

# Targeted questionnaire on the revision of the Injunctions Directive

Fields marked with \* are mandatory.

## 1 Introduction

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1 Word version of the questionnaire:

[Injunctions\\_30-10-2017\\_EN\\_1\\_.docx](#)

**Deadline for responding: 16 November 2017**

The evidence gathered during the [2017 Fitness Check of EU consumer and marketing law](#) indicated that while the current EU consumer law acquis is still largely fit for purpose, infringements of consumer rights remain at relatively high levels and there is a need for stepping up enforcement and redress. To address these concerns, the Commission is considering the adoption of a legislative package covering two strands of follow-up actions: (1) the targeted revision of EU consumer law Directives which concerns the substantive rules of the EU consumer law acquis ([Inception Impact Assessment](#)); and (2) the revision of the Injunctions Directive, which encompasses procedural rules for the protection of the collective interests of consumers ([Inception Impact Assessment](#)).

The present consultation seeks stakeholders' views on the possible legislative changes related to the second strand of follow-up actions, namely the legislative proposal for the revision of the Injunctions Directive 2009/22/EC ("the ID").

The ID was adopted in 1998 and its Annex was recast in 2009. It imposes on Member States the obligation to enable so-called 'qualified entities' to seek an injunction in front of a court or of an administrative authority to stop an act contrary to the EU consumer law, which harms the collective interests of consumers. It is left to the discretion of each Member State whether the injunction procedure is of judicial or/and administrative nature. The Fitness Check concluded that, in its current form, the ID is not as effective as it could be. In particular, the Fitness Check determined that the possible changes should be targeted towards: **(i) facilitating access to justice and reducing costs for the 'qualified entities' that protect the collective interests of consumers; (ii) increasing the deterrent effect of injunctions; and (iii) increasing the impact of the injunction on the affected consumers** (e.g. ability to obtain redress). For further information about the evaluation of the ID, please consult the [Study supporting the Fitness Check](#), in particular its main report (Part 1) and the country reports (Part 3), which would enable you to review the specific evaluation results regarding your Member State.

The revision of the Injunctions Directive will also build on the assessment of the implementation of the **2013 Commission Recommendation on Collective Redress**, which invited Member States to ensure in their

legal systems the existence of injunctive and compensatory collective relief in all areas of EU law. This assessment found that the impact of the Recommendation has been limited: only a few Member States have introduced new collective redress procedures or amended their legislation since the adoption of the Recommendation and nine Member States still do not provide for any possibility of claiming compensation collectively. In the Member States where compensatory redress exists in the area of consumer law, it is still reported to be too complex, costly and lengthy to fully reach its objectives (*the 2017 Commission Report on the implementation of the Recommendation will be published soon*).

**Please note that the possible legislative proposal would leave to the discretion of the Member States, as under the current ID, whether the procedure would be of judicial and/or administrative nature.**

**Terminology used in the questionnaire:**

'mass harm situation' means a situation where a number of consumers suffer or may suffer harm resulting from the same illegal activity of one or more natural or legal persons;

'collective interests of consumers' means interests which go beyond the cumulation of interests of individual consumers in a mass harm situation;

'qualified or representative entity' means any body or organisation (e.g. independent public bodies, consumer organisations, business associations) that represents the interests of consumers (*excluding public enforcement authorities and individual consumers*) by bringing an injunction or redress action;

'injunction order' means an order issued by a court/authority requiring the cessation or prohibition of any infringement by a trader;

'redress order' means an order issued by a court/authority requiring the provision of redress by the trader to the victims of the infringement;

'courts/administrative authorities' means courts and/or administrative authorities competent to rule in injunctions or redress proceedings. The possible legislative proposal would leave to the discretion of the Member States, as under the current ID, whether the procedure would be of judicial and/or administrative nature;

'follow-on actions' mean actions for consumer redress following a final court/administrative decision finding that there has been a breach of EU law.

## 2 Publication of your response:

Note that responses to this consultation, without personal data, will be published on the internet in a summarised form. In addition, quotes or opinions you express in this consultation may be also published.

Note that your response may be subject to a request for public access to documents under [Regulation \(EC\) N° 1049/2001](#)

It is important to read the specific privacy statement for information on how your personal data and contribution will be dealt with.

[EN-privacy-statement-REFIT-targeted.pdf](#)

## 2 About your organisation

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\*3 Please indicate the type of entity on whose behalf you are replying.

- Consumer protection authority
- Competition authority
- Consumer organisation
- Business organisation
- National ministry
- Judicial institution
- Legal practitioners
- European Consumer Centre
- Other

\*4 Are you a qualified entity authorised to bring injunctions under the Injunctions Directive?

- Yes
- No

\*5 Please provide the name of the entity on whose behalf you are replying.

U.S. Chamber Institute for Legal Reform ("ILR")

\*6 Please give your e-mail address in case we have questions about your reply and need to ask for clarifications.

sdecazotte@uschamber.com

\*7 Please indicate the Member State(s) in which you operate.

- EU-wide
- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
-

- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom

## 3 Survey

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### 3.1 Legal situation

8 Please provide information on the **action brought by qualified entities for stopping/prohibiting infringements of EU law** affecting the collective interest of consumers, as currently in force in your Member State.

|  | Yes                   | No                    | Do not know           |
|--|-----------------------|-----------------------|-----------------------|
| Independent public bodies are qualified entities   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Consumer organisations are qualified entities  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Business associations are qualified entities   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Qualified entities benefit from facilitated access to justice if they are not able to pay the costs related to bringing the action   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Courts/administrative authorities have the power to require the trader to provide information in its possession  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Traders may be obliged to publicise the injunction order (e.g. on their website, in newspapers, via social media)  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Traders may be obliged to individually inform all concerned consumers about the injunction order   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Once the injunction order is issued, all affected consumers are able to use the injunctions order as proof of the breach of EU law for their follow-on actions for damages | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| There are maximum time-limits for issuing injunction order as an <u>interim measure</u>  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
|  |                       |                       |                       |

There are maximum time-limits for issuing injunction order as definitive measure




9 Please explain your reply.

N/A

10 Please provide information on the **action brought by representative entities for consumer redress**, as currently in force in your Member State.

|   | Yes                   | No                    | Do not know           |
|---|-----------------------|-----------------------|-----------------------|
| Independent public bodies are representative entities   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Consumer organisations are representative entities  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Business associations are representative entities   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Representative entities benefit from facilitated access to justice if they are not able to pay the costs related to bringing the action   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Representative entities are able to seek injunctions as an <u>interim measure</u> and consumer redress within a single legal procedure  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Representative entities are able to seek injunctions as a <u>definitive measure</u> and consumer redress within a single legal procedure  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Courts/administrative authorities have the power to require the trader to provide information in its possession   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Courts/administrative authorities have the power to invite the representative entity and the trader to negotiate out-of-court an amicable settlement for the consumers' redress | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The out-of-court settlement negotiated between the representative entity and the trader is subject of the approval of a court/administrative authority                          | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Traders may be obliged to publicise the redress order (e.g. on their website, in newspapers, via social media)  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Traders may be obliged to individually inform all concerned consumers about the redress order   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| There are maximum time-limits for issuing redress order   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Traders who do not comply with a redress order face effective, proportionate and dissuasive penalties for non-compliance  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Traders who do not comply with an approved settlement face effective, proportionate and dissuasive penalties for non-compliance   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

11 Please explain your reply.

The current status in almost all Member States is that there is insufficient definition surrounding who may serve as a representative entity, in jurisdictions where collective damages cases by representative entities are permitted.

As seen in other jurisdictions, the fundamental danger of collective damages cases is that they can be captured by private, profit-motivated interests. In principle the concept of a representative entity is superior to a “free for all” where anyone can purport to represent consumers and pursue damages while in fact pursuing cases principally for their own benefit. However, unless both the concept and mode of operation of representatives are subject to strict controls, a “free for all” may be expected.

The Commission’s own 2013 Recommendation on Collective Redress indicated some useful safeguards (e.g. that a representative entity should have a non-profit character). This basic control is absent from the ID, and also from the options considered under this consultation. This is particularly important to revisit now. Up to this point, “profit” was not available under the ID, because damages were not available. If a damages component becomes available, so will profit, which is certain to raise the possibility of collective damages actions being pursued on a for-profit basis, whether directly or indirectly.

In addition, it is critical that any new regime consider the growing reality of non-profit consumer bodies being used as fronts for profit making enterprises.

For example, it is increasingly common that lawyers or third party litigation funders are the true instigators of collective actions, which they pursue on a for-profit basis, though they do so through advisory or other funding agreements with not-for-profit entities. In other words, the representative entity itself will not show a profit from an action, but will be committed by contract to pay windfall profits (e.g. through contingency fees or funding agreements) to its lawyers, financiers, or other backers. There is growing evidence that Dutch claims foundations are being used exactly in this way and for this purpose, thereby entirely circumventing the safeguard against for-profit entities instigating actions.

Any new regime must require that the standing of representative entities be restricted to non-profit independent entities who are appropriately qualified and who have as their core objective the representation of consumers. In addition, to be effective, the relevant safeguards must prevent representative entities merely becoming a vehicle for those behind the entity, including profit motivated shareholders, members, lawyers, advisors, funders, financiers, or others (apart from the consumers themselves) who may stand to gain from any award of compensation.

Perhaps the surest way to guarantee that consumers will be the real beneficiaries of any collective actions for damages is to require that any awarded compensation be paid directly by defendants to the consumers themselves, and that only demonstrated, court-awarded costs would be paid to the representative entity. In a system where compensation is instead paid to representative entities for later distribution, the amounts awarded are far

more likely to be distributed first and foremost to investors, lawyers or funders without the benefit of the Court's supervision.

For more insights into European consumers' attitudes towards collective actions and litigation funding, please review the survey accessible at the following link:

<http://www.instituteforlegalreform.com/research/supporting-safeguards-eu-consumer-attitudes>

## 3.2 Proposals

The Fitness Check concluded that, in its current form, the ID is not sufficiently effective in meeting its objectives. The main obstacles to its effectiveness include the injunction procedure's **cost, length, complexity and limited effects** on alleviating the harm suffered by the affected consumers.

12 Having in mind the above objective of increasing the effectiveness of the ID, **do you agree** with the following statements?

|  | Strongly agree                   | Tend to agree         | Tend to disagree      | Strongly disagree                | Do not know           |
|--|----------------------------------|-----------------------|-----------------------|----------------------------------|-----------------------|
| The scope of the ID should be extended to all EU law relevant for the protection of the "collective interests of consumers" (areas going beyond the existing Annex I to the ID, e.g. passenger rights, energy services, telecommunications, data protection) | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Independent public bodies should be qualified entities   | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| Consumer organisations should be qualified entities  | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| Business associations should be qualified entities   | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| Qualified entities should meet independence criteria (e.g. representativeness of the interests affected, no conflict of interest)  | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| Qualified entities should benefit, under objective criteria, from facilitated access to justice if they are not able to pay the costs related to bringing the action   | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| Qualified entities should be able to seek injunctions and consumer redress within a single legal procedure   | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |

|  |                                  |                       |                       |                       |                       |
|--|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Courts/administrative authorities should have the power to require the trader to provide information in its possession   | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Courts/administrative authorities should have the power to invite the qualified entity and the trader to negotiate out-of-court an amicable settlement for the consumers' redress                                      | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The out-of-court settlement negotiated between the qualified entity and the trader should be subject of the approval of a court /administrative authority  | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Traders should be obliged to publicise the injunction order, redress order and approved settlement (e.g. on their website, in newspapers, via social media)  | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Traders should be obliged, where possible and proportionate, to individually inform all concerned consumers about the injunction order, redress order and approved settlement  | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Traders who do not comply with an injunction order, redress order or approved settlement, should face effective, proportionate and dissuasive penalties for non-compliance   | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Once the injunction order is issued, all affected consumers should be able to use the injunctions order as proof of the breach of EU law for their follow-on actions for damages                                       | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Follow-on actions for damages should always be available also in the form of collective action   | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| There should be maximum time-limits for all procedural steps, while leaving the necessary margin of discretion for courts and administrative authorities to take due account of the concrete circumstances of the case | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

13 Please explain your reply and list **any other procedural or practical elements** that could improve the effectiveness of the ID.

We believe that extending the ID mechanisms (current or proposed) to all EU law relevant to the protection of consumers would be premature. The proposals under consideration have the potential to generate exactly the class action



culture that Europe has assiduously sought to avoid until now. It is unnecessarily risky to create a universal class action mechanism in one step without first examining how a smaller scale measure is adopted and applied.

14 If the following procedural changes were introduced at EU-level, which elements would in your view **introduce added value in your Member State**, taking into account the nature and frequency of use of the procedures available in your Member State? (multiple options possible)

- The scope of the ID should include all EU law relevant for the protection of the "collective interests of consumers"
- Independent public bodies should be qualified entities
- Consumer organisations should be qualified entities
- Business associations should be qualified entities
- Qualified entities should meet independence criteria (e.g. representativeness of the interests affected, no conflict of interest)
- Qualified entities should benefit, under objective criteria, from facilitated access to justice if they are not able to pay the costs related to bringing the action
- Qualified entities should be able to seek injunctions and consumer redress within a single legal procedure
- Courts/administrative authorities should have the power to require the trader to provide information in its possession
- Courts/administrative authorities should have the power to invite the qualified entity and the trader to negotiate out-of-court an amicable settlement for the consumers' redress
- The out-of-court settlement negotiated between the qualified entity and the trader should be subject of the approval of a court/administrative authority
- Traders should be obliged to publicise the injunction order, redress order and approved settlement (e.g. on their website, in newspapers, via social media)
- Traders should be obliged, where possible and proportionate, to individually inform all concerned consumers about the injunction order, redress order and approved settlement
- Traders who do not comply with an injunction order, redress order or approved settlement, should face effective, proportionate and dissuasive penalties for non-compliance
- Once the injunction order is issued, all affected consumers should be able to use the injunctions order as proof of the breach of EU law for their follow-on actions for damages
- Follow-on actions for damages should always be available also in the form of collective action
- There should be maximum time-limits for all procedural steps, while leaving the necessary margin of discretion for courts and administrative authorities to take due account of the concrete circumstances of the case

15 Please explain your reply.

As above, it is essential that appropriate controls be placed on who may pursue collective actions. In addition, all sides should have nothing to fear from full court supervision over any settlement, specifically including supervision of how much compensation consumers will actually receive, as opposed to the amounts that will be obtained by lawyers, funders and other backers.

In the recent MasterCard case in the UK, the agreement entered into between the claimant lawyers and the third party funder included clauses which provided

that the more of any award that went “undistributed” to consumers, the more compensation the funder would receive. In other words, those financing the case had a very strong incentive to ensure through any means possible that even if the case was successful, consumers were not actually located and compensated. It is essential that Courts have an unrestricted view into who is really behind collective actions, and how their interests align or conflict with victims of infringements. In addition it is essential that Courts have the ability to prevent outcomes which allow third parties to capitalize on those infringements for their own ends.

16 Do you agree that **differences between national injunction procedures** cause the following problems?

|  | Strongly agree        | Tend to agree         | Tend to disagree      | Strongly disagree     | Do not know           |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Costs for traders engaging in cross-border trade due to the need to adapt to different national procedures                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for traders engaging in cross-border trade due to the unequal deterrent effect of national procedures                        | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for qualified entities that wish to bring injunctions before the courts/authorities of other Member States                   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Harm to consumers due the continuation of the infringement caused by the sub-optimal use of injunctions in cross-border situations | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

17 Please explain your reply, including any other problems not listed above.

### 3.3 Case study

#### **A hypothetical mass harm situation: an infringement of EU law affecting the collective interests of consumers**

A large producer and retailer of household appliances (Company X) is established in your Member State and sells its goods across all EU Member States. Company X produces and sells a fridge that is advertised as "complying with existing rules" and as "environmentally friendly" with a value of 500 EUR per fridge. Approximately 50 000 consumers in your Member State have already purchased this fridge, while a total of 8 000 000 consumers purchased the fridge across the EU. It turns out that the fridge sold by Company X does not meet existing rules and the fridge is not as environmentally friendly as advertised. Company X was deliberately misleading the consumers that bought and may still buy the

fridge, which may constitute an infringement of EU law, particularly of the rules that prohibit misleading advertising in the Unfair Commercial Practices Directive 2005/29/EC. Furthermore, there is considerable evidence that Company X was involved in a price-fixing agreement with other household appliances producers for this type of fridges.

In order to ensure the effectiveness of EU law and to protect the collective interests of 50 000 consumers in your Member State that already bought the fridge and consumers that may still buy this product, legal action must be taken by a qualified/representative entity against Company X.

**Based on the facts of this case study, please consider the hypothetical application of:**

**(1) the current procedural rules in your Member State;**

**(2) the impact of the new rules that could be in place following the envisaged revision of the Injunctions Directive under option A or option B.**

### 3.3.1 (1) Current situation under national rules

18 Under the current procedural rules of your Member State, if an **injunction action** was brought by a qualified entity, would you agree that it would be **likely to succeed** in effectively and efficiently stopping the infringement?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- No opinion / Do not know

19 Please explain your reply, referring to the **reasons for the success or failure**.

20 Under the current procedural rules of your Member State, if an **compensatory redress action** was brought by a qualified entity, would you agree that it would be **likely to succeed** in effectively and efficiently securing redress for consumers?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- No opinion / Do not know

21 Please explain your reply, referring to the **reasons for the success or failure**.

22 If the **injunctions procedure** would be likely to fail in effectively stopping the breach of law, which of the following aspects would **contribute significantly to its failure** in your Member State? (multiple answers possible)

- Not all areas of law covered by the procedure
- Too strict criteria for qualified entities
- Lack of funding for qualified entities
- Complexity of the procedures
- Length of the procedures
- Cost of the procedures
- Insufficient level of traders' compliance with the injunctions order
- Lack of effective scheme for execution of injunctions order
- Lack of measures ensuring that consumers are informed about the breach of law affecting them
- Lack of a possibility to seek injunctions and redress within a single procedure
- No opinion / Do not know

23 Please explain your reply and highlight **other contributing factors** that are not listed.

24 If the **collective compensatory procedure** would be likely to fail in effectively ensuring redress, which of the following aspects would **contribute significantly to its failure** in your Member State? (multiple answers possible)

- Not all areas of law covered by the procedure
- Too strict criteria for representative entities
- Lack of funding for representative entities
- Complexity of the procedures
- Length of the procedures
- Cost of the procedures
- Courts/authorities are not obliged to encourage out-of-court settlements between the representative entities and traders
- Approval of the out-of-court settlements between the representative entities and traders by court /authority is not regulated by national law
- Insufficient level of traders' compliance with the judgments/decisions providing for redress
- Lack of effective scheme for execution of judgments/decisions providing for redress
- Lack of measures ensuring that consumers are informed about the breach of law affecting them
- Lack of measures ensuring that consumers affected by the breach can rely on injunction orders to bring their follow-on redress actions
- No opinion / Do not know

25 Please explain your reply and highlight **other contributing factors** that are not listed.

26 Under the current procedural rules of your Member State, if action were to be taken to protect the collective interests of consumers (injunctions or compensatory procedures), which **costs do you consider to be highest** in such a case? (multiple answers possible)

-

Costs of preparation of the case (e.g. collecting information about harmed consumers, translation, publicity)

- Lawyers' fees
- Court/administrative fees
- Reimbursement of costs of the other party in case of loss
- Reimbursement of lawyers' fees of the other party in case of loss
- Costs of settling the dispute out-of-court
- Other (please explain below)
- No significant costs
- No opinion / Do not know

27 Please explain your reply.

28 If possible, please estimate the costs for each category.

You may wish to answer either in staff time or in amount in Euros, or both. Do not consider staff time for translation. If no staff time was involved, indicate '0'.

|   | Estimated amount of working hours of staff | Estimated amount in EUR |
|---|--|-------------------------|
| Costs of preparation of the case (e.g. collecting information about harmed consumers, translation, publicity) |  |                         |
| Lawyers' fees   |  |                         |
| Court/administrative fees   |  |                         |
| Costs of settling the dispute out-of-court  |  |                         |
| Other cost of action  |  |                         |
| Other financial risk related to the action  |  |                         |

29 Please explain your reply concerning the costs listed above.

30 Please explain how **court/administrative fees** are calculated in the **injunction procedure** in your Member State.

31 Please explain how **court/administrative fees** are calculated in the **collective compensatory redress** procedure in your Member State.

32 Can **lawyers' fees** be capped in the **injunction procedure** in your Member State?

- Yes
- No
- Do not know

33 If 'yes', please explain the method of capping the fees.

34 Can **lawyers' fees** be capped in the **collective compensatory redress** procedure in your Member State?

- Yes
- No
- Do not know

35 If 'yes', please explain the method of capping the fees.

36 Can the **cost of preparation of the case** be reimbursed in the **injunction procedure** in your Member State?

- Yes
- No
- Do not know

37 If 'yes', please explain the method of reimbursement.

38 Can the **cost of preparation of the case** be reimbursed in the **collective compensatory redress** procedure in your Member State?

- Yes
- No
- Do not know

39 If 'yes', please explain the method of reimbursement.

### 3.3.2 (2) New rules under option A

Please consider the following questions in light of the procedure, which has the following features (policy "option A"):

- The procedure covers all EU law relevant for the protection of the collective interests of consumers.
- Independent public bodies, consumer organisations and business associations are allowed to bring injunctions as qualified entities, subject to independence criteria.
- Access to justice is facilitated for qualified entities that are not able to fully cover litigation costs.
- Maximum time-limits for each stage of the procedure are defined by law, while leaving discretion for courts/administrative authorities to take due account of the concrete circumstances of the case.
- Courts/administrative authorities have the power to require the trader to provide information in its possession needed to assess the lawfulness of the practice subject to the injunctions procedure.
- The infringing trader is required to widely publicise about the injunctions order (e.g. website, newspapers, social media) and, where possible, to individually inform thereof all concerned consumers.
- Effective, proportionate and deterrent financial penalties are ensured in case of non-compliance by the trader with the outcomes of the procedure.
- All interested consumers can invoke the injunction order as proof of the breach of EU law in follow-on actions.

40 Under option A, what would be the **impact** of the introduction of the above-mentioned new rules on the following?

|  | Significant positive impact | Moderate positive impact | No impact | Moderate negative impact | Significant negative impact |
|--|-----------------------------|--------------------------|-----------|--------------------------|-----------------------------|
|  |                             |                          |           |                          |                             |



|   |                       |                       |                       |                       |                       |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Procedural efficiencies due to the collective resolution of mass claims                                       | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Increased deterrence of illegal behaviour by non-compliant traders  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| More level playing field for compliant traders  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Increased consumer awareness and empowerment due to the publicity requirements at all stages of the procedure | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Reduction of consumer detriment   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

41 Please explain your reply, including other impacts that were not listed, the reasons for your assessment and any evidence you might be aware of.

42 Under option A, what would be the **cost impact** of the introduction of the above-mentioned new rules on the following?

|  | Significant reduction of costs | Moderate reduction of costs | No impact             | Moderate increase of costs | Significant increase of costs |
|--|--------------------------------|-----------------------------|-----------------------|----------------------------|-------------------------------|
| Costs for qualified entities: legal advice costs   | <input type="radio"/>          | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/>         |
| Costs for qualified entities: litigation costs   | <input type="radio"/>          | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/>         |
| Costs for consumers: costs of seeking injunctions  | <input type="radio"/>          | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/>         |
| Costs for consumers: costs of seeking redress through follow-on actions (relying on injunction order as proof) | <input type="radio"/>          | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/>         |
| Costs for courts: implementation costs   | <input type="radio"/>          | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/>         |
| Costs for administrative authorities: implementation costs   | <input type="radio"/>          | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/>         |
| Costs for courts: running costs  | <input type="radio"/>          | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/>         |
|  |                                |                             |                       |                            |                               |

|   |                       |                       |                       |                       |                       |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Costs for administrative authorities: running costs   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for businesses: legal advice costs  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for businesses: litigation costs  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for businesses: insurance premium for coverage against claims in mass harm situations | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for business: publicity requirements concerning the injunction order                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for business: obligation to individually inform all concerned consumers               | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

43 Please explain your reply and the reasons for your assessment.

For ILR, the most significant aspect of the possibilities above is the reference to the possibility of access to justice being “facilitated for qualified entities that are not able to fully cover litigation costs”. Based on experience in other jurisdictions, financing is the single most significant lever which will either prevent or encourage litigation abuse, the growth in litigation culture, and the capture of the litigation system by private interests.

If the Commission has in mind that properly independent representative entities be facilitated through public funds, or be forgiven court fees and costs, or other means of public action to facilitate their ability to achieve compensation of consumers, ILR would strongly support such steps.

However, the EC should be under no illusions: its plans to expand the ID are being celebrated by the US class action bar, and by third party litigation funders. Their core model is to provide “access to justice” by researching, sourcing, instigating, financing and prosecuting class and mass actions, for which they will extract a fee, typically based on a percentage of some 30% to 50% of the amount awarded.

Unless regulated by the EU, the default position in every single member State is that this will be permitted, because no Member State currently regulates or prohibits this kind of financing (though many do restrict lawyer contingency fees). If abuse is to be prevented, it is critical that the EU’s collective redress model is not financed in this way.

44 Which **other significant impacts**, which are not listed above, do you expect from the introduction of the new rules of Option A?

45 What would be the impact of introducing the new rules of Option A on the **costs of your institution or business**?

- There will be no impact on my costs
- My costs will increase
- My costs will decrease
- Do not know

46 Please explain your reply and quantify to the extent possible.

47 Do you agree that these **costs are reasonable**, when taking into account the possible benefits for consumers?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- No opinion / Do not know

48 Please explain your reply.

49 If it is possible to quantify such costs, what would be the **estimated costs** of adjusting to the new rules of Option A **for your institution or business**?

You may wish to answer either in staff time or in amount in Euros, or both. "One-off costs" are the one-off resources you need to invest. "Annual costs" are the resources you need to invest on a regular basis to comply with rules. Do not consider staff time for translation. If no staff time was involved, indicate '0'.

|  | Estimated amount of working hours of staff | Estimated amount in EUR |
|--|--|-------------------------|
| Absolute costs for adjustment to the new rules for implementation ( <b>one-off costs</b> ) |  |                         |
| Absolute annual additional costs due to new rules ( <b>annual costs</b> )                  |  |                         |

50 Please explain how you calculated the costs.

### 3.3.3 (2) New rules under option B

Please consider the following questions in light of the procedure described as policy "option B", which **in addition to the features of policy option A**, has the following features concerning **redress**:

- A single procedure ("one stop shop") whereby qualified entities would be able to ask courts /administrative authorities for stopping a breach of the collective interests of consumers (injunction order) and for redress (redress order).
- The court/administrative authority would have the power to invite the qualified entity and the trader to negotiate an amicable settlement out-of-court.
- If settlement is reached it would be subject to the approval of the court/administrative authority.
- If no amicable settlement is reached or if it is not approved, the court/administrative authority would continue collective redress procedures according to national law.
- The infringing trader is required to widely publicise about the injunction/redress order and/or approved settlement (e.g. website, newspapers, social media) and, where possible, to individually inform thereof all concerned consumers.

51 Under option B, what would be the **impact** of the introduction of the above-mentioned new rules on the following?

|   | Significant positive impact | Moderate positive impact | No impact             | Moderate negative impact | Significant negative impact |
|---|-----------------------------|--------------------------|-----------------------|--------------------------|-----------------------------|
| Procedural efficiencies due to the collective resolution of mass claims | <input type="radio"/>       | <input type="radio"/>    | <input type="radio"/> | <input type="radio"/>    | <input type="radio"/>       |
| Increased deterrence of illegal behaviour by non-compliant traders      | <input type="radio"/>       | <input type="radio"/>    | <input type="radio"/> | <input type="radio"/>    | <input type="radio"/>       |
| More level playing field for compliant traders                          | <input type="radio"/>       | <input type="radio"/>    | <input type="radio"/> | <input type="radio"/>    | <input type="radio"/>       |
|   |                             |                          |                       |                          |                             |

|   |                       |                       |                       |                       |                       |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Increased consumer awareness and empowerment due to the publicity requirements at all stages of the procedure | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Reduction of consumer detriment   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

52 Please explain your reply, including other impacts that were not listed, the reasons for your assessment and any evidence you might be aware of.

The most significant of all of the Commission's statements above is that "if no amicable settlement is reached or if it is not approved, the court /administrative authority would continue collective redress procedures according to national law." This suggests that the procedural parameters under which compensation could be claimed would be left to the Member States. While fully appreciating the subsidiarity issues, it seems to ILR vital to include at least some basic minimum abuse safeguards in any new version of the ID which includes a damages component.

Some basic procedural parameters are already present in the Injunctions Directive (e.g. the qualification criteria for representative entities) so there is no subsidiarity reason why these cannot be expanded upon to take account of the new responsibilities that qualified entities would undertake.

Similarly, there are procedural safeguards in other EU legislation relevant to how consumers may be compensated for infringements of EU law (see, for example, the Competition Damages Directive 2014/104/EC).

As a model, the Commission should at a minimum include the safeguards identified in its own 2013 Recommendation on Collective Redress. It is clear that these safeguards have not been adopted voluntarily by the Member States since that Recommendation.

53 Under option B, what would be the **cost impact** of the introduction of the above-mentioned new rules on the following?

|  | Significant reduction of costs | Moderate reduction of costs | No impact             | Moderate increase of costs | Significant increase of costs |
|--|--------------------------------|-----------------------------|-----------------------|----------------------------|-------------------------------|
| Costs for qualified entities: legal advice costs | <input type="radio"/>          | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/>         |
| Costs for qualified entities: litigation costs   | <input type="radio"/>          | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/>         |
| Costs for consumers: costs of seeking redress    | <input type="radio"/>          | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/>         |
|  |                                |                             |                       |                            |                               |

|   |                       |                       |                       |                       |                       |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Costs for courts: implementation costs  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for administrative authorities: implementation costs  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for courts: running costs   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for administrative authorities: running costs   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for businesses: legal advice costs  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for businesses: litigation costs  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for businesses: insurance premium for coverage against claims in mass harm situations                       | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for business: publicity requirements concerning the injunction order, redress order and approved settlement | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for business: obligation to individually inform all concerned consumers                                     | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

54 Please explain your reply and the reasons for your assessment.

55 Which **other significant impacts**, which are not listed above, do you expect from the introduction of the new rules of Option B?

56 What would be the impact of introducing the new rules of Option B on the **costs of your institution or business**?

- There will be no impact on my costs
- My costs will increase
- My costs will decrease
- Do not know

57 Please explain your reply and quantify to the extent possible.

58 Do you agree that these **costs are reasonable**, when taking into account the possible benefits for consumers?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- No opinion / Do not know

59 Please explain your reply.



60 If it is possible to quantify such costs, what would be the **estimated costs** of adjusting to the new rules of Option B **for your institution or business**?

You may wish to answer either in staff time or in amount in Euros, or both. "One-off costs" are the one-off resources you need to invest. "Annual costs" are the resources you need to invest on a regular basis to comply with rules. Do not consider staff time for translation. If no staff time was involved, indicate '0'.

|  | Estimated amount of working hours of staff | Estimated amount in EUR |
|--|--|-------------------------|
| Absolute costs for adjustment to the new rules for implementation ( <b>one-off costs</b> ) |  |                         |
| Absolute annual additional costs due to new rules ( <b>annual costs</b> )                  |  |                         |

61 Please explain how you calculated the costs.

### 3.4 Policy paper / other comments

62 Please upload your policy paper or other comments in a Word or PDF file.

**3dedd266-f73c-4ef6-bffa-a0fa1776804d/Collective\_Redress\_Tourism\_-  
\_Preventing\_Forum\_Shopping\_in\_the\_EU\_\_October\_2017\_.pdf**

**680af816-c2e9-476b-85a2-37ec1f24c57b/The\_Growth\_of\_Collective\_Redress\_in\_the\_EU\_-  
\_A\_Survey\_of\_Developments\_in\_10\_Member\_States\_\_March\_2017\_.pdf**

### Contact

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