



Assessment of the economic and social impact of the policy options to empower consumers to obtain adequate redress

DG HEALTH AND CONSUMER PROTECTION

Final Analytical Report on the Green Paper on Consumer Collective Redress
submitted by the Consumer Policy Evaluation Consortium

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CONTENTS

1 EXECUTIVE SUMMARY	4
1.1 Introduction.....	4
1.2 General overview of the contributors' view on the different options proposed in the Green Paper....	7
1.3 Key issues raised by contributors.....	9
1.4 General conclusion.....	13
2 INTRODUCTION	14
2.1 Introduction.....	14
2.2 Member States' and stakeholders' representation in the contributions	17
2.2.1 Member States' representation	17
2.2.2 Stakeholders' representation.....	18
2.3 Structure of the report	20
3 GENERAL OVERVIEW OF THE CONTRIBUTORS' OPINION ON THE DIFFERENT OPTIONS PROPOSED IN THE GREEN PAPER	21
4 DETAILED ANALYSIS OF THE CONTRIBUTIONS PER GREEN PAPER QUESTION	24
4.1 Introduction.....	24
4.2 Contributions to the specific questions raised in the Green Paper public consultation	24
4.2.1 EU involvement	24
4.2.2 Preferred and rejected options	29
4.2.3 Preferred and rejected elements of options in Green paper	49
4.2.4 Preferred elements of options not in Green Paper.....	49
4.2.5 Preferred combination of options	53
4.2.5.1 Preferred combination of options: general	53
4.2.5.2 Preferred combination of options: features	57
4.2.6 Binding vs non-binding instruments	94
4.2.7 Alternative means of solving the problem	100
5 OTHER ISSUES RAISED BY THE CONTRIBUTORS.....	104
5.1 Problems currently perceived by the respondents	104
5.2 Impact expected by the respondent for the different policy options.....	105
5.3 Other relevant aspects mentioned by the respondent	106
5.3.1 Consistency	106
5.3.2 National versus cross-border claims	109
5.3.3 Figures/data.....	110
5.3.4 Other.....	111
ANNEX 1: LIST OF CONTRIBUTORS.....	112
ANNEX 2: TABLES PRESENTING THE DETAILS OF THE ANSWERS TO QUESTIONS 3 AND 5: OPINION ON DETAILED FEATURES OF OPTIONS	115
ANNEX 3: LIST OF ABBREVIATIONS OF STAKEHOLDER NAMES	124

1 EXECUTIVE SUMMARY

1.1 Introduction

On 27 November 2008 the European Commission adopted a Green Paper on Consumer Collective Redress, to which interested parties were invited to give their responses. The Green Paper explores how redress can be facilitated in situations where large numbers of consumers have been harmed by a single trader's practice which is in breach of consumer law. The Green Paper identifies barriers to effective consumer redress in terms of access, effectiveness and affordability and presents various options to close the gaps and ensure that consumers who are victims of illegal commercial practices can get compensated for their losses, while avoiding unfounded claims.

The consultation launched by the Commission attracted only very few responses in the first months (i.e. two days before the closing of the consultation only 21 responses were received by the project team), but this number substantially increased during the last week before the consultation deadline: in total 74 responses were received before the closing of the consultation. However, in the following month (i.e. between March 2nd and March 31st) 107 additional responses were received, bringing the total to 181.

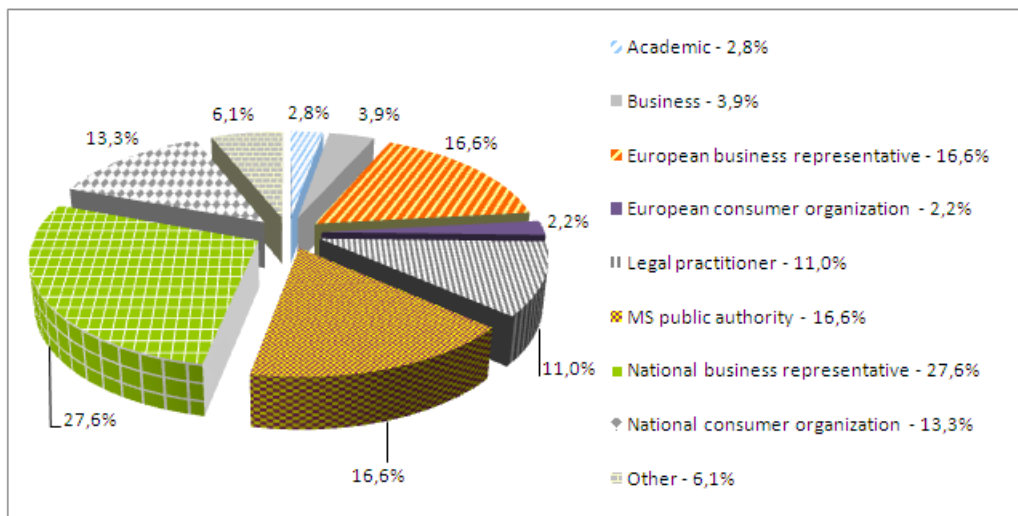
All responses received have been analysed and have subsequently been dealt with in this report.

The contributors are systematically categorised in the following groups of stakeholders:

- European institutions;
- Member States' public authorities;
- European consumer organisations,
- National consumer organisations;
- European business representatives;
- National business representatives;
- Businesses,
- Legal practitioners;
- Academics;
- Other stakeholders.

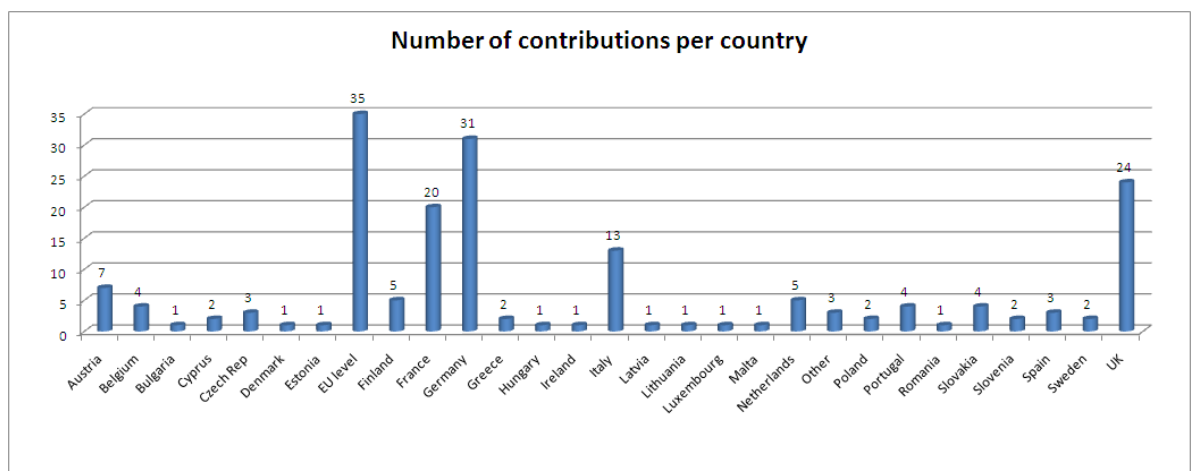
The full list of contributions so far is given in the Annex 1 to this report.

About half of the contributions analysed come from the business sector. When comparing the responses of the business sector with those of consumer representatives, a ratio of about 3:1 can be observed. A complete distribution of stakeholders per category identified above is given in the following graph:



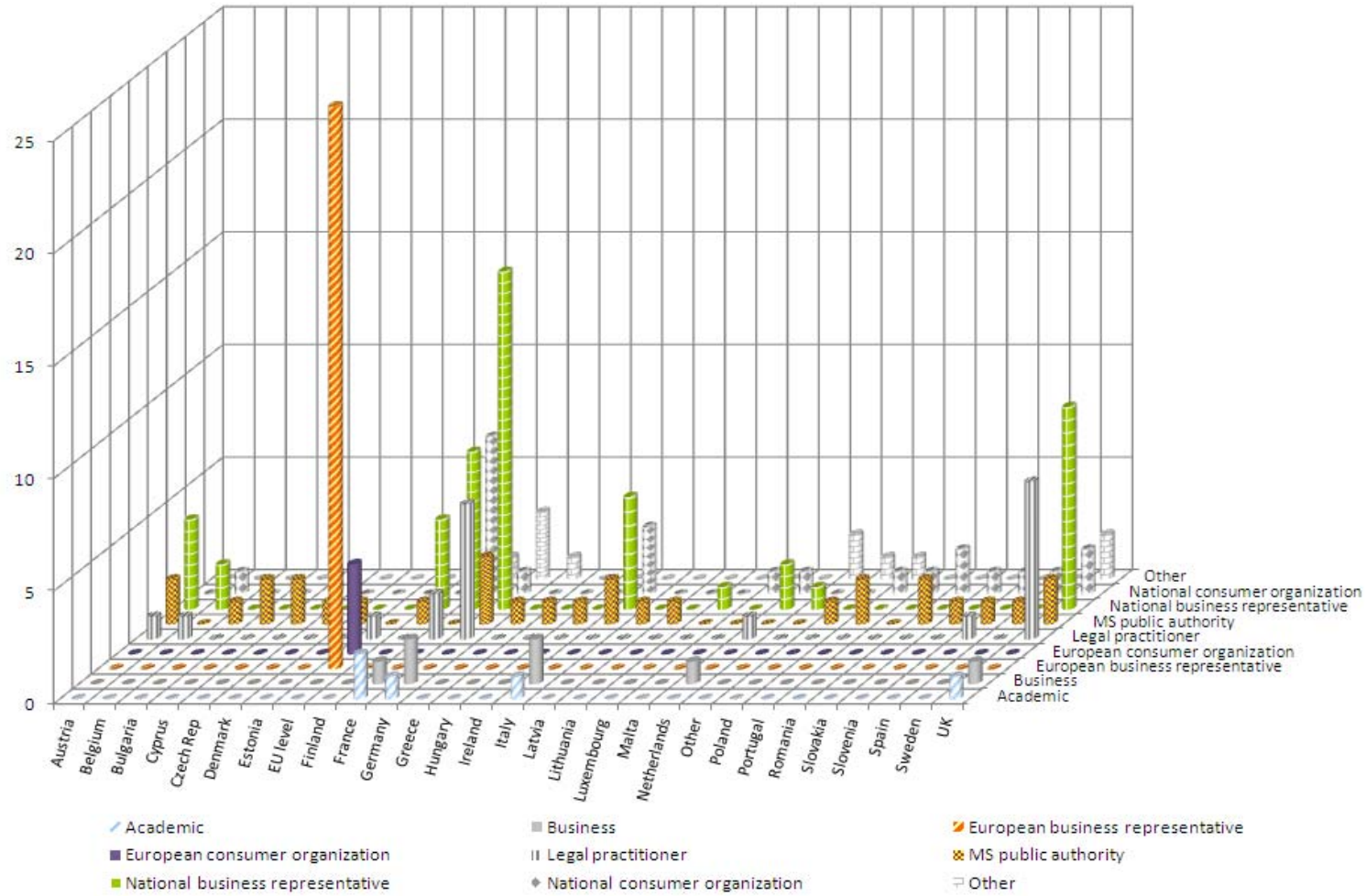
Graph 1: Number of contributions per stakeholder group and stakeholder percentage of total contributions

There is also a predominance of EU wide and German contributors. Next to those, most responses were received from the UK, France and Italy. All other European countries are however also present, albeit to a (much) lesser extent. Finally, three responses were received from countries outside the EU: two from the USA and one from Norway. All of this is illustrated in the following graph:



Graph 2: Number of contributions per country

Finally, the distribution of responses per country across the different stakeholders groups is represented in the graph hereunder, which indicates the strong prevalence of business representatives in EU wide and German responses. Also, from this last country, a substantial amount of responses from legal practitioners has been received, as is the case for the UK.



Graph 3: Stakeholder group representation per country

To enhance the readability of the report, the number of categories of stakeholders used in the detailed analysis has however been reduced to five. The relevant categories are: business representatives (comprising national and European business representatives and businesses), consumer representatives (comprising national and European consumer representatives), public authorities, legal experts (comprising legal practitioners and academics) and other stakeholders.

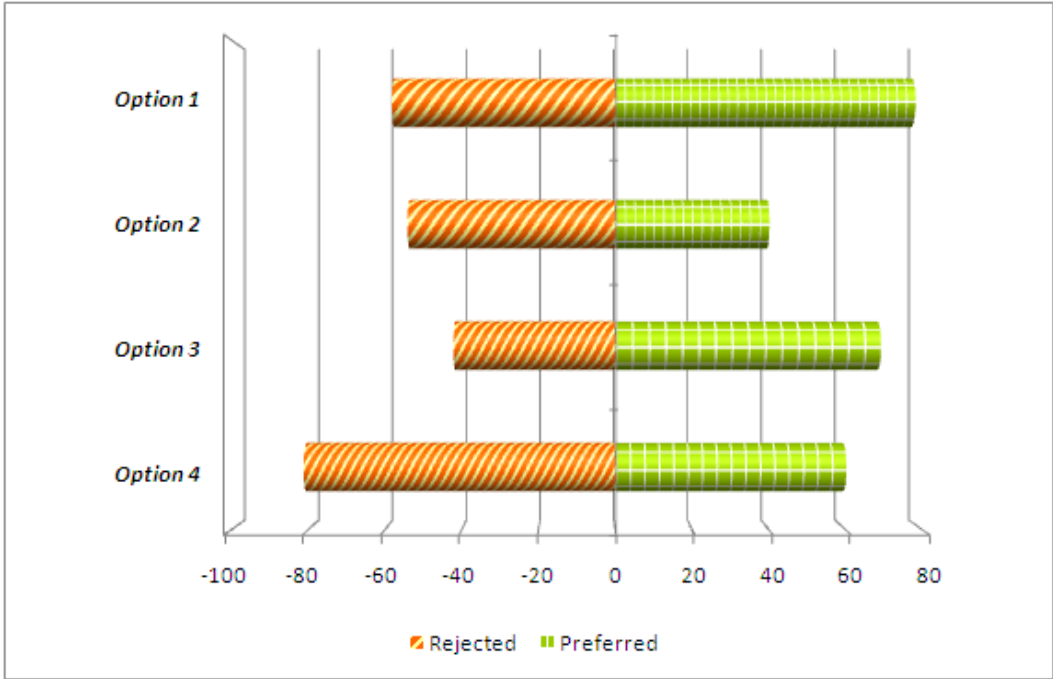
In general, the contributors welcome the work already undertaken by the European Commission and are very positive towards the approach of consultation through a Green Paper. However, a great number of remarks on the content of the Green Paper and of the previous studies have been noted. Some respondents signal for instance that not all approaches currently existing in different Member States have been taken into account in the studies. Others mention a lack of showing an actual need for new initiatives.

1.2 General overview of the contributors' view on the different options proposed in the Green Paper

The Green Paper presents four options on how to deal with the problems perceived in the market. These are:

- Option 1: No EC action: rely on existing national and EU measures, in any case until more information will be available on the effect of the existing and future measures;
- Option 2: Cooperation between Member States: for countries that already have a collective redress mechanism: the opening up of the mechanisms that exist in a country to consumers from all Member States – for countries that do not have a collective redress mechanism: the establishment of a collective redress mechanism open to consumers from all Member States;
- Option 3: Mix of policy instruments: a combination of improving alternative dispute resolution (ADR) mechanisms, extending the scope of national small claims procedures to mass claims, extending the scope of the Consumer Protection Cooperation Regulation, encouraging businesses to improve their complaint handling schemes and taking actions to raise consumers' awareness of existing means of redress;
- Option 4: Judicial collective redress procedure: the introduction of an EU measure to ensure that a collective redress judicial mechanism exists in all Member States.

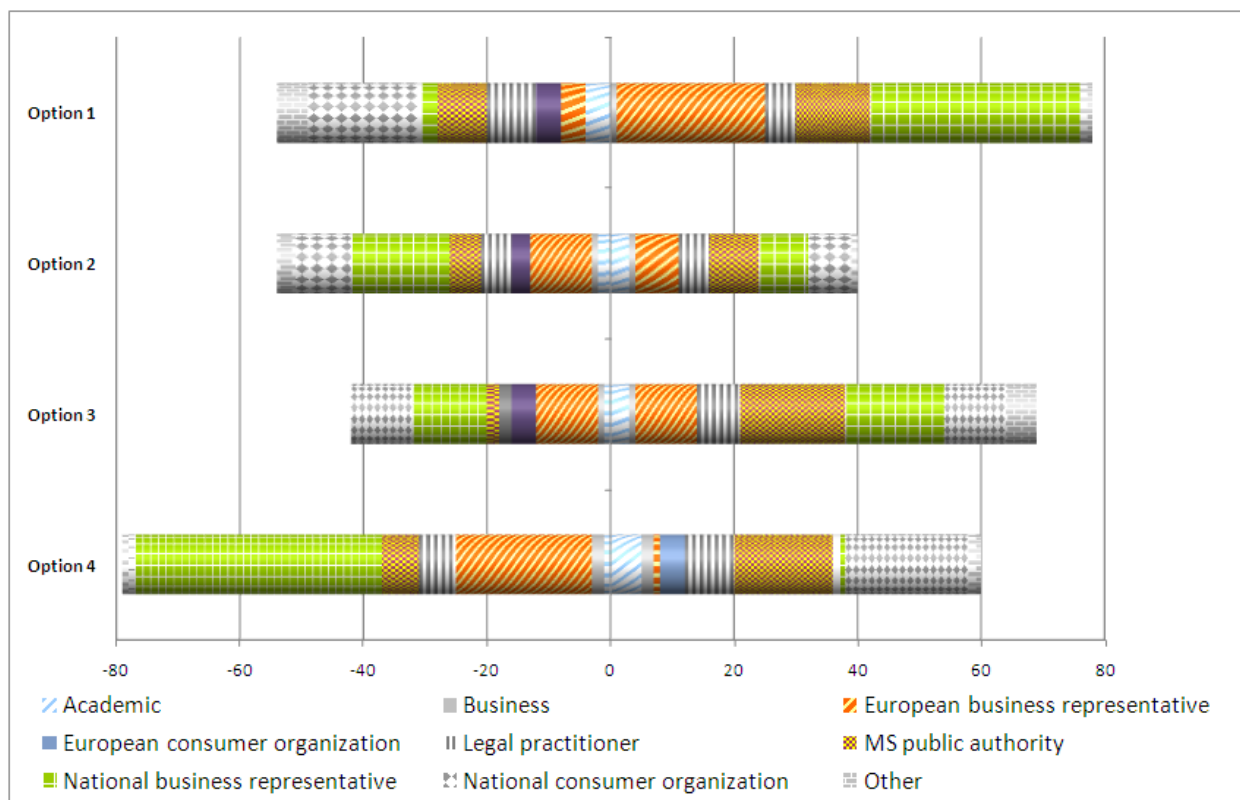
Respondents are asked to indicate their possible approval and/or disapproval of one or more options and their possible preference for a combination of different options. When combining all these answers, and presenting them per basic option (i.e. if a combination is preferred, this is accounted for once in each basic option that would form part or it), the following results are obtained:



Graph 4 General overview of the preference for and rejection of the four basic Green Paper options

There is a tendency towards option 1 as preferred option, with option 3 being the second most preferred, but rather closely followed by option 4. A lot of opposition can however also be observed for option 4. Option 3 receives the least opposition, and would be the primary option when combining the preferences and rejections per option.

It is important to bear in mind that the business sector is represented by about half of the total contributions received and that this stakeholder group is therefore over-represented compared to the other stakeholder groups. For a more detailed view, the distribution of opinions across stakeholder groups can be derived from the following summarizing graph:



Graph 5 General overview of the preference for and rejection of the four basic Green Paper options, per type of stakeholder

1.3 Key issues raised by contributors

On the level of EU involvement:

In view of the multiple and very diverse aspects and the nuances contained in many contributors' view on the role of the EU in the frame of collective redress, a categorisation of responses on this subject has not been made. However, it was possible to group many of the different arguments raised by contributors in a limited number of categories.

A frequently cited comment deals with the supposed lack of evidence in the Green Paper that there is an actual need for collective redress mechanisms. This can e.g. be because there are only very few cases which require collective redress and/or cross border solutions or because the difference of national provisions does not pose problems. These comments have been cited multiple times, primarily by business representatives, legal experts and public authorities. All stakeholder groups except consumer representatives furthermore question the existence of a need for new mechanisms because they argue there already are numerous national and EU measures in the area of consumer protection, some of which relatively recent, which implies that an evaluation of these mechanisms is needed before contemplating any changes. For the new mechanisms, time is moreover needed to let these mechanisms develop.

A second group of comments questions the competence the EU has in this matter. It is frequently cited by business representatives, legal experts and, albeit to a lesser extent, public authorities that the Green Paper fails to establish that the EU has competence, and that this

matter should be investigated in-depth. This concerns the general idea of intervention of the EU, but also and more specifically option 4. Several business representatives, legal experts and public authorities mention articles 61 (c), 65 (c), 95 and 153(3) (a) of the EC Treaty as limiting the competence of the EU in this field. By all types of stakeholders it is also stated that the principles of subsidiarity and proportionality should be adhered to and that further investigation of these aspects is necessary.

A third group of comments contains more positive views towards EU involvement. However, in this group the desired degree of EU involvement differs strongly among the stakeholders. The comments made state that the EU should continue to work, using guidelines or binding instruments, on the establishment of collective redress mechanisms, either based on a new EU-wide instrument, or through the adoption of a national collective redress procedure in the Member States that do not have one yet, and this either for both domestic and cross-border cases, or exclusively at the cross-border level. These positive comments have primarily been made by consumer representatives, public authorities and legal experts, but also by some business representatives.

On the different policy options proposed in the Green Paper:

Option 1

As already mentioned, option 1 is most often favoured by the contributors. Mainly business representatives prefer this option, but some public authorities also favour it, albeit sometimes in combination with other options. By respondents from all stakeholder categories except consumer representatives, it is found useful to wait until more information is available on existing measures, and some contributors are already convinced the existing measures are sufficient. European legal instruments that are considered useful to evaluate are not only the Small Claims Regulation and the Mediation Directive, but also several other texts, of which the Injunctions Directive is one of the most frequently cited. Also, it is stated by some public authorities and business representatives that the EU should acquire more information on the measures already available in the Member States. Finally, the choice for option 1 by stakeholders from all categories except consumer representatives is sometimes also infused by the presumed lack of competence for the EU to intervene (see above).

Option 2

Within option 2, the general idea of improvement of cooperation is approved, and this mainly by business representatives and public authorities. Respondents from all stakeholder groups find it useful to build on existing cooperation networks (i.e. the ECC-net). Despite this positive attitude towards cooperation, few respondents actually choose this option as their preferred one, and this for a multitude of reasons. Some legal experts and business representatives are of the opinion that the opening up of mechanisms to consumers from other Member States should already be guaranteed through existing regulation, so that there is no need for this option. Consumer representatives consider the option does not go far enough and will not reach harmonisation, so that the existing problems are not solved. Lastly, across stakeholder groups many problems are cited which have to do with funding and the applicable law.

Option 3

Option 3 in general is the second most preferred option. However, this is only the case when looking at the single preferred options and preferred combinations of options together. When only taking into account the detailed results for the preferred combinations of options, it

becomes apparent that option 3 is the most often cited as part of a combined approach. It is remarkable that the combination with options with low EU involvement as well as with options with high EU involvement is preferred. The first is preferred by some business representatives, legal experts and public authorities, while the latter is generally preferred by some consumer representatives and some other legal experts and public authorities. For instance, many respondents in favour of waiting until more information is available on the existing framework and the effectiveness thereof, state that it could be useful to complement this waiting with some 'soft' actions such as the increase of the awareness of consumers, the improvement of businesses' complaint handling schemes and the promotion and improvement of ADR mechanisms. On the other hand, stakeholders that are in favour of a harmonized judicial collective redress mechanism, also often state it could be useful to combine it with elements of option 3, especially ADR mechanisms. The judicial mechanism could in this way be seen as a sort of 'last resort' for cases that for one reason or another cannot be solved in a more amicable way. However, opinions are very much divided over the possibility to use ADR mechanisms as an obligatory prerequisite for judicial collective redress.

For the other two elements of option 3, i.e. the extension of the scope of the Small Claims Regulation and the extension of the scope of the Consumer Protection Cooperation Regulation, the opinions are more divided. The extension of the scope of the Small Claims Regulation is rejected by a bit more than half of all respondents across all stakeholder groups that have expressed an opinion on this possibility, with the extreme cases being the business representatives and the public authorities. About three out of four business representatives are against the extension, whereas about three out of four public authorities are in favour of it. Negative remarks expressed by different types of stakeholders are that collective cases would be too complex for this kind of treatment and that an evaluation should be awaited before considering extending it (see option 1). For the extension of the scope of the CPR, i.e. the amendment with the power for the competent authority to compensate harmed consumers and the amendment with the power for the competent authority to skim off profits, it can be seen that in total a light majority (including respondents from all stakeholder groups) is against it, and this is also true for all stakeholder groups except consumer representatives. Respondents from all stakeholder groups fear the proposed extensions would go against the legal traditions in the Member States and would cause conflicts with respect to the roles of the different public and private parties. There is also no agreement between business representatives and consumer representatives on who should be the beneficiary of the possibly skimmed off profits.

Option 4

The introduction of an EU judicial collective redress measure (option 4) has attracted much reaction from stakeholders, in a positive as well as negative sense. As already mentioned, a substantial part of stakeholders (mainly consumer representatives, public authorities and legal practitioners) is in favour of the option (as a single measure or in combination with other options), but it is also the option that has the most opponents, being business representatives, public authorities and legal practitioners. The supporters of the option find it is the only way to reach harmonisation, which is crucial to solve the current problems. Opponents however often refer to their comments or questions about EU competence and the supposed need for action, and also fear that the introduction of such a measure would lead to situations like in the US, where a true 'litigation culture' exists, where actions are filed in the interest of legal representatives, where unmeritorious claims are filed, etc. Furthermore, by respondents from all stakeholder groups except consumer representatives the benefits of the system are questioned (e.g. high costs are expected) and it is doubted whether it would be even possible to introduce such a system in view of the differences between Member States' traditions and laws.

With respect to the features or characteristics of option 4 proposed or debated in the Green Paper, the proposals made to finance the procedures and to finance the entities representing consumers have initiated much reaction. They are rejected by the majority of respondents expressing an opinion. This is especially the case for business representatives, legal experts and other stakeholders. Negative remarks are that they would stimulate unmeritorious claims and that respondents consider that other ways exist to help with funding (e.g. legal insurances and state aid for those who cannot afford legal fees). However, some consumer representatives and public authorities claim a sort of funding is required to let the new mechanism succeed. To finance the legal procedures, the limitation of legal fees is proposed. To finance consumer representatives, all options proposed in the Green Paper (allocation of a share of the compensation, loans by third parties and public funding by Member States) have a limited number of supporters.

To prevent unmeritorious claims, the loser-pays principle and the use of the judge to decide are particularly appreciated. However, according to business representatives and legal experts this last possibility has the disadvantage that it will be difficult for the judge to decide ex-ante about the merits of the claim, especially for complex cases. Objection to the loser pays principle is very rare.

Three out of four respondents expressing an opinion on the discussion between opt-in and opt-out systems, are against an opt-out system. This is especially true for business representatives and public authorities. Consumer representatives and legal experts have a more mixed opinion. In absolute terms, a great number of respondents have for that matter reacted on this specific feature. The controversial opt-out system is however appreciated by e.g. some consumer representatives and legal experts. By respondents from all stakeholder groups except consumer representatives opt-out is considered to be incompatible with European legislation and Member States' laws, and especially with Article 6 of the European Convention of Human Rights. Furthermore, it could promote unmeritorious claims, makes distribution of the compensation difficult and goes against the principle of freedom of choice of consumers. This last comment was moreover also made by consumer representatives. Some different ways of combining opt-in and opt-out are however proposed by a limited number of respondents from all stakeholder categories, to make use of the best features of each.

With respect to the law applicable in cross border cases, no consensus can be observed, and the solutions that are proposed also go in all directions. It can however be concluded that the different possibilities proposed in the Green Paper with respect to the law applicable in cases with consumers from different Member States, are rejected by nearly all respondents expressing an opinion on it (mainly consumer representatives and legal experts). Forum shopping should in any case be prevented according to many respondents (this is moreover also true for option 2).

Lastly, many business representatives state their objection to the use of media coverage as a means of pressure on businesses and respondents from all categories of stakeholders, except public authorities, state that punitive damages should be avoided.

On other relevant aspects:

The opinions on the use of binding or non-binding measures, should the EU decide to intervene, are divided. The preference for binding options clearly rises with the preference for options with more EU involvement. Several respondents from all stakeholder groups also propose a combination of binding and non-binding instruments, but the details of the proposed combination often vary. According to a number of respondents across stakeholder groups, the

intervention should be limited to a set of minimal rules so that no restrictions are imposed on the protection mechanisms already in place in Member States.

Few alternative solutions for the problem are proposed. Some stakeholders limit themselves to observing that the search for alternative solutions is not relevant as long as the need has not been established (business representatives, legal experts, public authorities and other stakeholders), others feel this question would only become relevant once the options proposed in the Green Paper have been thoroughly implemented and/or evaluated (consumer representatives and legal experts). Some alternative solutions include the development of an EU wide ombudsman for cross border cases and the establishment of an independent European court to deal with this kind of cases. The proposed Directive on consumer rights is also considered by some business representatives to be able to solve some of the current problems.

In general, it can also be concluded that the contributors emphasize the need for consistency between the work of DG SANCO and others. Especially the need for consistency with the work of DG Competition on EC antitrust law infringements is emphasized by business representatives, legal experts and other stakeholders.

Finally, there is no consensus on the restriction of the EU involvement to cross-border cases. Some business representatives and public authorities find that the EU would have no competence to intervene on national issues. Others (mainly consumer representatives) however feel a consistent approach for national and cross border cases is needed, and find that the Green Paper is too focused on the problem of cross border cases.

1.4 General conclusion

In conclusion, we observe the following main trends:

- The different stakeholder positions are extremely diverse and in some cases antagonistic, in particular regarding more EU involvement in this matter and regarding the options preferred; it is therefore hardly possible to make emerge some majority points of view;
- With respect to EU involvement there is however one area where some consensus appears i.e. the need for an evaluation of the working of the measures already in place.

2 INTRODUCTION

2.1 Introduction

This Report is part of the Assessment of the economic and social impact of the policy options to empower consumers to obtain adequate redress. The work is undertaken by the Consumer Policy Evaluation Consortium (CPEC), with one of the Consortium partners, GHK, leading the assignment on behalf of DG Health and Consumer Protection (DG SANCO).

This report presents an analysis of the contributions to the public consultation, launched by the European Commission with the Green Paper on Consumer Collective Redress COM (2008) 794 final of 27 November 2008. The consultation launched by the Commission in the first months attracted only very few responses (i.e. two days before the closing of the consultation only 21 responses were received by the project team), but this number substantially increased during the last week before the consultation deadline: in total 74 responses were received before the closing of the consultation. However, in the following month (i.e. between March 2nd and March 31st) 107 additional responses were received, bringing the total to 181. The chronology of reception of responses is summarized in the following table:

Date of reception	# of responses
Before closing of consultation	
16/01/2009	4
30/01/2009	2
6/02/2009	1
13/02/2009	5
20/02/2009	9
27/02/2009	52
<i>Subtotal</i>	73
After closing of consultation	
2/03/2009	42
3/03/2009	14
4/03/2009	4
5/03/2009	7
6/03/2009	7
9/03/2009	6
10/03/2009	6
11/03/2009	3
12/03/2009	1
13/03/2009	2
16/03/2009	3
17/03/2009	1
18/03/2009	2
19/03/2009	2
20/03/2009	2
23/03/2009	2
27/03/2009	1
30/03/2009	1
31/03/2009	2
<i>Subtotal</i>	108
TOTAL	181

Table 1 Number of responses received, according to the date of reception by the project team

All responses received have been analysed and have subsequently been dealt with in this report.

The contributors are systematically categorised in the following groups of stakeholders:

- European institutions;

- Member States' public authorities;
- European consumer organisations,
- National consumer organisations;
- European business representatives;
- National business representatives;
- Businesses,
- Legal practitioners;
- Academics;
- Other stakeholders.

The full list of contributions is given in the Annex 1 to this report.

This Analysis Report follows the structure of the Green Paper. For this reason, the contributions are summarised according to the seven questions that have been asked in the Green Paper:

- Q1: What are your views on the role of the EU in relation to consumer collective redress?
- Q2: Which of the four options set out above do you prefer? Is there an option which you would reject?
- Q3: Are there specific elements of the options with which you agree/disagree?
- Q4: Are there other elements which should form part of your preferred option?
- Q5: In case you prefer a combination of options, which options would you want to combine and what would be its features?
- Q6: In the case of options 2, 3 or 4, would you see a need for binding instruments or would you prefer non-binding instruments?
- Q7: Do you consider that there could be other means of addressing the problem?

The analysis of the responses to these questions has been undertaken on a quantitative as well as qualitative level to the extent that this is possible for the different questions (cf. infra).

It is important to note that the contributions are of variable quality and the pertinence of the responses to the questions asked in the Commission's public consultation document is mixed.

There is also a high variety in terms of length and content of the contributions: whereas some contributions follow exactly the structure of the Green Paper and thus respond to each of the seven questions, other contributors explain their view on collective redress in a general position paper, thereby e.g. giving their overall opinion on the subject of collective redress and dealing with wider debates on the subject. In addition, a number of contributors have not answered all questions, reflecting most likely their relative interest in particular questions.

It has been observed that when responding to a specific question, respondents frequently give an opinion, arguments etc. which in fact are part of the response to another question. To

maximise the degree of consistency between the processing of the responses and thus the quality and detail of the analyses that can be carried out, the members of the project team have recorded these answers under the question to which they judge the answer best responds to. The structure of responses may thus have been adapted substantially in a number of cases. It is clear that this adaptation is not always completely straightforward (i.e. that there are different categorisation possibilities), but great effort has been put into ensuring the consistency of the answers as much as possible.

In this regard, it should be noted that the project team has often been confronted with answers that indicate a 'preferred option' (see question 2) and also present a 'combination of options' (see question 5) that is esteemed acceptable. It is clear that a preference per definition can only correspond to one possibility (otherwise it is not a true preference). Also, if the preferred option as well as the combination of options would have been taken into account in the analysis, this would have resulted in a distortion of the statistics. This is why the project team has always indicated only one option or one combination of options as preferred (i.e. there will not be a positive answer to question 2 and 5 in the analysis). This exercise was possible through a detailed analysis of the responses, in which it is usually indicated that e.g. 'one option is preferred but a combination would also be acceptable' or 'if one single option had to be chosen, it would be this or that one, but a combination is in fact the best solution'. These nuances have moreover been maintained in the more qualitative parts of the analysis, explaining the reasons for a certain choice.

With regard to the languages in which the contributions are submitted, it can be noted that after English, German was the most frequently encountered language of responses. Next to that, respectively French and Italian answers were most often received. In addition, one to three answers in some less frequent languages have been received and analyzed, as is shown in the following table¹:

Language	# of responses
German	31
English	97
Estonian	1
Czech	2
French	19
Dutch	2
Italian	8
Slovak	2
Greek	3
Swedish	1
Hungarian	1
Spanish	3
Slovenian	2
Polish	2
Finnish	2
Danish	1
Latvian	1
Lithuanian	1
Portuguese	1
Bulgarian	1
TOTAL	181

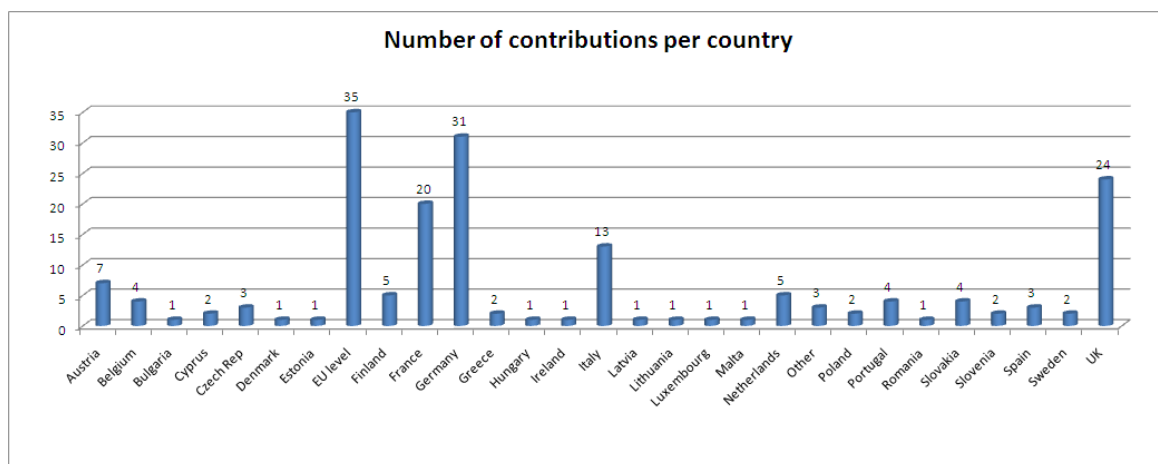
¹ Please note that some responses were received in multiple languages. In this case, the table mentions the language of the document that has been used by the project team when analysing the answer.

Table 2 Number of responses received, according to the language of the response

2.2 Member States' and stakeholders' representation in the contributions

It is important to present the total number of contributions received per country and per stakeholder group in order to ensure that the outcomes of the analysis are being interpreted accordingly, taking into account the extent to which each country and/or stakeholder is represented.

2.2.1 Member States' representation

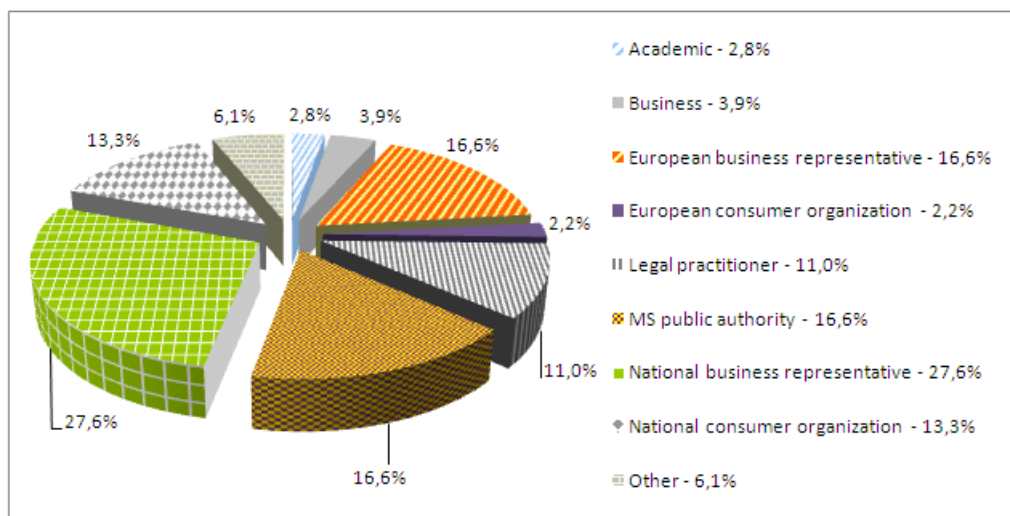


Graph 6 Number of contributions per country

A minimum of one response was received from all Member States. However, in the graph, a rather unbalanced representation of Member States can be observed. Very strongly present are EU-wide respondents (with about 19,3% of responses), and also Germany (17,1%). The UK and France follow with about 13,3% and 11,0% of responses. Finally, a substantial amount of responses was received from Italy (7,2%). From all other countries, a small amount of responses has been recorded, i.e. between 1 and 3 responses, except for Austria, Belgium, Finland, The Netherlands, Portugal and Slovakia, for which between 4 and 7 responses were recorded.

Three responses have been analysed from organisations or businesses covering countries outside the EU. Two of those are from the USA and the third one is from Norway.

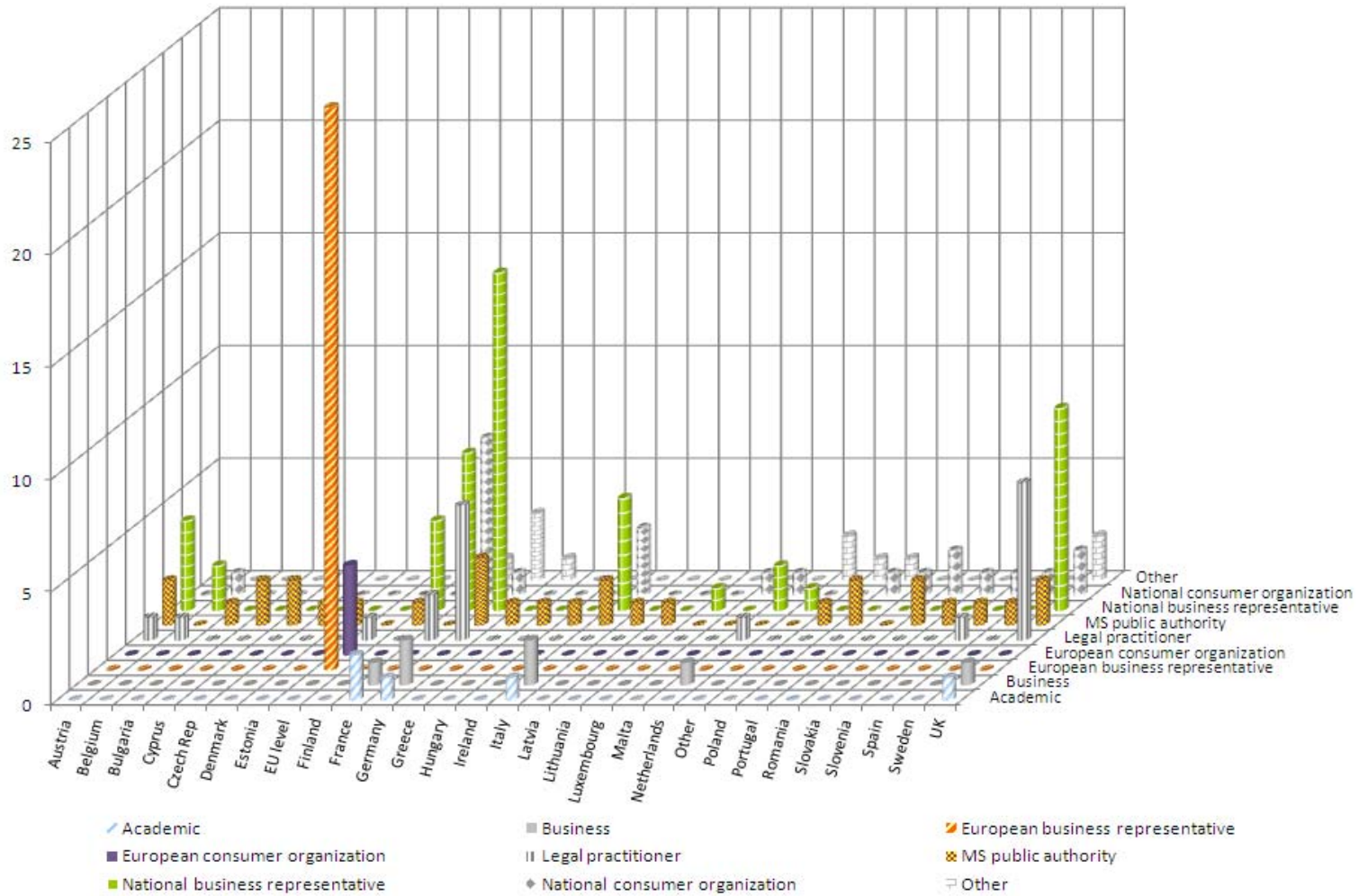
2.2.2 Stakeholders' representation



Graph 7 Number of contributions per stakeholder group and stakeholder percentage of total contributions

As shown in the above graph, a large amount of contributions comes from the business sector. More precisely, national and European business representatives and businesses together account for 48,1% of responses. The remaining half of responses in the first place represent Member States' public authorities (16,6%) and national and European consumer organisations (15,5%), and to a lesser extent legal practitioners or associations of legal practitioners (11,0%) and academics (2,8%). 6,1% of responses have been classified as 'other', and these comprise amongst others Ombudsmen, a trade union and a political party.

The stakeholder groups, represented by contributions for each country, are presented in Graph 8 below.



Graph 8: Stakeholder group representation per country

The large number of EU contributions mainly comes from business representatives. The German responses come from business representatives and legal practitioners and to a lesser extent from public authorities, other stakeholders and consumer organisations. Business representatives also often come from France, Italy, Austria, Finland and the UK. A substantial amount of responses from legal practitioners were also received from the UK.

2.3 Structure of the report

The remainder of the Report contains the following sections:

- Section 3: General overview of the contributors' opinion on the different options proposed in the Green Paper;
- Section 4: Detailed analysis of the contributions per Green Paper question;
- Section 5: Other relevant issues raised by the contributors.

Furthermore, Annex I provides the list of all the contributors by country and by stakeholder group.

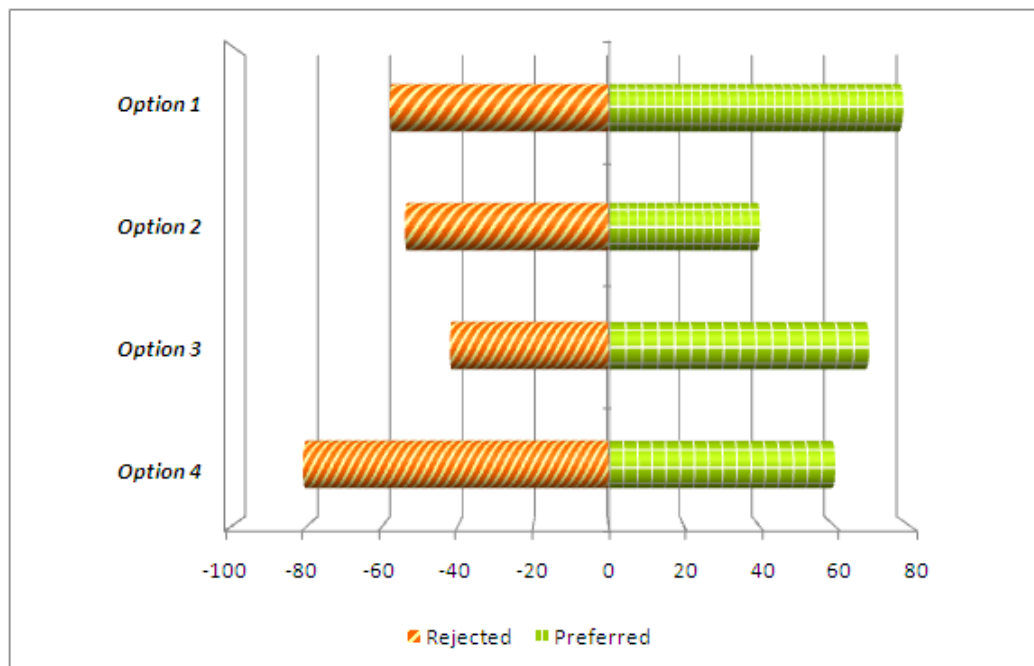
3 GENERAL OVERVIEW OF THE CONTRIBUTORS' OPINION ON THE DIFFERENT OPTIONS PROPOSED IN THE GREEN PAPER

This section gives a general overview of the opinions of the contributors on the different policy options, and this across all stakeholder groups.

As a reminder, the Options as presented by the European Commission in the Green Paper are summarized in the following list:

- Option 1: No EC action: rely on existing national and EU measures, in any case until more information will be available on the effect of the existing and future measures;
- Option 2: Cooperation between Member States: for countries that already have a collective redress mechanism: the opening up of the mechanisms that exist in a country to consumers from all Member States – for countries that do not have a collective redress mechanism: the establishment of a collective redress mechanism open to consumers from all Member States;
- Option 3: Mix of policy instruments: a combination of improving alternative dispute resolution (ADR) mechanisms, extension of the scope of national small claims procedures to mass claims, extending the scope of the Consumer Protection Cooperation Regulation, encouraging businesses to improve their complaint handling schemes and taking actions to raise consumers' awareness of existing means of redress;
- Option 4: Judicial collective redress procedure: the introduction of an EU measure to ensure that a collective redress judicial mechanism exists in all Member States.

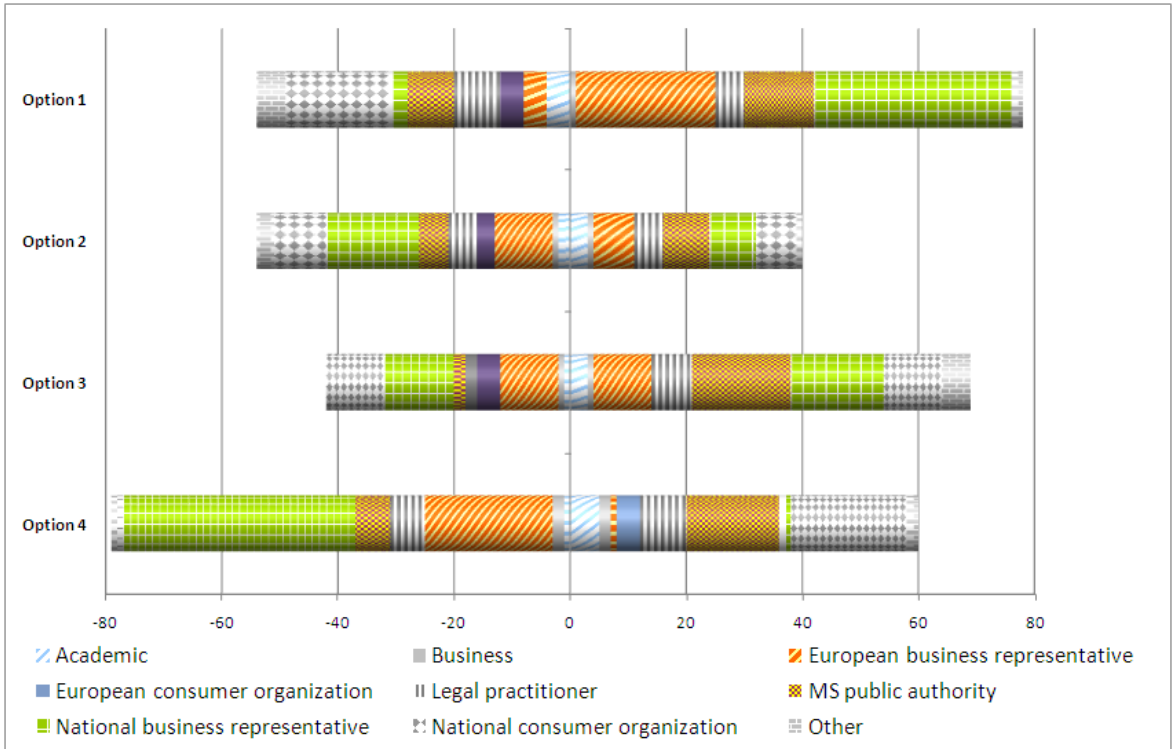
The respondents are asked to state their preference for one or more options, and their rejection of one or more options. Also, it is possible for respondents to indicate if they prefer a combination of different options. Grouping the answers to these questions and presenting them per basic option (i.e. if a combination is preferred, this is accounted for once in each basic option that would form part or it), the following results would be obtained:



Graph 9: General overview of the preference for and rejection of the four basic Green Paper options

There is a tendency towards option 1 as preferred option, with option 3 being the second most preferred, but rather closely followed by option 4. A lot of opposition can however also be observed for option 4. Option 3 receives the least opposition, and would be the primary option when combining the preferences and rejections per option.

It is important to bear in mind that the business sector is represented by about half of the total contributions received and that this stakeholder group is therefore over represented compared to the other stakeholder groups. For a more detailed view, the distribution of opinions across stakeholder groups can be derived from the following summarizing graph:



Graph 10: General overview of the preference for and rejection of the four basic Green Paper options, per type of stakeholder

The following section presents the answers to the different questions. The preferred and rejected options as well as preferred combinations of options are all presented per stakeholder group. Therefore this gives a more detailed picture on the opinions towards the options.

4 DETAILED ANALYSIS OF THE CONTRIBUTIONS PER GREEN PAPER QUESTION

4.1 Introduction

This section details the preferences of each stakeholder group with respect to the different Green Paper questions. Firstly, if applicable, the overall results are presented in a quantitative way and illustrated with graphs and/or tables. Secondly, the comments made by the contributors per question are summarised, and this while categorising them per type of stakeholder. If applicable, the responses are subdivided further, e.g. by option favoured or rejected or by characteristics of the option. The summary mainly focuses on the trends that have been observed in the answers, and thus puts emphasis on the most frequently cited comments.

To enhance the readability of the report, the number of categories of stakeholders used in the following analysis has been reduced to five. The relevant categories are: business representatives (comprising national and European business representatives and businesses), consumer representatives (comprising national and European consumer representatives), public authorities, legal experts (comprising legal practitioners and academics) and other stakeholders.

For each comment or statement that is made, a footnote refers to the relevant stakeholders. A list of the abbreviations that are used in these footnotes can be found in Annex 3.

Please note that all statements/judgements reported in this document have been made by contributors and are not to be seen as positions of the authors of the report.

4.2 Contributions to the specific questions raised in the Green Paper public consultation

4.2.1 *EU involvement*

The first question raised in the Green Paper was:

Question 1 “What are your views on the role of the EU in relation to consumer collective redress?”
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A quantitative analysis of the responses received to this question, in isolation from the responses received to the questions concerning Options, is difficult because it is a rather open question. It was initially envisaged to categorise the answers of the respondents in line with the degree of EU involvement desired (low-medium-high) or, more simply still, based on whether they are in favour or against EU involvement. But it was observed that such a categorisation would depend too much on the discretion of the team member analysing the answer (i.e. the choice would not be objective), since the responses to these questions are often very nuanced and contain multiple and diverse aspects. For example, some respondents acknowledge the need for action on collective redress and appear to be in favour of EU intervention in this area but they express serious reservations on the legal grounds for such an intervention. Those who raise doubts or objections as to the need for new regulatory initiatives in this field are split between those who recommend a full “stand still” and those who would like to see the EU do other things (such as promoting existing mechanisms). And amongst those who are in favour of an EU intervention, a few insist on the need to distinguish

domestic and cross-border trade situations, some respondents put more emphasis on harmonisation while others insist on the need to safeguard existing national systems.

In any case, numerous remarks have been made which we shall try to present in a clear and coherent manner.

- We shall first look at the issues that were raised against the notion that immediate action was needed to establish (a) collective redress mechanism(s) in the whole EU;
- We will then look at the comments received in relation with the competences of the EU in this matter, with the application of the subsidiarity and proportionality principles, and with other objections that were raised regarding feasibility and compatibility issues;
- We will then move on to the analysis of the recommended actions, starting with those that pertain to collective redress mechanisms as such, and continuing with the other possible avenues that the EU could pursue according to a number of respondents;
- Finally, we will group some of the other, less frequently made comments, which cannot be categorized under the above mentioned types of comments.

It should be noted that the above-mentioned categories are partly overlapping, so the comments should always be taken into account together.

Key issues raised by the contributors

The need for new collective redress mechanisms has not been adequately established:

Comments raised by business representatives and legal experts:

- Some business representatives and legal experts challenge or question the basic assumption of the Green Paper that consumer protection is lacking in the EU and/or that it is not possible for groups of consumers to be adequately compensated in case of infringement² or that EU intervention is needed to ensure that a collective redress mechanism exists in every Member State³ ;

Comments raised by business representatives:

- For a number of business representatives, the advantages of an EU intervention do not or may not outweigh the disadvantages (particularly the risks of abuse of the system)⁴;

Comments raised by business representatives, legal experts and public authorities:

- Some argue that the existence of various legal frameworks and procedures for collective redress in EU Member States is not sufficient to justify the need for new EU instruments in this field⁵;

² Dr Christopher Hodges, WKO – Abteilung für Rechtspolitik, WKO – Division Bank & Insurance, ECTAA, ÖRAK, EuroCommerce, Federation of Finnish Commerce, AEA, ZGV, EAPB, Clifford Chance LLP, CEA, Ashurst, US Chamber Institute for Legal Reform

³ IUA, EMOTA, ESBG, ABI, VCI, CEBP, Dutch Retail Association, BRC, UEAPME, Eurochambres, BVRLA, CECED, Association of British Insurers, EJF, US Chamber Institute for Legal Reform

⁴ ZGV, IUA, BRC, VCI

⁵ Dr Christopher Hodges, Bundesrat, WKO - Abteilung für Rechtspolitik

- Further studies would need to be undertaken on the outcomes, costs, benefits, advantages and disadvantages of alternative solutions to the problems identified⁶;
- Very few collective cases currently have a cross-border element.⁷ Only 10% of all collective redress cases currently include a cross-border element according to the Evaluation study⁸;
 - Problems are currently mainly perceived in the financial services and telecoms sector, which implies that action is only justified in these sectors and that the case for a cross-border problem is weak, since the above mentioned sectors are domestically purchased products and services⁹;

Some EU or Member States' initiatives in the area of consumer protection are quite recent and need time to unfold; The mechanisms now in place are/might already be satisfactory and further assessments of the need for new initiatives should be performed before any new EU intervention on collective redress:

Comments raised by business representatives, public authorities, legal experts and other stakeholders:

- Some collective redress mechanisms have been introduced only recently and they either work well or need more time before they can reduce detriment. So, it is incorrect or premature to say that consumer protection is insufficient or inefficient or that it is not allowing large groups of consumers to obtain redress¹⁰; The EU should wait until more information is available and perform new assessments on enforcement and on the effects of existing national and EU measures before any new regulatory initiatives are taken¹¹;

Comments raised by business representatives:

- Consumers are already well protected¹², especially when it comes to cross-border trade¹³;
- Many of the critics of EU intervention in the field of collective redress point to the satisfactory level of protection and the means of redress already granted to consumers in their country. (This is particularly true of German respondents)¹⁴;

⁶ Dr Christopher Hodges, AVIVA, UEAPME, Swedish Ministry of Justice

⁷ EBF, ZVEI, IV, BVRLA, CECED

⁸ Dr Christopher Hodges, ZVEI, Justizministerium Baden-Württemberg

⁹ Dr Christopher Hodges, Gesamtverband textil+mode Germany, Justizministerium Baden-Württemberg

¹⁰ FBF, WKO – Abteilung für Rechtspolitik, EAPB, ZGV, Estonian Government

¹¹ Dr Christopher Hodges, Österreichischer Genossenschaftsverband, DRV, ZVEI, Bundesrat, MEDEF, BDIU, Eurofinas, Siemens AG, ESBG, Central Chamber of Commerce Finland, Unicredit Group, VPRT, Bar Council of England and Wales, CGPME, EFBS, AEA, UGAL, EACB, CEEP, BRC, Bundesrat, Swedish Ministry of Justice, AMF, Herbert Smith LLP, Eurochambres, CECED, Ireland, EJF, ERRT

¹² Gesamtverband textil+mode Germany, Gesamtverband der Deutschen Versicherungswirtschaft, FBF, ZKA, Bundesverband der Deutschen Industrie

¹³ WKO – Abteilung für Rechtspolitik, UGAL, BRC

¹⁴ WKO – Abteilung für Rechtspolitik, WKO – Division Bank & Insurance, ZGV, DRV, ZVEI, DIHK, Gesamtverband der Deutschen Versicherungswirtschaft, ZDH, BRAK, Federation of Finnish Commerce

Doubts and objections as to the exact competences and legal grounds for an intervention of the EU in this matter:

Comments raised by business representatives, legal experts and public authorities:

- According to a number of respondents, the Green Paper fails to establish that the EU has competence to introduce legislation in the field of collective redress¹⁵;
 - The Community's legal competences to legislate on civil law issues (Art 61(c) and 65 of the EC Treaty) are too limited to allow her to impose a judicial collective redress procedure on all Member States or to harmonize substantial law¹⁶. They serve only to eliminate procedural hindrances that result from differences between various national laws¹⁷. The EU can only take measures to encourage Member States (using recommendations and guidelines) to set up a collective redress system if they do not have one¹⁸;
 - Besides, a prerequisite is that there is a cross-border element in the affected matters¹⁹ and that an intervention is necessary for the smooth functioning of the single market.²⁰ In other words, national differences must entail a distortion of competition in the single market. This is questionable in this case since all the companies active in a national market are exposed to the redress mechanisms available in that country (i.e. consumers can always bring a claim in their place of residence)²¹;
 - EU competences in consumer protection (Art. 153(3)(a) of the EC Treaty) only concern the measures that contribute to the realisation of the single market (Art. 95 of the Treaty) and measures which support, supplement and monitor the policy pursued by Member States (Art. 153(3)(b) of the EC Treaty)²². One respondent expresses doubts over the notion that collective redress will actually contribute to better internal market integration²³.

Calls for a strict application of the subsidiarity and/or proportionality principles:

Comments raised by all types of stakeholders:

- A number of the respondents quote and others insist on the need to adhere (strictly) to the principle of subsidiarity²⁴ or, more specifically, to let Member States decide themselves if and

¹⁵ Christopher Hodges, ZGV, EAPB, VCO-NCV, Bundesrat, VFA, UEL, Délégation des Barreaux de France, EuroCommerce, Bundesministerium für Wirtschaft, Familie und Jugend of Austria, ABI, VPRT, Confederation of Finnish Industries EK, UGAL, VCI, Zentraler Kreditausschuss Germany, Clifford Chance LLP

¹⁶ Christopher Hodges, Bundesrat, VCI, VFA, VPRT, Linklaters, EIJ, CCIP

¹⁷ Linklaters

¹⁸ ABI, RIAD, UGAL, EIJ

¹⁹ Justizministerium Baden-Württemberg, EACB, VCI, Mechthild Dyckmans, Linklaters, Bar Council of England and Wales, VPRT, IV, Clifford Chance LLP, Eurochambres, CBI, EIJ, Estonian Government

²⁰ VFA

²¹ Centrum für Europäische Politik, VFA, Linklaters, ZVEI, Mechthild Dyckmans

²² ZGV, VCO-NCW, Bundesrat, VPRT

²³ Linklaters

²⁴ WKO – Abteilung für Rechtspolitik, Centrum für Europäische Politik, EAPB, DRV, DIHK, HOTREC, ECTAA, VFA, CEFIC, FBF, ZAW, EuroCommerce, Zentraler Kreditausschuss Germany, VPRT, Confederation of Finnish Industries EK,

what adjustments are necessary²⁵;

- Following the principle of subsidiarity, the EU should only intervene if it appeared that consumer protection is insufficient (in Germany), which neither the Green Paper, nor its preparatory studies have proven to be the case²⁶ according to business representatives, public authorities and legal experts;
- In some cases, the opposition expressed against an EU intervention seems motivated more by fears that the EU may try to achieve excessive harmonisation than by a rejection of collective redress as such²⁷ according to public authorities and business representatives;

Comments raised by business representatives:

- According to the principle of proportionality, the EU may only act to the exact extent that is needed to achieve its objectives and not more²⁸;

Comments raised by public authorities:

- According to the principle of proportionality, Member States should be given enough freedom to integrate the desired measures into their existing legal system²⁹;

The EU should continue to work, using guidelines or binding instruments, on the establishment of collective redress mechanisms, either based on a new EU-wide instrument, or through the adoption of a national collective redress procedure in the Member States that do not have one yet, and either for both domestic and cross-border cases, or exclusively at the cross-border level.

Comments raised by all types of stakeholders:

- EU should strive for a suitable standard for consumer protection in all Member States³⁰. The widely varying legal mechanisms need to be substituted by a Europe-wide regulatory model³¹;

Business Europe, Ministry of Industry and Trade of the Czech Republic, Bundesverband der Deutschen Industrie, UGAL, AFEP, Bundesministerium für Justiz of Austria, Gesamtverband der Deutschen Versicherungswirtschaft, ZVEI, IV, Clifford Chance LLP, CCIP

²⁵ WKO - Abteilung für Rechtspolitik, Ministry of Industry and Trade Czech Republic, Bundesrat, MEDEV, Cefic, Gesamtverband der Deutschen Versicherungswirtschaft, ÖRAK, Bundesministerium für Wirtschaft, Familie und Jugend of Austria, BBA, VCI

²⁶ Bundesministerium für Justiz of Austria, Gesamtverband der Deutschen Versicherungswirtschaft, Centrum für Europäische Politik, ZVEI, DIHK, DRV

²⁷ Bundesrat, WKO - Abteilung für Rechtspolitik

²⁸ ZVEI

²⁹ Bundesrat, Justizministerium Baden-Württemberg, Ministry of Industry and Trade of the Czech Republic

³⁰ TSI, FSA, Association Consommation Logement Cadre de Vie, NACPR, DBF (Note: DBF also expressed doubts as to the EU's competence in the matter), UFC Que Choisir, Euro Coop, VZBV, Ministry of Commerce Industry and Tourism of Cyprus, Swedish Ministry of Justice, BEUC, Ministry of Development of Greece, Active Citizenship

³¹ UGC, ASU, TILP, Two professors from: Humboldt-Universität Berlin - J.W. Goethe-Universität Frankfurt/M, Which?, DGB, OFT, Ministry of Justice of the Slovak Republic, Ministry of Economy of the Slovak Republic, Hausfeld, Confindustria Servizi Innovativi e Tecnologici, EACB, OR.GE.CO, Faculty of Law of Montpellier, CRIOC

- The EU should provide a collective redress system, but specifically for cross-border claims³²;
- The EU should at least request or require Member States to provide for the existence of a collective redress mechanism³³, but should not provide for a particular collective redress mechanism, i.e. it should not force Member States with widely varying basic procedural rules to adopt strictly uniform measures³⁴ thereby also avoiding compromising the level of protection already granted to consumers in some Member States³⁵;

Other priorities, recommendations and comments:

Comments raised by all types of stakeholders:

- The EU should ensure that consumers are better informed on already existing protection and redress mechanisms³⁶ and notably encourage businesses and consumers to turn to ADR mechanisms³⁷;

Comments raised by public authorities, business representatives and legal experts:

- It might be more relevant for the EU to work on improving the implementation and enforcement of existing EU or Member States legislations³⁸;
- A balance needs to be found between the interests of European consumers and businesses³⁹;

4.2.2 Preferred and rejected options

The Green Paper asks the stakeholders to indicate one or more options that they approve of and that they disapprove of:

³² ANACOM, ACC, Concejal Delegado de Consumo del Ayuntamiento Irun, RIAD, Siemens AG, Diaz Reus, ZPS, Bar Council of England and Wales, Ministero dello Sviluppo Economico, CEEP, Civil Justice Council, E. Nguyen, Law Society of England and Wales

³³ Collège Européen de Paris, Insurance Ombudsman Office, Villaägarnas Riksförbund, Hellenic Consumers Ombudsman, of Commerce, Industry and Tourism of Cyprus, ABI, 13 European Consumer Associations, EBF, EADD, CNAFAL, Università degli Studi di Firenze, CRIOC

³⁴ DAV, DRV, ANACOM, FdF, DMA, CACCL, UNC, Polish Gov., Federation of Finnish Financial Services, Consumer Protection Office Slovenia, Unicredit Group, European Consumer Centre of Malta, VCI, AVIVA, Swedish Ministry of Justice, Ministry of Economy of Latvia, AmCham EU, Eurochambres, Ireland, Ashurst, Law Society of England and Wales, Familles Rurales, Association of Personal Injury Lawyers

³⁵ Confédération Syndicale des Familles, Danish Gov.

³⁶ VCO-NCW, MEDEV, ECTAA, FLA, EMOTA, Insurance Ombudsman Office, DGB, Confederation of Finnish Industries EK, EBF, Ministry of Industry and Trade of the Czech Republic, Confindustria, VCI, Università degli Studi di Firenze, ECCG, AMF, BVRLA, Confederation of British Industry, FEB, US Chamber Institute for Legal Reform

³⁷ FFSA, HOTREC, Bundesrat, Financial Ombudsman Service, EMOTA, Assuralia, FBF, Insurance Ombudsman Office, Central Chamber of Commerce Finland, ICC, Confederation of Finnish Industries EK, BBA, EBF, AFEP, AMF, BVRLA, Confederation of British Industry, EMF, FEB

³⁸ Dr Christopher Hodges, VCO-NCW, FLA, Eurofinas AISBL, Confederation of Finnish Industries EK, EACB, BVRLA, Law Society of England and Wales, UK Gov.

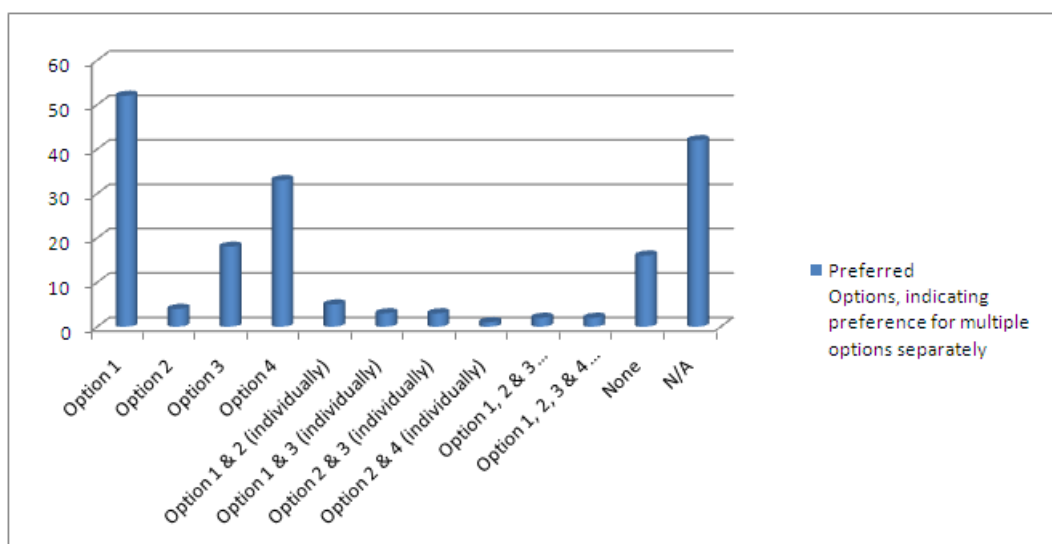
³⁹ Justizministerium Baden-Württemberg, Danish Gov, EACB, EAPB, DRV, Bundesrat, VCI, Clifford Chance LLP, Ashurst

Question 2 “Which of the four options set out above do you prefer? Is there an option which you would reject?”

Preferred options

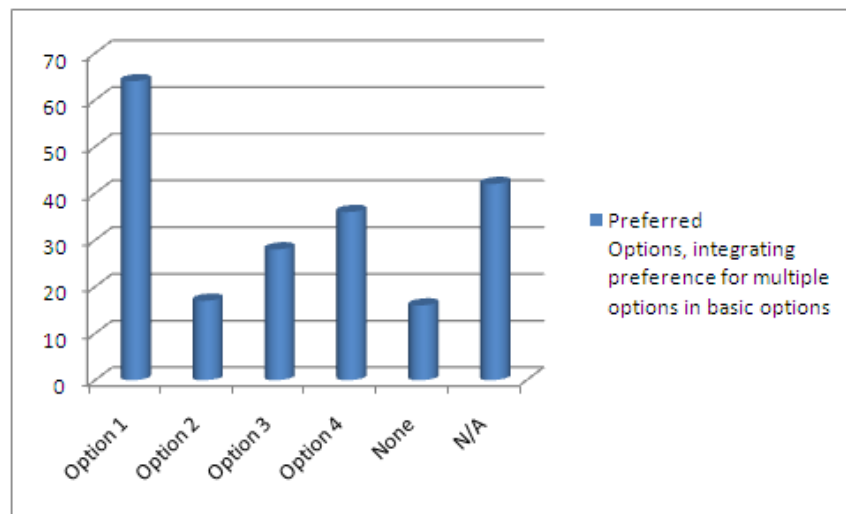
Before looking at the answers of the respondents, it should be clarified that preferred options are defined by the project team as options that are exclusively preferred by the respondent (i.e. he/she clearly prefers one option over the others) or options that are similarly, but separately, preferred by the respondent (i.e. he/she prefers more than one option, but individually, so not as a combination). If the respondent prefers multiple options but indicates he prefers these together (i.e. they would only be effective in combination with each other), this is regarded as a preference for a combination of options, which is thus recorded under the answer to question 5.

The following Graph shows the option or options that are chosen by the respondent as “preferred”:



Graph 11: Distribution of options preferred by respondents, indicating preference for multiple options separately

The above graph distinguishes between all possible answers of respondents, i.e. it separately indicates the cases in which respondents prefer multiple options. If all these cases of multiple options would be simply accounted for through each option of the four basic options (i.e. if a respondent prefers options x and y (individually) this would count for one in each basic option), the following result can be observed:

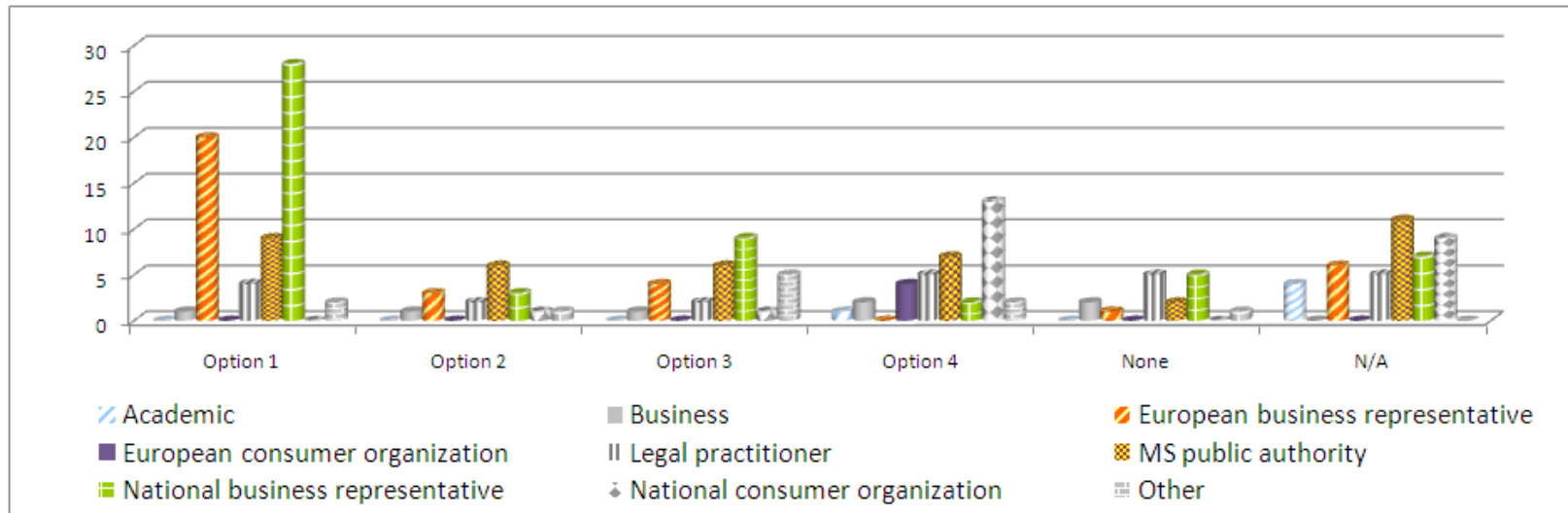


Graph 12: Distribution of options preferred by respondents, integrating preference for multiple options

The majority of stakeholders expressing a preference for one or more options, are in favour of option 1 (52,0%). Respectively 29,3% and 22,8% of these contributors are in favour of options 4 and 3. A preference for option 2 can be observed for 13,8% of contributors choosing one or more preferred options.

It should be noted that respondents for which the answer to the question of preferred options is categorised as 'N/A', are respondents that are opting for a combination of options (see question 5). If their recorded answer is 'None', this means that these respondents simply prefer no option, for instance because they reject all options or because they do not indicate a preference in their response.

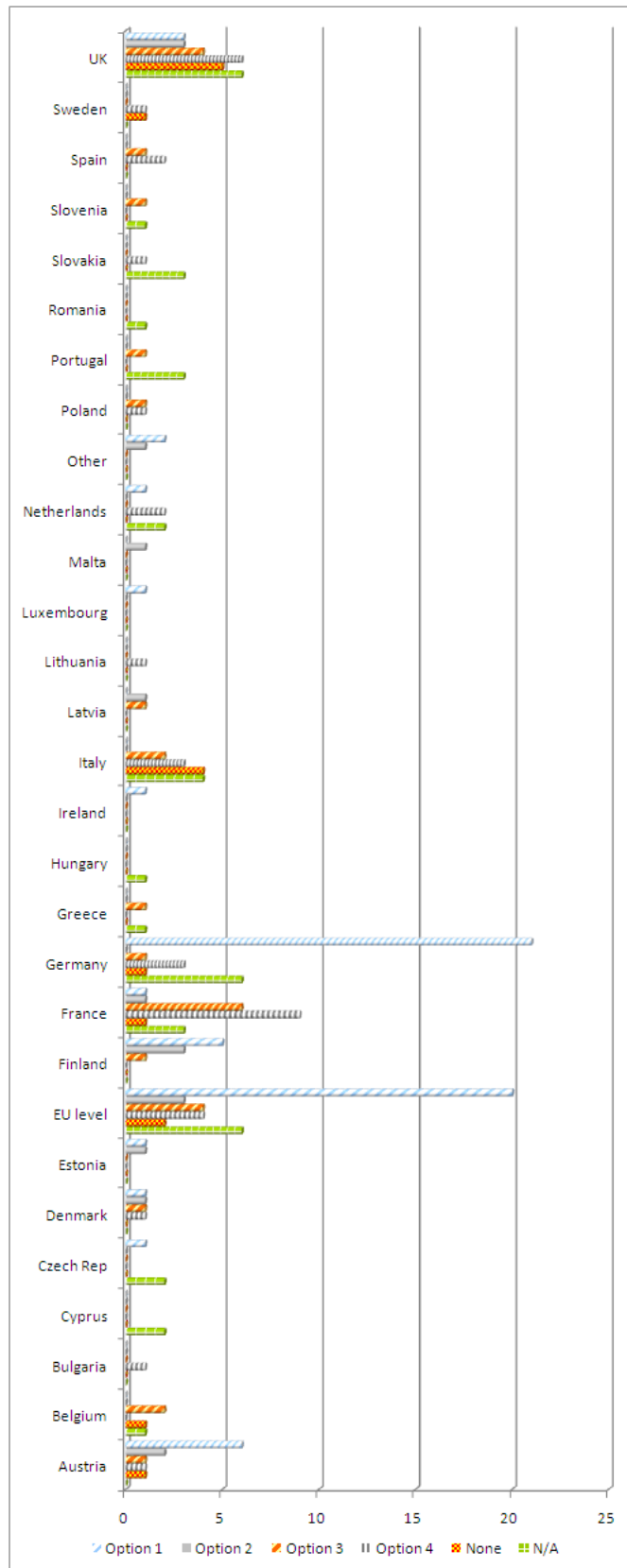
Grouping the preference for the different options per type of stakeholder, the following results can be observed:



Graph 13: Distribution of options preferred by respondents, per type of stakeholder

The business representatives clearly have a preference for option 1, and to a much lesser extent for options 2 and 3. Option 4 is most often preferred by consumer organisations and public authorities. The opinions of this last category of respondents are moreover very dispersed: a distribution across all options is noticed. The same is true for legal practitioners, although they have a slight preference for a more 'extreme' solution on one of both ends of the spectrum, i.e. option 1 or 4. Academics apparently prefer a combination of options (see further).

Grouping the preference for the different options per country of origin of the respondents, the following results can be observed:



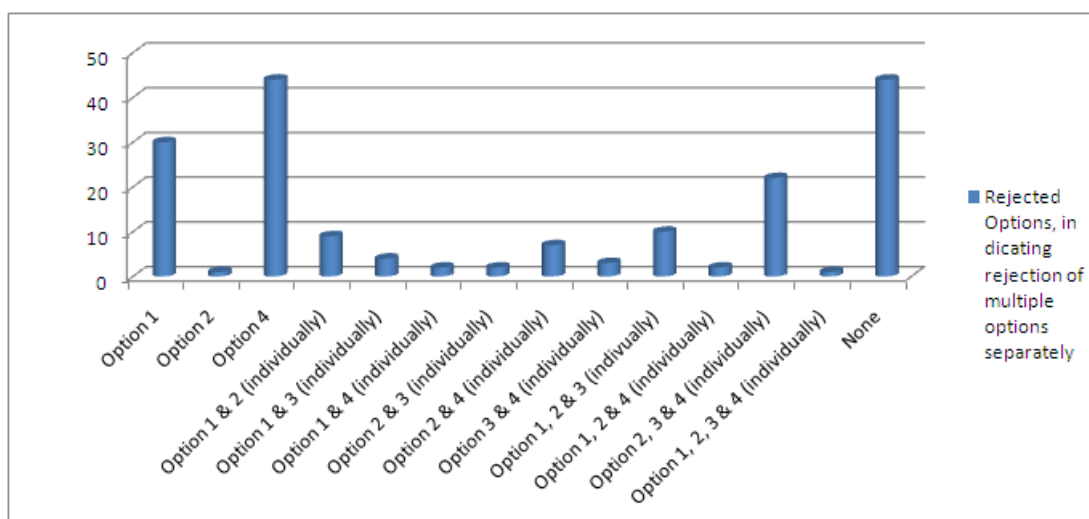
Graph 14: Distribution of options preferred by respondents, per country

The most remarkable aspect of the above graph is the preference of German respondents for option 1 (65,6% of all preferences by German respondents). The same is more or less valid for EU-wide and Austrian responses (51,3% and 54,6% respectively). In the UK the opinions are rather dispersed, but with a small preference of option 4 over the others (22,2%). France shares this preference for option 4 (42,9% of French preferences).

Rejected options

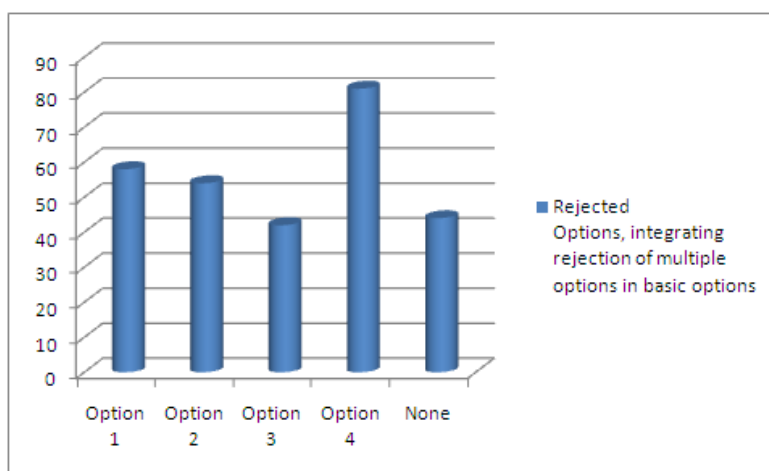
A similar analysis can be made for the options that are rejected by the respondents. It should be noted however that only options that are explicitly rejected, are recorded, i.e. not necessarily all options that are not preferred, are categorized as rejected.

Graph 15 shows the distribution of rejected options, when indicating the rejection of multiple options in separate fields.



Graph 15: Distribution of options rejected by respondents, indicating rejection of multiple options separately

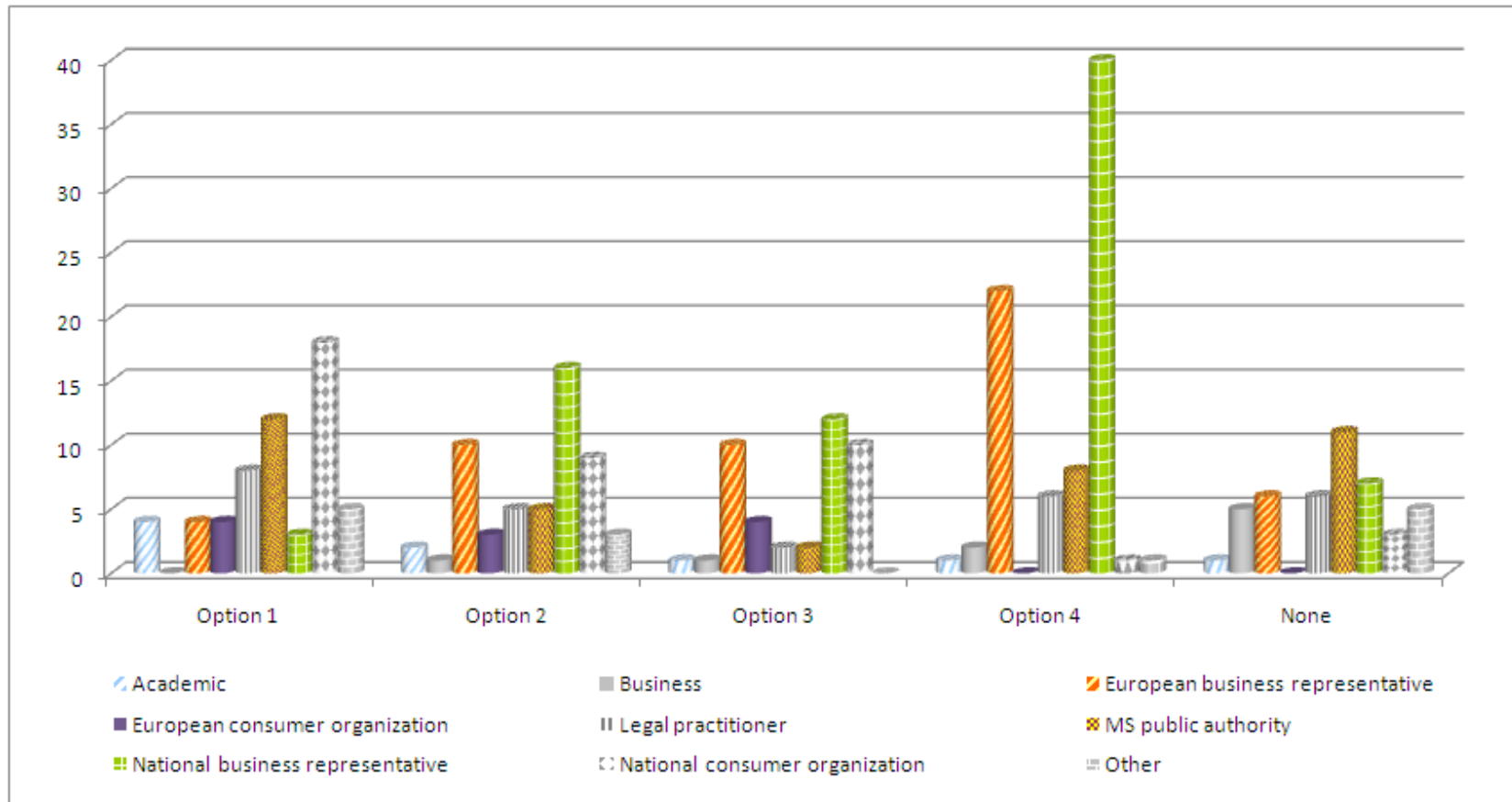
When simplifying this to a categorisation following the four basic options, this gives the following result:



Graph 16: Distribution of options rejected by respondents, integrating rejection of multiple options

It is clear that option 4 is the option that is most often rejected (59,1%). Option 1 and 2 are rejected by 42,3% and 39,4% of contributors expressing one or more rejections respectively. Option 3 is the least often rejected, i.e. by 30,7% of these contributors. It is clear that these figures for options 1 to 3 are relatively close together, and that there is no clear trend to be observed.

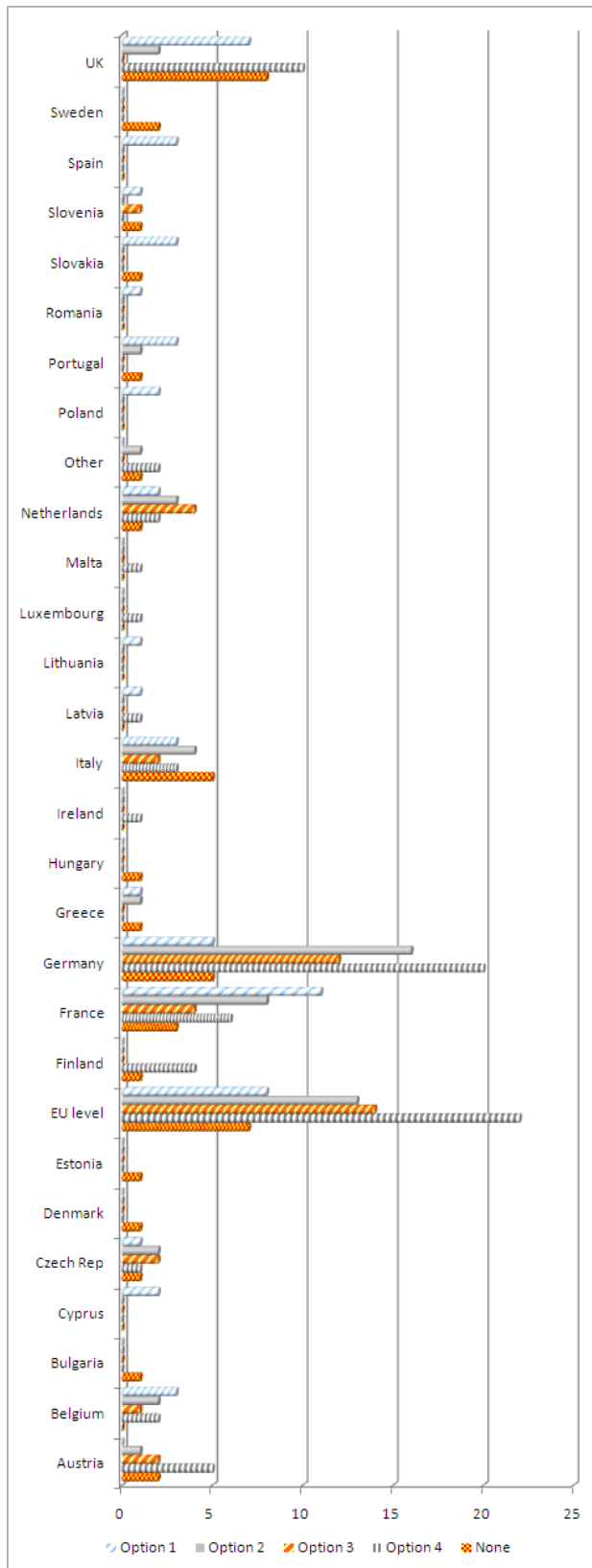
Grouping the rejection of the different options per type of stakeholder, the following results can be observed:



Graph 17: Distribution of options rejected by respondents, per type of stakeholder

Business representatives strongly reject option 4 and to a lesser extent option 2 and option 3 respectively. Consumer representatives on the other hand frequently reject all options (and most often option 1) except option 4. Option 1 is also often rejected by public authorities, legal practitioners and academics.

Finally, when grouping the rejection of the different options per country of origin of the stakeholders, the following results can be observed:



Graph 18: Distribution of options rejected by respondents, per country

In line with the preferred options, it is clear that German and EU wide respondents very often reject option 4 (34,5% and 34,4%), but also options 2 and 3. In the UK option 4 is also the most frequently rejected (37,0%), but second in line there is option 1 (25,9%), whereas the less 'extreme' options receive almost no opposition. In France options 1 and 2 are most often rejected (34,4% and 25,0% of rejections respectively).

Key issues raised by the contributors

For both the preferred and the rejected options, a number of reasons are stated by most of the respondents. The following paragraphs give an overview of these reasons, categorised per option.

It should be noted that question 5 deals with possible preferences for combinations of options (see further). To avoid duplication, the reasons stated there by respondents for their preference of a certain option as part of the combination preferred, are also analysed on the following pages.

Contributors preferring option 1:

Comments raised by business representatives, legal experts and public authorities (and other stakeholders):

- EU involvement would not be desirable, e.g. because of a lack of competence (see answers to question 1);
- There already exist numerous collective and individual measures, and these might be sufficient⁴⁰ (e.g. German representative actions and test cases, German elements of procedural law like model litigation contract, joinder of parties and the law on model case proceedings for capital investors, group actions and/or test case mechanisms in 12 other Member States, Regulation No 44/2001, Injunctions Directive, Small Claims Regulation, Cooperation between national authorities responsible for consumer protection, national and international ADR systems (e.g. ECC-Net), Ombudsmen). Also, the EU should acquire more information concerning the measures already available in Member States⁴¹;
- Several legal instruments are being implemented or will come into effect. European as well as national instruments are cited, such as the Mediation Directive, the Small Claims Regulation, the Injunctions Directive, national and international ADR systems (e.g. ECC-Net), the Greek test-case mechanism, the Danish, Finnish and Bulgarian representative actions, the work of the Estonian Consumer Protection Board.... An evaluation of the existing instruments needs to take place to measure their effects and to see if any additional measures would be needed⁴². This is true for the legal instruments that are currently being implemented but also for the ones that have been implemented in recent years. Moreover, the legal instruments that

⁴⁰ DRB, EAPB, DRV, ZVEI, DIHK, ZAW, Siemens, Dutch Retail Association, EMOTA, Justizministerium Baden-Württemberg, Federation of Finnish Commerce, VPRT, Gesamtverband der Deutschen Versicherungswirtschaft, Eurofinas, Linklaters, European Federation of Building Societies, British Banker's Association, Verband der Chemischen Industrie Germany, Industriellenvereinigung Austria, Freshfields Bruckhaus Deringer LLP

⁴¹ ZVEI, Bundesrat, AmChamEU, Ireland

⁴² Österreichischer Genossenschaftsverband, DRB, DRV, DIHK, HDE + BAG, BDIU, Zentraler Kreditausschuss Germany, Siemens, Dutch Retail Association, Gesamtverband textil + mode Germany, Cefic, ECTAA, VFA, Bundesministerium für Wirtschaft, familie und Jugend of Austria, European Savings Bank Group, Justizministerium Baden-Württemberg, VPRT, WKO bank and insurance, HOTREC, Gesamtverband der Deutschen Versicherungswirtschaft, Federation of Finnish Financial Services, Danish Government, Confederation of Finnish Industries, Linklaters, European Banking Federation, Ministry of Industry and Trade of the Czech Republic, Verband der Chemischen Industrie Germany, VCO-NCW, Industriellenvereinigung Austria, AmChamEU, CEA Insurers of Europe, CECED, Ireland, US Chamber Institute for Legal Reform, ERRT, Eurochambres, Estonian Government

are currently being implemented need to be given time before a suchlike evaluation can take place. Member States should for instance be given the time to develop and optimize their systems autonomously⁴³. This way successful mechanisms that can serve as an example for other Member States can be detected⁴⁴. It is noted that the waiting for an evaluation of existing measures and the possible improvements of these measures are in line with the Better Regulation-principle⁴⁵;

- Mechanisms like ADR, complaint handling systems and improving consumers' awareness are useful and can be used as a complement to option 1⁴⁶, but according to some respondents these should remain voluntary;

Comments raised by business representatives (and other stakeholders):

- Next to an evaluation of existing measures, the reinforcement and promotion of these measures is also suggested⁴⁷;
- There are negative effects linked to the introduction of collective redress by the EU and the advantages of intervention may not outweigh the disadvantages⁴⁸. It is moreover doubted whether action would increase cross-border trade of goods and services⁴⁹ and it is feared that there may be obstacles to the transferability of the individual case to a multitude of cases that have the same factual and legal background, especially in the insurance sector⁵⁰. Also, in the meantime option 1 spares companies from extra costs⁵¹;
- Actions could lead to the development of a litigation culture like in the US⁵²;

Comments raised by business representatives and legal experts:

- The creation of new institutions would only cause unnecessary bureaucracy for the EU, the Member States and all institutions and companies involved⁵³;
- There is no evidence that there is a need for collective redress⁵⁴, and it is sometimes cited that the Green Paper does not provide a thorough analysis of this need;

⁴³ Bundesrat

⁴⁴ VFA

⁴⁵ European Banking Federation, UGAL, European Association of Co-operative Banks

⁴⁶ DRB, ZVEI, EuroCommerce, Ministry of Industry and Trade of the Czech Republic, Direct Marketing Association, ZAW, BDIU, EMOTA, Confederation of Finnish Industries, British Bankers Association, Bundesverband der Deutschen Industrie, Verband der Chemischen Industrie Germany, Agència Catalana del Consum, European Justice Forum

⁴⁷ European Mortgage Federation, US Chamber Institute for Legal Reform

⁴⁸ ZGV, UEL

⁴⁹ European Federation of Building Industries

⁵⁰ CEA Insurers of Europe

⁵¹ DRV, UGAL, US Chamber Institute for Legal Reform

⁵² Dutch Retail Association, VFA

⁵³ DRB, Linklaters, Industriellenvereinigung Austria

⁵⁴ EMOTA, EFPIA, Dutch Retail Association, Central Chamber of Commerce in Finland, Confederation of Finnish Industries, European Federation of Building Societies, UGAL, EACB, Confindustria, Clifford Chance LLP

Contributors preferring option 2:

Comments raised by business representatives:

- Cooperation between Member States will increase efficiency, standardisation and specification of proceedings⁵⁵. It is however remarked that this should be done without incurring additional costs;
- Option 2 would comply with the subsidiarity principle⁵⁶, as it implies taking into account the different legal cultures and systems in the EU. It should thus also consist of a Recommendation⁵⁷;
- A network of competent authorities could enhance the solving of problems related to cross-border transactions⁵⁸;

Comments raised by public authorities (and other stakeholders):

- A network of competent authorities would make it easier for foreign consumers to seek redress in another Member State⁵⁹;
- By ensuring that representative actions, group actions and test cases are open to consumers located in another MS, there is a greater chance that cross-border actions would be taken but the diversity of solutions would make it difficult to identify a truly European solution. This is not necessarily a bad thing as there is no clear evidence about which one system is best but it would not ensure that consumers would have the same access to justice but rather that they would have the same access to whatever was available in the Member State where action was taken⁶⁰;

Contributors preferring option 3:

Comments raised by business representatives, consumer representatives, public authorities and other stakeholders:

- ADR is one of the most frequently cited positive aspects of this option⁶¹, with advantages being: it is an answer to some principal obstacles such as high litigation costs, complexity and length of procedures and lack of information of consumers; it leads to quick, less expensive and flexible solutions; it maintains a less confrontational atmosphere between parties; it is advantageous for businesses and consumers; it has proven to work well; it encounters less problems of juridical jurisdiction and applicable right than other solutions; it avoids the pitfalls and potential abuse of a litigation mechanism; the direct relationship between consumer and craftsman places the latter in a privileged position to solve the dispute without juridical

⁵⁵ WKO bank and insurance, DAV

⁵⁶ HOTREC, International Underwriting Association

⁵⁷ HOTREC, International Underwriting Association, Federation of Finnish Financial Services

⁵⁸ Central Chamber of Commerce of Finland

⁵⁹ Royal Ministry of Children and Equality Norway, UK Government

⁶⁰ UK Government

⁶¹ Chamber de Métiers et de l'Artisanat, FFSA, Gesamtverband der Deutschen Versicherungswirtschaft, Centro de Arbitragem de Conflictos de Consumo de Lisboa, Assuralia, Agència Catalana del Consum, Polish Government, CRIOC, European Banking Federation, European Association of Co-operative Banks, Ministry of Social Affairs and Labour of Hungary, FEDSA, BVRLA, CECED, Ministry of Justice Finland

involvement. However, it should be investigated whether or not differences in ADR mechanisms will have an effect on the consumers' possibilities for compensation in different countries⁶²;

Comments raised by business representatives and other stakeholders:

- Actions to improve complaint handling systems are welcomed⁶³. This will reduce the volumes of complaints that reach authorities and will also consolidate the confidence of consumers;

Comments raised by business representatives and legal experts:

- Option 3 takes advantage of the existing mechanisms⁶⁴ and it is always best to try to improve these before turning to other options. It is also aimed at prevention of the problem rather than on the consequences⁶⁵;
- The mix of policy instruments also encourages self-regulation and individual settlement⁶⁶ and contains small-scale cheap solutions⁶⁷;

Contributors preferring option 4:

Comments raised by public authorities and consumer representatives:

- Option 4 would enhance consumer confidence and improve consistency for businesses⁶⁸;

Comments raised by public authorities, consumer representatives and legal experts:

- It is important to have a similar mechanism in all Member States, e.g. to avoid contradictions or disparities between jurisdictions, to provide a coherent mechanism, to have an organised system, to prevent forum shopping, to decrease the competition hindering effect on EU level, and option 4 would best reach this goal⁶⁹. After all, currently only 13 Member States have some form of consumer collective redress⁷⁰. With respect to the German system test cases are characterized as being very restrictive in their area and representative actions are not effective because consumers do not receive compensation⁷¹. In the Netherlands, a claim for damage in money is not possible through collective action, and the Collective Settlement of

⁶² Danish Government

⁶³ Hellenic Consumers Ombudsman, Gesamtverband der Deutschen Versicherungswirtschaft, AMF

⁶⁴ Centro de Arbitragem de Conflictos de Consumo de Lisboa, Jones Day, British Retail Consortium, AMF, ERRT

⁶⁵ Jones Day

⁶⁶ AFEP

⁶⁷ Ashurst

⁶⁸ Office of Fair Trading, Active Citizenship

⁶⁹ Unione Nazionale Consumatori, UFC Que Choisir, EuroCoop, Polish Government, ING, CRIOC, Confédération syndicale des familles, Association of Service Users, Villagaärnas Riksförbund, Altroconsumo, Office of Fair Trading, TILP, Professors from Humboldt-Universität Berlin – J.W. Goethe Universität Frankfurt/M, Ministry of Justice Lithuania, Ministry of Economy and Energy of Bulgaria

⁷⁰ CNAFAL

⁷¹ TILP

Mass Claims Act of 2005 can only be used when a settlement is reached (thus when businesses are not willing to cooperate, consumers are left empty-handed)⁷²;

Comments raised by public authorities, consumer representatives, business representatives and other stakeholders:

- It will be cheaper than separate actions in each Member State⁷³ and cheaper than individual claims⁷⁴ and would solve cases more efficiently and with more conclusive certainty than is the case for individual claims.⁷⁵ This would especially necessary since there appears to be evidence that there currently are meritorious claims which are not being pursued individually, since the costs are disproportionate to the compensation⁷⁶;

Comments raised by consumer representatives and legal experts (and other stakeholders):

- Option 4 would improve access to justice⁷⁷, e.g. for those with small claims, those with limited resources and those in countries which currently have no provisions. It would thus make the system more democratic and more effective;
- The financing issue is very important and needs adequate solutions⁷⁸;
- It would have a pre-emptive and preventive impact on businesses⁷⁹ and would be the only solution in cases where businesses are not willing to compensate victims on a voluntary basis⁸⁰. Without option 4, consumers would be unable to properly vindicate their substantive rights⁸¹;

Contributors rejecting option 1:

Comments raised by all types of stakeholders:

- There is currently a problem and doing nothing would not solve this problem⁸², e.g. consumers in some Member States would have no access to collective redress, the

⁷² Consumentenbond

⁷³ Which?, Office of Fair Trading

⁷⁴ ADAC, Office of Fair Trading, Civil Justice Council

⁷⁵ Civil Justice Council

⁷⁶ Civil Justice Council, BEUC

⁷⁷ Association Consommation Logement Cadre de Vie, UFC Que Choisir, Délégation des Barreaux de France, TILP, ECCG, Civil Justice Council

⁷⁸ Emmanuel Nguyen, Consumentenbond

⁷⁹ Association Consommation Logement Cadre de Vie, BEUC

⁸⁰ Unione Nazionale Consumatori

⁸¹ Hausfeld

⁸² Financial Services Authority – Consumer Panel, RICS, Polish government, Verbraucherzentrale Bundesverband, Centro de Arbitragem de Conflictos de Consumo de Lisboa, Assuralia, Ministry of Commerce, Industry and Tourism of Cyprus, Agència Catalana del Consum, National Authority for Consumer Protection of Romania, Dr Christopher Hodges, UFC Que Choisir, Association Consommation Logement Cadre de Vie, ANACOM, Confédération Syndicale des Familles, Hellenic Consumers Ombudsman, DIAZ REUS, Two professors from: Humboldt-Universität Berlin J.W. Goethe-Universität Frankfurt/M, DGB, CRIOC, Office of Fair Trading, 13 European Consumer Associations, Hausfeld, Ministero dello Sviluppo Economico, ECCG, FEDSA, BEUC, Ministry of Economy of Latvia, Emmanuel Nguyen, Active Citizenship, OR.GE.CO, Ministry of Justice Lithuania, Association of Personal Injury Lawyers

functioning of the internal market would be hindered, businesses who would not follow the rules would gain illicit advantages over other businesses, there would be no mechanism in case mass EU wide detriment occurs. Doing nothing cannot contribute actively to achieving the strategy objectives of the committee for consumer policy. As consumer protection rises to the same high level in every Member State, an EU citizen should be able to defend his rights in the same manner in every Member State;

Comments raised by legal experts:

- Even if the need for cross-border solutions currently appears minor, it is justifiable to seek solution for future problems⁸³;
- There are new initiatives that the Commission can take to improve consumer redress while waiting for an impact assessment of some recent initiatives⁸⁴;
- There is a risk of forum shopping without a coordinated approach⁸⁵;

Comments raised by business representatives:

- Intervention is also necessary to shelter Europe from the negative effects of class actions in third countries, and Regulation EC N° 44/2201 should be amended to achieve this⁸⁶;

Contributors rejecting option 2:

Comments raised by consumer representatives:

- The existing procedures in Member States are different and some Member States do not even have a system or have an ineffective one, so it would not result in a coherent internal market solution, tackle the inadequacy of existing systems or solve problems such as high costs and length of procedures⁸⁷. It would keep the existing differentiations and create new ones, and even increase costs for consumers and especially for businesses, so that it will complicate the situation even further⁸⁸. It would also not solve other problems such as court congestion⁸⁹;

Comments raised by legal experts and business representatives:

- Cooperation between Member States and/or opening up of mechanisms to consumers from other Member States should already be guaranteed so there is no need for option 2⁹⁰;

⁸³ Dr Christopher Hodges

⁸⁴ Jones Day

⁸⁵ Hausfeld

⁸⁶ FEDSA

⁸⁷ Dr Christopher Hodges, Unione Nazionale Consumatori, TEST, Association Consommation Logement Cadre de vie, ANACOM, Confédération Syndicale des familles, Jones Day, Deutscher Gewerkschaftsbund, Ministero dello Sviluppo Economico, Assuralia, ECCG, BEUC

⁸⁸ Ministero dello Sviluppo Economico, Office of Fair Trading

⁸⁹ Unione Nazionale Consumatori, TEST, ECCG

⁹⁰ DIAZ REUS, Cefic, Bundesverband der Deutschen Industrie, RJ Gaudet

Comments raised by public authorities and business representatives:

- Would mean that Member States who have financed introduction of collective redress on their territory should let consumers of Member States who have financed nothing in that domain, benefit from it⁹¹. It would thus overcharge these Member States and they may therefore be reluctant;

Comments raised by consumer representatives, legal experts and business representatives:

- Has a problem of funding: it is unclear who would bear the costs for procedures involving consumers from other Member States⁹² and it cannot be expected of Member States to take care of everything financially and administratively⁹³;
- The solution would only address cross-border cases⁹⁴;

Comments raised by all types of stakeholders:

- The introduction of option 2 seems to be very complex⁹⁵ and a number of different problems of different nature are expected:
 - According to substantive law a court or other institution is obliged to apply the law of the plaintiff's Member State. This would oblige judges, lawyers, etc. to study the national law of every other Member State (expensive and time-consuming)⁹⁶;
 - According to Art. 6 of the Rome I regulation the different laws of all consumers in cross-border cases should be applied. Parties may not be familiar with the national law of other Member States⁹⁷;
 - A chaotic legal status will be the result of allowing consumers from all Member States (not only consumers from Member States which do not have a collective redress mechanism) to choose where in the EU they would like their lawsuit to take place. It is doubtful if judges will be able to apply the national law of another Member State correctly and if these verdicts can be binding⁹⁸. Moreover, it is remarked that normally the law of the consumer's homeland is always preferred, whereas now he would get access to the law of other Member States⁹⁹;
 - Legal verification must be possible when the parties do not agree with the verdict. This causes confusion regarding which court in which Member State is responsible for this verification¹⁰⁰;

⁹¹ FFSA, ANACOM, CECED, European Justice Forum

⁹² Dr Christopher Hodges, VFA

⁹³ OR.GE.CO

⁹⁴ Association Consommation Logement Cadre de vie, TEST, VFA, ECCG, BEUC, Clifford Chance

⁹⁵ Familles de France, Jones Day, ANACOM, Confédération générale du patronat des petites et moyennes entreprises, AMF, OR.GE.CO, Clifford Chance

⁹⁶ DRB, Law Society of England and Wales

⁹⁷ ZVEI, Deutscher Gewerkschaftsbund

⁹⁸ DRB

⁹⁹ Bundesverband der Deutschen Industrie

¹⁰⁰ DRB

- Consumers may not benefit from the potentially better law in their own country and it would thus be difficult to treat these cases at once¹⁰¹;

Comments raised by public authorities, legal experts and business representatives:

- There may be extra bureaucracy for all involved parties and/or additional (organisational) costs¹⁰², such as high translation costs¹⁰³;

Comments raised by consumer representatives, business representatives and other stakeholders:

- There are no guarantees that a better cooperation between countries would lead to a better consumer protection. It is thus too uncertain in terms of effectiveness¹⁰⁴;
- There is a risk of forum shopping without a coordinated approach¹⁰⁵;

Contributors rejecting option 3:

Comments raised by business representatives and legal experts:

- Option 3 will be complicated to implement, it will entail disproportionate expenses and procedural uncertainties and it necessitates too many compromises from too many parties¹⁰⁶. It will also lack coherence and involve additional red-tape¹⁰⁷;

Comments raised by business representatives and consumer representatives:

- Option 3 is unclear and raises questions about implementation¹⁰⁸. The details of this option should be specified in more detail, e.g. the binding versus non-binding nature of the policies, the practical implementation of mediation;
- The Small Claims Regulation¹⁰⁹ and ADR systems¹¹⁰ do not offer a satisfactory solution for mass claims, but are directed towards individual (simpler) claims. The use of ADR in the EU is moreover very diverse and closely linked to cultural traditions¹¹¹.

¹⁰¹ Hellenic Consumers Ombudsman

¹⁰² ANACOM, DRB, Association of Personal Injury Lawyers

¹⁰³ ZVEI, Deutscher Gewerkschaftsbund

¹⁰⁴ DIHK, Familles de France

¹⁰⁵ AFEP, Bundesverband der Deutschen Industrie, ECCG, BEUC, US Chamber Institute for Legal Reform

¹⁰⁶ HOTREC, WKO bank and insurance, Two professors from: Humboldt-Universität Berlin J.W. Goethe-Universität Frankfurt/M, Association of Personal Injury Lawyers B

¹⁰⁷ HOTREC

¹⁰⁸ Cefic, Confédération Syndicale des Familles, VFA, Bundesverband der Deutschen Industrie

¹⁰⁹ VCO-NCW, OR.GE.CO

¹¹⁰ Association Consommation Cadre de Vie, Unione Nazionale Consumatori, ECCG, OR.GE.CO

¹¹¹ Unione Nazionale Consumatori, ECCG

Comments raised by consumer representatives:

- ADR is in itself not acceptable: it is voluntary¹¹² and thus only works with the 'motivation' of an alternative, being an effective court system (so a combination with option 4 is sometimes suggested);

Comments raised by business representatives:

- The Small Claims Regulation, the CPR¹¹³ and the Mediation Directive¹¹⁴ are very recent so before possible extensions, an evaluation is necessary. Also, the division of roles between public and private parties and public parties and courts must be firstly developed, as well as the question of specialisation towards certain sectors¹¹⁵;

Contributors rejecting option 4:

Comments raised by business representatives and legal experts:

- For justifying their rejection of a judicial collective redress option, respondents often refer to the reasons they have stated for not wanting EU intervention, so the answers to that question should be seen in conjunction with the ones on this question. Important remarks are the esteemed lack of competence of the EU and the fact that there would be no need for a collective judicial system or that this need has not been established (yet)¹¹⁶. The lack of demonstration of need specifically for cross-border issues is also explicitly cited¹¹⁷;
- There are many disadvantages or risks of disadvantages when introducing such a system¹¹⁸: high costs for businesses and/or consumers, high costs for Member States, damage to the reputation of businesses (especially because of media attention), a case overflow for courts, abusive appeals, inflexible solutions, procedural difficulties, impact on insurances, all risks would lie with the businesses and none with the consumers;
- Other problems that are cited include¹¹⁹: substantive law would need to be amended, normal civil procedures would be by-passed, there would be practical problems for the determination of the ways of compensation, it would be technically impossible to define one uniform solution for contractual situations that differ, it is unclear how to deal with the double assertion of

¹¹² TEST, Unione Nazionale Consumatori, EuroCoop, CRIOC, Slovenian Consumers Association, ECCG, OR.GE.CO

¹¹³ VCO-NCW

¹¹⁴ Siemens

¹¹⁵ VCO-NCW

¹¹⁶ Gesamtverband textil + mode Germany, MEDEF, Direct Marketing Association, Finance and Leasing Association, Fédération Bancaire Française, European Savings Bank Group, EuroCommerce, Dutch Retail Association, HOTREC, Cefic, European Banking Federation, International Underwriting Association, VCO-NCW, Business Europe, Confederation of Finnish Industries, British Banker's Association, Verband der Chemischen Industrie Germany, Industriellenvereinigung Austria, Clifford Chance LLP, Eurochambres, BVRLA, Freshfields Bruckhaus Deringer, ERRT (As a general point: What is the logic in the order of the respondents listed?) In general, the order is the same as in the database, and depends thus on the order of recording the responses

¹¹⁷ VCO-NCW

¹¹⁸ Jones Day, ZVEI, FFSA, ZGV, Dr Christopher Hodges, WKO bank and insurance, FFSA, UEAPME, Clifford Chance LLP, Eurochambres, CECED, Ashurst, ERRT, CCIP

¹¹⁹ WKO bank and insurance, ZGV, FFSA, Verband der Chemischen Industrie Germany, UEAPME, Confederation of British Industry, Ashurst, European Justice Forum

claims by qualified entities and individual consumers, it would create barriers and distortions rather than removing them, even if safeguards are determined it is questionable whether the Commission has the power to make sure these are effectively put in place in Member States;

- Problems with private funding¹²⁰ may be that it will create abuses or will not happen for small cases, thus not creating a solution. Funding by law firms would also result in abuses;

Comments raised by business representatives, legal experts, public authorities and other stakeholders:

- There is a risk of resulting in a situation like in the US¹²¹, where there is a real litigation culture, where the costs are extremely high, where actions are being filed in the economic interest of legal representatives, where there is a pressure for businesses to settle even in case of unmeritorious claims etc, even if it is stated in the Green Paper that this should be avoided. Such a judicial collective redress system is the counterpart of a lowly regulated economical system (like the US), but this is not the context in Europe¹²². Europe has a legal tradition of individual claims and punishing businesses by means of private law is a principle of Anglo-American law¹²³. Moreover, even in the US class actions are increasingly critically regarded, e.g. the Class Action Fairness Act of 2005 that passed a reform of procedural law¹²⁴;
- It would be very difficult or even impossible to develop such a system taking into account the national specificities of the Member States¹²⁵. Examples of where there might be clashes are the time limitation of actions, the burden of proof and the claim for punitive damages. Collective redress on the basis of the Anglo-American example might not even be compatible with the basic principles of Continental European civil process law, and it would in any case be a diversion from the legal traditions in Member States¹²⁶. It would be best to leave the choice of a system to Member States, in view of the differences in national contexts and national judicial systems¹²⁷; Also, it is not reasonable to require Member States to build new systems if they already have their own systems¹²⁸;
- The introduction of such a measure would be disproportionate¹²⁹, e.g. because of the small number of cases that have a cross-border element or that are eligible for collective action. Because of the usually small amount of claims the costs per consumer would also be disproportionate to the costs of the regulator being able to enforce a similar right¹³⁰;

¹²⁰ Ashurst, European Justice Forum

¹²¹ Österreichischer Genossenschaftsverband, Bundesrat, FLA, WKO Bank and Insurance, Dr Christopher Hodges, DRV, DIHK, Siemens, VFA, VPRT, SGV, EFPIA, British Banker's Association, Bundesverband der Deutschen Industrie, Clifford Chance LLP, Ashurst, FEB, European Justice Forum, US Chamber Institute for Legal Reform

¹²² FFSA

¹²³ Gesamtverband textil + mode Germany

¹²⁴ Verband der Chemischen Industrie Germany

¹²⁵ British Retail Consortium, Fédération Bancaire Française, Central Chamber of Commerce in Finland, ABI, UniCredit Group, DAV, RIAD, WKO bank and insurance, HOTREC, Clifford Chance LLP, ERRT, Ministry of Justice Finland

¹²⁶ EAPB, Ministry of Industry and Trade of the Czech Republic

¹²⁷ Confederation of Finnish Industries, Industriellenvereinigung Austria, BVRLA, Confederation of British Industry, CCIP

¹²⁸ Eurochambres

¹²⁹ BVRLA, Confederation of British Industry, Ireland

¹³⁰ Ashurst

- There is doubt about the possible benefits of a suchlike system¹³¹, e.g. the extra costs can undo any gain of time, compensation still needs to be decided for each consumer so it would not be more efficient, the litigation costs for businesses will not decrease since more claims will be filed, media coverage can be a threat for the further existence of businesses, group actions are not fast, simple and inexpensive, the problem of the question of jurisdiction and of the multitude of applicable laws would not be solved...The absence of added value is also shown by the fact that there are limited damages earned by consumers in countries where the system exists (from 32 to 332 EUR);

Comments raised by business representatives:

- It would not be appropriate to try to extend measures that already exist in some Member States to a EU level when it is shown that there are weaknesses in these national systems and that they are not yet well established, as the studies of the Commission show¹³²;
- The existing EU mechanisms have as a consequence that there is no need¹³³: the Small Claims Regulation and the Order for Payment Regulation and also Regulation (EC) No 44/2001: a consumer has the option to take action in his or her domicile or in Member States of defendant's domicile. If all consumers would choose the defendant's domicile, this would result in a group action;
- Has the risk of causing liability to be disengaged from damage, causality and fault (no presupposition of fault), because it requires simplified and compounded facts¹³⁴;
- The introduction in the current crisis situation would not be opportune¹³⁵;

Comments raised by business representatives and public authorities:

- There already exist suchlike systems in certain Member States so there is no further need¹³⁶: e.g. Austrian Code of Civil Procedure does not provide for collective redress *in se* but there are two possibilities for group action: several plaintiffs act jointly in a single action with their individual claims (subjective "joinder" of actions) and a single plaintiff integrates several claims assigned for collection (objective "joinder" of actions), collective instruments exist in Germany, in France there are juridical protection guarantees, The Czech Republic has partial arrangements for collective cases (connection of individual cases);

Comments raised by legal experts:

- It is reasonable that the financing issue would be left to the Member States but this reinforces the impracticality of a common procedure for all Member States: consumers would sue in the Member State where their claims would best be financed¹³⁷;

¹³¹ WKO Abteilung für Rechtspolitik, Österreichischer Genossenschaftsverband, RIAD, Gesamtverband textil + mode Germany, MEDEF, UEL, Unicredit, BDIU, Dutch Retail Association, ZGV, Linklaters, Ministry of Industry and Trade of the Czech Republic, Bundesverband der Deutschen Industrie, AmChamEU, Eurochambres

¹³² ABI, Unicredit Group, European Banking Federation

¹³³ UEL, WKO bank and insurance

¹³⁴ WKO bank and insurance, ZGV, BVRLA

¹³⁵ FFSA, European Association of Co-operative banks

¹³⁶ Österreichischer Genossenschaftsverband, Bundesregierung, WKO Bank and insurance, FFSA, Czech Ministry of Industry and Trade of the Czech Republic, Verband der Chemischen Industrie Germany

¹³⁷ Ashurst

Comments raised by public authorities:

- While positively evaluated, it is expected that not all Member States could implement it in the near future, taking into account the economic situation and financial and judicial capacity¹³⁸;

Contributors rejecting options 2, 3 and 4:

Comments raised by legal experts:

- The current reasons for the unlikelihood of consumers filing claims for small cases might remain whatever option is chosen¹³⁹;

Comments raised by business representatives:

- Objectives of options do not serve protection of consumers but encourage patronisation and bureaucracy according to a respondent. A socialist and collectivist view of consumers is painted and this is not reconcilable with the image in our culture of the responsible human. Example of the market for ringtones in the Green Paper: it is a market to which each consumer has resort in a strictly voluntary way so there would be no reason to regulate¹⁴⁰;
- The different options are insufficiently explained in detail in the Green Paper¹⁴¹.

4.2.3 Preferred and rejected elements of options in Green paper

The Green Paper discusses a number of aspects or characteristics of the different options it proposes. Respondents are asked to indicate the characteristics with which they agree, and the ones with which they disagree:

Question 3 "Are there specific elements of the options with which you agree/disagree?"
--

It is clear that these elements or characteristics do not present a one:one relationship with the options preferred or rejected under Question 2. After all, respondents can be in favour of a certain option without agreeing to all aspects of it, and likewise they can reject a certain option but indicate what their preference for a specific characteristic would be in case it would be decided to implement the option rejected by them.

Since this question is closely related to part of question 5, i.e. where it is asked what the preferred elements of the combination of options are, the answers to this question are analysed there (see paragraph 4.2.5). This way a total view of the preferences of the stakeholders on the different elements or characteristics can be given.

4.2.4 Preferred elements of options not in Green Paper

If the respondent would choose one or more options (individually) as his preferred option(s), he is given the chance to indicate which features he would like to see form part of this option(s), which are not treated by the Green Paper itself. This is done by the following question:

¹³⁸ Ministry of Economy of Latvia

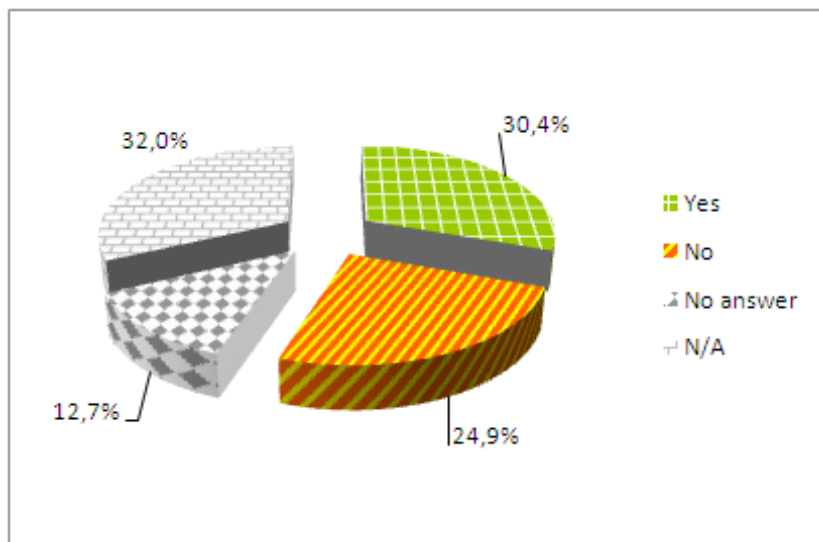
¹³⁹ Linklaters

¹⁴⁰ CEBP

¹⁴¹ DIHK

Question 4 “Are there other elements which should form part of your preferred option?”

All respondents who have not indicated a preference for one or more options in question 2 (i.e. those preferring a combination of options or preferring none of the options), are categorised as having answered ‘N/A’ to this question. The others are distributed between ‘Yes’, ‘No’ and ‘No answer’. The following distribution can be observed:



Graph 19: Distribution of answers to Question 4: Are there any other elements which should form part of your preferred option?

This means only some respondents identified any additional elements. However, it should be noted that a number of respondents indicated some additional elements under their response to question 3, so that these elements are already taken into account when discussing the ‘other elements’ of the different options under question 3.

Key issues raised by the contributors

With respect to Option 1:

Comments raised by business representatives:

- Accompanied by research about the creation and/or the actual creation of cooperation between the national supervisory authorities of the Member States¹⁴²;
- Accompanied by investigations into the legal situation in countries outside the EU and by monitoring of the high burden of costs in countries that have collective redress systems¹⁴³;

¹⁴² Federation of Finnish Commerce, British Banker’s Association, UGAL

¹⁴³ Bundesverband der Deutschen Industrie

With respect to Option 2:

Comments raised by business representatives:

- The development of a pilot scheme between a small number of Member States to see how option 2 might work in practice¹⁴⁴;

With respect to Option 3:

Comments raised by business representatives and other stakeholders:

- A more widespread use of Ombudsman and of Online Dispute Resolution methods and the creation of a European Consumer Code of Conduct could be envisaged¹⁴⁵;

Comments raised by consumer representatives:

- To start a training for the employees of the competent authorities of Member States and to launch specific working groups between administrations of different Member States¹⁴⁶;

Comments raised by public authorities:

- Skimming off profits of traders by the court (not state authorities)¹⁴⁷: creation of a fund from which consumers may be reimbursed (by allocating resources to consumer organisations), but problems may arise with the profit share amount for the assessment of the damage;

Comments raised by other stakeholders:

- Legal certainty should be ensured for e.g. the Consumer Rights Directive and the consultation on ADR-mechanisms to avoid unnecessary duplication¹⁴⁸;
- Objective benchmark criteria are needed to ensure that mechanisms are fair to all parties involved (e.g. possibilities for businesses to challenge invalid claims)¹⁴⁹;

Comments raised by business representatives:

- Encourage initiatives such as for example the implementation of «standard types of contracts» allowing to inform businesses on all the rules they have to comply with, indicating that the parties to the contract may have the opportunity to use out-of-court dispute resolution mechanisms if they want to. The objective is to train consumers and traders to be more involved in the process of out-of-court dispute resolution¹⁵⁰;

¹⁴⁴ RICS

¹⁴⁵ Confindustria, Hellenic Consumers Ombudsman

¹⁴⁶ Agència Catalana del Consum

¹⁴⁷ Ministry of Economy of Latvia

¹⁴⁸ AmChamEU

¹⁴⁹ AmChamEU

¹⁵⁰ CCIP

With respect to Option 4:

Comments raised by business representatives:

- The new provisions may not be applied retro-actively¹⁵¹;
- Overcompensation of consumers should be avoided¹⁵²;
- Normal rules for evidence/proof should be applied¹⁵³;
- Forum shopping and duplicate recovery should be prevented¹⁵⁴;
- The EU system should not undermine any national systems that are more meritorious in domestic situations¹⁵⁵;

Comments raised by consumer representatives:

- Elements should include¹⁵⁶: funding of consumer organisations for cross border actions, a wide scope, a set of minimum common rules, aim should be obtaining compensation and not punitive damages, EU guidelines for distribution of compensation, open to consumer organisations qualified at national level, applicable to national and cross border cases, court can decide whether claims are meritorious or not, possible on behalf of identified, identifiable or non identifiable victims, measures to inform consumers;
- A restriction to the consumers' accountability¹⁵⁷ to avoid him not exploiting the case because of fear of being charged with legal costs;
- Effective systems should be able to discourage collective illegal practices, for example by taking account of the increased profit realised through the infringement to calculate the damage done and to be charged to the guilty¹⁵⁸;

Comments raised by public authorities:

- Option 4 could be completed with some quantitative criteria¹⁵⁹ with respect to number of plaintiffs or combined value of complaints;

Comments raised by legal experts:

- An effective follow-up of the execution of the judicial decisions¹⁶⁰;

¹⁵¹ EACB, Confindustria

¹⁵² Federation of Finnish Financial Services, Central Chamber of Commerce of Finland, EACB, Gesamtverband der Deutschen Versicherungswirtschaft, Eurochambres

¹⁵³ Cefic, EACB

¹⁵⁴ Eurochambres

¹⁵⁵ Trading Standards Institute

¹⁵⁶ BEUC, Consumentenbond, ECCG

¹⁵⁷ Villgärnas Riksforbund

¹⁵⁸ Active Citizenship

¹⁵⁹ Bundesministerium für Justiz of Austria

¹⁶⁰ E. Nguyen

Comments raised by other stakeholders:

- Insurance for consumer organisations against risks concerning procedural costs could be envisaged¹⁶¹;
- Collective claims should be subject to an enhanced form of case management by specialist judges¹⁶²;

4.2.5 Preferred combination of options

It can be expected that certain respondents do not prefer one specific option or a number of options individually (see question 2), but prefer the combination of different options or elements of options. For this reason, the following question was introduced into the Green Paper:

Question 5 “In case you prefer a combination of options, which options would you want to combine and what would be its features?”

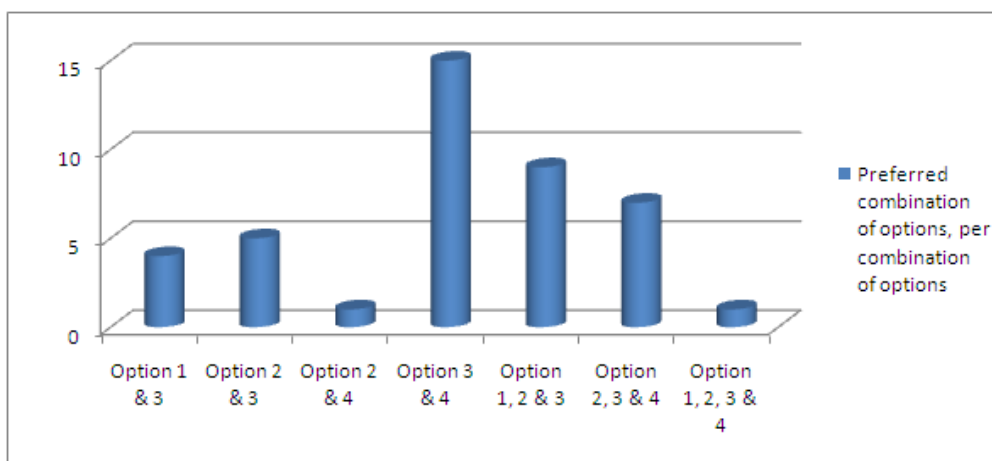
4.2.5.1 Preferred combination of options: general

As can be seen from the following table, about one out of four respondents prefers a combination of options (23,2%).

Answer to Q5: do you prefer a combination of options?	Number of respondents in absolute terms	Number of respondents in relative terms
No	89	49,17%
No answer	50	27,62%
Yes	42	23,20%

Table 3: Distribution of answers to question 5: do you prefer a combination of options?

The distribution of combinations preferred by these respondents can be summarized as follows:

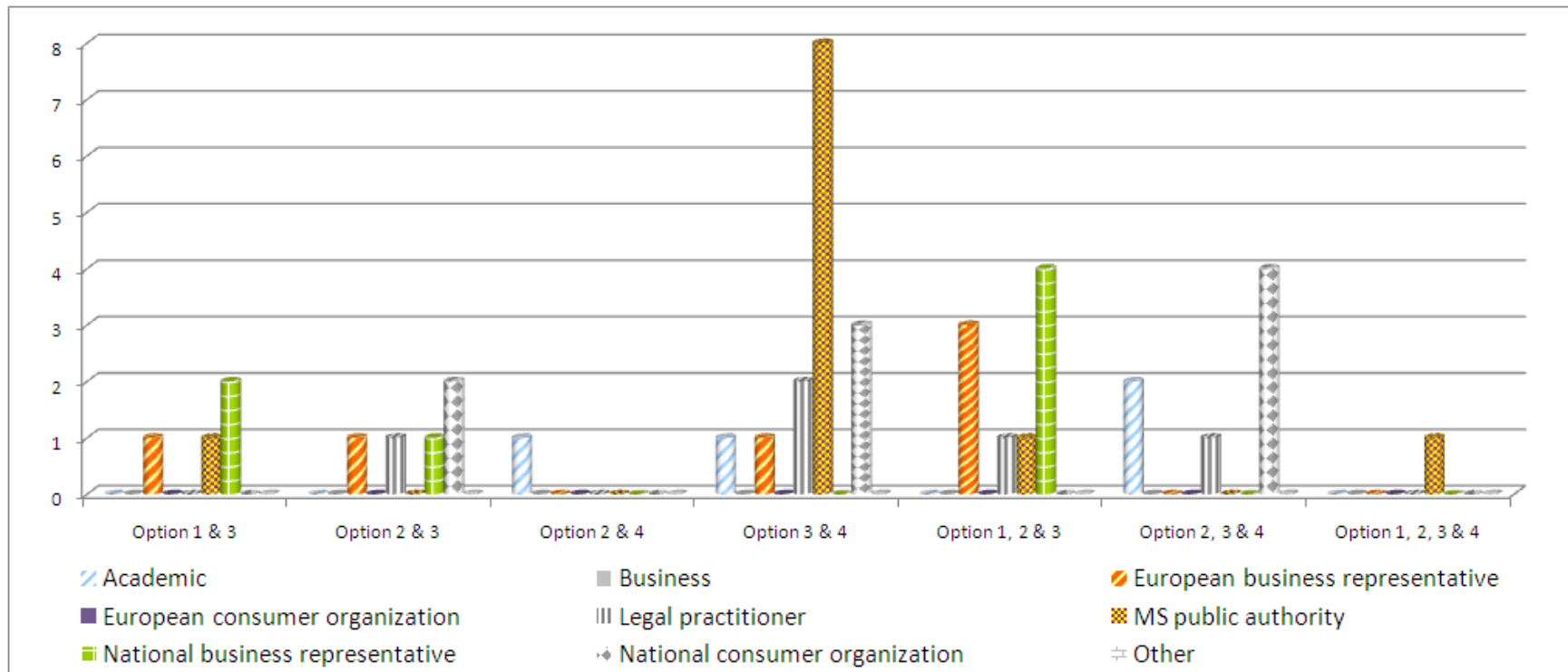


¹⁶¹ DGB

¹⁶² Civil Justice Council

Graph 20: Distribution of combination of options preferred by respondents, summarized per combination of options

The following graph presents the distribution of these preferred combinations over the different stakeholder groups:



Graph 21: Distribution of combination of options preferred by respondents, summarized per category of stakeholder

Business representatives in favour of a combination of options apparently have a preference for options 1 to 3. Consumer organisations and legal practitioners prefer options 2 to 4. Public authorities are most in favour of options 3 and 4.

Splitting these results up per country would give the following results:



Graph 22: Distribution of combination of options preferred by respondents, summarized per country

Few conclusions can be drawn from these rather dispersed results per country. It can however be seen that the combination of options 1, 2 and 3 is the most popular with EU wide and UK respondents.

From the comments of respondents on their preferred combination and the reason for this, the following trends were observed:

For consumer representatives, public authorities and legal experts:

- If option 4 is esteemed useful by respondents, this is very often in combination with the ADR mechanism of option 3, which would in fact be the first possibility to solve cases, whereas option 4 should then be seen as the last resort¹⁶³. Some of these respondents also claim that option 3 would not be successful without option 4 as the motivator behind it. However, not all respondents who are in favour of a combination of option 3 and 4 agree with option 3 as being a prerequisite for option 4¹⁶⁴;

For business representatives, public authorities and legal experts:

- Option 1 is not regarded as doing nothing by some respondents, but consists in evaluating and improving existing legislation and several respondents state this can in the meantime be combined with elements of option 2 and 3¹⁶⁵;

It should be noted that the reasons stated by these respondents for their preference for the different options part of their preferred combination, were already dealt with when analysing the answers to question 2 (4.2.2), which is why the above analysis only deals with the specific reasons for the choice for the combination (and not the elements/options of the combination).

4.2.5.2 Preferred combination of options: features

As already mentioned under 4.2.3, the opinion of the respondents on the detailed elements or characteristics of the different options is analysed jointly for question 3 and 5. This way, a global view of the likes and dislikes of the stakeholders can be obtained.

The following paragraphs group the opinions of the stakeholders on the characteristics per option. A quantitative analysis is made, and then the important remarks and comments of the stakeholders are summarized. In view of the size of the tables summarizing the quantitative analysis, these are reprised in Annex 2.

To summarize the quantitative results, firstly a counting exercise is done: for each characteristic, all responses stating an opinion on this characteristic are grouped according to the type of response they belong to (i.e. if they agree or disagree with this characteristic). This leads to a table indicating the number of responses agreeing with a certain characteristic and disagreeing with this characteristic. The table comprises absolute as well as relative values. This exercise is done individually for each stakeholder group, in order to maximise the detail of the analysis.

¹⁶³ Dr Christopher Hodges, TEST, vzbv, TILP, ANACOM, CRIOC, DIAZ REUS, of Commerce, Industry and Tourism of Cyprus – competition service and consumer protection, Ministry of Commerce, Industry and Tourism of Cyprus, Ministry of Justice of the Slovak Republic, Ministry of Economy of the Slovak Republic, Ministero dello Sviluppo Economico, Financial Services Authority Consumer Panel, RJ Gaudet, BEUC Direção Geral de Consumidor, OR.GE.CO, European Justice Forum

¹⁶⁴ ZPS

¹⁶⁵ VCO-NCW, Committee on EU Affairs of the Senate of the Parliament Czech Republic, MEDEF, Direct Marketing Association, FLA, British Retail Consortium, Bundesregierung, Confindustria, ERRT, Eurochambres, Ashurst

Features of option 1:

For the table giving the contributors' opinion on the features of option 1, we refer to Annex 2.

It can be seen there that very few respondents specifically state an objection towards the use of elements of the existing and future EU and national measures: only the use of the Mediation Directive and the Small Claims Regulation is rejected by respectively 1 and 2 respondents (the first by a legal expert and the second by a legal expert and a public authority). A relatively large number of respondents is on the contrary in favour of the use of the Small Claims Regulation: together with the use of existing ADR schemes, which are very often favoured by business representatives, it is the most popular aspect of option 1.

Comments raised by the contributors were:

Comments raised by business representatives, public authorities and legal experts:

- With respect to the Mediation Directive and Small Claims Directive, some respondents¹⁶⁶ argue that a future evaluation of these Directives will not be very useful in the frame of collective redress, since they were not designed for mass claims. Moreover, the Mediation Directive is only useful when parties are willing to reconcile and the Small Claims Regulation is only useful for cross border cases. However, some positive side effects cannot be excluded;

Comments raised by business representatives:

- Other relevant instruments may be the European order for payment procedure and European enforcement order for uncontested claims¹⁶⁷ and also the code of civil procedure¹⁶⁸;
- The Injunctions Directive is considered useful by some respondents¹⁶⁹, but it is stated by one respondent that experience shows that the need is very small: only two cases in which it has been used until now¹⁷⁰;

Comments raised by legal experts:

- The Consumer Rights Directive and the mechanisms envisaged by the Commission's White Paper on damage actions for breach of EC anti-trust rules are also considered to be useful¹⁷¹;
- With respect to the use of existing measures in general it is stated that competition between legal systems contributes to the economic strength of the EU. Different means are thus not a disadvantage as long as each Member States provides suitable means of redress. Member

¹⁶⁶ DRB, WKO Abteilung für Rechtspolitik, Ministry of Justice of the Slovak Republic, Ministry of Social Affairs and Labour of Hungary, Ministry of Economy of Latvia

¹⁶⁷ EACB

¹⁶⁸ Bundesverband der Deutschen Industrie

¹⁶⁹ VCO-NCW, Federation of Finnish Commerce, Bundesverband den Deutschen Industrie, ERRT

¹⁷⁰ VCO-NCW

¹⁷¹ Freshfields Bruckhaus Deringer

States have already started to compare the existing mechanisms, so that they can find the one that is best suited for their respective legal system¹⁷²;

Comments raised by public authorities:

- With respect to national instruments, the Irish Small Claims Court Procedure under auspices of District Court is mentioned as being widely used and popular with Irish consumers¹⁷³;
- With respect to national instruments, the Finnish provisions in the Judicial Procedure chapter 18 which foresee an aggregation of claims (which also applies to small claims) are mentioned¹⁷⁴;
- A formal review to the progress being made in embedding ADR as a means of resolving consumer disputes throughout the Member States should be undertaken by the Commission¹⁷⁵;

Comments raised by business representatives and public authorities:

- Existing ADR measures are considered to be very useful¹⁷⁶, and reference is made to e.g. the German insurance sector, Finnish collective appeal mechanisms at the Consumer Disputed Board and the UK sector-specific ombudsman schemes where effective instruments exist. There is however a need to spread a culture of ADR among businesses and consumers¹⁷⁷, and there is a role for the EC here;

Features of option 2:

For the table giving the contributors' opinion on the features of option 2, we refer to Annex 2.

It can be seen there that on the level of EU involvement, a Recommendation is much more preferred than a Directive. This is especially true because of the large opposition of the business sector towards a Directive. For the cooperation network, a consensus can be observed for the use of the existing ECC-Net, possibly together with other existing networks. For the introduction of a new network, the opinions are divided: it can be observed that for every positive opinion, there are nearly two negative opinions.

¹⁷² DAV

¹⁷³ Ireland

¹⁷⁴ Ministry of Justice Finland

¹⁷⁵ Ireland

¹⁷⁶ Cefic, Gesamtverband den Deutschen Versicherungswirtschaften, Direct Marketing Association, Finance and Leasing Association, EMOTA, Bundesverband Deutscher Inkasso-Unternehmen, Federation of Finnish Commerce, Confindustria, Enel Holding, European Mortgage Federation, European Justice Forum

¹⁷⁷ Confindustria, Finance and Leasing Association, Ireland

Comments raised by the contributors were:

Comments raised by business representatives, public authorities, legal experts and other stakeholders:

- It is stated that consumers can already use the existing collective redress mechanisms of the different Member States in the entire EU, irrespective of their nationality¹⁷⁸, so there would be not much added value of EU action in this domain by means of a Recommendation or Directive;
- There might be some problems¹⁷⁹ like jurisdictional concerns and the question of the applicable law, the information that would need to be exchanged (which might make it too costly), standing and capacity to sue, consumer representatives that must understand all existing systems, the legal difficulties involved if damages would be available in actions pursued by a representative and in the absence of evidence from individual consumers, the language problems and the possibility of forum-shopping. The problems would be worst in case of opt-out systems or with representative actions (as opposed to in case of opt-in) according to a legal expert¹⁸⁰;
- Problem of Member States being hesitant to finance cases with consumers from other countries: some respondents¹⁸¹ find this a big problem (without giving any possible solution), but another respondent¹⁸² states this will be solved automatically since Member States who do not have a system may establish one, as no Member State will gain an advantage by not providing for a collective redress mechanism. Another respondent¹⁸³ would solve this problem by providing the same level of assistance for authorities responsible for consumer protection in all Member States;

Comments raised by business representatives:

- A Directive which would place an obligation on Member States to introduce a collective redress mechanism is rejected by a respondent¹⁸⁴. This must be left to the discretion of individual Member States;
- Public financing is rejected by some respondents¹⁸⁵, since it can lead to information asymmetry and an imbalance at the expense of the accused organisation. Only public pre-financing could be accepted;

¹⁷⁸ WKO Abteilung für Rechtspolitik, MEDEF, TILP, Cefic, Bundesministerium für Wirtschaft, Familie und Jugend of Austria, European Justice Forum

¹⁷⁹ Office of Fair Trading, UEL, Délégation des Barreaux Français, BRAK, Confederation of Finnish Industries, DIHK, Council of Bars and Law Societies in Europe, CEEP, Unicredit, Danish Government, Industriellenvereinigung Austria, Law Society of England and Wales, US Chamber Institute for Legal Reform, Ashurst, ERRT, Ireland

¹⁸⁰ Herbert Smith

¹⁸¹ HOTREC, Council of Bars and Law Societies in Europe, Unicredit, Industriellenvereinigung Austria, Clifford Chance, European Justice Forum, Herbert Smith

¹⁸² DAV

¹⁸³ Ministry of Social Affairs and Labour of Hungary

¹⁸⁴ Confederation of British Industry

¹⁸⁵ WKO Abteilung für Rechtspolitik, VCO-NCW

Comments raised by business representatives, consumer representatives and legal experts:

- A set of benchmarks, harmonised criteria or minimum standards is proposed by some respondents¹⁸⁶, so without a full harmonisation;

Comments raised by business representatives and legal experts:

- Some state this type of cooperation should strictly apply to cross-border cases¹⁸⁷;
- The use of test cases in this option is rejected by a respondent¹⁸⁸, and the use of representative actions is rejected by another respondent¹⁸⁹ because consumer organisations do not have the expertise and resources to pursue judicial collective redress cases;

Comments raised by legal experts:

- It is signalled that consumer organisations cannot act on behalf of consumers from another country than the traders', since they are often subsidized by national authorities and thus a breach of Art. 87 of the EC Treaty might exist¹⁹⁰;

Comments raised by business representatives, consumer representatives, public authorities and legal experts:

- Multiple respondents find it positive to build on the existing structures of ECC-Net for the cooperation network, to avoid duplication¹⁹¹. Otherwise, the work in the networks would have to be reconciled and both networks would presumably have the same participants. A new network would lead to a double-faced policy and would create conflicts. The development of the EEC-NET network has moreover already led to better cross-border cooperation between consumer organisations. An extension and optimisation of it seems necessary. However, a respondent¹⁹² states that until now it has not received any complaints under this scheme although it has been a member of the ECC-NET for several years, so a cost-benefit analysis would be needed and attention should be given to the question of consumer demand;

Comments raised by business representatives, consumer representatives and public authorities:

- Next to ECC-Net, FIN-NET, the European Judicial Network and the co-operation between national authorities responsible for the enforcement of consumer protection laws (Reg.

¹⁸⁶ MEDEF, ECC Malta, RIAD, AVIVA, Freshfields Bruckhaus Deringer, European Justice Forum, Aviva

¹⁸⁷ Gesamtverband der Deutschen Versicherungswirtschaft, Council of Bars and Law Societies in Europe

¹⁸⁸ Industriellenvereinigung Austria

¹⁸⁹ RJ Gaudet

¹⁹⁰ Österreichischer Rechtsanwaltskammertag

¹⁹¹ WKO Bank and Insurance, WKO Abteilung für Rechtspolitik, Association of Consumer Organisations in Slovakia, Gesamtverband der Deutschen Versicherungswirtschaft, ASU, FLA, RIAD, Collège Européen de Paris, vzbv, European Savings Bank Group, Bunderregierung, Unicredit, Business Europe, Ministry of Justice of the Slovak Republic, Ministry of Social Affairs and Labour of Hungary, Università degli studi di Firenze, Industriellenvereinigung Austria, Confederation of British Industry, Active Citizenship, FEB, Familles Rurales, Active Citizenship, European Justice Forum

¹⁹² FLA

2006/2004) are often cited as structures that might need to be further developed and that could be very useful¹⁹³;

Comments raised by business representatives and other stakeholders:

- Other forms of cooperation are proposed: in jurisdictions that employ litigation mechanisms, the Commission could encourage courts from different Member States to cooperate in the apportionment of damages and the administration of settlements¹⁹⁴ and the coordination of Member States could consist in issuing guidelines for the application by national courts of three international conventions on international law with a view to reforming the EC's international law on civil procedures¹⁹⁵;

Comments raised by consumer representatives, public authorities, legal experts and other stakeholders:

- However, the use of cooperation networks is criticized by some respondents¹⁹⁶, stating a.o. that there would be very high costs, technical problems, problems with the fact that 27 different jurisdictions and 22 different languages need to be covered, it would risk creating conflicts and delays due to the interpretation of the different national legislations, which would be finally damageable to the consumers, it is not conceivable to grant automatically to an entity authorised to bring group actions in a Member State, a same right in another Member State, without a harmonisation of benchmarks, consumer organisations would have to assign part of their budget to the representation of interests of consumers from other countries, which would double their work and eventually affect their mission;

Features of option 3:

A distinction is made between the five elements or sub-options together constituting option 3:

ADR

For the table giving the contributors' opinion on the features of option 3 - ADR, we refer to Annex 2.

About half of the total number of stakeholders, and this across all stakeholder categories, is in favour of the use and improvement of ADR mechanisms in general. With respect to the development of a standard model for collective ADR schemes which could present the main components of it, as a way to achieve convergence, it can be observed that there is no consensus. Legal experts are generally against it, business and consumer representatives have mixed opinions and public authorities are in favour of it. The use of ECC-Net and FIN-Net is very much welcomed. In general a Recommendation is more often preferred than a Directive.

Comments raised by the contributors were:

¹⁹³ Association of Consumer Organisations of Slovakia, Central Chamber of Commerce in Finland, Federation of Finnish Financial Services, British Banker's Association, Unicredit, Ministry of Social Affairs and Labour of Hungary, AVIVA, ABI, Ministry of Economy of Latvia, ERRT, AVIVA

¹⁹⁴ US Chamber Institute for Legal Reform

¹⁹⁵ FEDSA

¹⁹⁶ Bundesrat, Centro de Arbitragem de Conflitos de Lisboa, Justizministerium Baden-Württemberg, Linklaters, British Retail Consortium, Active Citizenship, FEB, US Chamber Institute for Legal Reform

With respect to ADR in general:

Comments raised by business representatives, public authorities and legal experts (and other stakeholders):

- It is an attractive solution with advantages being¹⁹⁷: it tends to give swift, flexible and low cost solutions, it is efficient, it is advantageous for both parties, consumers see it as an effective solution, there are fewer opportunities for abuse;
- ADR would only be useful on a voluntary basis¹⁹⁸;

Comments raised by consumer representatives and public authorities:

- It might be useful but may not be seen as a prerequisite to the initiation of collective court actions¹⁹⁹;
- ADR mechanisms are different across the EU²⁰⁰ and across sectors: e.g. The UK only has ADR in a limited number of markets, Belgium has many ADR bodies but the decisions are often not binding and Spain has already organised a collective arbitration procedure but the problem is that the only competent authority is based in Madrid;

Comments raised by business representatives and legal experts (and other stakeholders):

- There are numerous examples of where it is working well²⁰¹: e.g. ombudsmen and consumer complaint boards in various sectors at national level, especially in Nordic countries, mediation schemes (provided, for example, by courts, trade associations or consumer bodies);
- The difference the Commission makes between the use of ADR for low and high value claims is criticized²⁰²: this does not impact on the complexity of the claim;
- It can be combined with encouragement by public authorities and endorsement of the agreement by the courts²⁰³;

Comments raised by business representatives, consumer representatives, public authorities and legal experts:

- Disadvantages²⁰⁴ are that it only works when all parties agree to participate, that it is often misused as a means to win time, that there is no power to execute the decision;

¹⁹⁷ Dr Christopher Hodges, ZVEI, ANACOM, Assuralia, EuroCommerce, Collège Européen de Paris, Federation of Finnish Financial Services, Unicredit, ABI, European Federation of Building Societies, Office of Fair Trading, Ministry of Justice of the Slovak Republic, UEAPME, Ministry of Economy of Latvia, BVRLA, CECED, Ireland, Ministry of Justice of Lithuania, US Chamber Institute for Legal Reform

¹⁹⁸ DRB, Bundesrat, WKO Abteilung für Rechtspolitik, ZVEI, Industriellenvereinigung Austria, Herbert Smith

¹⁹⁹ Familles de France, Association Consommation Logement Cadre de Vie, Confédération Syndicale des Familles, UNC, Office of Fair Trading, UFC Que Choisir, Industriellenvereinigung Austria, ECCG

²⁰⁰ BEUC, Ministry of Economy and Energy of Bulgaria

²⁰¹ CECED, AmChamEU, Herbert Smith

²⁰² CCBE, Österreichischer Rechtsanwaltskammertag WKO Abteilung für Rechtspolitik, FEB

²⁰³ Dr Christopher Hodges, EJP

²⁰⁴ TILP, EuroCoop, Bundesrechtsanwaltskammer, Ministry of Justice of the Slovak Republic, Confindustria, BEUC

- ADR may offer attractive solutions for all parties involved. It should be further promoted²⁰⁵, improved²⁰⁶, extended to all countries²⁰⁷ and/or extended to collective and cross-border procedures²⁰⁸;

Comments raised by consumer representatives:

- There are doubts about the efficiency because of the lack of confidence of consumers in the system and in the trader's capacity²⁰⁹;

Comments raised by business representatives:

- It might be useful to first execute a cost-benefit analysis²¹⁰;

Comments raised by business representatives and consumer representatives:

- Another negative remark is that it is useful for individual, but not for collective claims²¹¹;

Comments raised by public authorities:

- It is not always suitable for every type of case²¹²: e.g. high value collective claims involving complex issues of fact and evidence gathering: generic issues may be dealt with together but it may be necessary to split up cases for the assessment of damages;

Comments raised by business representatives, consumer representatives and legal experts:

- There should be adequate incentives for parties to settle. It would for instance work well with collective judicial redress as 'motivator'²¹³;

Comments raised by business representatives and public authorities:

- It would be useful to investigate how it is working in the Member States²¹⁴;

Comments raised by other stakeholders:

- It is necessary to recognise that different ADR schemes across the EU reflect different legal traditions. Measures for improvement should therefore offer flexibility²¹⁵;

²⁰⁵ UEL, Confederation of Finnish Industries, ERRT

²⁰⁶ VCO-NCW, Confederation of Finnish Industries, 13 European Consumer Associations, ERRT, CEA Insurers of Europe

²⁰⁷ Association of British Insurers

²⁰⁸ ZVEI, UNC, Business Europe, 13 European Consumer Associations, European Banking Federation, TEST, Assuralia, Federation of Finnish Financial Services, Direcção Geral de Consumidor, Law Society of England and Wales, RJ Gaudet, Confederation of British Industry

²⁰⁹ NACPR

²¹⁰ Eurofinas

²¹¹ CPGME, Bundesverband der Deutschen Industrie, Which, UEAPME, ECCG

²¹² Ireland

²¹³ EuroCoop, Bundesverband der Deutschen Industrie, Hausfeld, ECCG

²¹⁴ Ireland, Confederation of British Industry, BVRLA

²¹⁵ AMChamEU

With respect to EU involvement:

- There is a role for the EU in promoting, improving and extending ADR mechanisms (see under 'With respect to ADR in general');

Comments raised by business representatives (and other stakeholders):

- A Recommendation is preferred over a Directive²¹⁶, a.o. because ADR is voluntary per definition, because the national differences should be taken into account and because it can be established through supplementing the existing Recommendations in the domain;
- A monitoring mechanism might be envisaged²¹⁷. This could be result-oriented and thus gradually improve the systems;

Comments raised by business representatives and legal experts:

- It should be a decision of the Member States²¹⁸, either because the EU is not in a position to oblige Member States or because they are better suited to assess the need;

With respect to the development of a standard model:

Comments raised by business representatives:

- It is questionable if one standard model would suffice²¹⁹ for all possible relationships in all possible sectors and for all possible countries with different legal traditions. Furthermore, countries should be allowed to decide themselves what features would suit its country²²⁰;
- It would be useful provided that such stakeholders include equal representation of business and consumer bodies. If properly constituted, such a group of stakeholders could develop a balanced and practical approach to collective ADR that could be used by MS²²¹;

Comments raised by consumer representatives:

- It would risk stopping the development of innovative instruments²²²;

Comments raised by other stakeholders:

- Trade unions should be allowed participation in the development process according to a respondent²²³;

²¹⁶ VCO-NCW, European Savings Bank Group, Central Chamber of Commerce of Finland, ABI, Unicredit, Confederation of Finnish Industries, European Banking Federation, CECED

²¹⁷ Hellenic Consumers Ombudsman, European Savings Bank Group, Unicredit

²¹⁸ VFA, FLA, Collège Européen de Paris, DRB, British Banker's Association

²¹⁹ WKO Abteilung Für Rechtspolitik, WKO Bank and Insurance, International Underwriting Association, British Banker's Association

²²⁰ BVRLA

²²¹ CECED

²²² Active Citizenship

²²³ DGB

Comments raised by legal experts:

- ADR derives its credibility from having flexibility so that a standard model is not recommendable²²⁴;
- There are significant risks in any attempt to lay out a Europe-wide template for what the ADR schemes should look like²²⁵. Different industries, different parties and different disputes are suited to different types of ADR process. It is therefore helpful to have a wide variety of different avenues available through which consumers can access ADR processes; one size does not necessarily fit all in the ADR context. This variety is all the more important as trading patterns develop, e.g. rise of online trading: online ADR schemes, for example, seem likely to become increasingly important. It would be unfortunate if any measures implemented at European level adopted a prescriptive approach and thereby put at risk one of the most important features of ADR, namely flexibility;

With respect to the involvement of existing networks in helping consumers to access ADR schemes:

Comments raised by business representatives, consumer representatives and other stakeholders

- It would be useful to reinforce ECC-Net and to put more emphasis on informing consumers²²⁶;

Comments raised by other stakeholders:

- FIN-Net could improve the situation in the financial services sector, where, according to the Problem Study the problem of redress is problematic²²⁷;

Comments raised by business representatives:

- FIN-Net should be further promoted and improved²²⁸;

Comments raised by consumer representatives:

- ECC-Net and FIN-Net however only deal with cross border cases according to a consumer representative²²⁹;

With respect to other elements:

Comments raised by business representatives:

- Use of media as an incentive to participate is strongly rejected²³⁰;
- A pan-European network of ADR mechanisms that would draw together ADR mechanisms which work well and would attempt to build organically on existing national mechanisms,

²²⁴ Ashurst

²²⁵ Herbert Smith

²²⁶ CECED, Confederation of British Industry, BVRLA, AmChamEu, Active Citizenship

²²⁷ AmChamEU

²²⁸ CEA Insurers of Europe, Association of British Insurers

²²⁹ BEUC

²³⁰ WKO Abteilung für rechtspolitik, DIHK, MEDEF

improving coverage and effectiveness and sharing best practice, is recommended by a business representative²³¹;

- Governmental support to consumers (e.g. on cost aspect), and more in general one-sided interference of authorities, is also rejected by a respondent²³².

Comments raised by legal experts:

- A respondent feels that funding might be useful under some conditions²³³;

Extension scope Small Claims Regulation

For the table giving the contributors' opinion on the features of option 3 – extension scope Small Claims Regulation, we refer to Annex 2.

The extension of the Small Claims procedures is rejected by a bit more than half of the respondents stating their opinion on this possibility. Almost three out of four business representatives are against it, while there is a more even distribution for consumer representatives, legal experts and other stakeholders. Nearly three out of four public authorities stating an opinion on the extension, are in favour of it.

Comments raised by the contributors were:

Comments raised by all types of stakeholders:

- It is stated that mass claims are more complex than individual claims and therefore an extension of the Small Claims Regulation would not be appropriate²³⁴. These extra complexities can be: the costs are much higher; when groups of consumers are hurt, this cannot be considered as minor; there would be so much adaptation to the existing Small Claims Regulation needed that it is better to move directly to option 4; it could lead to a blockage of the specialised courts put in place for small claims; the maximum value for small claims will quickly be exceeded with mass claims, mass claims require more time and resources; the competent Courts are insufficiently equipped and staffed to deal with mass claims; from a jurisdictional point of view it may be considered inappropriate for a judge of the District Court to determine issues of law in the context of what could be a multi-million euro class action; with small claims less attention is paid to the gathering of evidence to speed up the procedures but this cannot be acceptable for mass claims;

Comments raised by legal experts:

- The separate approach for small claims in the first place is put in question²³⁵;

²³¹ Confederation of British Industry

²³² WKO Abteilung für rechtspolitik

²³³ Jones Day

²³⁴ VFA, International Underwriting Association, EuroCoop, Insurance Ombudsman Office, Council of Bars and Law Societies in Europe, VPRT, Business Europe, Bar Council of England and Wales, EACB, Ministry of Justice of the Slovak Republic, Gesamtverband textile + mode Germany, MEDEF, DRB, Industriellenvereinigung Austria, RJ Gaudet, BEUC, Ireland, Royal Ministry of Children and Equality (Norway), European Justice Forum, UK Government

²³⁵ RJ Gaudet

Comments raised by public authorities:

- It is a legal procedure and thus not comparable to alternative dispute resolution (it would create the same problems as creating a new collective complaints procedure). It would therefore need to be classified under option 4 instead of option 3 and the possibility is rejected²³⁶;

Comments raised by business representatives (and other stakeholders):

- It is emphasized that any extension may only be applicable to cross border claims²³⁷;
- Respondents in favour of an extension state the following benefits²³⁸: it would answer impediments such as high legal costs, risks of litigation, complex and lengthy procedures; it would lead to prompt, fair and efficient resolution of consumer protection issues, it can provide consumers with streamlined procedures for the quick resolution of their grievances at a relatively low cost, it offers few opportunities for abuse;

Comments raised by consumer representatives, legal experts and other stakeholders:

- Before contemplating an extension an assessment of the current regulation should be made²³⁹;

Comments raised by business representatives, consumer representatives and legal experts:

- An extension can be envisaged but with some rules²⁴⁰: e.g. as a complementary action to option 4, the overall amount of damages should be small, the details of the Green Paper proposal should be detailed, it may not jeopardize the speed with which these specialized courts currently address individual cases;

Extension Scope CPR

For the table giving the contributors' opinion on the features of option 3 – extension scope CPR, we refer to Annex 2.

The opinions on the extension of the Consumer Protection Cooperation Regulation in general are very dispersed. When looking at the results per type of stakeholder, it becomes apparent that consumer representatives are relatively most often in favour of it, while public authorities tend to be the most against an extension (in relative terms).

A general trend in opinions can be observed with respect to the proposed features, i.e. the amendment to let a competent authority require a trader to compensate consumers that have been harmed and the granting of a power to public authorities to skim-off profits of traders who have committed an intra-Community infringement. Of the respondents stating an opinion on these two characteristics, respectively 63,0% and 63,2% are against these extensions. When distinguishing the results per type of stakeholder, it is clear that from all stakeholder groups except consumer representatives a majority of respondents is against both extensions.

²³⁶ Ministry of Justice Finland

²³⁷ BVRLA, Confederation of British Industry

²³⁸ FEDSA, US Chamber Institute for Legal Reform

²³⁹ Jones Day, UFC Que Choisir, BEUC, AmChamEU

²⁴⁰ ECCG, CECED, Law Society of England and Wales, ERRT

Comments raised by the contributors were:

With respect to an extension of the scope of the CPR in general:

Comments raised by business representatives and public authorities:

- The replacement of private claims by claims of a public authority goes against the legal tradition in Member States²⁴¹. It raises questions about the role of the enforcement authorities versus the judiciary²⁴² and would cause an unbalance between the rights of consumers and of companies²⁴³;
- First an evaluation of the CPR is necessary²⁴⁴, amongst others, because it does not function optimally²⁴⁵;

Comments raised by public authorities:

- It would not solve the problem since it only deals with cooperation between Member States²⁴⁶;

Comments raised by business representatives:

- It builds on public enforcement and provides an opportunity for redress to be provided as part of the judgment²⁴⁷;

Comments raised by other stakeholders:

- Government regulators typically have expertise in the field they regulate, are often better positioned to ascertain when consumer protection violations actually occur, are not driven by profit motives and are therefore generally less likely to pursue frivolous claims than private actors. Safeguards should nevertheless be put in place, notably by limiting available remedies to compensatory damages and reasonable fines and by submitting the process to robust procedural protections²⁴⁸;

Comments raised by consumer representatives:

- Public authorities may be unable or unwilling to perform such actions²⁴⁹, e.g. because of lack of resources, language issues etc.

²⁴¹ Bundesregierung, VPRT, Ministry of Social Affairs and Labour of Hungary, UEL

²⁴² EuroCoop, Ministry of Justice Finland

²⁴³ Bundesministerium für Justiz of Austria

²⁴⁴ Bundesrat, Business Europe, Confederation of British Industry, FEB, UK Government

²⁴⁵ Bundesrat

²⁴⁶ Ministry of Justice of the Slovak Republic, Office of Fair Trading

²⁴⁷ ERRT

²⁴⁸ US Chamber Institute for Legal Reform

²⁴⁹ BEUC, ECCG

With respect to the amendment of the CPR with the power for the competent authority to compensate harmed consumers:

Comments raised by business representatives, consumer representatives, public authorities and legal experts:

- Getting compensation should be the role of private parties; such an extension would violate the principle of separation of power and due process and goes against existing procedures in Member States²⁵⁰. It suggests a mix of public and civil law, which is typically American²⁵¹;

Comments raised by business representatives (and other stakeholders):

- Public authorities are not competent to perform such actions²⁵²;
- It would be complex since these kinds of procedures are regulated in different ways by national legal systems of Member States²⁵³. Reference is made to Scandinavian countries where this possibility exists, but it is stated that the structures of administration are very different there²⁵⁴;

Comments raised by business representatives, public authorities and other stakeholders:

- Member States should decide on this possibility²⁵⁵;

Comments raised by legal experts:

- The empowerment of public authorities to include compensation and restoration as part of enforcement functions has many theoretical advantages, and has been a success in practice (e.g. Denmark and the UK)²⁵⁶;
- It would need to be ensured that traders were given a fair opportunity to be heard before any compensation was ordered²⁵⁷;

Comments raised by legal experts and public authorities:

- Disadvantages²⁵⁸ entail the difficulties in distributing compensation, notifying consumers etc., the potential for abuse;

²⁵⁰ WKO Abteilung für Rechtspolitik, VCO-NCW, DAV, Bundesverband Deutscher Inkasso Unternehmen, ÖRAK, Justizministerium Baden-Württemberg, Confederation of Finnish Industries, Linklaters, Bundesverband der Deutschen Industrie, ECCG, Eurochambres, Ministry of Children and Equality of Norway, Freshfields Bruckhaus Deringer, European Justice Forum, Ministry of Justice Finland, Estonian Government

²⁵¹ VFA

²⁵² Industriellenvereinigung Austria

²⁵³ Hellenic Consumers Ombudsman

²⁵⁴ Bundesverband der Deutschen Industrie

²⁵⁵ AmChamEU, CECED, Ministry of Children and Equality of Norway

²⁵⁶ Dr Christopher Hodges

²⁵⁷ Herbert Smith

²⁵⁸ Ireland, Ashurst

Comments raised by consumer representatives:

- Public authorities should have the power to impose to the traders compensations in favour of the victims and a clear EU communication should be made based on the example of the telecommunications sector²⁵⁹;

With respect to the amendment of the CPR with the power for the competent authority to skim-off profits:

Comments raised by business representatives, public authorities and legal experts and other stakeholders:

- With such extensions, there would be a mix up of repression and reparation²⁶⁰, of competition law and civil law²⁶¹, of civil and public law²⁶² and of criminal and civil law²⁶³;

Comments raised by business representatives and legal experts:

- The procedures should concentrate only on compensating the damages suffered by the consumers²⁶⁴;
- It would result in enormous difficulties of proof and problems with expense of disclosure²⁶⁵;

Comments raised by business representatives:

- This provision is very similar to the provisions on EC antitrust law infringements regarding the payment of fines by guilty businesses. However, these provisions are well-defined in antitrust law, which is not the case here²⁶⁶;

Comments raised by business representatives, consumer representatives and other stakeholders:

- The skimming off of profits can only be done to the benefit of the state, i.e. cannot be seen as a compensation for consumers according to a number of respondents²⁶⁷, except for consumer-related purposes such as the financing of collective procedures²⁶⁸;

Comments raised by public authorities and legal experts:

- This power should only be allowed to consumers or consumer organisations, and not to public authorities²⁶⁹;

²⁵⁹ Active Citizenship

²⁶⁰ MEDEF, Confederation of British Industry, Ashurst, FEB, EJV, ERRT

²⁶¹ Gesamtverband der Deutschen Versicherungswirtschaft

²⁶² TILP, Bundesministerium für Wirtschaft, Familie und Jugend of Austria, Confederation of Finnish Industries, Linklaters, European Banking Federation

²⁶³ Industriellenvereinigung Austria, AmChamEU, Eurochambres

²⁶⁴ Diaz Reus, Business Europe, VFA

²⁶⁵ Ashurst, ERRT

²⁶⁶ CCIP

²⁶⁷ WKÖ Abteilung für Rechtspolitik, Gesamtverband textil + mode Germany, Gesamtverband der Deutschen Versicherungswirtschaft, Assuralia, VPRT, Industriellenvereinigung Austria

²⁶⁸ DGB, ECCG

Comments raised by public authorities:

- It should be left to Member States how to accomplish this because these are very sensitive areas which move from compliance to restoration to punishment²⁷⁰;

Comments raised by business representatives and public authorities:

- Skimming off profits has been introduced in Germany²⁷¹;

With respect to other elements:

Comments raised by business representatives, legal experts and other stakeholders:

- The extension of intra-Community infringements to acts that harm the individual interest of multiple consumers is favoured²⁷² and rejected²⁷³ by some respondents. Another respondent²⁷⁴ states that this discussion is enigmatic because interests of multiple consumers are an alternative way of saying collective interests of consumers;

Furthermore, some remarks on the advantages of skimming off profits were made, without explicitly linking this possibility to an extension of the CPR. These remarks were the following:

Comments raised by business representatives:

- The skimming off of profits for the benefit of the state coffers, in line with § 10 of the German Act Against Unfair Competition (UWG), could make up for the shortcomings in individual Member States without incurring the risk of abuse by private claimants²⁷⁵;

Comments raised by legal experts:

- Infringements can be effectively punished by means of the confiscation of profits. In Germany, consumer associations, chambers of commerce and trade, as well as competitors can confiscate illegitimately achieved profits for the public benefit (sec. 10 of the German Unfair Competition Act). This alternative is less expensive than legal collective redress as it requires only two parties²⁷⁶;

Improve complaint-handling systems

For the table giving the contributors' opinion on the features of option 3 – improve complaint-handling schemes, we refer to Annex 2.

The improvement of complaint-handling schemes of businesses is generally approved by the respondents. A majority of respondents from all stakeholder groups except business representatives

²⁶⁹ Justizministerium Baden-Württemberg, Bundesrat, TILP

²⁷⁰ UK Government

²⁷¹ VPRT, Bundesrat

²⁷² Insurance Ombudsman Office,

²⁷³ WKO Abteilung für Rechtspolitik

²⁷⁴ Ashurst

²⁷⁵ Verband der Chemischen Industrie Germany

²⁷⁶ Linklaters

is also in favour of making them subject to independent monitoring and auditing standards. However, a majority of business representatives is against this. Furthermore, the encouragement of these mechanisms by the EU is approved of, but this should only be done on a voluntary basis (see further).

Comments raised by the contributors were:

Comments raised by business representatives, public authorities, legal experts and other stakeholders:

- They are a very effective way of dealing with the problem (e.g. low costs) and can reduce the number of cases before the court²⁷⁷;
- The creation of independent monitoring and auditing standards would create a further burden, more bureaucracy and there might be lack of consensus among businesses²⁷⁸. However, the granting of certifications to businesses with effective systems could be envisaged²⁷⁹;

Comments raised by business representatives, consumer representatives, public authorities and legal experts:

- The development of codes of conduct is welcomed²⁸⁰ and the exchange of best practices can be useful, for which the EU can maybe issue guidelines or establish standards²⁸¹. However, since there are already standards for these systems (e.g. ICC Tools and ISO standards), the development of more standards is rejected by a respondent²⁸²;
- The role for the EU would be rather limited according to some respondents, but they can encourage these schemes²⁸³. A voluntary mechanism is thus often preferred: sufficient leeway should be left for companies depending on the complexity of such systems (e.g. the burden on smaller businesses would be rather large): this may not make it appropriate for all businesses, and businesses should decide themselves²⁸⁴;

Comments raised by business representatives, legal experts and other stakeholders:

- Disadvantages of these systems are²⁸⁵: they create a lot of bureaucracy for businesses and impose further burdens on them, they are not adequate tools to deal with collective interests or mass claims because they are not designed for such claims, not all companies have them

²⁷⁷ Jones Day, Hellenic Consumers Ombudsman, WKO Abteilung für Rechtspolitik, ANACOM

²⁷⁸ WKO Abteilung für Rechtspolitik, DRB, Hellenic Consumers Ombudsman, Confederation of British Industry, BVRLA, Ministry of Justice Finland

²⁷⁹ Gesamtverband der Deutschen Versicherungswirtschaft, CECED, AmChamEU

²⁸⁰ Assuralia, Gesamtverband der Deutschen Versicherungswirtschaft, Business Europe, Confederation of Finnish Industries, Ireland, Ministry of Economy and Energy of Bulgaria, BVRLA

²⁸¹ Collège Européen de Paris, Business Europe, Jones Day, Clifford Chance, FEB, Active Citizenship

²⁸² Confederation of British Industry

²⁸³ EuroCoop, Dr Christopher Hodges, Collège Européen de Paris, WKO Abteilung für Rechtspolitik, ANACOM, Active Citizenship, CECED, Ministry of Economy and Energy of Bulgaria

²⁸⁴ Bar Council of England and Wales, Bundesministerium für Wirtschaft, Familie und Jugend of Austria, DAV, Industriellenvereinigung Austria

²⁸⁵ DRB, EuroCoop, DGB, WKO Abteilung für Rechtspolitik, CCIP

or can afford to have them and they simply do not provide for the necessary guarantee of independence; it is unlikely that they will improve the situation;

Comments raised by public authorities:

- It could improve the level of consumer protection but there is some scepticism on the additional benefits (the Unfair Commercial Practices Directive and Services Directive already contain provisions on the right of appeal)²⁸⁶;

Comments raised by legal experts:

- The failure of self-regulation is exactly the reason why additional measures are necessary²⁸⁷;
- Complaint-handling schemes can be a leverage to inform consumers about alternative options they have if they are not satisfied with the solutions offered by the company²⁸⁸;

Comments raised by consumer representatives and public authorities:

- While it is useful, it is in itself not a sufficient comprehensive solution²⁸⁹;

Comments raised by business representatives:

- Trading organisations (e.g. the CCI network) could be assigned a specific support mission, financed by a Community programme, for the awareness-raising of traders on the use of standards or the implementation of independent monitoring standards to facilitate the treatment of consumer complaints²⁹⁰;

Raise consumers' awareness

For the table giving the contributors' opinion on the features of option 3 – raise consumers' awareness, we refer to Annex 2.

In general, respondents are in favour of raising consumers' awareness of existing measures. It is to be noted that this possibility is often cited by respondents in favour of other options, to complement the option preferred.

Comments raised by the contributors were:

Comments raised by business representatives, consumer representatives, public authorities and legal experts (and other stakeholders):

- With respect to the promotion of actions by Member States or by the EU, it is stated by a respondent that informing the consumer of existing mechanisms cannot be the role of any legal system in the Community law²⁹¹. Others however see a role for public entities in

²⁸⁶ Ministry of Justice Finland

²⁸⁷ RJ Gaudet

²⁸⁸ Collège Européen de Paris

²⁸⁹ BEUC, UK Government

²⁹⁰ CCIP

²⁹¹ WKO Abteilung für Rechtspolitik

informing consumers²⁹². In Ireland, the National Consumer Authority for instance has a statutory mandate to promote and develop ADR procedures²⁹³;

- Some possibilities cited by respondents are: the establishment and improvement of consumer advice centres²⁹⁴; using networks such as ECC-Net, FIN-Net and SOLVIT²⁹⁵; informing about ADR systems²⁹⁶; mandatory information about out-of-court settlement possibilities in insurance contracts²⁹⁷; using the website of ECC-Net to centralise all relevant information on a multilingual basis²⁹⁸; organising workshops and seminars and developing a brochure²⁹⁹; promoting domestic consumer organisations in the media³⁰⁰; businesses that promote their own complaint-handling schemes³⁰¹; information about the available settlement procedures, about the extent to which consumers have a legitimate right to compensation and about disadvantages of collective litigation³⁰² etc;

Comments raised by business representatives:

- A danger lies in the media attention that could give negative publicity for businesses, even in case of unmeritorious claims³⁰³;

Features of option 4:

For the table giving the contributors' opinion on the features of option 4, we refer to Annex 2.

In general, contributors have very often given their opinion on the features of this option. It is clear this is the option they feel most strongly about. The proposals made in the Green Paper to finance the procedures and to finance the entities representing consumers have initiated much reaction. They are rejected by the majority of respondents expressing an opinion. This is especially the case for business representatives, legal experts and other stakeholders. Consumer representatives and public authorities tend to be in favour of these possibilities, but with the exception of the exemption from court fees for public authorities and loans by third parties for consumer representatives.

To prevent unmeritorious claims, especially the loser-pays principle and the use of the judge to decide are appreciated. It is however important to note that some legal experts are against the use of the judge as gatekeeper. The reasons stated for this are discussed in the following paragraphs when presenting the comments raised by contributors.

²⁹² Business Europe, 13 European Consumer Associations, Ministry of Industry and Trade of the Czech Republic, DRB, BVRLA, Ministry of Economy and Energy of Bulgaria

²⁹³ Ireland

²⁹⁴ DRB

²⁹⁵ AmChamEU

²⁹⁶ CEA Insurers of Europe, Ireland

²⁹⁷ CEA Insurers of Europe

²⁹⁸ MEDEF

²⁹⁹ 13 European Consumer Associations

³⁰⁰ Ministry of Industry and Trade of the Czech Republic

³⁰¹ AmChamEU

³⁰² EJF

³⁰³ VFA, Industriellenvereinigung Austria

The giving of legal standing to consumer organisations is in general viewed positively. From all stakeholder groups, a majority of respondents expressing an opinion on it are in favour of it, and this is especially true for public authorities and consumer representatives.

Three out of four respondents expressing an opinion on the discussion between opt-in or opt-out systems, are against an opt-out system. In absolute terms, a great number of respondents has reacted on this specific feature. The controversial opt-out system is however appreciated by e.g. some consumer representatives and legal experts.

Fewer respondents have expressed an opinion on the law applicable in cross-border cases and cases with consumers from different Member States. It can however be observed that the different possibilities proposed in the Green Paper with respect to the law applicable in cases with consumers from different Member States, are rejected by nearly all respondents expressing an opinion on it (mainly consumer representatives and legal experts). The comments that have been made on this subject can be found under the summary of comments hereunder.

Comments raised by the contributors were:

With respect to the choice between binding and non-binding measures:

Comments raised by consumer representatives, public authorities and legal experts:

- Binding measures will be most suitable to reach consistent standards for all consumers³⁰⁴, to give clarity and safety to businesses and consumers³⁰⁵, to exclude the risk that they are ignored by certain institutions³⁰⁶, to avoid the inconsistencies and complex problems of differing legal systems and regimes³⁰⁷,

Comments raised by business representatives, public authorities and legal experts:

- The binding measures should consist of a system of minimum requirements so that existing regulation in certain Member States can be maintained and Member States can implement the legislation in a way suitable in their country³⁰⁸. This is also the reason why other respondents are in favour of non-binding instruments³⁰⁹;

Comments raised by business representatives:

- Prescriptive reform may interfere with the balance of litigation risks in Member States³¹⁰;

Comments raised by legal experts:

- A framework directive, which would empower national courts to decide, on a case-by-case basis, whether to organise collective redress proceedings, is proposed by a respondent³¹¹;

³⁰⁴ FSA Consumer Panel, Association Consommation Logement Cadre de Vie, Familles de France, UNC, UFC Que Choisir, EuroCoop, 13 European Consumer Associations, Altroconsumo, ECCG, Active Citizenship, Familles Rurales

³⁰⁵ Confédération Syndicale des Familles

³⁰⁶ TILP

³⁰⁷ Office of Fair Trading

³⁰⁸ Danish Government, Assuralia, Direcção Geral de Consumidor, Ministry of Development Greece

³⁰⁹ Central Chamber of Commerce of Finland, Herbert Smith

³¹⁰ British Bankers' Association

Comments raised by consumer representatives:

- It is stated that all issues should be dealt with in one single document³¹²;

With respect to the financing of the procedure:

Comments raised by business representatives, public authorities and legal experts (and other stakeholders):

- The exemption from court fees and capping of legal fees are an incentive to assert unmeritorious claims (see also the example of the US)³¹³. This can lead to over-deterrence and companies can be led to settle unmeritorious claims in order to avoid damage to reputation. Also it would lead to an unbalance between businesses and consumers³¹⁴
- Some respondents have a nuanced opinion, e.g.: a capping could be acceptable to certain degree but the procedure cannot become free of charges³¹⁵, the exemption of fees could be useful but judicial fees should be maintained in case of complete loss of the action as a way to avoid abuses and unmeritorious claims³¹⁶, costs must be reasonable and, if appropriate, legally limited³¹⁷; the threshold for a case currently is high in Germany due to exceptionally high court fees³¹⁸;

Comments raised by business representatives and legal experts (and other stakeholders):

- Another disadvantage is that it would lead to resources being taken from public budgets or to defendants being required to pay³¹⁹. Also, it seems unnecessary in view of the economies of scale and scope linked to collective claims³²⁰ and court fees are needed to finance the work of courts³²¹. Moreover, there is no reason to offer such an advantage to consumer organisations at the expense of States or any other third party³²² and collective procedures should not receive a preferential treatment compared to individual procedures³²³. Since legal fees cannot be linked to the results obtained in the treatment of the complaint, a capping is not needed nor would it be acceptable³²⁴;

³¹¹ Collège Européen de Paris

³¹² ASU

³¹³ Centrum für Europäische Politik, Bundesrat, Gesamtverband der Deutschen Versicherungswirtschaft, VFA, Polish Government, Bundesministerium für Wirtschaft, Familie und Jugend of Austria, DIAZ Reus, Industriellenvereinigung, Confederation of British Industry, US Chamber Institute for Legal Reform, Association of British Insurers

³¹⁴ Bundesministerium für Wirtschaft, Familie und Jugend of Austria, BRAK

³¹⁵ Bundesministerium für Justiz of Austria

³¹⁶ EuroCoop

³¹⁷ EAPB, EJF

³¹⁸ TILP

³¹⁹ Bundesverband der Deutschen Industrie

³²⁰ Bar Council of England and Wales

³²¹ Council of Bars and Law Societies in Europe

³²² UEL

³²³ Industriellenvereinigung Austria, EJF, Association of British Insurers

³²⁴ BRAK

- There are already ways of support provided³²⁵: in Germany litigation costs depend on the size of the claim and Germany offers financial support to citizens unable to pay the court fees, so there is no need for further provisions;
- Several respondents are against making use of contingency fees³²⁶. It creates the incentive to turn the defence of consumer interests into a lucrative business. However, it could be allowed for expensive and risky cases according to a respondent³²⁷. Another respondent is in favour of the admission of success fees: it could be a way to provide incentives for lawyers to ensure that claims that otherwise would not be brought to court, would be brought to court³²⁸. Also, a respondent feels contingency fees do not stimulate a litigation culture since no lawyer would risk defending a case that does not seem successful³²⁹. It could be allowed when giving consideration to the capping of legal fees and a transparency of fee arrangements³³⁰. A solution in between would be allowing properly regulated conditional fee agreements/mechanisms and costs insurance, but not to the extent of permitting contingency fees. This can give the individual claimant a degree of protection from liability for costs in return for his lawyers and/or insurers receiving an augmented fee in the event of recovery³³¹;

Comments raised by business representatives and public authorities:

- It would involve a major intervention in national systems and it might be unlawful for a claim to be financed by a party other than the plaintiff³³²;

Comments raised by consumer representatives and public authorities:

- According to some respondents, to assure the effectiveness of the mechanism, it will be essential to put a limit to the amount of legal fees for collective actions³³³;

Comments raised by legal experts:

- The English courts have a wide discretion to use costs to manage litigation, including restricting and disallowing recovery of costs before as well as after they are incurred. Measures such as costs capping are already a feature of English litigation in appropriate cases³³⁴;

³²⁵ VFA, DRB, WKO Abteilung für Rechtspolitik, Industriellenvereinigung Austria

³²⁶ VCO-NCW, EuroCoop, WKO Abteilung für Rechtspolitik, ZGV, MEDEF, Bar Council of England and Wales, Centrum für Europäische Politik, Zentraler Kreditausschuss Germany, Verband der Chemischen Industrie Germany, Professors from Humboldt-Universität Berlin – J.W. Goethe Universität Frankfurt/M, EACB, EJF, Eurochambres, US Chamber Institute for Legal Reform

³²⁷ DIAZ REUS

³²⁸ DAV

³²⁹ TILP

³³⁰ Association of British Insurers

³³¹ Bar Council of England and Wales

³³² Ireland, Association of British Insurers

³³³ 13 European Consumer Associations, Office of Fair Trading

³³⁴ Herbert Smith

Comments raised by consumer representatives and business representatives:

- There is a proposal for assistance funds³³⁵, which would for instance be fed by public authorities in the beginning and by unclaimed compensations later on or by a part of the compensation allocated by the judge. National and European funds could take into account the limited and disproportionate means of the 12 most recent members³³⁶. Also, it could be useful to estimate the likely costs to the plaintiffs at the outset of the procedure³³⁷ or to give the court the power to review any funding arrangements and to refuse them where necessary³³⁸;

Comments raised by business representatives:

- Legal expense insurance products have an important possible role for the financing of collective actions³³⁹;

With respect to the financing of the consumer representatives - general:

Comments raised by business representatives, public authorities, legal experts and other stakeholders:

- Negative remarks on the allocation of a share of the compensation to consumer representatives include: the consumer would not get full compensation, which is not acceptable³⁴⁰, it creates an incentive to turn the defence of consumer interests into a lucrative business³⁴¹ and it is essentially a contingency fee for consumer organisations³⁴². The mingling of financing collective redress with the claims is not accepted or would be confusing³⁴³;

Comments raised by consumer representatives and other stakeholders:

- However, some respondents argue that such a mechanism is essential to provide effective collective redress³⁴⁴, that some of the compensation should go to a specially created fund³⁴⁵ (e.g. the difference between the compensation paid by the business and the compensation paid to the consumers who declared themselves as damaged, thus the part for unknown

³³⁵ Association Consommation Logement Cadre de Vie, OR.GE.CO, Familles Rurales

³³⁶ 13 European Consumer Associations

³³⁷ UFC Que Choisir

³³⁸ EJF

³³⁹ Association of British Insurers

³⁴⁰ WKO Abteilung für Rechtspolitik, EAPB, DIHK, ZAW, Bundesministerium für Justiz of Austria, Eurochambres, Confederation of British Industry

³⁴¹ Centrum für Europäische Politik, Gesamtverband der Deutschen Versicherungswirtschaft, VFA, DGB, Polish Government, UEL, ÖRAK, Industriellenvereinigung Austria, Confederation of British Industry, EJF

³⁴² US Chamber Institute for Legal Reform

³⁴³ Council of Bars and Law Societies in Europe, Délégation des barreaux français

³⁴⁴ 13 European Consumer Associations, ZPS, UNC

³⁴⁵ UFC Que Choisir, Confédération Syndicale des Familles, Familles de France, TEST

consumers), that it is especially necessary if the institution carried out considerable work with respect to the identification of a dishonest practice or with consumer help³⁴⁶;

Comments raised by consumer representatives:

- On top of allocating a part of the compensation to the consumer organisations, their own right to damage compensation should also be fully recognised³⁴⁷;

Comments raised by consumer representatives, public authorities and legal experts:

- Alternative financing proposals are that the system described in the White Paper on damages actions for breach of the EC antitrust rules (COM (2008) 165 final) should be used as a model³⁴⁸, that special insurances should be used, as in the UK³⁴⁹, that conditional fee agreements and/or a special fund for actions should be used³⁵⁰, possibly coming from skimming off profits³⁵¹, that the decision should lie with the national courts³⁵² and that there would be European funding for consumer organisations³⁵³;

With respect to the financing of the consumer representatives – loans by third-parties:

Comments raised by business representatives, consumer representatives, legal experts and other stakeholders:

- Disadvantages linked to loans by third parties are according to the respondents: the consumer would not get full compensation and there would be abuses, e.g. third parties would act in their own economic interests and there would be unmeritorious claims³⁵⁴, consumer organisations are financially too fragile to rely on loans³⁵⁵ and it cannot be expected that they become indebted to represent consumers³⁵⁶, it would be unfair to grant them for collective claims and not for individual claims³⁵⁷, the third parties would e.g. be banks, who can be in fact potentially accused³⁵⁸;

Comments raised by consumer representatives and legal experts:

- A respondent states that it is an attractive alternative for the loser-pays-principle as the loser-pays-principle not only prevents unmeritorious claims but also many meritorious claims. Financing can eliminate the threshold of high costs for the individual consumers. No financier

³⁴⁶ Insurance Ombudsman Office

³⁴⁷ Active Citizenship

³⁴⁸ UFC Que Choisir

³⁴⁹ UFC Que Choisir

³⁵⁰ Office of Fair Trading, Familles Rurales

³⁵¹ ECCG

³⁵² Herbert Smith

³⁵³ Ministry of Justice of Austria

³⁵⁴ WKO Abteilung für Rechtspolitik, Familles de France, VFA, DGB, Jones Day, Zentraler Kreditausschuss Germany, Industriellenvereinigung Austria, AmChamEU, Confederation of British Industry, US Chamber Institute for Legal Reform

³⁵⁵ Familles de France

³⁵⁶ Familles Rurales, OR.GE.CO

³⁵⁷ Gesamtverband der Deutschen Versicherungswirtschaft

³⁵⁸ Österreichischer Genossenschaftverband

will however grant resources to a claim that does not suggest a successful outcome³⁵⁹. Another reason for it would be that without funding, the system would not take place in practice³⁶⁰;

Comments raised by business representatives:

- Safeguards and guidelines to avoid abuses are necessary (e.g. letting the courts review funding arrangements)³⁶¹;

Comments raised by business representatives and legal experts:

- It is stated³⁶² that liberal funding in combination with opt-out rules would make private court-based action effective. Liberal funding is required to provide sufficient financial return to those who fund an action (state funds, private funds or combination possible). However, this would involve significant transaction costs and have a risk of capture by intermediaries and of producing abuse, such as conflicts of interest, inadequate settlements for consumers and blackmail settlements (liberal funding and opt-out would result in a toxic cocktail);

With respect to the financing of the consumer representatives – public funding by Member States:

Comments raised by business representatives, public authorities, legal experts and other stakeholders:

- Disadvantages stated by respondents are: gives an incentive to assert unmeritorious claims³⁶³, would constitute a corrosion of the separation of powers and a display of partiality³⁶⁴, especially if publicly funded subjects act on behalf of consumers³⁶⁵, would raise costs for the taxpayer/consumers³⁶⁶, is unfair since it is not allowed for individual claims³⁶⁷, some Member States could not afford it³⁶⁸, the costs of a juridical action should be borne by the parties involved and the commission has no competence in this matter³⁶⁹;

Comments raised by business representatives, consumer representatives, public authorities and legal experts:

- Funding would be necessary for the success of the project, and public funding may then be a good way to achieve this³⁷⁰, possibly through an independent European wide fund or through

³⁵⁹ TILP

³⁶⁰ ZPS

³⁶¹ EJF, Association of British Insurers

³⁶² Dr Christopher Hodges, EJF

³⁶³ Centrum für Europäische Politik, VFA, UEL, DGB, Jones Day, CEA Insurers of Europe, Confederation of British Industry

³⁶⁴ WKO Abteilung für Rechtspolitik

³⁶⁵ Ministry of Economy of the Slovak Republic

³⁶⁶ ZVEI, Délégation des barreaux français, Council of Bars and Law Societies in Europe, Industriellenvereinigung Austria

³⁶⁷ Gesamtverband der Deutschen Versicherungswirtschaft

³⁶⁸ UEL

³⁶⁹ ÖRAK

³⁷⁰ Dr Christopher Hodges, Trading Standards Institute, EuroCoop, vzbv, ZPS

a small one-off fixed charge for such claims³⁷¹. However, it is doubted whether this will provide a satisfactory solution in many cases³⁷²;

Comments raised by business representatives and consumer representatives:

- It is doubted whether it will be sufficient³⁷³ or whether it will happen in practice³⁷⁴, e.g. see UK example: extensive legal aid in the '90s: expensive cases were started that all failed or settled and as a result the amount of legal aid is not too little to be able to launch new collective litigation;

With respect to avoiding unmeritorious claims - Filter by the court:

Comments raised by consumer representatives and legal experts:

- Some respondents agree with this proposal but give few reasons or advantages. It is however remarked that it would prevent the obstruction of courts³⁷⁵ and that in the Slovak Republic ASU in cooperation with the Ministry of Justice of the Slovak republic created the Legal Consumer Protection Body, which will evaluate legitimacy of claims and bring legal action³⁷⁶. Also, judges could act as efficient and independent gatekeepers against abuses³⁷⁷;

Comments raised by all types of stakeholders:

- It would be useful according to some respondents but with some rules: it cannot constitute a 'trial before a trial'³⁷⁸, independent and qualified judges are needed and this not only for collective cases³⁷⁹, the judge should also decide if the claim can be considered as collective³⁸⁰, the judge should verify that parties have sufficiently considered ADRs³⁸¹, the court should be in charge of the admissibility examination, the coordination of the notification procedure and the control of the representation criteria³⁸², the judge could also examine and validate the funding arrangements and transactions between the parties involved³⁸³, only a court specialised in collective demands could do it³⁸⁴, it could only be on pure formal grounds³⁸⁵, the court would need to determine that the representative body is able to act in

³⁷¹ Office of Fair Trading

³⁷² Bar Council of England and Wales

³⁷³ Familles Rurales

³⁷⁴ EJF

³⁷⁵ Council of Bars and Law Societies in Europe

³⁷⁶ ASU

³⁷⁷ ECCG

³⁷⁸ Familles de France

³⁷⁹ Gesamtverband der Deutschen Verisicherungswirtschaft

³⁸⁰ VFA, Industriellenvereinigung Austria, Association of British Insurers, US Chamber Institute for Legal Reform, APIL, EJF

³⁸¹ APIL

³⁸² Assuralia

³⁸³ Délégation des Barreaux Français, APIL

³⁸⁴ ZPS

³⁸⁵ Ministry of Justice of Austria

the best interest of consumers³⁸⁶, it should be on the basis that one of the certification criteria would include a wider superiority requirement that other alternative procedures had not been pursued for reasonable reasons³⁸⁷;

Comments raised by business representatives and legal experts:

- It would be very difficult since the judge would ex-ante need to take the decision that is in fact his final conclusion and decision. Especially for very technical subjects which the judge may not be familiar with, it can be difficult to decide whether or not a claim is meritorious³⁸⁸;
- Other disadvantages include: it could trigger other actions on the part of consumers (appeal, claims against the representative entity, etc.) and entail further complications³⁸⁹, there is no guarantee that negative consequences will be excluded³⁹⁰ and sometimes defendants wish to settle unmeritorious claims because it is cheaper, so no evidence of poor merits will be given and court will be in dilemma of approving an unjust payment or requiring parties to continue incurring litigation costs³⁹¹;

Comments raised by legal experts:

- The following examples of court approval are given³⁹²: in Norway, Denmark, Sweden and the Netherlands, court approval is required before any class settlement can take place and in Sweden, courts also have the power to remove class representatives and replace them if they do not fulfil their duties.

With respect to avoiding unmeritorious claims - Certification of representative entity:

Comments raised by business representatives and legal experts:

- On the positive side, it would prevent commercial entities such as large lawyers' firms from representing the consumers³⁹³ and that the certified entities can show that the number of consumers is too important to be able to use another kind of procedure and that the situation is identical for all consumers and is against the same business³⁹⁴. They would also reduce the risk of abusive or unmeritorious claims being brought³⁹⁵;

Comments raised by business representatives and public authorities:

- Clear guidelines, rules and/or and court assessments are necessary for the certification³⁹⁶, but there is doubt whether it is possible to find these³⁹⁷;

³⁸⁶ Association of British Insurers

³⁸⁷ Dr Christopher Hodges

³⁸⁸ DRB, WKO Abteilung für Rechtspolitik, Dr Christopher Hodges

³⁸⁹ UEL

³⁹⁰ Verband der Chemischen Industrie Germany

³⁹¹ Dr Christopher Hodges

³⁹² RJ Gaudet

³⁹³ Gesamtverband der Deutschen Versicherungswirtschaft

³⁹⁴ FFSA

³⁹⁵ Herbert Smith

³⁹⁶ International Underwriting Association, ING, APIL

³⁹⁷ Bundesministerium für Justiz of Austria

- It offers no guarantees that there will be no abuses³⁹⁸ and it is argued that consumer organisations should not take decisions of this nature because they are parties to the case³⁹⁹. Also, there might be bottlenecks if there are too little certified organisations⁴⁰⁰;

With respect to avoiding unmeritorious claims - Loser-pays principle:

Comments raised by business representatives, public authorities and legal experts:

- The maintaining of the loser-pays principle is necessary according to many respondents because it is necessary to prevent a litigation culture with unmeritorious claims⁴⁰¹; because lawyer fees are not even entirely compensated with the loser-pays principle in case the defendant is found not-guilty, so certainly no further skimming of this is accepted⁴⁰²; because without it the basic rights to equal treatment and to honest judicial procedure are not respected⁴⁰³, because it acts as an incentive for early resolution of claims (which must be encouraged)⁴⁰⁴, because it would be illogical to adopt a different system than the one adopted in the European Small Claims procedure⁴⁰⁵, because it is also maintained in the opinion of the Economic and Monetary Affairs Committee of the EP with respect to the White Paper on damages for breach of EC antitrust rules⁴⁰⁶;

Comments raised by business representatives:

- Moreover, the loser-pays in this types of cases would need to include guarantees that loser will pay because in case business wins, it cannot be expected that it will chase all consumers individually⁴⁰⁷. A proposal would be that the judge should be free to determine that the claimant group needs to provide a cost deposit to the court, to be used as part of the payment to the defendant in case of an unsuccessful claim⁴⁰⁸;
- The proposal in the White Paper on Competition Damages that the Court has the power to make different award with regard to costs is opposed and also criticized because there may be no differences in the Commission's approach⁴⁰⁹;
- Other ways to ensure funding than abolishing the loser-pays principle are remarked: in Germany citizens have the possibility to insure themselves against the risks involved with a

³⁹⁸ MEDEF, UEL

³⁹⁹ EMF

⁴⁰⁰ Bundesministerium für Justiz of Austria

⁴⁰¹ WKO Abteilung für Rechtspolitik, DRB, EAPB, VCO-NCW, Bundesrat, Gesamtverband textil + mode Germany, ECTAA, RIAD, Zentraler Kreditausschuss Germany, Justizministerium Baden-Württemberg, VPRT, Industriellenvereinigung Austria, Herbert Smith, Eurochambres, Confederation of British Industry, Association of British Insurers, Freshfields Bruckhaus Deringer, EJM

⁴⁰² WKO Abteilung für Rechtspolitik

⁴⁰³ WKO Abteilung für Rechtspolitik

⁴⁰⁴ Herbert Smith

⁴⁰⁵ Bar Council of England and Wales

⁴⁰⁶ Verband der Chemischen Industrie Germany

⁴⁰⁷ WKO Abteilung für Rechtspolitik

⁴⁰⁸ Association of British Insurers

⁴⁰⁹ EJM

law suit and financial support is offered to citizens who are unable to pay for a law suit⁴¹⁰ and in the UK there is the provision for conditional fee arrangements (CFA) and after-the-event insurance (ATE)⁴¹¹. This will however need to be changed in order to be applicable for collective claims;

- Respondents against the loser-pays principle state it does not exist in all Member States⁴¹²;
- It is stated that the loser-pays principle should be maintained except at the certification stage, so as to allow cases to be put before the judge without fear of harsh costs sanction⁴¹³;

Comments raised by legal experts:

- It should be applied flexible according to some respondents⁴¹⁴ (e.g. the court can disallow disproportionate costs);
- Respondents against the loser pays principle state it prevents some meritorious claims⁴¹⁵;

With respect to avoiding unmeritorious claims - Public authorities funding redress:

Comments raised by business representatives:

- This would only be useful to prevent unmeritorious claims in countries where there is public funding in the first place⁴¹⁶;

Comments raised by business representatives and legal experts:

- Others believe it would be useful in preventing unmeritorious claims⁴¹⁷

With respect to avoiding unmeritorious claims - Other:

Comments raised by all types of stakeholders:

- Other proposed solutions are: time-limited electronic notification⁴¹⁸, dissuasive sanctions⁴¹⁹, the system in place in Quebec^{420, 421}, courts should be permitted to consolidate actions and to join parties⁴²², legally determined criteria for acceptance are necessary (minimal

⁴¹⁰ Gesamtverband textil + mode Germany

⁴¹¹ Internation Underwriting Association

⁴¹² UEL

⁴¹³ APIL

⁴¹⁴ Bar Council of England and Wales, Council of Bars and Law Societies in Europe

⁴¹⁵ TILP

⁴¹⁶ UEL

⁴¹⁷ Dr Christopher Hodges, WKO Abteilung für Rechtspolitik, British Retail Consortium

⁴¹⁸ Assuralia

⁴¹⁹ FBF

⁴²⁰ i.e. the judge: designates a representative for the consumers, determines the kind of publicity to be given to the case, examines and validates any transaction proposal, decides who (insurer, accountant, association, lawyer, public entity, etc.) will distribute the damages awarded amongst the plaintiffs if the collective compensation is a fixed amount instead of an amount per individual claimant.

⁴²¹ UFC Que Choisir

⁴²² Council of Bars and Law Societies in Europe

requirements)⁴²³, the use of a gatekeeper⁴²⁴, good and efficient regulation combined with a liability for class members⁴²⁵, public authorities encouraging genuine attempts at settlement⁴²⁶;

Comments raised by consumer representatives:

- The imposition of ADR as a prerequisite⁴²⁷ is rejected as a means to avoid unmeritorious claims;

Comments raised by legal experts:

- The same rules as in individual litigation should apply⁴²⁸;

Comments raised by business representatives:

- It is signalled that the White Paper on "damages actions for breach of the EC antitrust rules" does not deal with the problem of unmeritorious claims, which could lead to the fact that different measures will be available in different Member States and thus to forum shopping⁴²⁹;

With respect to giving legal standing to consumer organisations:

Comments raised by consumer representatives and legal experts:

- The idea is applauded by certain respondents⁴³⁰, e.g. because it can avoid non-founded or improper procedures and because it would be more efficient;

Comments raised by business representatives and legal experts (and other stakeholders):

- A respondent has experienced in the past (e.g. in environmental protection) that such legal standings are often abused by dishonest organisations who issue false claims in order to gain money⁴³¹. Such incidents cause a lot of suspicion and damage the reputation of honest organisations as well. Also, consumer organisations are ill-prepared to play such a role in Member States where a collective redress system does not already exist⁴³²;
- Strict conditions for organisations⁴³³ are necessary: e.g. being recognized on the national level, being legally capable of introducing a claim, being a non-profit organisation of sufficient financial standing, acting in the best interest of the consumers they represent, having as one of its core functions the advocacy of consumers;

⁴²³ WKO Abteilung für Rechtspolitik

⁴²⁴ ERRT

⁴²⁵ Royal Ministry of Children and Equality of Norway

⁴²⁶ EJF

⁴²⁷ Confédération Syndicale des Familles, Familles de France

⁴²⁸ RJ Gaudet

⁴²⁹ VFA

⁴³⁰ Freshfields Bruckhaus Deringer, OR.GE.CO, Familles Rurales, Herbert Smith

⁴³¹ DRB

⁴³² UEL

⁴³³ Assuralia, Gesamtverband der Deutschen Versicherungswirtschaft, Association of British Insurers, US Chamber Institute for Legal Reform, Herbert Smith

Comments raised by business representatives:

- Many bodies do not see their role as being the conduct of litigation and they do not have the resources or expertise for it and it risks capture by third party funders⁴³⁴;
- The absence of consistent legal criteria across the EU regarding accountability, representativeness and funding of such organisations is of concern⁴³⁵;

Comments raised by other stakeholders:

- The power to bring actions before the court should be given to both consumer organisations and to the group members⁴³⁶;

Comments raised by consumer representatives:

- It is currently the case in the Slovak Republic⁴³⁷;

With respect to giving legal standing to the ombudsman:

Comments raised by business representatives:

- This possibility should be left to national rules according to the judicial culture of the Member States⁴³⁸;

Comments raised by public authorities:

- The ombudsman could either be national or sector-linked⁴³⁹;

With respect to the choice between opt-in and opt-out:

- Disadvantages of opt-out include:

Comments raised by business representatives, public authorities and legal practitioners (and other stakeholders):

- It is incompatible with European and Member States' laws and Article 6 of the European Convention on Human Rights⁴⁴⁰
- It can promote unmeritorious claims as the case can be in the interest of the case representative⁴⁴¹

⁴³⁴ EJJ

⁴³⁵ Confederation of British Industry

⁴³⁶ Royal Ministry of Children and Equality of Norway

⁴³⁷ ASU

⁴³⁸ EuroCoop

⁴³⁹ Ministry of Development of Greece

⁴⁴⁰ Dr Christopher Hodges, WKO Abteilung für Rechtspolitik, DRB, DRV, ZVEI, Gesamtverband der Deutschen Versicherungswirtschaft, VFA, Assuralia, RIAD, Bundesministerium für Wirtschaft, Familie und Jugend of Austria, Bundesregierung, Council of Bars and Law Societies in Europe, Justizministerium Baden-Württemberg, Jones Day, Verband der Chemischen Industrie Germany, CEEP, DAV, MEDEF, Polish Government, CEA Insurers of Europe, Ireland, EMF, EJJ, UK Government, Estonian Government

⁴⁴¹ WKO Abteilung für Rechtspolitik, Centrum für Europäische Politik, MEDEF, International Underwriting Association, VPRT, Bar Council of England and Wales, VFA, Ministero dello Sviluppo Economico, Confederation of British Industry, Association of British Insurers, EJJ, US Chamber Institute for Legal Reform

- It makes distribution of compensation difficult, risks over- or under-compensation and risks getting compensation for consumers who do not want it⁴⁴²;
- it is one of the reasons of abuses in the USA⁴⁴³;

Comments raised by business representatives, consumer representatives, public authorities, legal practitioners and other stakeholders:

- It limits individual freedom of choice and consumers would be bound by a judgement without their knowledge or without having been able to contest the management of the case⁴⁴⁴;

Comments raised by business representatives and public authorities:

- shifting an unreasonable burden on representative organisations in finding claimants and allocating awards⁴⁴⁵;

Comments raised by business representatives:

- the company always has the right to know exactly for which and how many claims it is facing⁴⁴⁶;

Comments raised by all types of stakeholders:

- It is argued that both have their advantages and disadvantages and therefore the choice should depend on the concrete framework and can be left to Member States⁴⁴⁷ or a combination of both can be envisaged: opt-in should be used except when public authorities reasonably request opt-out⁴⁴⁸, opt-out should be used for initiating a court action and opt-in should be used for distributing the compensation⁴⁴⁹, opt-out should be possible in the case of small claims which would not warrant individual complaints⁴⁵⁰, opt-out could be limited to specifically designated representative groups who are more likely to have regard for the reputational effects of spurious claims⁴⁵¹, the judge should decide which to apply⁴⁵², opt-out procedure is possible at the moment of the proceedings institution (introduction)⁴⁵³, the

⁴⁴² WKO Abteilung für Rechtspolitik, Centrum für Europäische Politik, RIAD, Zentraler Kreditausschuss Germany, ANACOM, UEL, Polish Government, Ministero dello Sviluppo Economico, Herbert Smith, CEA Insurers of Europe, Association of British Insurers

⁴⁴³ Siemens, ZDH, Bundesregierung, Gesamtverband der Deutschen Versicherungswirtschaft, FBF, EJJ, Confederation of British Industry, Clifford Chance

⁴⁴⁴ Centrum für Europäische Politik, DRB, DRV, ZVEI, Bundesrat, Gesamtverband der Deutschen Versicherungswirtschaft, ECTAA, VFA, Bundesministerium für Wirtschaft, Familie und Jugend of Austria, ASU, VPRT, Bar Council of England and Wales, Verband der Chemischen Industrie Germany, EAPB, ANACOM, Gesamtverband der Deutschen Versicherungswirtschaft, International Underwriting Association, Délégation des Barreaux Français, Polish Government, Council of Bars and Law Societies in Europe, Industriellenvereinigung Austria, CEA Insurers of Europe, Eurochambres, Ireland, EMF, Freshfields Bruckhaus Deringer, EJJ, Clifford Chance, Estonian Government

⁴⁴⁵ International Underwriting Association, Ministry of Economy and Energy of Bulgaria

⁴⁴⁶ Industriellenvereinigung Austria, Association of British Insurers

⁴⁴⁷ EuroCoop, Collège Européen de Paris

⁴⁴⁸ Dr Christopher Hodges

⁴⁴⁹ Confédération Syndicale des familles

⁴⁵⁰ BRAK, Danish Government

⁴⁵¹ Office of Fair Trading

⁴⁵² 13 European Consumer Associations, Hausfeld, CRIOC, APIL, Civil Justice Council

collective redress mechanism ought to be organised on the basis of the “opt-in” formula unless the defendant himself prefers the “opt-out”-formula⁴⁵⁴, Member States can offer an opt-out formula if it is certified or requested by a public enforcer⁴⁵⁵; in the Norwegian Dispute Act the opt-out alternative only applies if each claim involves amounts or interests that are so small it must be assumed that a considerable majority of the claims would not be brought as individual actions, and are not deemed to raise issues that need to be heard individually⁴⁵⁶;

Comments raised by legal experts:

- The fact that a claimant does not opt in should not preclude him or her from pursuing his or her own right of action⁴⁵⁷, but possibly with a financial disincentive when an individual action is not justified;
- Advantages of opt-out/disadvantages of opt-in include:

Comments raised by consumer representatives:

- opt-in could present significant practical difficulties for consumers and consumer organisations⁴⁵⁸;
- collective redress mechanism can only be effective if all the impacted consumers receive compensation⁴⁵⁹;

Comments raised by public authorities and legal experts:

- Opt-out includes more people and it would be more efficient and more economical⁴⁶⁰;

Comments raised by legal experts:

- Opt-out ensures the most empowerment to consumers and ensures the most compensation⁴⁶¹;
- There is no proof that opt-in prevents unmeritorious claims (see Lindberg v. Botkyra kommun et al. case in Sweden)⁴⁶²;
- Opt-out does not encourage excessive litigation. In fact, the greatest part of consumers does not take part in the actual procedure. They only come in the picture when the division of the redress actually takes place⁴⁶³;

⁴⁵³ OR.GE.CO

⁴⁵⁴ Assuralia

⁴⁵⁵ UK Government

⁴⁵⁶ Royal Ministry of Children and Equality Norway

⁴⁵⁷ Council of Bars and Law Societies in Europe, Bar Council of England and Wales

⁴⁵⁸ FSA Consumer Panel, UFC Que Choisir

⁴⁵⁹ Association Consommation Logement Cadre de Vie

⁴⁶⁰ Danish Government, Dr Christopher Hodges, UK Government

⁴⁶¹ RJ Gaudet

⁴⁶² RJ Gaudet

⁴⁶³ TILP

Comments raised by consumer representatives and legal experts:

- Opt-out eliminates the psychological threshold that consumers may experience⁴⁶⁴;

Comments raised by consumer representatives:

- A respondent does not understand the EC's argument that opt-in could lead to problems for consumer organisations of not finding enough participants. If there is a small number of consumers, collective redress is not justifiable and other means should be used to solve the case⁴⁶⁵;
- A system in which the group representative can act on behalf of identified, identifiable or non identifiable victims is preferred by a respondent⁴⁶⁶, i.e. no mandate is required;

Comments raised by business representatives:

- The Commission's objections to opt-in seem not valid to a respondent: if you want your damage to be compensated, it is reasonable to expect of you that you make some effort⁴⁶⁷;

Comments raised by public authorities:

- One respondent⁴⁶⁸ states that the choice should be considered thoroughly, taking into account the particularities of a country's judicial system and the pros as cons. It would thus not give preference to either at this time;

Comments raised by legal experts:

- A legal expert states that in case of opt-out, the surplus distribution cannot be awarded to a sort of fund (as is often the case in other jurisdictions) because this would cross the line between compensation and punishment. Therefore, the amount should be reverted to the defendant⁴⁶⁹;

With respect to the court distributing compensation:

Comments raised by other stakeholders:

- Where a case is brought on an opt-out or opt-in basis, the court should have the power to aggregate damages in an appropriate case. To protect the interests of the represented class of claimants any settlement agreed by the representative claimant and the defendant(s) must be approved by the court within a 'Fairness Hearing' before it can bind the represented class of claimants. In approving a settlement or giving judgment on a collective claim the court should take account of a number of issues in order to ensure that the represented class are given adequate opportunity to claim their share of the settlement or judgment⁴⁷⁰;

⁴⁶⁴ TILP, Which

⁴⁶⁵ FFSA

⁴⁶⁶ BEUC

⁴⁶⁷ VCO-NCW

⁴⁶⁸ Ministry of Justice Lithuania

⁴⁶⁹ Herbert Smith

⁴⁷⁰ Civil Justice Council

Comments raised by consumer representatives:

- The judge can compensate the victims, feed a fund for the financing of procedures and finance other consumer-linked projects⁴⁷¹;

With respect to the joining of a mass claim after a test case:

Comments raised by consumer representatives and legal experts:

- Some respondents point out that in order for this system to function properly, consumers must be given improved opportunities to join the action (e.g. online registers of issued claims and messages in the media that state that citizens have the right to access the claim registers)⁴⁷². It should also be possible to join the case during or after the finalisation⁴⁷³.
- One of the advantages is that consumers will more readily claim compensation⁴⁷⁴;

Comments raised by business representatives:

- Questions that arise could be⁴⁷⁵: Why give some consumers a free ride on the procedure initiated and paid by others? Who will bear the costs of the action if it is unsuccessful and too few consumers have joined in from the start?;

Comments raised by consumer representatives:

- The notion of test case can include a lot of different practical situations, and it is important that such a system complies with minimum standards of efficiency and effectiveness. Also, in this context, the question of whether each consumer should have to follow a specific judicial procedure in order to benefit from the judgement, or whether more flexible solutions could be identified, is crucial. Such an approach would prevent many of the shortcomings of an opt-in procedure, while avoiding disadvantages of the opt-out procedure. The discussion will then have to lie with the type of procedure that could be cost-effective for an individual consumer to undertake to obtain compensation: would this be a formality or would the consumer have to prove his individual damage and according to which rules? The merit of this approach will largely depend on the ease of the follow-up procedure⁴⁷⁶;

With respect to the applicable jurisdiction in cross-border cases:

Comments raised by business representatives, public authorities, legal experts and other stakeholders:

- According to some respondents the choice of the forum should be made by the accused party, not the accusing party⁴⁷⁷. This is important to prevent forum shopping. This may according to others however lead to forum shopping by the accused party⁴⁷⁸;

⁴⁷¹ Familles Rurales

⁴⁷² DRB, Familles Rurales

⁴⁷³ NACPR

⁴⁷⁴ Hausfeld, UNC

⁴⁷⁵ UEL

⁴⁷⁶ ECCG

⁴⁷⁷ DIHK, Collège Européen de Paris, Siemens, European Justice Forum, US Chamber Institute for Legal Reform

⁴⁷⁸ Bundesministerium für Justiz of Austria

Comments raised by consumer representatives:

- Some state the action should be brought to the court where the group or entity representing the consumers is established⁴⁷⁹. This general principle should be extended to collective cases⁴⁸⁰;
- A specialised and unique European Court could judge the collective cross-border infringements⁴⁸¹. The most favourable legislation in each Member State (maximum harmonisation) should ideally be applied;

Comments raised by business representatives, consumer representatives and legal experts:

- The choice of the jurisdiction should lie with the victims according to some respondents⁴⁸². This could according to another respondent however not be suited for collective claims since the plaintiffs are already in a stronger position⁴⁸³;

Comments raised by business representatives:

- The place of jurisdiction should be decided by the contract according to some⁴⁸⁴;
- It is also stated that the case should be brought to the jurisdiction where the consumer receives the best protection⁴⁸⁵;

Comments raised by legal experts:

- A legal expert wonders how this issue will be dealt with in opt-out cases⁴⁸⁶: would only those consumers in the Member State in which the action was brought be covered or (for a representative action) all the consumers in the Member State in which the representative body operated (if different)?

With respect to the applicable jurisdiction in cases with consumers from different Member States:

Comments raised by consumer representatives and legal experts:

- Disadvantages⁴⁸⁷ of the amendment of the rules to impose the law of the trader: this solution involves the risk that companies would move their headquarters to Member States with little consumer protection, it would be contrary to the consumers' interest, it is unclear if it is about the trader's registered office, its centre of administration or its centre of main interest, it would be dangerous for consumers, especially if the trader is established outside of Europe⁴⁸⁸;
- The confrontation of judges with various national laws is seen as too complicated⁴⁸⁹. However, consumers prefer to settle their case before their national courts and according to

⁴⁷⁹ Association Consommation Logement Cadre de Vie, Confédération Syndicale des Familles

⁴⁸⁰ ASU

⁴⁸¹ Familles Rurales

⁴⁸² UFC Que Choisir, vzbv, UEL

⁴⁸³ Collège Européen de Paris

⁴⁸⁴ EAPB, Zentraler Kreditausschuss Germany

⁴⁸⁵ ADAC

⁴⁸⁶ Herbert Smith

⁴⁸⁷ DRB, Association Consommation Logement Cadre de Vie, Linklaters

⁴⁸⁸ BEUC

⁴⁸⁹ DRB

their national law and this is foreseen in the Rome I and Brussels I Regulation so none of the options proposed is acceptable for some respondents⁴⁹⁰ or it should at least be further studied with care⁴⁹¹;

Comments raised by business representatives, consumer representatives, legal experts and other stakeholders:

- It is proposed to designate a given jurisdiction and court for all European cross-border collective redress actions⁴⁹², to ensure one single action throughout the EU⁴⁹³, to choose the jurisdiction first confronted with the case⁴⁹⁴, to apply the law of the affected market(s) but let the parties then agree to settle on a single law⁴⁹⁵, to arrange a standardisation of substantial law which would be more sensible than a standardisation of procedures⁴⁹⁶, to just let consumers issue their claims in their own Member State⁴⁹⁷, to apply the normal choice of law analysis (Rome I and Rome II) but with the possibility to create subclasses in which one national law applies to one subclass and another national law to another subclass⁴⁹⁸, to let the judge decide if an agreement is impossible⁴⁹⁹, to apply the rule of maximum harmonisation in order to give the same optimal rights to all European consumers⁵⁰⁰, to implement robust choice of law rules to minimise forum shopping⁵⁰¹;

Comments raised by business representatives and legal experts:

- It is remarked that the creation of special regulations in this area for collective cases is unfair compared to individual cases, where such arrangements are not introduced⁵⁰²

With respect to other elements:

- A number of respondents have stipulated some extra conditions that they would like to see part of option 4. These vary substantially, but the comments that were made several times can be summarized as follows:

Comments raised by business representatives, consumer representatives, legal experts and other stakeholders:

- Punitive damages (or more generally non-economic and exemplary damages) should be avoided⁵⁰³;

⁴⁹⁰ Linklaters, UNC, ECCG, Herbert Smith

⁴⁹¹ EuroCoop

⁴⁹² Confédération Syndicale des Familles

⁴⁹³ Hausfeld, ASU

⁴⁹⁴ Délégation des Barreaux Français

⁴⁹⁵ Collège Européen de Paris

⁴⁹⁶ DRB

⁴⁹⁷ DRB

⁴⁹⁸ RJ Gaudet

⁴⁹⁹ BEUC

⁵⁰⁰ Familles Rurales

⁵⁰¹ US Chamber Institute for Legal Reform

⁵⁰² VFA, Herbert Smith

Comments raised by business representatives:

- The use of media attention as an incentive is not acceptable⁵⁰⁴;
- There are strict rules for the compensation⁵⁰⁵, i.e. it cannot be a form of punishment, it should only restore the lost object, foregone profit and possibly interests, it should be the same as the sum of the individual cases;
- It is stated that it should be limited to cross-border cases⁵⁰⁶;

Comments raised by business representatives and public authorities:

- Care should be taken to protect business secrets⁵⁰⁷, as well as privacy rights⁵⁰⁸;

Comments raised by consumer representatives and legal experts:

- It is stated that it should be applicable to national and cross-border cases⁵⁰⁹;

4.2.6 Binding vs non-binding instruments

All options except option 1 would entail a certain form of action of the EU or of the Member States.

Question 6 “In the case of options 2, 3 or 4, would you see a need for binding instruments or would you prefer non-binding instruments?”

Q6: Would you see a need for binding-instruments or would you prefer non-binding instruments?	Number of respondents in absolute terms	Number of respondents in relative terms
Binding	62	34,25%
Non-binding	60	33,15%
No answer	59	32,60%

Table 4: Distribution of answers to Question 6: Choice between binding and non-binding instruments

One-third of the contributors do not give a response to this question. For those answering the question, an even distribution between binding and non-binding measures can be observed. When

⁵⁰³ Association Consommation Logement Cadre de Vie, Familles de France, Fédération Bancaire française, Bar Council of England and Wales, Professors from Humboldt-Universität Berlin – J.W. Goethe Universität Frankfurt/M, HOTREC, Cefic, Gesamtverband der Deutschen Versicherungswirtschaft, Federation of Finnish Commerce, EACB, CEA Insurers of Europe, Association of British Insurers, European Justice Forum, US Chamber Institute for Legal Reform

⁵⁰⁴ WKO Abteilung für Rechtspolitik, Fédération Bancaire française, ZDH, Verband der Chemischen Industrie Germany, EACB

⁵⁰⁵ WKO Abteilung für Rechtspolitik, ZGV, EAPB

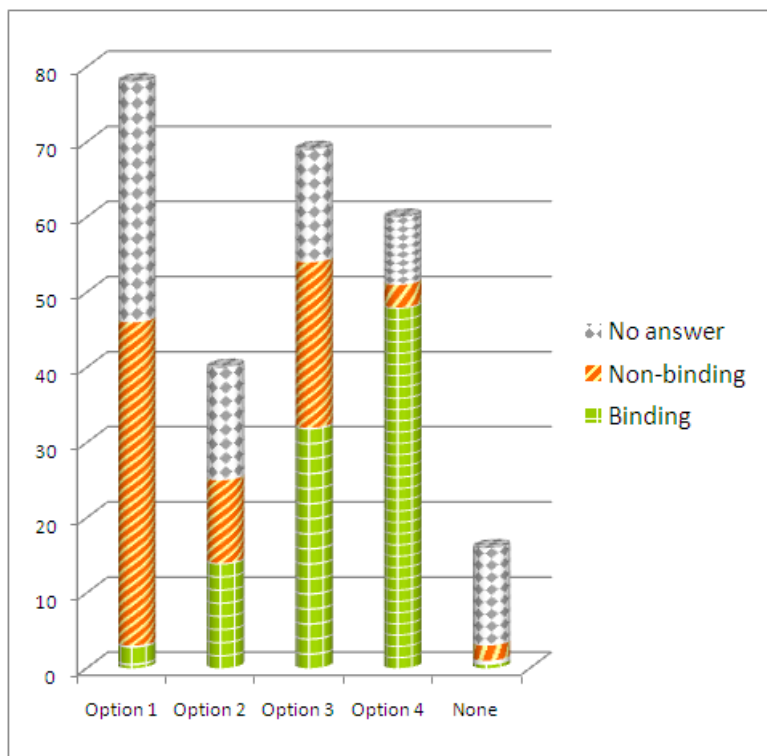
⁵⁰⁶ WKO Abteilung für Rechtspolitik, DIHK, HOTREC, Gesamtverband der Deutschen Versicherungswirtschaft

⁵⁰⁷ DIHK, Polish Government, EAPB, HOTREC, Eurochambres

⁵⁰⁸ Eurochambres

⁵⁰⁹ TEST, Professors from Humboldt-Universität Berlin – J.W. Goethe Universität Frankfurt/M, UNC, Association Consommation Logement Cadre de Vie

combining this choice with the preferred option or preferred combination of options (expressed in terms of totals per basic option), the following results are obtained:



Graph 23 Choice between binding and non-binding instruments, summarized per basic option preferred

It can be remarked that the results are biased by the fact that a number of the contributors in favour of option 1 have stated they are in favour of non-binding measures, whereas the question was in fact directed towards the other three options.

It is clear that stakeholders in favour of option 1, if they answer this question, generally prefer non-binding measures. The preference for binding measures rises with the degree of EU involvement proposed in the options, i.e. in 35%, 46,4% and 80% of cases where options 2, 3 and 4 are preferred, binding measures are chosen.

Key issues raised by the contributors

Contributors in favour of binding measures:

Comments raised by all types of stakeholders:

- A binding instrument is necessary to provide an adequate⁵¹⁰ / uniform⁵¹¹ level of protection in the whole EU. However, the following conditions are stated:
 - This level should be such that no restrictions are imposed on the protection mechanisms already granted to consumers [in a variety of Member States]⁵¹². Other respondents state that therefore a set of minimal rules should be defined that each Member State should implement in its own way. A Directive based on the principle of minimal harmonisation could establish it⁵¹³;
 - This level should allow the Member States to decide whether public enforcement or private litigation is the best way to go⁵¹⁴;

Comments raised by public authorities:

- Binding instruments help in streamlining the procedure⁵¹⁵;

Comments raised by consumer representatives:

- Non-binding instruments would defeat the whole purpose of a proposal if option 4 were preferred. Access to justice is a basic and fundamental right of citizens and it has to be ensured in a binding, non-discriminatory way⁵¹⁶;
- Non-binding measures have proved to be inefficient or difficult to implement⁵¹⁷;

Comments raised by legal experts:

- The objective of achieving effective redress for consumers through collective actions can only be achieved by binding instruments⁵¹⁸ (e.g. Directive);
- One respondent states that a binding measure is preferred as long as a binding standard of diligence and procedural rights for courts is maintained. If such a binding standard is

⁵¹⁰ Association of Service Users, ADAC, Deutscher Gewerkschaftsbund, Office of Fair Trading, Ministry of Social Affairs and Labour of Hungary, Ministry of Economy and Energy of Bulgaria

⁵¹¹ Association of Consumer Organisations in Slovakia, Familles de France, vzbv, Ministry of Commerce, Industry and Tourism of Cyprus, 13 European Consumer Associations, EADD, RJ Gaudet, Ministry of Development of Greece, Active Citizenship

⁵¹² Familles de France, Ministry of Economy of Latvia, Ministry of Development of Greece

⁵¹³ Test, UNC

⁵¹⁴ UK Government

⁵¹⁵ Ministero dello Sviluppo Economico

⁵¹⁶ Euro Coop, ECCG

⁵¹⁷ BEUC

⁵¹⁸ TILP

maintained, there is no reason why Member States should be exempted from the duty to cooperate with other Member States with regard to consumer redress.⁵¹⁹;

- One respondent proposes a Directive, except for cross-border cases which require a Regulation⁵²⁰;
- According to a legal expert, binding elements should include: an obligation on Member States to provide an effective means of collective redress to consumers; a requirement that Member States allow both opt-in and opt-out mechanisms depending on circumstances; a mechanism allowing the consolidation of similar claims and the recognition of their judgement throughout the EU; mutual recognition of the rights of consumer organisations and groups to bring claims in other Member States and appropriate use of ADRs provided these do not impair the effectiveness of consumer redress⁵²¹;
- A respondent points out the fact that a Directive involves a risk of delay in implementation and of disparities among Member States⁵²²;

Comments raised by consumer representatives and public authorities:

- Experience shows that voluntary and non-binding mechanisms have many shortcomings and lead to unlevelled protection of consumers. Moreover, non-binding instruments would not deliver the Commission's aim of promoting the retail internal market by making consumers as confident shopping cross-border as in their home countries⁵²³;

Contributors in favour of non-binding measures:

Comments raised by business representatives, legal experts, public authorities and other stakeholders:

- Non-binding instruments are less likely to conflict with national law and consumer protection systems and offer more flexibility to Member States⁵²⁴. Further remarks include the following:
 - Only if the goals can not be achieved by means of non-binding instruments, should the EC consider binding instruments⁵²⁵;
 - Non-binding instruments would ensure that differences among legal cultures and systems would be fairly and adequately taken into consideration, while fully complying with the subsidiarity principle. Therefore a Recommendation would constitute an ideal instrument. If binding instruments were nonetheless to be considered, a general Directive which would incorporate broad flexibilities for Member States, should be favoured. This second-best scenario would also respect the subsidiarity principle, notably by allowing Member States to retain their own legal culture and systems on the matter, and therefore to maintain their domestic

⁵¹⁹ DAV

⁵²⁰ Two professors from: Humboldt-Universität Berlin - J.W. Goethe-Universität Frankfurt/M

⁵²¹ Hausfeld

⁵²² Délégation des Barreaux de France

⁵²³ FSA, ECCG, Ministry of Justice Lithuania

⁵²⁴ Centro de Arbitragem de Conflitos de Consumo de Lisboa, VFA, EMOTA, Siemens AG, Justizministerium Baden-Württemberg, Central Chamber of Commerce Finland, Jones Day, Federation of Finnish Commerce, Confederation of Finnish Industries, European Banking Federation, Università degli Studi di Firenze, AmChamEU, Eurochambres, CECED

⁵²⁵ Gesamtverband der Deutschen Versicherungswirtschaft

coherence⁵²⁶;

Comments raised by business representatives:

- Focusing on more intensive dialogue with those Member States which do not have any collective redress mechanism in place is the best way to approach the implementation of Options 2 and 3⁵²⁷;
- Recommendations, possibly accompanied by a monitoring activity by the Commission, should be sufficient to achieve the objectives of the Green Paper⁵²⁸;
- The emphasis should be on building on the already existing national mechanisms, and it would not be appropriate to impose such developments as obligations⁵²⁹;
- The EC does not have the competence to introduce binding measures⁵³⁰;
- A respondent who prefers mediation is in favour of non-binding measures since mediation is per definition free and informal⁵³¹;
- According to one respondent, Option 4 has its best chance of succeeding when non-binding elements of encouragement for Member States would be used⁵³².

Comments raised by public authorities:

- Non-binding instruments are accepted more easily by consumers and companies than binding instruments and can therefore be much more effective⁵³³;

Comments raised by legal experts:

- Any new instrument should set out minimum standards rather than seeking to impose a single harmonised procedure on Member States which have very different legal systems⁵³⁴;
- As far as non-legal (e.g. ADR) and national mechanisms are concerned, the EU would be in no position to enforce binding instruments and for legal cases consumers have sufficient possibilities for redress in their own national courts⁵³⁵;
- Different cases may require different solutions and there is no one type of ADR that will necessarily fit all cases⁵³⁶;
- Binding instruments cause unnecessary bureaucracy⁵³⁷;

⁵²⁶ HOTREC.

⁵²⁷ European Banking Federation

⁵²⁸ ABI, Unicredit Group

⁵²⁹ BVRLA, Confederation of British Industry

⁵³⁰ Industriellenvereinigung Austria

⁵³¹ FFSA

⁵³² Trading Standards Institute

⁵³³ Bundesrat

⁵³⁴ Herbert Smith

⁵³⁵ DRB

⁵³⁶ Clifford Chance

Comments raised by business representatives and other stakeholders:

- Use of a binding instrument is premature:
 - The Green Paper is only in consultation phase and approaches therefore have not yet fully matured in terms of substantive law⁵³⁸;
 - Further investigation would be needed into whether the expected gains are commensurate to the likely costs and are consistent and complement the existing consumer dispute resolution mechanisms⁵³⁹;
 - The development of mechanisms for collective redress is less advanced than mechanisms for ADR⁵⁴⁰;

Contributions in favour of a mix of binding and non-binding instruments

A number of respondents indicated that a combination of some binding and non-binding instruments would be most adequate. This combination can take different forms. Some examples include:

Business representatives:

- Some elements might need to be binding, others can be non binding⁵⁴¹;
- Binding instruments are more effective in achieving results and a coherent approach. Binding instruments, however, can set objectives leaving Member States free to determine the means. The appropriate approach would be a combination of binding and non binding instruments as is relevant for the individual aspects of the overall approach⁵⁴²;

Legal experts:

- There may be a case for binding instruments if needed to ensure that cross-border claims are treated no less advantageously than domestic claims or to extend the Consumer Protection Cooperation Regulation, but more detailed matters could be addressed by means of non-binding instruments⁵⁴³;
- A Directive is necessary but it is also important to encourage the use of ADR where appropriate⁵⁴⁴;
- A combination of a binding measure for cross-border collective redress and non-binding instruments for the establishment or harmonisation of a collective redress mechanism available domestically in a Member State is preferred by a respondent⁵⁴⁵;

⁵³⁷ DRB

⁵³⁸ WKO Bank & Insurance

⁵³⁹ International Underwriting Association

⁵⁴⁰ Financial Ombudsman Service

⁵⁴¹ Bundesministerium für Justiz of Austria, AFEP

⁵⁴² British Retail Consortium

⁵⁴³ Bar Council of England and Wales

⁵⁴⁴ Collège Européen de Paris

⁵⁴⁵ Law Society of England and Wales

- It takes binding instruments to implement the required changes to the "Brussels I" Regulation, to the Injunctions Directive and other acts of Community law. However guidelines should be used for the coordinated application of instruments of international civil law⁵⁴⁶;

Public authorities:

- For option 4, a binding instrument would lead to the most effective result but for option 3, a Recommendation would be more adequate⁵⁴⁷;

Consumer representatives:

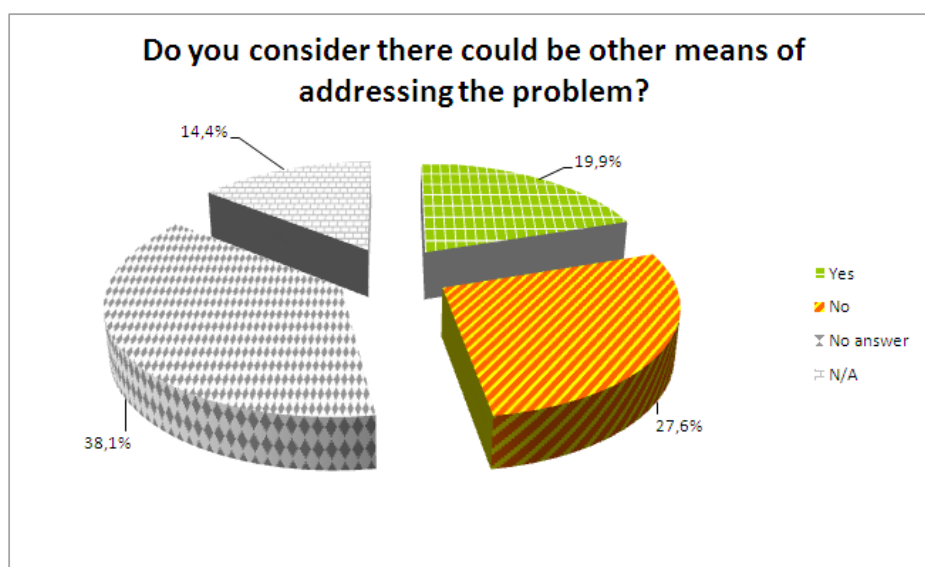
- The requirement to have a collective redress mechanism for consumers only, and to make it practically available to consumers resident in other Member States (by having organisations in the Member States, where the claims will be heard, represent or assist claimants – depending on the nature of the mechanism available in that Member State) should be binding. Any other elements should not be binding on the Member States⁵⁴⁸.

4.2.7 **Alternative means of solving the problem**

The Green Paper suggests a number of different options that the EC esteems could be useful in addressing the problems that have been identified. However, the suggestion of other options is welcomed. Therefore the last question of the Green Paper is the following:

Question 7 "Do you consider that there could be other means of addressing the problem?"

The following distribution of responses is observed:



Graph 24 Distribution of answers to Question 7: do you consider there could be other means of addressing the problem?

⁵⁴⁶ FEDSA

⁵⁴⁷ Polish Government, Ministry of Economy of the Slovak Republic, Direcção Geral de Consumidor

⁵⁴⁸ ECC Malta

It can be observed that 38,1% of respondents do not even answer this question. Furthermore, 27,6% answers the question negatively. This leaves 34,3% of responses that give some information.

It should first of all be clarified that responses categorised as 'N/A' are responses in which an answer to the question is given, but for which the answer cannot be categorized as 'yes' or 'no'. The answer often contains a more general remark on the subject of the question, more precisely the following remarks were made:

- Some business representatives, public authorities, legal experts and other stakeholders state that the expansion of possibilities to solve the problem can only be investigated after it has been concluded that there actually is a problem, i.e. after the need for (additional) collective redress measures has been established and after there has been an evaluation of existing (recent) possibilities⁵⁴⁹. The Green Paper does not assess this need thoroughly according to a number of respondents;
- Some consumer representatives and legal experts state that whether alternative measures are required (and which ones this could be) can only be investigated after implementation and evaluation of the options proposed in the Green Paper⁵⁵⁰.

Responses that indicate alternative options are possible often refer to elements of options already proposed in the Green Paper (e.g. different forms of information campaigns), so these cannot be regarded as actual alternative options. Some genuine alternative options that were proposed include the following:

Options proposed by business representatives:

- A publicly funded EU Level Consumer Ombudsman for cross-border cases⁵⁵¹;
- An analysis of national legislations which could lead to a list of best practices, in which individual countries could find inspiration to improve their own legislation⁵⁵²;
- The introduction of a new Directive on consumer rights, as is proposed. This will mean full harmonisation of the consumers' position and solve many of the existing problems⁵⁵³;
- Power should be given to the State to impose administrative penalties⁵⁵⁴;
- Extra-legal mechanisms⁵⁵⁵ such as ombudsman, commissions of disputes and mediation procedures should be established;
- The Unfair Commercial Practices Directive is relatively new and if it achieves its objectives of targeting and stopping unfair practices by traders towards consumers, this will pro-actively reduce the need for consumer redress⁵⁵⁶

⁵⁴⁹ WKO Abteilung für Rechtspolitik, EAPB, Centrum für Europäische Politik, DRV, DRB, DIHK, Bundesrat, British Banker's Association, ECTAA, CCIP

⁵⁵⁰ DAV, ECC-Malta

⁵⁵¹ British Retail Consortium, EuroCommerce

⁵⁵² ZDH

⁵⁵³ Central Chamber of Commerce of Finland, Federation of Finnish Financial Services, Direct Marketing Association, Eurochambres, CECED

⁵⁵⁴ Trading Standards Institute

⁵⁵⁵ FEB, Italian Chambers of Commerce

⁵⁵⁶ Direct Marketing Association

- Resolve the problem of affordability of claims⁵⁵⁷, e.g. by giving financial support to those who cannot pay litigation costs, letting litigation costs depend on the size of the claim;
- Greater involvement of public authorities in overseeing compensation, as is being adopted in the UK (see the Regulatory Enforcement and Sanctions Act 2008)⁵⁵⁸;
- In the interests of consumers, Member States should be encouraged to maintain or create a legal environment that eliminates unnecessary constraints which increase the costs of legal protection insurance or make the provision of services more costly or complicated for legal protection insurers. Therefore redress procedures in general should be made less complex and easier to comprehend and for the remaining difficulties legal protection insurers can provide expertise and cover the costs of proceedings at a reasonable price⁵⁵⁹;
- A respondent⁵⁶⁰ thinks that public authorities may sometimes not pursue all the cases that are reported as potential breaches and this may lead to frustration for some victims. He believes this can best be overcome by an alternative arrangement. This could either be a system whereby alleged victims can group together to take a case of prima facie evidence to an adjudicator to require the public authorities to undertake an investigation or a system whereby a public official such as an ombudsman could independently require the public authorities to undertake an investigation on the basis of complaints he has received. Separate resources should be made available for the investigation to avoid the Authority's own programme being undermined – such resources to be recouped from any guilty party;
- To deal with the damage done to European firms by third-country class actions, The Hague Conference on Private International Law should be used by the EU (to seek protection against such claims)⁵⁶¹;

Options proposed by legal experts:

- An expansion of the Injunctions Directive to include individual damages, as in the Greek and Italian consumer collective redress regimes. The exact procedure could be left to the discretion of the Member States⁵⁶²;
- The establishment of an independent court in Brussels for cross-border collective claims⁵⁶³;
- EU common industry-wide codes of conduct⁵⁶⁴;
- Infringements can be effectively punished by means of unfair competition injunctions. According to article 11(1) of directive 2005/29/EC market distortions can be prevented and consumer protection will be increased if competitors file claims for injunctive relief based on a violation of unfair competition law. A corresponding model exists in national German law as

⁵⁵⁷ VFA

⁵⁵⁸ Confederation of British Industry

⁵⁵⁹ RIAD

⁵⁶⁰ British Retail Consortium

⁵⁶¹ FEDSA

⁵⁶² Collège Européen de Paris

⁵⁶³ DIAZ REUS

⁵⁶⁴ Law Society of England and Wales

well (sec. 8 of the German Unfair Competition Act). This alternative is less expensive than legal collective redress as it requires only two parties⁵⁶⁵;

- Introducing a judicial collective redress procedure will be time-consuming. In the meantime, a respondent suggests taking the following immediate actions as a preparation for the judicial collective redress procedure: 1) an agreement should be made with other countries (such as the USA) concerning EU-citizens that take part in their judicial collective redress procedures. Currently, their verdicts are not binding in the EU-Member States. Furthermore, suspension of the limitation should be guaranteed during the period that the consumers are waiting for the pending procedure to become effective. 2) Creation of opt-in-possibilities for citizens from other Member States. 3) Legal standing should be given to consumer organisations in test cases⁵⁶⁶.
- Several additional measures are proposed by a legal expert⁵⁶⁷: collective redress should be considered as a procedural mechanism not only suitable for consumer related cases but for the resolution of other problems as well (e.g. employment discrimination, mass torts, fraud, pollution, etc.), criminal sanctions should be included (but this may be outside of EC's competence), "dawn raids" should be included, the EC and the Member States should consider outsourcing legal prosecution to private law firms that are willing to take the risk and invest their own capital for the public good and the Member States should require tv, radio and print broadcasters to provide a certain amount of time or space to educating citizens about collective redress;

Options proposed by public authorities:

- Deepening of European arbitration which could happen fast and free, as well as the creation of some pilot projects in areas of cross-border purchases⁵⁶⁸;
- A mixed approach of effective public enforcement alongside private rights of redress⁵⁶⁹;

Options proposed by different types of stakeholders:

- The Injunctions Directive in general is perceived as possibly useful⁵⁷⁰;

⁵⁶⁵ Linklaters

⁵⁶⁶ DIAZ REUS

⁵⁶⁷ RJ Gaudet

⁵⁶⁸ Concejal delegada de consumo del ayuntamiento de Irun

⁵⁶⁹ UK Government

⁵⁷⁰ Bundesrat, FEDSA and see answer to question

5 OTHER ISSUES RAISED BY THE CONTRIBUTORS

As already mentioned, several respondents do not directly give an answer to the seven questions of the Green Paper. Instead, they present their general view on the subject of collective redress (e.g. in a position paper). Other respondents illustrate their responses to the questions with some examples, facts, arguments, etc. which were not directly targeted by the questions. Some of this information may in an indirect way be very useful for the Green Paper analysis or for the subsequent phases of the study. This is why The present chapter gives an overview of the information that may be of further relevance.

5.1 Problems currently perceived by the respondents

This may deal with market or other problems that are currently encountered in the EU or in a specific Member State and which e.g. should or could be resolved by the implementation of one of the four policy options.

The following problems were identified:

By legal experts and business representatives:

- Problems are mainly perceived in telecoms and financial services sector according to some respondents⁵⁷¹. Another respondent denies problems in the financial services sector because it is often domestically linked⁵⁷². Retail insurance is supposed to be not affected since it happens locally⁵⁷³;

By legal experts:

- The Eurobarometer-questionnaire does not show a problem in collective redress. It merely shows that citizens do not have faith in their Member State and its national law. The Member States should take measures to restore this faith⁵⁷⁴.
- The main barrier to consumers taking action in other jurisdictions are the many different languages spoken⁵⁷⁵;

By business representatives:

- The existing mechanisms in 13 Member States are not necessarily general collective mechanisms. For example, in Germany the test cases are restricted to the sector of the financial services⁵⁷⁶;
- There are no studies that investigate the impact of collective redress mechanisms on businesses⁵⁷⁷;

⁵⁷¹ Dr Christopher Hodges, International Underwriting Association

⁵⁷² European Banking Federation

⁵⁷³ International Underwriting Association

⁵⁷⁴ DRB

⁵⁷⁵ Clifford Chance

⁵⁷⁶ VFA

- Despite the admissibility of group complaint cases since 2007 in Finland there is a total lack of them until now. This means the statement that a significant amount of consumer claims remains without compensation due to the lack of collective redress mechanisms is wrong⁵⁷⁸;

By consumer representatives:

- Because collective redress is often missing or difficult to exploit, trade between Member States is limited. Consumers favour national suppliers over foreign suppliers and competition is thus limited⁵⁷⁹;
- It only comes to individual action in Slovenia in ultimate and extreme cases⁵⁸⁰;

By other stakeholders:

- Consumers should be able to assert meritorious claims, but due to the fact that disputes often involve low sums of money, consumers shy away from the costs and effort involved⁵⁸¹;
- In Poland the institution of collective service is unknown and there are no adequate legal regulations in the domain⁵⁸²;

5.2 Impact expected by the respondent for the different policy options

Positive and negative impacts expected by the respondents because of the introduction of a certain option are collected in this field.

Negative impacts of option 4:

Comments raised by business representatives:

- In France, extra compensation costs of one billion EUR per year of which 50% for businesses and 50% for insurances. The financial capacity of businesses deteriorates and insurance fees will go up, conditions of insurance will be revised and problems of insurability can occur⁵⁸³;
- Example given of US where annual costs of mass appeals are estimated at 250 billion dollar⁵⁸⁴;

Comments raised by other stakeholders:

- Representatives of group interests could pursue an individual agenda that is not identical to the interests of those represented (incentives should be set so as to minimize influence of individual interests)⁵⁸⁵;

⁵⁷⁷ FEB, Association of British Insurers, Confederation of British Industry

⁵⁷⁸ Central Chamber of Commerce in Finland

⁵⁷⁹ Villagaärnas Riksförbund

⁵⁸⁰ ZPS

⁵⁸¹ Centrum für Europäische Politik

⁵⁸² Insurance Ombudsman Office

⁵⁸³ FFSA

⁵⁸⁴ Österreichischer Genossenschaftverband, ZGV

⁵⁸⁵ Centrum für Europäische Politik

- Could trigger growth loss if excessive deterrent effects on the market behaviour of companies occur as a consequence⁵⁸⁶.

Positive impacts of option 4:

Comments raised by other stakeholders:

- Could lead to a reduction in legal costs as it would only be necessary to go to court once instead of many times⁵⁸⁷;
- No impact expected on the quality of the EU as a business location if measures are valid for all companies offering products and services in Europe⁵⁸⁸.

General impact expected for all options:

Comments raised by business representatives:

- Even the best-intentioned entrepreneurs will not always be able to satisfy all legal requirements given the complexity of legal norms in the different Member States, especially in cross-border trade. Therefore new mechanisms should be weighed up against the resulting burden on businesses⁵⁸⁹;
- The fact that the consequences of collective procedures are more far-reaching than those of individual procedures implies that intensive use will be made of all judicially available procedural means (i.e. all possibilities will be exhausted)⁵⁹⁰.

Comments raised by consumer representatives:

- Strengthening the repressive arsenal will have a preventive impact and will improve business practices⁵⁹¹;

5.3 Other relevant aspects mentioned by the respondent

These have been divided in a number of categories, thereby taking into account the subjects the European Commission finds most important to have information on.

5.3.1 Consistency

Some consistency problems signalled by the respondents are the following:

By business representatives, legal experts and other stakeholders:

- There is a lack of consistency between the Commission's policy on collective redress and on competition cases, i.e. EC antitrust law infringements which are excluded from collective redress and for which DG Competition is taking action, and this is not acceptable for some

⁵⁸⁶ Centrum für Europäische Politik

⁵⁸⁷ Centrum für Europäische Politik

⁵⁸⁸ Centrum für Europäische Politik

⁵⁸⁹ Cefic

⁵⁹⁰ WKO Abteilung für Rechtspolitik

⁵⁹¹ Confédération Syndicale des Familles

respondents⁵⁹². It is also stated that although anti-trust violations pose specialised procedural issues, the case has not been made that a separate collective redress system is necessary for anti-trust cases and consumer protection⁵⁹³. According to another respondent it might be useful to see if collective redress in the competition area and collective redress in consumer protection, that have much in common from a procedural point of view, could not be dealt with using the same horizontal instrument, although the legal basis for it might be more difficult (but not impossible) to find⁵⁹⁴;

By business representatives:

- A possible contradiction in the Green Paper: it is stated that no distinction should be made between national and cross-border cases but it is also said that it should be studied if instruments should only be applicable cross-border or also nationally⁵⁹⁵;
- In the Green Paper process related problems appear to be confused with novelties with respect to material law according to a respondent⁵⁹⁶;
- A respondent is concerned that the Green Paper refers to data mentioned in the Problem Study even though on the webpage dedicated to collective redress of its own website, the EC expressly indicates that it does not guarantee the accuracy of the data included in the Problem Study⁵⁹⁷;
- It is not entirely clear whether the objective is to root out malpractice or whether it is to compensate consumers for the effects of malpractice or for contractual issues⁵⁹⁸;
- The Green Paper is incomplete by not discussing measures that could, by adapting the 'Brussels I' Regulation, shelter European businesses from the ills of class actions in third, non EU/EEA countries⁵⁹⁹;

By consumer representatives:

- The envisaged collective redress system should also cover non-contractual obligations. There is no reason to discriminate between contractual infringements and non-contractual ones when it comes to protecting consumers. For example, product safety issues should be dealt with in a similar fashion. Ideally, a common collective redress framework should be established for all these situations as well as to deal with anti-competitive practices⁶⁰⁰;

By legal experts:

- A close look at all existing procedural instruments is needed in order to avoid the kinds of inconsistencies that were introduced between, on the one hand, the 1998 Injunctions

⁵⁹² Dr Christopher Hodges, VCO-NCW, Dutch Retail Association, MEDEF, Cefic, Délégation des Barreaux Français, Zentraler Kreditausschuss Germany, Business Europe, AmChamEU, Herbert Smith, CECED, ERRT, EIJF

⁵⁹³ Association of British Insurers

⁵⁹⁴ Collège Européen de Paris

⁵⁹⁵ WKO Abteilung für Rechtspolitik

⁵⁹⁶ WKO Abteilung für Rechtspolitik

⁵⁹⁷ ECTAA

⁵⁹⁸ British Retail Consortium

⁵⁹⁹ FEDSA

⁶⁰⁰ UFC Que Choisir

Directive and the 2004 Intellectual Property Rights Directive, and on the other hand, the rules on jurisdiction and enforcement of judgement in Regulation 44/2001⁶⁰¹;

- According to a respondent⁶⁰² the Green Paper is characterized by internal inconsistencies and contradictions. For example, the Green Paper suggests reducing court and legal fees but at the same time states that companies should be protected from unmeritorious claims. Furthermore, many problems are discussed without offering a solution (e.g. language barrier, the cross-border flow of information, etc.);
- The manner in which the Green Paper uses the figures of the Eurobarometer gives an incorrect impression according to a respondent⁶⁰³. For example, the Green Paper fails to mention that more than 50% of the consumers have the same or even greater trust in cross-border purchases than in domestic purchases. Also, the Eurobarometer does not answer the questions whether the supposed low confidence actually leads to less purchases (on travel and over the internet) and whether a collective redress procedure will increase this confidence;
- The portrayal of the US system in the Green Paper is inaccurate, unfair and unprofessional: empirical evidence is necessary to support such statements (no room for prejudices), American class actions do not cause excessive litigation or stimulate unmeritorious claims, the US can hardly be called a litigation culture when many citizens cannot even afford a lawyer, the Green Paper shows a lack of knowledge of the US-system (e.g. contingency fees are only common in cases with very high damages). Finally, the EC should recognize that the terms "class action", "group action" and "legal collective redress" are synonymous and that the distinction simply proves that the EU is unwilling to learn from the US⁶⁰⁴;
- A respondent feels that the Dutch class actions were unfairly excluded from the Green Paper's estimate of the average payout to consumers. The Dutch system is not distorted, but is proof of the effectiveness of opt-out class actions⁶⁰⁵;
- There appears to be no reason why special procedures should be introduced in the competition and consumer spheres which are not available for other equally deserving claimants seeking to bring claims in, for example, personal injury or securities litigation. The creation of new, special procedures restricted to certain types of claim might have the unwanted effect of encouraging claimants and those promoting and funding claims to seek to present cases in an artificial manner in order to bring them within what is seen as the most favourable regime. Further, the existence of differing regimes for different types of claims could lead to confusion for claimants as well as increased costs for businesses which would have to get to grips with the different procedures available⁶⁰⁶;
- The Green Paper does not address complex legal and practical issues inherent in a proposal of an EU judicial collective redress procedure. Policy makers should be reluctant to see private actions as providing a potential mechanism for redress in matters where regulatory enforcement is more natural. By way of example, where theoretical claims involve large groups of "small losers", regulatory enforcement rather than civil proceedings must be the

⁶⁰¹ Collège Européen de Paris

⁶⁰² Linklaters

⁶⁰³ Linklaters

⁶⁰⁴ RJ Gaudet

⁶⁰⁵ RJ Gaudet

⁶⁰⁶ Herbert Smith

preferred course in circumstances where individual damages, assuming consumers are actually motivated to pursue compensation at all, are outweighed by the inherent costs of the process⁶⁰⁷;

By other stakeholders:

- The research data upon which the Green Paper is based do not fully support some of the conclusions of the Green Paper; are, in several instances, incomplete, insufficiently quantitative, or not entirely reliable and do not allow any definitive inferences about the enthusiasm of consumers for collective redress remedies⁶⁰⁸;

5.3.2 *National versus cross-border claims*

Comments raised by business representatives and public authorities:

- Some respondents state that strictly national cases should not be affected. Only cross-border cases should be included in a collective redress system at European level⁶⁰⁹;

Comments raised by consumer representatives, legal experts and other stakeholders:

- Other respondents however are of the opinion that national and cross-border cases should be affected⁶¹⁰, and find that the Commission is too focused on cross-border cases and that the EU needs to introduce collective redress mechanisms for national claims in all Member States⁶¹¹;

Comments raised by business representatives:

- One respondent finds the Commission's intentions with respect to this issue ambiguous and would like clarifications on the scope of this initiative⁶¹²;
- A respondent believes that there will be a percentage of consumers in the EU who will never shop cross border, due to the issues of language difficulties and the inherent difficulties of shopping at a distance, whether within a Member State or cross border. The respondent agrees that one of the main issues regarding shopping within the EU is the lack of knowledge about the legal situation in each country and part of that lack of knowledge is not knowing what you can do if something goes wrong. However, the respondent disagrees that a way to improve consumer confidence in this area is to develop across an EU wide consumer collective redress scheme⁶¹³.

⁶⁰⁷ Clifford Chance

⁶⁰⁸ US Chamber Institute for Legal Reform

⁶⁰⁹ WKO Abteilung für Rechtspolitik, FFSA, DAV, DIHK, Cefic, EJV, Estonian Government

⁶¹⁰ Familles de France, Confédération Syndicale des familles, NACPR, Délégation des Barreaux Français, UFC Que Choisir, Insurance Ombudsman Office, ZPS, BEUC, Consumentenbond

⁶¹¹ Familles de France, Confédération Syndicale des familles, Délégation des Barreaux Français

⁶¹² MEDEF

⁶¹³ Direct Marketing Association

5.3.3 *Figures/data*

Little information on actual data has been given. The only figures given are the following:

By business representatives:

- In the US, the direct litigation costs amount to almost 2% of GDP according to some respondents⁶¹⁴ and according to other respondents the damage caused annually by class actions amounts to 800 or 835 dollars (or 660 EUR) (according to Tillinghast-Towers Perrin study) per head of the population⁶¹⁵. It is also claimed that the annual costs of mass appeals in the US are estimated at 250 billion dollar⁶¹⁶ and that plaintiffs recover 2-3% of their alleged losses, but that law firms recover 25-30% of that loss⁶¹⁷;
- In Germany, these costs amount to 60 dollar per capita per year⁶¹⁸;
- The introduction of option 4 would In France lead to extra compensation costs of one billion EUR per year, of which 50% would be on account of insurance companies⁶¹⁹;
- Further information is needed on the “significant proportion of consumers who have suffered damage and do not obtain redress” in cross-border cases (cfr. Green Paper pt 15, page 5)⁶²⁰;

By legal experts:

- According to a respondent data indicates that while the existence of collective redress will not increase cross-border trade, its costs are likely to discourage traders from expanding their activities to other MS. This response quotes numerous data from the Special Eurobarometer 298 on Consumer protection in the internal market, October 2008, and from the Flash Eurobarometer Series 224 on Business attitudes towards cross-border sales and consumer protection⁶²¹;
- Data in the Eurobarometer suggest that consumers prefer to settle their cross-border disputes under national law in their national courts. Creating a collective redress mechanism requires a single application law. This is thus exactly the opposite of what consumers want⁶²²;

By consumer representatives:

- The following figures on the Netherlands are cited⁶²³:
 - In a study with 778 consumers that were unsatisfied with a good or service, only 3 called upon ADR or ended up in court;

⁶¹⁴ VCO-NCW, EJF

⁶¹⁵ Bundesverband der Deutschen Industrie, Verband der Chemischen Industrie Germany, EJF, Association of British Insurers

⁶¹⁶ Österreichischer Genossenschaftverband, ZGV

⁶¹⁷ EJF

⁶¹⁸ Verband der Chemischen Industrie Germany

⁶¹⁹ FFSA

⁶²⁰ Cefic

⁶²¹ Jones Day

⁶²² Linklaters

⁶²³ Consumentenbond

- The respondent is actively involved in 40 cases in which groups of consumers were harmed by one trader;
- In the last few years, the respondent started 4 collective actions by means of the existing legal instruments. The "Collective Settlement of mass Claims Act of 2005" was used in only one of these cases;
- The Dutch Consumer Authority (DCA) estimates that half a million Euros is lost per year in the Netherlands as the result of unfair commercial practices. The DCA reports that the same holds for the other countries of the Benelux;
- Consumer authorities in all Member States have reported that consumers suffer from SMS-scams due to illegal activities of commercial websites. According to the DCA, the number of cross-border cases is increasing;

5.3.4 Other

These include remarks that are esteemed not to be directly relevant for the analysis. A detailed analysis will thus not be undertaken, but these remarks have nonetheless been taken into account.

In general, the remarks mainly concern the signalling of shortcomings or criticism on different studies, not only the Green Paper itself but also the so called evaluation study and EC problem study.

ANNEX 1: LIST OF CONTRIBUTORS

Country	Type of stakeholder/organisation	Name of stakeholder/organisation
Austria	Legal Practitioner	Österreichischer Rechtsanwaltskammertag
	MS Public Authority	Austrian Federal Ministry for Economy, Family and Youth
		Österreichische Bundesministerium für Justiz
	National Business Representative	Austrian Federal Economic Chamber - Division Bank and Insurance
		Österreichischer Genossenschaftsverband (Schulze - Delitzsch)
	Wirtschaftskammer Österreich - Abteilung für Rechtspolitik	
Belgium	Legal Practitioner	Jones Day
	National Business Representative	Assuralia
	National Consumer Representative	Fédération des Entreprises de Belgique (FEB)
Bulgaria	MS Public Authority	Onderzoeks- en informatiecentrum van de verbruikersorganisaties
		Ministry of Economy and Energy Bulgaria
Cyprus	MS Public Authority	Ministry of Commerce, Industry and Tourism
		Ministry of Commerce, Industry and Tourism - competition service and consumer protection
Czech Republic	MS Public Authority	Committee on EU Affairs of the Senate of the Parliament Czech Republic
	National Consumer Representative	Ministry of Industry and Trade
Denmark	MS Public Authority	Civic association of consumers (TEST)
Estonia	MS Public Authority	Forbrugerstyrelsen - Danish government
EU level	European Business Representative	Estonian Government
		Union des Groupements de Détaillants indépendants de l'Europe (UGAL)
		Association of European Airlines
		Business Europe
		CEA - Insurers of Europe
		Confédération Européenne des Organisations Nationales de la Boulangerie et de la Pâtisserie
		Eurochambres
		EuroCommerce
		European Association of Co-operative Banks (EACB)
		European Association of Directory and Database Publishers
		European Association of Public Banks (EAPB)
		European Banking Federation
		European Centre of Employers and Enterprises providing Public Services (CEEP)
		European Chemical Industry Council (Cefic)
		European Committee of Domestic Appliance Manufacturers (CECED)
		European E-commerce and Mail Order Trade Association (EMOTA)
		European Federation of Building Societies (EFBS)
		European Federation of Finance House Associations (Eurofinas)
		European Federation of Pharmaceutical Industries and Associations (EFPIA)
		European Justice Forum
		European Mortgage Federation
		European Retail Round Table
		European Savings Banks Group ESBG
		European Travel Agents and Tour Operators Association (ECTAA)
		Federation of European Direct Selling Associations (FEDSA)
		Hotels, Restaurants & Cafés in Europe (HOTREC)
		International Association of Legal Expenses Insurance (RIAD)
		International Chamber of Commerce (ICC)
		International Underwriting Association
	Royal Institution of Chartered Surveyors (RICS)	
	Union Européenne de l'Artisanat et des petites et moyennes entreprises (UEAPME)	
	European Consumer Representative	13 European Consumer Associations
		Bureau Européen des Unions de Consommateurs (BEUC)
European Community of consumer cooperatives (EURO COOP)		
		European Consumer Consultative Group
Legal Practitioner		Council of bars and law societies in Europe (CCBE)
Finland	MS Public Authority	Ministry of Justice Finland
	National Business Representative	Central Chamber of Commerce
		Confederation of Finnish Industries EK
		Federation of Finnish Commerce
		Federation of Finnish Financial Services

Country	Type of stakeholder/organisation	Name of stakeholder/organisation
France	Academic	Collège européen de Paris Faculté de Droit de Montpellier
	Business	Oxylane Group Decathlon
	Legal Practitioner	Délégation des Barreaux de France Emmanuel Nguyen
	National Business Representative	Association Française des Entreprises Privées (AFEP)
		Chambre de commerce et d'industrie de Paris (CCIP)
		Chambres de Métiers et de l'Artisanat - Assemblée Permanente (APCM)
		Confédération générale du patronat des petites et moyennes entreprises (CGPME)
		Fédération Bancaire Française
		Fédération Française des Sociétés d'Assurances - Direction des Affaires Juridiques, Fiscales et de la Concurrence
	National Consumer Representative	Mouvement des Entreprises de France (MEDEF)
		Association Consommation Logement Cadre de Vie
		Confédération Syndicale des Familles
		Conseil National des Associations Familiales Laïques (CNAFAL)
		Familles de France
		Familles Rurales Fédération Nationale
	Other	OR.GE.CO UFC Que Choisir
	Other	Médiateur de l'Autorité des marchés financiers
Germany	Academic	Two professors from: Humboldt-Universität Berlin - J.W. Goethe-Universität Frankfurt/M
	Business	Allgemeiner Deutscher Automobil-Club (ADAC) SIEMENS AG
	Legal Practitioner	Bundesrechtsanwaltskammer
		Deutscher Anwaltverein (DAV) - German Bar Association
		Deutscher Richterbund
		DIAZ REUS LLP
		Linklaters LLP, Munich
	MS Public Authority	TILP Rechtsanwälte
		Bundesrat
		Bundesregierung Justizministerium Baden-Württemberg
	National Business Representative	Bundesverband Deutscher Inkasso-Unternehmen e. V.
		Deutscher Industrie- und Handelskammertag
		Deutscher Reiseverband
		Federation of German Industries - BDI
		Bundesverband der Deutschen Industrie
		Gesamtverband der Deutschen Versicherungswirtschaft
		Gesamtverband Textil+mode
		Hauptverband des Deutschen Einzelhandels HDE & Handelsverband BAG
		VERBAND DER CHEMISCHEN INDUSTRIE e.V.
		Energie und Klima, Recht und Steuern
		Verband Forschender Arzneimittelhersteller (VFA) - German Association of Research-based Pharmaceutical Companies
		Verband Privater Rundfunk und Telemedien (VPRT)
		Zentraler Kreditausschuss
Zentralverband der deutschen Werbewirtschaft e.V. (ZAW)		
Zentralverband des Deutschen Handwerks (ZDH)		
Zentralverband Elektrotechnik- und Elektronikindustrie (ZVEI)		
Zentralverband Gewerblicher Verbundgruppen E.V.		
National Consumer Representative	Verbraucherzentrale Bundesverband - Federation of German Consumer Organisations	
Other	Centrum für Europäische Politik	
	Deutscher Gewerkschaftsbund	
	Mechthild Dyckmans, MdB	
Greece	MS Public Authority	Ministry of Development - General Secretariat of Consumer Affairs
	Other	Hellenic Consumers' Ombudsman
Hungary	MS Public Authority	Ministry of Social Affairs and Labour of Hungary
Ireland	MS Public Authority	Ireland
Italy	Academic	University of Florence - Faculty of Law - Private and Procedural Law
	Business	Enel Holding
		UniCredit S.p.a.
	MS Public Authority	Italian Competition Authority Ministero dello Sviluppo Economico
	National Business Representative	Associazione Bancaria Italiana (ABI)
		Confcommercio International
		Confindustria
		Confindustria Servizi Innovativi e Tecnologici
	National Consumer Representative	Italian Chamber of Commerce
		Active Citizenship
		Altroconsumo
Unione Nazionale consumatori		

Country	Type of stakeholder/organisation	Name of stakeholder/organisation
Latvia	MS Public Authority	Latvian Ministry of Economy
Lithuania	MS Public Authority	Ministry of Justice Lithuania
Luxembourg	National Business Representative	Union des Entreprises Luxembourgeoises (UEL)
Malta	National Consumer Representative	European Consumer Centre of Malta
Netherlands	Business	ING
	Legal Practitioner	RJ Gaudet & Associates
	National Business Representative	Dutch Retail Association/ Platform Detailhandel Nederland
	National Consumer Representative	VNO-NCW
Other	Other	American Chamber of Commerce to the European Union
		Royal Ministry of Children and Equality
		US Chamber Institute for Legal Reform
Poland	MS Public Authority	Polish Government
	Other	Insurance Ombudsman Office
Portugal	MS Public Authority	Autoridade Nacional de Comunicações (ANACOM) Direcção-Geral do Consumidor (consumer policy public agency in Portugal)
	National Consumer Representative	UNIÃO GERAL DE CONSUMIDORES (UGC)
	Other	Centro de Arbitragem de Conflitos de Consumo de Lisboa
Romania	National Consumer Representative	National Authority for Consumer Protection of Romania
Slovakia	MS Public Authority	Ministry of Economy of the Slovak Republic - Department of Consumer Protection and Internal Trade Ministry of Justice of the Slovak Republic
	National Consumer Representative	Asociácia spotrebiteľských subjektov Slovenska/ Association of consumer organisations in Slovakia Association of Service Users
Slovenia	MS Public Authority	Consumer Protection Office Slovenia
	National Consumer Representative	Zveza potrošnikov Slovenije (ZPS) / Slovene Consumers Association
Spain	Legal Practitioner	D. Fernando Santos Urbaneja & D. José María Segura Egea
	MS Public Authority	Concejal Delegada de Consumo
	National Consumer Representative	Agència Catalana del Consum
	Other	Partit dels Socialistes de Catalunya (PSC)
Sweden	MS Public Authority	Swedish Ministry of Justice
	National Consumer Representative	Villaägarnas Riksförbund
UK	Academic	Dr Christopher Hodges of the University of Oxford - Centre for Socio-Legal Studies
	Business	Aviva
	Legal Practitioner	Ashurst LLP
		Bar Council of England and Wales, Brussels Office
		Clifford Chance LLP
		Freshfields Bruckhaus Deringer LLP
		Hausfeld & co
		Herbert Smith LLP
		Law Society of England and Wales
	Office of Fair Trading	
	UK Government	
	National Business Representative	Association of British Insurers
		Association of Personal Injury Lawyers
		British Bankers Association
		British Retail Consortium
		British Vehicle Rental and Leasing Association
		Confederation of British Industry
Finance and Leasing Association		
The Direct Marketing Association (UK) Ltd		
Trading Standards Institute		
National Consumer Representative	The Financial Services Authority (FSA) - Consumer Panel Which?	
Other	Civil Justice Council	
	Financial Ombudsman Service (UK)	

ANNEX 2: TABLES PRESENTING THE DETAILS OF THE ANSWERS TO QUESTIONS 3 AND 5: OPINION ON DETAILED FEATURES OF OPTIONS

Question to which the record is a response	Answer: agree/disagree or no answer		Existing Schemes: Judicial Individual	Existing Schemes: Judicial Collective	Existing Schemes: ADR Mechanisms	Existing Schemes: Complaint Handling Systems	Existing Schemes: Other	Future EU Instruments: Mediation Directive	Future EU Instruments: Small Claims Regulation	Future EU Instruments: Other	Other
Absolute values											
Question 3 - Agree & Question 5 Combination	Agree	Business Repr.	8	8	15	6	3	7	11	6	6
		Consumer Repr.	0	0	0	0	0	0	0	0	0
		Legal Expert	0	0	0	0	2	2	3	2	0
		Public Authority	1	2	1	1	1	5	5	0	0
		Other	0	0	0	0	0	0	0	0	0
	TOTAL	9	10	16	7	6	14	19	8	6	
Question 3 - Disagree	Disagree	Business Repr.	0	0	0	0	0	0	0	0	0
		Consumer Repr.	0	0	0	0	0	0	0	0	0
		Legal Expert	0	0	0	0	0	1	1	0	0
		Public Authority	0	0	0	0	0	0	1	0	1
		Other	0	0	0	0	0	0	0	0	0
	TOTAL	0	0	0	0	0	1	2	0	1	
Relative values											
Question 3 - Agree & Question 5 Combination	Agree	Business Repr.	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%
		Consumer Repr.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		Legal Expert	N/A	N/A	N/A	N/A	100,00%	66,67%	75,00%	100,00%	N/A
		Public Authority	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	83,33%	N/A	0,00%
		Other	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Question 3 - Disagree	Disagree	Business Repr.	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%
		Consumer Repr.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		Legal Expert	N/A	N/A	N/A	N/A	0,00%	33,33%	25,00%	0,00%	N/A
		Public Authority	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	16,67%	N/A	100,00%
		Other	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Relative values - TOTAL											
Question 3 - Agree & Question 5	Agree		100,00%	100,00%	100,00%	100,00%	100,00%	93,33%	90,48%	100,00%	85,71%
Question 3 - Disagree	Disagree		0,00%	0,00%	0,00%	0,00%	0,00%	6,67%	9,52%	0,00%	14,29%

Table 5: Contributors' opinion on features of option 1

Assessment of the economic and social impact of the policy options to empower consumers to obtain adequate redress

Question to which the record is a response	Answer: agree/disagree or no answer		EU Involvement: Recommendation	EU Involvement: Directive	EU Involvement: Additional Recommendation With Benchmarks	EU Involvement: Other	Cooperation Network: Yes	Cooperation Network: No	Form Cooperation Network: Existing - ECC-Net	Form Cooperation Network: Existing - Other	Form Cooperation Network: New	Other
Absolute values												
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	5	0	2	0	12	0	14	6	3	6
		Consumer Repr.	1	1	0	0	1	0	4	1	1	2
		Legal Expert	4	2	1	0	3	0	2	0	0	1
		Public Authority	1	0	0	1	2	3	5	5	0	4
		Other	0	0	0	0	1	0	0	0	0	1
		TOTAL	11	3	3	1	19	3	25	12	4	14
Question 3 - Disagree	Disagree	Business Repr.	8	11	1	1	1	7	1	1	5	7
		Consumer Repr.	0	0	0	0	0	1	1	0	1	0
		Legal Expert	0	0	1	4	0	1	0	0	0	2
		Public Authority	1	0	0	1	1	0	0	0	1	2
		Other	0	0	0	0	0	1	0	0	0	0
		TOTAL	9	11	2	6	2	10	2	1	7	11
Relative values												
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	38,46%	0,00%	66,67%	0,00%	92,31%	0,00%	93,33%	85,71%	37,50%	46,15%
		Consumer Repr.	100,00%	100,00%	N/A	N/A	100,00%	0,00%	80,00%	100,00%	50,00%	100,00%
		Legal Expert	100,00%	100,00%	50,00%	0,00%	100,00%	0,00%	100,00%	N/A	N/A	33,33%
		Public Authority	50,00%	N/A	N/A	50,00%	66,67%	100,00%	100,00%	100,00%	0,00%	66,67%
		Other	N/A	N/A	N/A	N/A	100,00%	0,00%	N/A	N/A	N/A	100,00%
Question 3 - Disagree	Disagree	Business Repr.	61,54%	100,00%	33,33%	100,00%	7,69%	100,00%	6,67%	14,29%	62,50%	53,85%
		Consumer Repr.	0,00%	0,00%	N/A	N/A	0,00%	100,00%	20,00%	0,00%	50,00%	0,00%
		Legal Expert	0,00%	0,00%	50,00%	100,00%	0,00%	100,00%	0,00%	N/A	N/A	66,67%
		Public Authority	50,00%	N/A	N/A	50,00%	33,33%	0,00%	0,00%	0,00%	100,00%	33,33%
		Other	N/A	N/A	N/A	N/A	0,00%	100,00%	N/A	N/A	N/A	0,00%
Relative values - TOTAL												
Question 3 - Agree &	Agree		55,00%	21,43%	60,00%	14,29%	90,48%	23,08%	92,59%	92,31%	36,36%	56,00%
Question 3 - Disagree	Disagree		45,00%	78,57%	40,00%	85,71%	9,52%	76,92%	7,41%	7,69%	63,64%	44,00%

Table 6: Contributors' opinion on features of option 2

Assessment of the economic and social impact of the policy options to empower consumers to obtain adequate redress

Question to which the record is a response	Answer: agree/disagree or no answer		Option3A: Improving ADR Mechanisms	EU involvement: Recommendation	EU involvement: Directive	EU involvement: Other	MS Freedom: Voluntarily Develop Standard Model	MS Freedom: Other	Existing Networks: ECC-NET	Existing Networks: FIN-NET	Existing Networks: Other	Other
Absolute values												
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	40	10	0	9	4	6	10	13	2	4
		Consumer Repr.	13	1	0	1	1	0	1	0	0	0
		Legal Expert	11	1	0	2	0	1	1	1	1	1
		Public Authority	18	3	1	1	2	0	1	1	0	1
		Other	5	3	3	1	3	0	2	2	0	0
		TOTAL	87	18	4	14	10	6	15	17	3	6
Question 3 - Disagree	Disagree	Business Repr.	4	2	1	0	6	2	0	0	0	2
		Consumer Repr.	3	0	0	0	3	1	2	2	0	0
		Legal Expert	3	0	2	0	3	0	0	0	0	0
		Public Authority	1	0	0	0	0	1	0	0	0	0
		Other	0	0	0	0	0	0	0	0	0	0
		TOTAL	11	2	3	0	12	4	2	2	0	2
Relative values												
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	90,91%	83,33%	0,00%	100,00%	40,00%	75,00%	100,00%	100,00%	100,00%	66,67%
		Consumer Repr.	81,25%	100,00%	N/A	100,00%	25,00%	0,00%	33,33%	0,00%	N/A	N/A
		Legal Expert	78,57%	100,00%	0,00%	100,00%	0,00%	N/A	100,00%	100,00%	100,00%	100,00%
		Public Authority	94,74%	100,00%	100,00%	100,00%	100,00%	0,00%	100,00%	100,00%	N/A	100,00%
		Other	100,00%	100,00%	100,00%	100,00%	100,00%	N/A	100,00%	100,00%	N/A	N/A
Question 3 - Disagree	Disagree	Business Repr.	9,09%	16,67%	100,00%	0,00%	60,00%	25,00%	0,00%	0,00%	0,00%	33,33%
		Consumer Repr.	18,75%	0,00%	N/A	0,00%	75,00%	100,00%	66,67%	100,00%	N/A	N/A
		Legal Expert	21,43%	0,00%	100,00%	0,00%	100,00%	N/A	0,00%	0,00%	0,00%	0,00%
		Public Authority	5,26%	0,00%	0,00%	0,00%	0,00%	100,00%	0,00%	0,00%	N/A	0,00%
		Other	0,00%	0,00%	0,00%	0,00%	0,00%	N/A	0,00%	0,00%	N/A	N/A
Relative values - TOTAL												
Question 3 - Agree &	Agree		88,78%	90,00%	57,14%	100,00%	45,45%	60,00%	88,24%	89,47%	100,00%	75,00%
Question 3 - Disagree	Disagree		11,22%	10,00%	42,86%	0,00%	54,55%	40,00%	11,76%	10,53%	0,00%	25,00%

Table 7: Contributors' opinion on features of option 3 - ADR

Assessment of the economic and social impact of the policy options to empower consumers to obtain adequate redress

Question to which the record is a response	Answer: agree/disagree or no answer		Option3B: Extension Scope Small Claims To Mass Claims	EU Involvement: Recommendation	EU Involvement: Other	Other
Absolute values						
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	7	0	0	2
		Consumer Repr.	5	0	0	0
		Legal Expert	4	0	0	0
		Public Authority	8	0	0	0
		Other	2	0	0	0
		TOTAL	26	0	0	2
Question 3 - Disagree	Disagree	Business Repr.	18	0	0	1
		Consumer Repr.	4	0	0	0
		Legal Expert	5	0	0	0
		Public Authority	3	0	0	0
		Other	2	0	0	0
		TOTAL	32	0	0	1
Relative values						
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	28,00%	N/A	N/A	66,67%
		Consumer Repr.	55,56%	N/A	N/A	N/A
		Legal Expert	44,44%	N/A	N/A	N/A
		Public Authority	72,73%	N/A	N/A	N/A
		Other	50,00%	N/A	N/A	N/A
Question 3 - Disagree	Disagree	Business Repr.	72,00%	N/A	N/A	33,33%
		Consumer Repr.	44,44%	N/A	N/A	N/A
		Legal Expert	55,56%	N/A	N/A	N/A
		Public Authority	27,27%	N/A	N/A	N/A
		Other	50,00%	N/A	N/A	N/A
Relative values - TOTAL						
Question 3 - Agree & Question 3 - Disagree	Agree		44,83%	N/A	N/A	66,67%
	Disagree		55,17%	N/A	N/A	33,33%

Table 8: Contributors' opinion on features of option 3 – Extension scope Small Claims Regulation

Assessment of the economic and social impact of the policy options to empower consumers to obtain adequate redress

Question to which the record is a response	Answer: agree/disagree or no answer		Option3C: Extension Scope CPR	EU Involvement General: Amend CPR With Compensation Possibilities	EU Involvement General: Competent Authority Skim Off Profits	Other
Absolute values						
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	11	2	5	4
		Consumer Repr.	5	7	4	2
		Legal Expert	6	3	1	1
		Public Authority	3	4	3	1
		Other	2	1	1	1
		TOTAL	27	17	14	9
Question 3 - Disagree	Disagree	Business Repr.	14	14	16	1
		Consumer Repr.	1	1	0	1
		Legal Expert	2	5	2	1
		Public Authority	9	6	4	0
		Other	1	3	2	0
		TOTAL	27	29	24	3
Relative values						
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	44,00%	12,50%	23,81%	80,00%
		Consumer Repr.	83,33%	87,50%	100,00%	66,67%
		Legal Expert	75,00%	37,50%	33,33%	50,00%
		Public Authority	25,00%	40,00%	42,86%	100,00%
		Other	66,67%	25,00%	33,33%	100,00%
Question 3 - Disagree	Disagree	Business Repr.	56,00%	87,50%	76,19%	20,00%
		Consumer Repr.	16,67%	12,50%	0,00%	33,33%
		Legal Expert	25,00%	62,50%	66,67%	50,00%
		Public Authority	75,00%	60,00%	57,14%	0,00%
		Other	33,33%	75,00%	66,67%	0,00%
Relative values - TOTAL						
Question 3 - Agree &	Agree		50,00%	36,96%	36,84%	75,00%
Question 3 - Disagree	Disagree		50,00%	63,04%	63,16%	25,00%

Table 9: Contributors' opinion on features of option 3 – Extension scope CPR

Assessment of the economic and social impact of the policy options to empower consumers to obtain adequate redress

Question to which the record is a response	Answer: agree/disagree or no answer		Option3D: Encouragement Complaint Handling Schemes	EU Involvement	Features Complaint Handling Schemes: Credible	Features Complaint Handling Schemes: Efficient Working	Features Complaint Handling Schemes: Independen Monitoring	Features Complaint Handling Schemes: Other	Other
Absolute values									
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	18	5	2	2	2	0	2
		Consumer Repr.	5	1	0	0	1	0	0
		Legal Expert	6	3	2	2	2	1	1
		Public Authority	7	1	2	2	2	1	2
		Other	3	0	0	0	3	1	0
		TOTAL	39	10	6	6	10	3	5
Question 3 - Disagree	Disagree	Business Repr.	3	0	0	0	4	0	0
		Consumer Repr.	1	1	0	0	0	0	0
		Legal Expert	2	1	0	0	1	0	0
		Public Authority	0	1	0	0	1	0	0
		Other	1	0	0	0	0	0	0
		TOTAL	7	3	0	0	6	0	0
Relative values									
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	85,71%	100,00%	100,00%	100,00%	33,33%	N/A	100,00%
		Consumer Repr.	83,33%	50,00%	N/A	N/A	100,00%	N/A	N/A
		Legal Expert	75,00%	75,00%	100,00%	100,00%	66,67%	100,00%	100,00%
		Public Authority	100,00%	50,00%	100,00%	100,00%	66,67%	100,00%	100,00%
		Other	75,00%	N/A	N/A	N/A	100,00%	100,00%	N/A
Question 3 - Disagree	Disagree	Business Repr.	14,29%	0,00%	0,00%	0,00%	66,67%	N/A	0,00%
		Consumer Repr.	16,67%	50,00%	N/A	N/A	0,00%	N/A	N/A
		Legal Expert	25,00%	25,00%	0,00%	0,00%	33,33%	0,00%	0,00%
		Public Authority	0,00%	50,00%	0,00%	0,00%	33,33%	0,00%	0,00%
		Other	25,00%	N/A	N/A	N/A	0,00%	0,00%	N/A
Relative values - TOTAL									
Question 3 - Agree & Question 3 - Disagree	Agree		84,78%	76,92%	100,00%	100,00%	62,50%	100,00%	100,00%
	Disagree		15,22%	23,08%	0,00%	0,00%	37,50%	0,00%	0,00%

Table 10: Contributors' opinion on features of option 3 – Improve complaint-handling systems

Assessment of the economic and social impact of the policy options to empower consumers to obtain adequate redress

Question to which the record is a response	Answer: agree/disagree or no answer		Option3E: Raise Consumers Awareness	Other
Absolute values				
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	25	4
		Consumer Repr.	8	0
		Legal Expert	6	0
		Public Authority	14	1
		Other	3	0
		TOTAL	56	5
Question 3 - Disagree	Disagree	Business Repr.	2	3
		Consumer Repr.	0	0
		Legal Expert	0	0
		Public Authority	0	0
		Other	0	0
		TOTAL	2	3
Relative values				
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	92,59%	57,14%
		Consumer Repr.	100,00%	N/A
		Legal Expert	100,00%	N/A
		Public Authority	100,00%	100,00%
		Other	100,00%	N/A
		Question 3 - Disagree	Disagree	Business Repr.
		Consumer Repr.	0,00%	N/A
		Legal Expert	0,00%	N/A
		Public Authority	0,00%	0,00%
		Other	0,00%	N/A
Relative values - TOTAL				
Question 3 - Agree &	Agree		96,55%	62,50%
Question 3 - Disagree	Disagree		3,45%	37,50%

Table 11: Contributors' opinion on features of option 3 – Raise consumers' awareness

Assessment of the economic and social impact of the policy options to empower consumers to obtain adequate redress

Question to which the record is a response	Answer: agree/disagree or no answer		Binding	Non-Binding	Financing Procedure: Exemption From Court Fees	Financing Procedure: Capping Legal Fees	Financing Procedure: Other	Financing Consumer Represent: Share Of Compensation	Financing Consumer Represent: Loans By Third Parties	Financing Consumer Represent: Public Funding By MS	Financing Consumer Represent: Other	Prevention Unmerituous Claims: Judge	Prevention Unmerituous Claims: Certification Representative Entity	Prevention Unmerituous Claims: Loser-Pays	Prevention Unmerituous Claims: Public Authorities Funding Redress	Prevention Unmerituous Claims: Other	Legal Standing: Standing For Consumer Organisations	Legal Standing: Standing For Ombudsmen	Legal Standing: Other
Absolute values																			
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	4	5	1	5	4	0	1	1	1	13	10	28	3	8	7	0	3
		Consumer Repr.	16	0	5	3	8	7	1	5	8	11	1	0	0	1	11	1	0
		Legal Expert	4	2	2	4	1	1	1	2	1	3	1	7	1	2	4	1	1
		Public Authority	6	2	3	5	3	3	1	3	2	3	3	4	0	1	5	2	4
		Other	0	0	1	0	0	1	0	0	0	1	0	0	0	1	0	0	1
		TOTAL	30	9	12	17	16	12	4	11	12	31	15	39	4	13	27	4	9
Question 3 - Disagree	Disagree	Business Repr.	4	2	17	13	4	15	9	13	4	3	3	3	3	3	4	0	0
		Consumer Repr.	0	2	0	1	0	0	4	0	0	0	0	0	0	2	0	0	0
		Legal Expert	1	1	4	6	3	2	3	4	0	2	1	1	1	0	1	0	2
		Public Authority	0	0	5	3	1	2	0	0	0	1	1	0	0	0	0	0	0
		Other	0	0	2	2	1	2	2	2	1	0	0	0	0	0	0	0	0
		TOTAL	5	5	28	25	9	21	18	19	5	6	5	4	4	5	5	0	2
Relative values																			
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	50,00%	71,43%	5,56%	27,78%	50,00%	0,00%	10,00%	7,14%	20,00%	81,25%	76,92%	90,32%	50,00%	72,73%	63,64%	N/A	100,00%
		Consumer Repr.	100,00%	0,00%	100,00%	75,00%	100,00%	100,00%	20,00%	100,00%	100,00%	100,00%	100,00%	N/A	N/A	33,33%	100,00%	100,00%	N/A
		Legal Expert	80,00%	66,67%	33,33%	40,00%	25,00%	33,33%	25,00%	33,33%	100,00%	60,00%	50,00%	87,50%	50,00%	100,00%	80,00%	100,00%	33,33%
		Public Authority	100,00%	100,00%	37,50%	62,50%	75,00%	60,00%	100,00%	100,00%	100,00%	75,00%	75,00%	100,00%	N/A	100,00%	100,00%	100,00%	100,00%
		Other	N/A	N/A	33,33%	0,00%	0,00%	33,33%	0,00%	0,00%	0,00%	100,00%	N/A	N/A	N/A	100,00%	N/A	N/A	100,00%
Question 3 - Disagree	Disagree	Business Repr.	50,00%	28,57%	94,44%	72,22%	50,00%	100,00%	90,00%	92,86%	80,00%	18,75%	23,08%	9,68%	50,00%	27,27%	36,36%	N/A	0,00%
		Consumer Repr.	0,00%	100,00%	0,00%	25,00%	0,00%	0,00%	80,00%	0,00%	0,00%	0,00%	0,00%	N/A	N/A	66,67%	0,00%	0,00%	N/A
		Legal Expert	20,00%	33,33%	66,67%	60,00%	75,00%	66,67%	75,00%	66,67%	0,00%	40,00%	50,00%	12,50%	50,00%	0,00%	20,00%	0,00%	66,67%
		Public Authority	0,00%	0,00%	62,50%	37,50%	25,00%	40,00%	0,00%	0,00%	0,00%	25,00%	25,00%	0,00%	N/A	0,00%	0,00%	0,00%	0,00%
		Other	N/A	N/A	66,67%	100,00%	100,00%	66,67%	100,00%	100,00%	100,00%	0,00%	N/A	N/A	N/A	0,00%	N/A	N/A	0,00%
Relative values - TOTAL																			
Question 3 - Agree & Question 5	Agree		85,71%	64,29%	30,00%	40,48%	64,00%	36,36%	18,18%	36,67%	70,59%	83,78%	75,00%	90,70%	50,00%	72,22%	84,38%	100,00%	81,82%
Question 3 - Disagree	Disagree		14,29%	35,71%	70,00%	59,52%	36,00%	63,64%	81,82%	63,33%	29,41%	16,22%	25,00%	9,30%	50,00%	27,78%	15,63%	0,00%	18,18%

Table 12: Contributors' opinion on features of option 4 – Part 1

Assessment of the economic and social impact of the policy options to empower consumers to obtain adequate redress

Question to which the record is a response	Answer: agree/disagree or no answer		Opt-In	Opt-Out	Opt-In: Court Distributing Compensation	Opt-In: Mass Action After Test Case	Opt-In: Other	Jurisdiction Cross-Border: Regulation On Jurisdiction For Public Authorities	Jurisdiction Cross-Border: Trader's Court	Jurisdiction Cross-Border: Place Of Performance Of Contract	Jurisdiction Cross-Border: Other	Jurisdiction Cons Diff MS: Amendment To Impose Law Of Trader	Jurisdiction Cons Diff MS: Law Of Market Most Affected	Jurisdiction Cons Diff MS: Law Of MS Where Representative Entity Is	Jurisdiction Cons Diff MS: Other	Introduction Choice Of Law Agreement	Other
Absolute values																	
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	19	2	0	0	1	2	0	0	3	0	0	0	2	0	12
		Consumer Repr.	8	9	1	4	3	0	0	1	4	0	0	1	4	3	4
		Legal Expert	9	6	1	2	0	0	1	0	2	0	0	0	3	0	0
		Public Authority	7	3	4	1	2	1	0	0	0	0	0	0	1	0	5
		Other	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0
		TOTAL	44	21	6	7	6	3	1	1	9	0	0	1	10	3	21
Question 3 - Disagree	Disagree	Business Repr.	5	34	1	1	1	2	1	1	1	1	0	2	0	9	
		Consumer Repr.	3	1	1	0	0	1	1	1	0	5	5	5	0	2	
		Legal Expert	3	9	0	0	1	1	0	0	1	2	1	1	3	1	
		Public Authority	1	9	0	0	0	0	1	0	0	0	0	0	0	1	
		Other	0	1	0	0	0	0	0	0	0	0	0	0	0	0	
		TOTAL	12	54	2	1	2	4	3	2	2	8	6	6	5	0	13
Relative values																	
Question 3 - Agree & Question 5 - Combination	Agree	Business Repr.	79,17%	5,56%	0,00%	0,00%	50,00%	50,00%	0,00%	0,00%	75,00%	0,00%	N/A	N/A	50,00%	N/A	57,14%
		Consumer Repr.	72,73%	90,00%	50,00%	100,00%	100,00%	0,00%	0,00%	50,00%	100,00%	0,00%	0,00%	16,67%	100,00%	100,00%	66,67%
		Legal Expert	75,00%	40,00%	100,00%	100,00%	0,00%	0,00%	100,00%	N/A	66,67%	0,00%	0,00%	0,00%	50,00%	N/A	0,00%
		Public Authority	87,50%	25,00%	100,00%	100,00%	100,00%	100,00%	0,00%	N/A	N/A	N/A	N/A	N/A	100,00%	N/A	83,33%
		Other	100,00%	50,00%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Question 3 - Disagree	Disagree	Business Repr.	20,83%	94,44%	100,00%	100,00%	50,00%	50,00%	100,00%	100,00%	25,00%	100,00%	N/A	N/A	50,00%	N/A	42,86%
		Consumer Repr.	27,27%	10,00%	50,00%	0,00%	0,00%	100,00%	100,00%	50,00%	0,00%	100,00%	100,00%	83,33%	0,00%	0,00%	33,33%
		Legal Expert	25,00%	60,00%	0,00%	0,00%	100,00%	100,00%	0,00%	N/A	33,33%	100,00%	100,00%	100,00%	50,00%	N/A	100,00%
		Public Authority	12,50%	75,00%	0,00%	0,00%	0,00%	0,00%	100,00%	N/A	N/A	N/A	N/A	N/A	0,00%	N/A	16,67%
		Other	0,00%	50,00%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Relative values - TOTAL																	
Question 3 - Agree & Question 5	Agree		78,57%	28,00%	75,00%	87,50%	75,00%	42,86%	25,00%	33,33%	81,82%	0,00%	0,00%	14,29%	66,67%	100,00%	61,76%
Question 3 - Disagree	Disagree		21,43%	72,00%	25,00%	12,50%	25,00%	57,14%	75,00%	66,67%	18,18%	100,00%	100,00%	85,71%	33,33%	0,00%	38,24%

Table 13: Contributors' opinion on features of option 4 – Part 2

ANNEX 3: LIST OF ABBREVIATIONS OF STAKEHOLDER NAMES

Abbreviation	Full name of stakeholder/organisation
ABI	Associazione Bancaria Italiana
ACC	Agència Catalana del Consum
ADAC	Allgemeiner Deutscher Automobil-Club
AEA	Association of European Airlines
AFEP	Association Française des Entreprises Privées
AMChamEU	American Chamber of Commerce to the European Union
AMF	Médiateur de l'Autorité des marchés financiers
ANACOM	Autoridade Nacional de Comunicações
APCM	Chambres de Métiers et de l'Artisanat - Assemblée Permanente
APIL	Association of Personal Injury Lawyers
ASU	Association of Service Users
BBA	British Bankers Association
BDI	Federation of German Industries - Bundesverband der Deutschen Industrie
BDIU	Bundesverband Deutscher Inkasso-Unternehmen e. V..
BEUC	Bureau Européen des Unions de Consommateurs
BRAK	Bundesrechtsanwaltskammer
BRC	British Retail Consortium
BVRLA	British Vehicle Rental and Leasing Association
CACCL	Centro de Arbitragem de Conflitos de Consumo de Lisboa
CBI	Confederation of British Industry
CCBE	Council of bars and law societies in Europe
CCIP	Chambre de commerce et d'industrie de Paris
CEA	CEA - Insurers of Europe
CEBP	Confédération Européenne des Organisations Nationales de la Boulangerie et de la Pâtisserie
CECED	European Committee of Domestic Appliance Manufacturers
CEEP	European Centre of Employers and Enterprises providing Public Services
Cefic	European Chemical Industry Council
CEP	Centrum für Europäische Politik
CGPME	Confédération générale du patronat des petites et moyennes entreprises (CGPME)
CLCV	Association Consommation Logement Cadre de Vie
CNAFAL	Conseil National des Associations Familiales Laïques
Confcommercio	Confcommercio International
Confindustria	Confindustria Servizi Innovativi e Tecnologici
CRIOC	Onderzoeks- en informatiecentrum van de verbruikersorganisaties
CSF	Confédération Syndicale des Familles
DAV	Deutscher Anwaltverein - German Bar Association
DBF	Délégation des Barreaux de France
DGB	Deutscher Gewerkschaftsbund
DIHK	Deutscher Industrie- und Handelskammertag
DMA	The Direct Marketing Association (UK) Ltd
DRB	Deutscher Richterbund
DRV	Deutscher Reiseverband
EACB	European Association of Co-operative Banks
EADP	European Association of Directory and Database Publishers
EAPB	European Association of Public Banks
EBF	European Banking Federation
ECC Malta	European Consumer Centre of Malta
ECCG	European Consumer Consultative Group
ECTAA	European Travel Agents and Tour Operators Association
EFBS	European Federation of Building Societies

Abbreviation	Full name of stakeholder/organisation
EFPIA	European Federation of Pharmaceutical Industries and Associations
EJF	European Justice Forum
EMF	European Mortgage Federation
EMOTA	European E-commerce and Mail Order Trade Association
ERRT	European Retail Round Table
ESBG	European Savings Banks Group
EURO COOP	European Community of consumer cooperatives
Eurofinas	European Federation of Finance House Associations
FBF	Fédération Bancaire Française
FdF	Familles de France
FEB	Fédération des Entreprises de Belgique
FEDSA	Federation of European Direct Selling Associations
FFFS	Federation of Finnish Financial Services
FFSA	Fédération Française des Sociétés d'Assurances - Direction des Affaires Juridiques, Fiscales et de la
FLA	Finance and Leasing Association
FSA	The Financial Services Authority (FSA) - Consumer Panel
GDV	Gesamtverband der Deutschen Versicherungswirtschaft
HDE - BAG	Hauptverband des Deutschen Einzelhandels HDE & Handelsverband BAG
HOTREC	Hotels, Restaurants & Cafés in Europe
ICC	International Chamber of Commerce
IUA	International Underwriting Association
IV	Industriellenvereinigung, Bereich Rechtspolitik & Verwaltungsreform
MEDEF	Mouvement des Entreprises de France
NACPR	National Authority for Consumer Protection of Romania
OFT	Office of Fair Trading
ÖGV	Österreichischer Genossenschaftsverband (Schulze - Delitzsch)
ÖRAK	Österreichischer Rechtsanwaltskammertag
RIAD	International Association of Legal Expenses Insurance
RICS	Royal Institution of Chartered Surveyors
TEST	Civic association of consumers TEST
TILP	TILP Rechtsanwälte
TSI	Trading Standards Institute
UEAPME	Union Européenne de l'Artisanat et des petites et moyennes entreprises
UEL	Union des Entreprises Luxembourgeoises
UGAL	Union des Groupements de Détaillants indépendants de l'Europe
UGC	Uniao Geral de Consumidores
UNC	Unione Nazionale Consumatori
VCI	Verband der Chemischen Industrie e.V. Energie und Klima, Recht und Steuern
VFA	Verband Forschender Arzneimittelhersteller - German Association of Research-based Pharmaceutical
VPRT	Verband Privater Rundfunk und Telemedien
vzbv	Verbraucherzentrale Bundesverband - Federation of German Consumer Organisations
WKÖ Abteilung für Rechtspolitik	Wirtschaftskammer Österreich - Abteilung für Rechtspolitik
WKÖ Bank and Insurance	Austrian Federal Economic Chamber - Division Bank and Insurance
ZAW	Zentralverband der deutschen Werbewirtschaft e.V.
ZDH	Zentralverband des Deutschen Handwerks
ZGV	Zentralverband Gewerblicher Verbundgruppen E.V.
ZKA	Zentraler Kreditausschuss
ZPS	Zveza potrošnikov Slovenije / Slovene Consumers Association
ZVEI	Zentralverband Elektrotechnik- und Elektronikindustrie