



The Eurocouncil of the Fédération Internationale de l'Automobile
European Bureau

For the attention of:

European Commission

"Consultation on collective redress"

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Per email to: EC-collective-redress@ec.europa.eu

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FIA CONTRIBUTION TO THE CONSULTATION ON COLLECTIVE REDRESS

The Fédération Internationale de l'Automobile brings together Touring and Automobile Clubs. In the European Union, our member Clubs have a combined membership of more than 35 million motorists. We are these motorists' voice at European level.

Helping to resolve civil disputes is a service many FIA clubs offer to their members. Whether their complaints concern travelling services or motor vehicles, mobile consumers appeal to their national automobile and touring clubs to settle their claim at national level. Automobile clubs represent consumers and have an interest in the setting-up of a system, which would stop unlawful business practices which affect a multitude of claimants and provide them with adequate compensation for the harm caused.

You will find below our contribution to the consultation.

1. What added value would the introduction of new mechanisms of collective redress (injunctive and/or compensatory) have for the enforcement of EU law?

The introduction of new mechanisms of collective redress will help reduce the fragmentation of the current legal situation. Although the consequences of the introduction of such a text on the implementation of EU law depends on a number of unknown factors at the moment (legal basis of the text, entities allowed to file a complaint...), it should at least lead to a simplification for consumers.

The intrinsic value of the introduction of common system is to allow consumers victims of the same detriment to join forces in order to obtain compensation. This system should be designed in such a way that it minimizes the risks linked to the launch of a law suit and allows consumers to seek redress for a limited amount of time and resources.

2. Should private collective redress be independent of, complementary to, or subsidiary to enforcement by public bodies? Is there need for coordination between private collective redress and public enforcement? If yes, how can this coordination be achieved? In your view, are there examples in the Member States or in third countries that you consider particularly instructive for any possible EU initiative?



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The FIA believes that the two possibilities should coexist. The possibility to launch a collective redress action should not be subject to previous action taken by public bodies.

3. Should the EU strengthen the role of national public bodies and/or private representative organisations in the enforcement of EU law? If so, how and in which areas should this be done?

National public bodies have a role to play in a future European scheme for collective redress. However, specialists' consumers' organisations should also get the opportunity to intervene in their area of expertise, for example organisations specialised in health, lodging or mobility. Given the costs burden on smaller associations, a mechanism should be foreseen, whereby public funds are lent to these associations to launch an action.

4. What in your opinion is required for an action at European level on collective redress (injunctive and/or compensatory) to conform with the principles of EU law, e.g. those of subsidiarity, proportionality and effectiveness? Would your answer vary depending on the area in which action is taken?

We believe that the mechanisms proposed should be adapted to the area in which action is taken. The means of action proposed should be adapted to the level of competence of the European Union in this field and the stringency of the mechanism should be tailored to the importance of the right defended. It should guarantee an easy and efficient access to justice.

5. Would it be sufficient to extend the scope of the existing EU rules on collective injunctive relief to other areas; or would it be appropriate to introduce mechanisms of collective compensatory redress at EU level?

FIA clubs believe that it would be more appropriate to introduce mechanism of collective compensatory redress at EU level to ensure for greater efficiency and coherence of the measures.

6. Would possible EU action require a legally binding approach or a non-binding approach (such as a set of good practices guidance)? How do you see the respective benefits or risks of each approach? Would your answer vary depending on the area in which action is taken?

In a field with diverging interests, EU endeavour to protect consumers' rights and ensure that those are effectively enforced, should be supported by a binding approach. Non-binding approach would be subject to national interpretations and therefore be less likely to have a unifying effect on the protection of EU consumers. Moreover, non binding instruments are usually only binding on the Commission are less likely to be complied with at national level, as lack of compliance with them has little direct effect.

7. Do you agree that any possible EU initiative on collective redress (injunctive and/or compensatory) should comply with a set of common principles established at EU level? What should these principles be? To which principle would you attach special significance?

An EU initiative on collective redress should be based on a set of common principles, which would ensure cost-efficient and effective redress for consumer. One of the key goals of the initiative should be to enhance consumers' confidence, so as to strengthen the functioning of the internal market.



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Effective, cheap and timely redress would indeed enhance consumers' confidence. One of the added-values of an EU action would be to ensure that a judgement in favour of consumers can be enforced throughout the entire European Union.

FIA supports the need for

- effectiveness and efficiency of redress
- the importance of information and of representative bodies (the choice of representative bodies will also be crucial in this)
- the need for safeguards to avoid abusive litigation (representative bodies should also be considered as part of this safeguard). Damages should be limited to the costs of the damages effectively suffered by the consumers.
- the need for appropriate financing mechanisms for consumers
- the importance of effective enforcement throughout the EU (and uniform application of the above-mentioned principles)

8. As cited above, a number of Member States have adopted initiatives in the area of collective redress. Could the experience gained so far by the Member States contribute to formulating a European set of principles?

Reference should be made to successful systems of collective redress, which exist in different EU countries. We should bear in mind, however, the consumer protection law and processes also have a national dimension and have been developed in a national context.

9. Are there specific features of any possible EU initiative that, in your opinion, are necessary to ensure effective access to justice while taking due account of the EU legal tradition and the legal orders of the 27 Member States?

FIA clubs believe that an EU piece of legislation should be made binding on all member states, to ensure a uniform set of rights for consumers if things go wrong. However, we would welcome a minimum harmonization approach, so that member states can choose to set higher levels of consumer protection if they so wish.

A simple procedure would also indeed contribute to the efficiency of such a system and contribute to alleviate courts workload (especially if one judgement was to be automatically applied to all EU consumers concerned).

10. Are you aware of specific good practices in the area of collective redress in one or more Member States that could serve as inspiration from which the EU/other Member States could learn? Please explain why you consider these practices as particularly valuable. Are there on the other hand national practices that have posed problems and how have/could these problems be overcome?

No comment

11. In your view, what would be the defining features of an efficient and effective system of collective redress? Are there specific features that need to be present if the collective redress mechanism would be open for SMEs?

Consumers should be well-informed of their rights and know who they may address in case of litigation when they know/ suspect that this practice harmed more than themselves. Automobile clubs would be able to play a key role in mobility issues, both to inform their more than 35 million members and in representing them, should the need arise.



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Additionally, the time and money investment in a collective redress claim should be assessable in advance to allow consumers to make an informed choice.

12. How can effective redress be obtained, while avoiding lengthy and costly litigation?

Repeated litigation should be avoided thanks to European-wide recognition of court proceedings.

13. How, when and by whom should victims of EU law infringements be informed about the possibilities to bring a collective (injunctive and/or compensatory) claim or to join an existing lawsuit? What would be the most efficient means to make sure that a maximum of victims are informed, in particular when victims are domiciled in several Member States?

Information on the possibilities to bring a collective claim should be widely available to the public from the day of their publication. Awareness should be fostered well before consumers face the possibility/ need to launch a collective claim. A general awareness-campaign could be carried out by the media, national member states and the European Union itself.

Once the detriment to the consumer has been caused, a different type of actor should intervene, i.e. the institutions and organisations that consumers would normally contact in such a case (national consumer organisations, European Consumer Centres, national automobile clubs...).

The setting-up of an online information portal, detailing all currently running collective redress processes may also be considered as a way to address a maximum of victims, even when they are domiciled in different member states. Such an information platform should be as lean as possible, as it will require translation in all EU languages. It could also give the contact details of the organisation leading on the claim.

14. How the efficient representation of victims could be best achieved, in particular in cross-border situations? How could cooperation between different representative entities be facilitated, in particular in cross-border cases?

Effective representation in cross-border calls for different pre-requisite:

Information should be available in all countries, both on the process and on the organisations representing consumers.

Communication should be possible in the consumers' native language with the organisation leading the claim. All communication and contribution from the person concerned should be possible in his/ her native language, provided that this is an EU official language. This calls for an efficient translation structure to be put in place.

15. Apart from a judicial mechanism, which other incentives would be necessary to promote recourse to ADR in situations of multiple claims?

Recourse to Alternative Dispute Resolution system would be more systematic if it was totally free of charge for the consumer. Quick results would also encourage consumers to make use of these systems, provided that it does not preclude them for initiating legal action, should the outcome not be satisfactory.

16. Should an attempt to resolve a dispute via collective consensual dispute resolution be a mandatory step in connection with a collective court case for compensation?



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Introducing this step would not be in favour of an efficient, lean system of dispute resolution. We do not believe that collective consensual dispute resolution should be made mandatory.

17. How can the fairness of the outcome of a collective consensual dispute resolution best be guaranteed? Should the courts exercise such fairness control?

The fairness of the outcome of such a process would be guaranteed by the equal participation of consumers and industry representative in the work (with equal voting rights).

18. Should it be possible to make the outcome of a collective consensual dispute resolution binding on the participating parties also in cases which are currently not covered by Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters?

We believe that consumers should not be bound by the outcome of a collective consensual dispute resolution decision. Alternative Dispute Resolution system is a way to avoid long and expensive court cases, but might not be appropriate to solve all disputes. Therefore consumers should remain free to bring their case to court, should the outcome of the ADR process remain unsatisfactory.

19. Are there any other issues with regard to collective consensual dispute resolution that need to be ensured for effective access to justice?

No comment

20. How could the legitimate interests of all parties adequately be safeguarded in (injunctive and/or compensatory) collective redress actions? Which safeguards existing in Member States or in third countries do you consider as particularly successful in limiting abusive litigation?

Consumers' organisations should be key partners in the representations of consumers in such matters. As such, they would both federate the victims of an illegal practice and choose which claims to bring forward, based on their knowledge of the detriment and their key position to gather complaints. As an example, automobile clubs would be well-placed to represent the interest of mobile consumers, should a need for representation arise.

21. Should the "loser pays" principle apply to (injunctive and/or compensatory) collective actions in the EU? Are there circumstances which in your view would justify exceptions to this principle? If so, should those exceptions rigorously be circumscribed by law or should they be left to case-by-case assessment by the courts, possibly within the framework of a general legal provision?

Whereas the "loser pays" principle usually limits abusive litigation, we believe that the principle could not possibly be fully applied in collective redress, as it is very difficult to assess the final costs of such a procedure.

22. Who should be allowed to bring a collective redress action? Should the right to bring a collective redress action be reserved for certain entities? If so, what are the criteria to be fulfilled by such entities? Please mention if your reply varies depending on the kind of collective redress mechanism and on the kind of victims (e.g. consumers or SMEs).

For consumers, we believe that consumer organisations in the broad sense should be the ones bringing in collective redress actions.



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23. What role should be given to the judge in collective redress proceedings? Where representative entities are entitled to bring a claim, should these entities be recognised as representative entities by a competent government body or should this issue be left to a case-by-case assessment by the courts?

In order to bring certainty to the consumers, we believe that representative entities should be recognized and listed by the governments.

24. Which other safeguards should be incorporated in any possible European initiative on collective redress?

As mentioned earlier, it would make sense to limit the damages perceived by the consumers to the detriment suffered. We believe that punitive damage allocation might lead to multiplication of claims, justified or not. Additionally, lawyers' retribution should not vary greatly depending on the outcome of the process, i.e. be much higher in case of success.

25. How could funding for collective redress actions (injunctive and/or compensatory) be arranged in an appropriate manner, in particular in view of the need to avoid abusive litigation?

The limitation of the organisations allowed to bring claims forward would strictly limit the risk of abusive litigation. We do not believe that funding should be used as an instrument to limit recourse to collective redress actions.

26. Are non-public solutions of financing (such as third party funding or legal costs insurance) conceivable which would ensure the right balance between guaranteeing access to justice and avoiding any abuse of procedure?

No comment

27. Should representative entities bringing collective redress actions be able to recover the costs of proceedings, including their administrative costs, from the losing party? Alternatively, are there other means to cover the costs of representative entities?

No comment

28. Are there any further issues regarding funding of collective redress that should be considered to ensure effective access to justice?

No comment.

29. Are there to your knowledge examples of specific cross-border problems in the practical application of the jurisdiction, recognition or enforcement of judgements? What consequences did these problems have and what counter-strategies were ultimately found?

No comment

30. Are special rules on jurisdiction, recognition, enforcement of judgments and /or applicable law required with regard to collective redress to ensure effective enforcement of EU law across the EU?

In case of collective redress concerning consumers throughout the EU, we believe the judgement from any given national country should be either directly enforceable in the other countries or that its principle should be safeguarded by other national court, to allow for a uniform treatment of consumers in the European Union.



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31. Do you see a need for any other special rules with regard to collective redress in cross-border situations, for example for collective consensual dispute resolution or for infringements of EU legislation by online providers for goods and services?

Given that the proposed system would cover all European consumers, regardless of their country of residence, no special rules need to be added to cover specifically cross-border issues. However, collective redress procedures should be possible against online providers of goods and services, if needed.

32. Are there any other common principles which should be added by the EU?

No comment

33. Should the Commission's work on compensatory collective redress be extended to other areas of EU law besides competition and consumer protection? If so, to which ones? Are there specificities of these areas that would need to be taken into account?

No comment

34. Should any possible EU initiative on collective redress be of general scope, or would it be more appropriate to consider initiatives in specific policy fields?

No comment

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