

# FACTSHEET

## Representative actions & collective redress

### What is collective redress?

It's when consumers who have suffered the same, or a very similar, harm caused by the same trader, come together and seek compensation in court as one. Also known as a group action or class action, it enables a group of consumers who have had their rights violated to be represented by a consumer organisation in court.

### Why does the EU need collective redress?

It would ensure justice for people and bring us closer to a modern, fair and balanced Single Market for many reasons.

**Justice:** when faced with damages and breaches of their rights, most consumers do not go to court individually, as the procedure is long, costly and sometimes intimidating. This situation is unfair for consumers and the businesses who play fair.

**Scope:** collective redress can deal with a wide range of issues, from dangerous or defective goods, to bad financial advice, and from flight delays to personal data protection.

**Method:** injunctions (a court order to stop a trader's practice) or alternative dispute resolution are important but insufficient. They do not provide solutions for compensation when thousands or even millions of consumers face a loss.

**Need:** 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.<sup>1</sup>

### Examples of collective redress in EU

Only 5 EU countries offer a working system of collective redress. 9 countries still do not offer any form of collective redress. The others offer a system that is either too difficult to use or too recent to be evaluated properly.



#### Cases from Belgium

In 2014 in Belgium, there were a number of strikes at the national train operator NMBS/SNCB, but the company refused to pay compensation to affected consumers.

The group action was still in the phase of getting admitted in court when an agreement was reached between SNCB and Belgian consumer group Test Achats/Test Aankoop, which had launched the group action. Most participants to the class action (44,000) were compensated and the train company now grants compensation for strikes.



#### Volkswagen case

In 2016, four consumer groups, members of the BEUC network – Test Achats/Test Aankoop (Belgium), Altroconsumo (Italy), DECO (Portugal) and OCU (Spain) - took Volkswagen to court in their respective countries using collective redress procedures because of the company's fraudulent behaviour on emissions controls.

The actions have been admitted by the courts and are now pending. Because of the lack of functioning collective redress tools, in no other country has a collective redress case been filed against Volkswagen, despite the scandal affecting over 8 million car users in the EU. As a consequence, consumers in the majority of EU countries will most probably remain without compensation.

<sup>1</sup> European Commission, Eurobarometer 299, 2011, [http://ec.europa.eu/commfrontoffice/publicopinion/flash/fl\\_299\\_en.pdf](http://ec.europa.eu/commfrontoffice/publicopinion/flash/fl_299_en.pdf), p.8.



## What is the Commission's representative actions proposal about?

The Commission is proposing to make collective redress available in every EU country. This is a huge step forward for consumers who have been waiting for thirty years for this opportunity. Until now, the Commission had only recommended non-binding action in this area, but it is only in the wake of the Volkswagen scandal that it took the matter into its own hands and proposed binding legislation.

The proposal requires the completion of an injunction procedure, which is where a court orders an activity by a trader to cease, before a procedure for collective redress can be launched. It allows consumer organisations and public bodies, which comply with criteria about independence and non-profit character, to bring collective cases on behalf of consumers.

Member States can choose if they want the system to function on an opt-in (requires consumers to actively declare themselves part of the group action) or opt-out basis (all consumers affected are automatically included in the claims for damages).

The proposal allows consumers from several countries to join a case launched in one country.

The proposal has numerous safeguards in place, making it impossible for EU collective redress to mirror class actions in the US:

1. Only specified non-profit groups, such as consumer groups, can initiate a collective redress case.
2. It isn't possible to seek damages other than the actual detriment caused to consumers which could dissuade the company from behaving like this again.
3. The 'loser pays' principle would apply. This means, unlike in the US, if you lose the court case, you could end up having to pay the winning side's legal costs.

## Is it effective enough?

BEUC strongly supports the proposal but recognises that it contains a number of weak spots which will undermine its usefulness.

### We believe that:

- EU law should set minimum requirements that countries must meet to allow group actions, but it should be possible for countries to go beyond those requirements if they already have a system that is more developed (this is called a minimum harmonisation tool)
- It shouldn't be left to courts to decide if collective redress is possible, just because a case might be complex or because it might be difficult to calculate the damages. These are precisely the cases where consumers need the most help. In all likelihood, the Volkswagen scandal would fall into this category. Collective redress should be possible in all cases, regardless of their complexity.
- The scope of the laws, a breach of which could trigger a collective redress case, should be as broad as possible. It must include passenger rights and the data protection framework.
- The requirement that consumers should first get a final injunction order before filing a claim for collective redress means the process could take years and carries the risk consumers lose evidence and interest in the case. It should be possible to introduce claims for injunction and for redress at the same time, without waiting for the finality of the injunction order.