

Insurance Europe would welcome the opportunity to present its thoughts in more detail within the review process the EC is currently undertaking. For the time being, Insurance Europe will limit its comments to the following main points:

Insurance Europe believes that too little time has passed since the Commission's 2013 Recommendations to properly assess a possible need for further regulation. Insurance Europe notes that in some member states (such as Belgium, Denmark and France), instruments for collective action have recently been enacted and in others, such as the Netherlands, they are being further developed. There is an ongoing discussion in Germany about the introduction of a model declaratory action (Musterfeststellungsklage). The member states are introducing different models of collective action in line with their respective legal traditions and systems. Against this background, more time is necessary to see how these mechanisms function in the different legal traditions and systems and how effective the safeguards against possible abuse are.

Safeguards such as those introduced in the EC's 2013 Recommendations go in the right direction if consistently and fully implemented. While the issue of third party funding has already been addressed in the Recommendations, Insurance Europe believes that more safeguards should be introduced in that respect, in instances where the funder has no relation to the claim, claimant or defendant. More specifically, no member state limits third party funders from seeking a percentage of awards, although many member states prevent lawyers representing the claimants from doing so.

Insurance Europe also advocates the use of alternative dispute resolution ("ADR") mechanisms. These tend to be more speedy, efficient and effective routes to conflict resolution.

* Question 32: What is your opinion about the layout of the questionnaire?

- ☐ Easy to understand and user friendly
- ☒ Could be improved

Please specify

THANK YOU FOR YOUR INPUT

Contact

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