

Myths and realities on collective redress

What is collective redress?

It's when consumers who have suffered the same loss or harm caused by the same trader come together and seek redress in court as one. Also known as a group action or class action, a case of collective redress can be represented by a body like a consumer organisation which seeks compensation for the affected consumers in situations where they would otherwise be left empty-handed.

Why is collective redress important for consumers?

It would create a fairer and more balanced relationship between consumers and the traders who do not respect the rules.

- Because court procedures can be very long, costly and intimidating, most consumers don't seek redress individually, even if they know their rights have been infringed. In standing together, consumers feel stronger.
- Collective redress would allow consumers to get compensation in diverse cases such as defective goods or bad financial advice.
- A court order to stop a particular practice by a trader (an injunction) or dispute resolution services, which is when the two parties try to find an agreement with the help of a third party, are important but insufficient answers when thousands or even millions of consumers face a collective loss.

The Commission found that **79%** of EU consumers would be more willing to defend their rights if they could join up with other consumers who suffered the same harm.

Flash Eurobarometer, EU Commission, 2011: http://ec.europa.eu/commfrontoffice/publicopinion/flash/fl_299_sum_en.pdf

GREEN: The systems are working well.

ORANGE: A procedure exists but it has either serious flaws or the system is too recent to assess.

RED: There is either no procedure or a procedure which cannot be used efficiently by consumers.

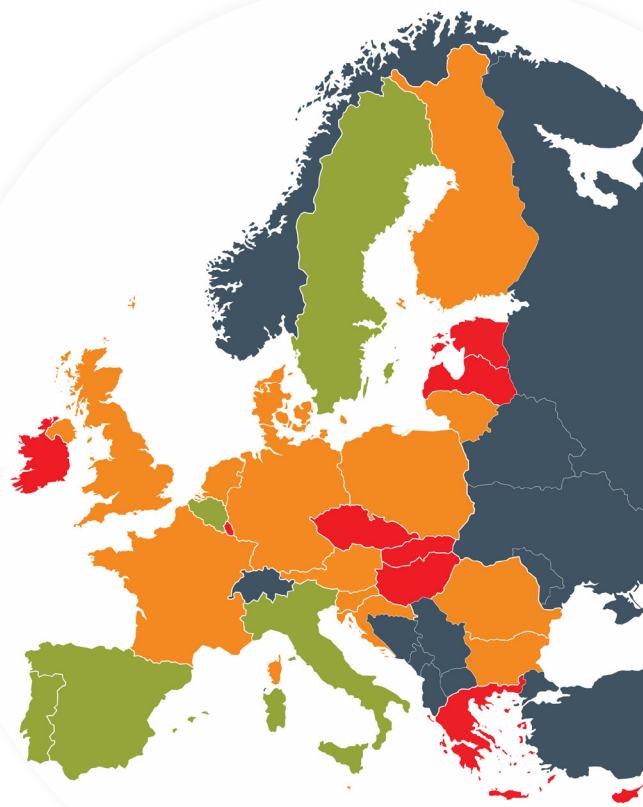
Where does collective redress exist in the EU?

Of the 28 EU countries, only 5 of them have a functioning, efficient collective redress system (Belgium, Italy, Portugal, Spain and Sweden).

In 14 other countries, there is a collective redress system that contains either serious flaws or gaps or has been introduced too recently to be evaluated.

It is still impossible to launch a collective redress procedure in 9 EU countries.¹

¹ 'Where Does Collective Redress For Individual Damages Exist?' BEUC position paper, October 2017, http://www.beuc.eu/publications/beuc-x-2017-117_collective_redress_country_survey.pdf (accessed on 30 May 2018).



Why is this so different from the US-style class action system?

The law proposed by the European Commission has little to do with US class action procedures.

- No law firm could initiate a collective redress case in the EU. Unlike in the US, only consumer and non-profit groups would be able to do that. This means the model often decried in the United States, where law firms are said to make money by immediately proposing court action for damages to victims of a mass harm situation, would be simply impossible.
- In the US, you can go to court on behalf of many consumers and seek damages several times higher than the actual detriment. This is what is called punitive damages. But this wouldn't be possible in the EU because the Commission proposal simply doesn't introduce the possibility of punitive damages.
- In the US, both the plaintiff and the defendant pay their own legal costs. But in the EU, the 'loser pays' principle is in use. This means that, in going to court, you may have to pay the winning side's costs if you lose the case. As a result, only cases which have a solid basis go forward and a consumer organisation will think long and hard about whether to launch a case. The financial risk for a not-for-profit group is just too big to bring spurious claims to court.
- What's more, the EU countries which already have an existing workable collective redress scheme do not include any of the elements listed above – they are already very different from the US system.
- Cases from those 5 EU countries show that 'abusive' litigation is simply not an issue. For instance, none of the collective cases put forward by Portuguese consumer group DECO in Portugal, which has a collective redress procedure since 1995, has been discarded by the judiciary as not having merit.

Isn't there a risk that launching court cases without merit harms the reputation of the business in question?

Allegations that defendants in the US even settle claims without merit (to avoid court cases which allegedly would harm their reputation) are not based on facts. Most settlements take place after an admissibility hearing. Only then do the traders see the case as serious and as one that could potentially succeed for the plaintiff.

Does collective redress increase the amount of litigation?

EU Member States with a functioning collective redress mechanism do not have an increase in litigation. Even in the US, class actions do not constitute a significant part of all civil litigation cases (less than 1% of all civil suits).

On the contrary, in mass claims situations that have caused hundreds or thousands of individual cases, the burden on courts would have been reduced by having a collective redress option, because it would federate all the individual cases into one.

Is this an opportunity to increase profits for third party funders?

The procedural rules in most Member States already contain general safeguards against any kind of abuse by third party funders in civil actions. In addition, the Commission proposal contains provisions which ensure that third party funders cannot influence the proceedings. This means that the influence of funders will be limited.