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This paper presents a first working analysis of the impact of policy options designed in the light of the replies to the Green Paper. It is a DG SANCO services document drafted as a basis for discussion at the hearing on 29 May 2009.

Stakeholders are invited to provide further information, preferably with concrete examples and/or figures, in order to allow adjusting, developing or completing the present paper. Further information on the concrete impact of each option on national redress systems would be welcome.

**The present paper serves as a discussion paper only to facilitate the debate at the hearing and does not in any way prejudge any future action of the Commission.**

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## **1. PROBLEM DEFINITION**

### **1.1. Introduction**

1. In the modern consumer oriented, globalised and digital economy accountability and confidence play a crucial role. Traders should be made accountable for their behaviour if that is detrimental for consumers. Measures to enhance confidence of consumers will contribute to the creation of healthy markets and therefore to innovation and competitiveness. In particular, access to redress by consumers when traders violate their rights promotes consumer confidence and is a stimulus for sound traders' performance.
2. Within the market a trend can be identified towards an increasing scaling up of mass claims. Expanding mass consumer markets with traders and consumers shopping cross-border and on the internet create a high potential for large groups of consumers harmed by the same or a similar illegal practice of a trader. These practices are no longer limited to breaches of traditional consumer law in the area of goods such as misleading advertising or the distribution of unsafe products. More or more illegal acts such as overcharging of billing or the lack to provide pre-contractual information become common in the services sector. They usually affect large numbers of consumers and seriously harm the trust in the market. Recent developments such as the infringement of privacy rules or aggressive commercial practices in the digital environment often focus on the most vulnerable consumers.
3. The present paper addresses these problems and explores proportionate responses to the emerging problem of mass claim cases. These responses have to be based on accessible, affordable and effective redress with minimal costs for all involved, providing compensation for legitimate claims, preventing unmeritorious claims and taking into account the legal traditions of the Member States.
4. Mass claim cases can affect a very large number of consumers. Although sometimes the harm may be low for the individual consumer, the aggregated amount of the damage faced by a very large group of consumers can be high for the size of the market. For example, a Dutch bank sold to 400.000 customers from various Member States a financial product the profits of which were supposed to reimburse a loan. The bank did not warn consumers explicitly and clearly about the risks involved in buying these financial products. A settlement between 165.300 Dutch clients and the bank was reached, providing partial compensation for the clients totalling €1.5 billion; foreign clients were not included in this compensation. A group of consumers in Portugal took action against a telecom company which had charged its 3 million clients a 'start-up fee'. Following their joint complaint, the Lisbon Court ruled that the charge was illegal and had to be refunded to the clients. The compensation awarded to consumers has been in the order of €70 million.
5. The lack of an effective legal framework enabling consumers to ensure adequate compensation in mass claim cases is detrimental to the market and creates a justice gap. The effect of a malpractice may be so widespread as to distort markets. The lack of an adequate legal framework has a negative impact on consumers' confidence when shopping at home as well as cross-border and on reputable businesses that suffer from

the unfair behaviour of competitors who refuse to play by the rules. Companies that infringe consumer protection legislation may gain illegal advantages on the market at the expenses of consumers and law abiding companies. The proper functioning of the retail Internal Market is weakened. Consumers do not reap all the advantages of a single market by not undertaking cross-border transactions; likewise, traders may not explore possibilities in new markets. The absence of compensation is due to the lack of efficient means of redress for mass claims, in particular for very low value claims, and to the weaknesses of the current legal framework. Finally, the diversity of the national provisions governing consumer redress for mass claims among Member States, but also within each Member State does not put all consumers and traders at an equal footing within the EU. Depending on where they are located, consumers and traders will have access or not to efficient means of redress for their consumer mass claims. This situation creates a justice gap.

## **1.2. Lack of efficiency of the current legal framework for mass claims**

6. In all Member States legal actions can be taken to stop an illegal practice by a trader which breached consumer protection law. Such actions can be used to stop an illegal practice that could harm or has harmed a group of consumers for breaches of consumer protection laws. For cross-border cases, a mechanism of cooperation through a network of consumer enforcement authorities exists in the EU<sup>1</sup>. Furthermore, a mechanism at EU level exists under which the consumer protection authorities and consumer organisations are recognised to take action for injunctive relief in another Member State<sup>2</sup>. However, such actions do not provide consumers with a compensation for the harmed suffered.
7. Currently, only thirteen Member States<sup>3</sup> have a system specifically designed to compensate a group of consumers who are harmed by a breach of consumer protection laws. These mechanisms, often judicial, are very different across Member States. Some of these procedures apply in very specific areas. In addition, their modalities are very different in relation to legal standing, opt-in/opt-out, funding and distribution of proceeds.
8. For example, in Germany there are three judicial collective redress mechanisms: a test case procedure in the area of financial securities; a representative action where consumers can assign their claims to a consumer organisation which would bring the cases to court and a skimming-off procedure in the area of unfair competition law which can be brought to court by consumer organisations. In Portugal, an opt-out collective action can be taken by a consumer, a group of consumers or a consumer organisation. In the Netherlands, the court can approve a collective settlement negotiated between a consumer association and the trader for the payment to be made to all the consumers harmed by an illegal practice of the trader. The settlement will be

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<sup>1</sup> Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, OJ L 364, 9.12.2004, p.1

<sup>2</sup> Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, OJ L 166, 11.6.1998, p. 51

<sup>3</sup> Austria, Bulgaria, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Portugal, Spain, Sweden and the UK

then binding on both the trader and the consumers affected, unless they opt-out<sup>4</sup>. According to a study launched by the Commission<sup>5</sup>, the existing schemes have diverse results: most have some elements that work and some that do not.

9. Very few Member States have also developed collective out-of-court dispute resolution mechanisms, also called Alternative Dispute Resolution (ADR) mechanisms. In Sweden and Finland, collective claims can be taken to the national complaint boards. While in Sweden such claims can be initiated by the consumer ombudsman, a consumer organisation or a wage-earners' organisation, it can only be initiated by the consumer ombudsman in Finland. In both Sweden and in Finland, these proceedings are based on an opt-out principle. The Swedish or the Finnish complaint boards issue a non-binding instrument in which they recommend how the dispute should be solved. In Slovenia, legislation is in preparation which envisages the creation of an arbitration board which can deal with collective claims.
10. Fourteen Member States do not have specific procedures at all to deal with mass claims. In those countries, consumers and traders exclusively depend on individual procedures. All Member States have individual court proceedings, but there are also other individual mechanisms that have been developed to ease consumers' access to justice, such as simplified court procedures for claims of small value or out-of-court dispute resolution mechanisms, such as mediation, conciliation or arbitration schemes.
11. Simplified individual court procedures can ease individual consumers' access to justice and exist in nearly every Member State<sup>6</sup> for national cases and in all Member States for cross-border cases<sup>7</sup>. Joining individual small claims proceedings may be an efficient means to deal with mass claims. However, they often apply below a certain threshold<sup>8</sup> and are only relevant for a limited number of consumers. Therefore, the usefulness of such a tool for national mass claims through such a procedure is limited. The possibilities to join individual cross-border proceedings are also very limited.<sup>9</sup>
12. Individual ADR may also ease individual consumers' access to justice. These proceedings are generally shorter and less costly for consumers<sup>10</sup> than court proceedings and their flexibility offers advantages in providing a tailored and specialised approach to a dispute. Individual consumers may be more likely to use such mechanisms. However, most of the existing mechanisms are not really designed for mass claims and important gaps still exist, both sector-specific gaps and gaps in geographical coverage in almost all Member States. The modalities of these

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<sup>4</sup> For a broader picture of the collective judicial redress scheme in the EU, see Study on the Evaluation of the Effectiveness and the efficiency of CR mechanisms in the European Union (Evaluation Study), p. 38  
<sup>5</sup> Evaluation Study, p. 47 and part II (country report)

<sup>6</sup> [http://ec.europa.eu/civiljustice/simplif\\_accelerat\\_procedures/simplif\\_accelerat\\_procedures\\_gen\\_en.htm](http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_gen_en.htm)

<sup>7</sup> Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p.1

<sup>8</sup> For instance, the Small Claims Regulation sets the threshold at €2000 for cross-border claims.

<sup>9</sup> See Article 28(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, OJ L 12, 16.1.2001, p. 1.

<sup>10</sup> Cf. average duration and costs of some existing out-of-court proceedings in the study "Analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings", Centre for European Economic Law Katholieke Universiteit Leuven, Belgium, 2007, p.179 to 187.

mechanisms also vary considerably from one Member State to another and even within one Member State.

13. For example, consumer ADR schemes are a rather recent development in most of the Member States of Central and Eastern Europe and the possibility to have recourse to ADR remains limited in some of these Member States. For example, only 12% of Bulgarian consumers, 29% of Romanian consumers or 17 % Slovakian consumers think it is easy to resolve a dispute with a seller through ADR<sup>11</sup>. In the Netherlands where ADR are well developed, 57% of the Dutch consumers think it is easy to resolve a dispute with a seller through ADR. However, even in Member States where ADR are well developed gaps remain. In the Netherlands, where more than thirty sector specific schemes operate under the supervision of the Stichting Geschillencommissie Consumentenklachten, some frequent disputes such as car rental are still not covered and in the air transport sector not all airline companies are member of the scheme. The provision of ADR for consumer problems depends therefore very much on the type of the problem faced and in which sector or country the problem arises.
14. In the light of the above, currently, consumers and traders have various possibilities to resolve problems involving a group of consumers. However, the range of available instruments depends on where consumers and traders are located. This means in practice that they may have at their disposal several instruments among which they can choose the most appropriate, or only very few which are not suited to the particular situation of a mass claim. This undermines the effectiveness of the redress framework at national level and in the EU. As a result, consumers and traders do not have the same possibilities and rights throughout the EU; everything depends on the places where they are located or where the trader is located. This justice gap is even more acute in cross-border cases where consumers of a Member State with a wide range of possibilities could be restricted to much more limited options because of a trader's location in another Member State. In addition, rogue traders may be tempted to establish themselves in Member States where the risk of facing actions is more limited.

### **1.3. Scale of the problem**

15. The Evaluation Study<sup>12</sup> estimated the average benefits to consumers who have defended their rights through a judicial collective redress mechanism to be in the order of €910 per year, ranging from €32 in Portugal to €1573 in the Netherlands. The total annual consumer benefit in Member States which have a collective redress system and for which data exists<sup>13</sup> is about €523 million. The study extrapolated these findings to those Member States which do not have a judicial collective redress scheme based on population size and GDP. The estimated detriment which consumers face in those Member States is at around €100 million and close to €384 for an individual consumer. These figures were based on 326 cases collected over ten years in 8 Member States which have had judicial collective redress mechanisms in place for

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<sup>11</sup> EB on consumer protection in the Internal Market, September 2008

<sup>12</sup> See footnote 4.

<sup>13</sup> Austria, Bulgaria, France, Germany, the Netherlands, Portugal, Spain and Sweden.

more than two years.<sup>14</sup> 10% of these cases have a cross-border element (i.e. some or all the consumers harmed were located in a country other than the trader's).

16. It should however be observed that the cases known so far are only the tip of the iceberg. The collective redress mechanisms of most of the 8 Member States concerned have been put in place rather recently and experiences are still fairly limited. The expected increase of cross-border and internet shopping will potentially lead to more mass claims, as will the further development of the services sector.
17. According to a recent estimate<sup>15</sup>, 100 million consumers in the EU each year have a problem with a trader, of whom 80 million make a complaint. While in 40 million cases a solution can be found, 20 million cases are abandoned after a first contact with the trader and 20 million cases are pursued through different means of consumer redress. This estimate would suggest that at least 40% of all problems (the 20 million cases not pursued and those 20 million cases not pursued after a first contact with the trader) do not find a solution.
18. The potential existence of mass claims can be illustrated by the following examples. An EU-led enforcement action revealed widespread abuse in the market for ring tones<sup>16</sup>. Over 60% of websites checked did present the required information, but hid it in the small print or made it hard to find. Goods and services were advertised as "free", but customers later found that there were charges or that they were tied into a contract. This initiative led for example the Dutch Consumer Authority to take action against this practice and fine a company a total of €76.000 for providing consumers with inadequate information.<sup>17</sup> Another EU-led enforcement action revealed that consumers were subject to unfair contract terms (e.g. pre-checked boxes for optional services) on nearly half of the airline ticket selling websites of 13 Member States.<sup>18</sup> Every year, German consumer organisations seek 1400 injunctions to stop illegal practices. In half of these cases, companies immediately sign so-called "cease and desist letters". Some 350 cases go to court, 90% of which are successful. Recently, the Italian Antitrust authority fined Barclays Bank a €1 million for unfair commercial practices. The bank prevented active portability and proposed more expensive mortgage substitution solutions. The bank did not provide appropriate advice to consumers; it was accessible only through a high tariff telephone number imposing extra financial obligations on the consumers. In these cases, not always data exist on the number of consumers harmed or of the eventual compensation obtained by the consumers concerned, as they are not compensated directly but need to take further steps. According to a study of the Dutch Consumer Authority, it is estimated that

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<sup>14</sup> In addition to Denmark, Finland, Greece and Italy which did not have relevant cases decided, the UK was excluded due to the lack of consistent data.

<sup>15</sup> Estimate based on Special Eurobarometer 298, p.50

<sup>16</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1169&format=HTML&aged=0&language=EN>

<sup>17</sup> [http://www.consumentenautoriteit.nl/English\\_summary/Press\\_releases/Press\\_release\\_archive\\_2008/Press\\_release\\_September\\_4\\_2008\\_Consumer\\_Authority\\_fines\\_ringtone\\_providers](http://www.consumentenautoriteit.nl/English_summary/Press_releases/Press_release_archive_2008/Press_release_September_4_2008_Consumer_Authority_fines_ringtone_providers)

<sup>18</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/722&format=HTML&aged=0&language=EN>



every year around 4,6 million consumers are victims of unfair commercial practices in the Netherlands.<sup>19</sup>

19. In some cases, however, information exists on the potential number of consumers suffering harm. The UK Office of Fair Trading (OFT) started an investigation on the grounds that UK banks allegedly systematically overcharged in an unfair manner an estimated number of several hundred thousand to several millions of consumers using overdrafts<sup>20</sup>. In Germany, 17.000 investors (out of 3 million investors concerned) claim that the German Telekom, when issuing shares, did not inform them correctly on its real estate holdings in its prospectus. The total value of the claims is €80 million; the average damage per capita is said to be around €4.700. In the UK, an injunction was recently granted against a trader misleading consumers by racing tipster mailings. The OFT estimated that more than 300.000 consumers responded to these mailings and the individual harm was £ 590.<sup>21</sup> Also in the UK, three major retailers are under investigation for selling leather sofas which contained a toxic chemical that caused people serious skin, chest and eye problems. An estimated 100 000 sofas were sold in the UK. In France, a similar investigation against a major furniture company selling leather sofa containing the same toxic chemical has begun; so far, 350 consumers are concerned. An investigation on toxic sofas has also been launched by the Belgian authorities. Victims have also been identified in Scandinavian countries.
20. Transport, package travel and tourism are sectors where consumers are increasingly likely to engage in cross-border activities and where the number of mass claims is also likely to increase. According to OFT research, 400.000 UK consumers every year are victims of bogus holiday clubs in Spain. The average victim loses £ 3000.<sup>22</sup> These cases also concern consumers of other Member States, such as Belgium, France and Sweden. Some 100 consumers were harmed when their flight from Paris to Vienna was cancelled and the airline refused to provide for alternative transport and accommodation<sup>23</sup>. A Spanish consumer organisation is preparing a collective action against an airline because Spanish and foreign consumers were harmed by cancellations and delays of flights at the Madrid airport.<sup>24</sup> Recently, some 15 000 investors claimed that an Austrian company allegedly misled them on the description of investment products. The total value of the claims is around €135 million. Around 5000 of the claimants come from Germany.<sup>25</sup>

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<sup>19</sup> [http://www.consumentenautoriteit.nl/English\\_summary/Survey\\_report\\_Unfair\\_Commercial\\_Practices\\_in\\_the\\_Netherlands.pdf\\_980kb](http://www.consumentenautoriteit.nl/English_summary/Survey_report_Unfair_Commercial_Practices_in_the_Netherlands.pdf_980kb)

<sup>20</sup> [http://www.offt.gov.uk/advice\\_and\\_resources/resource\\_base/market-studies/current/personal/personal-test-case;](http://www.offt.gov.uk/advice_and_resources/resource_base/market-studies/current/personal/personal-test-case;)<http://www.moneysavingexpert.com/reclaim/oft-bank-charges>  
<http://www.clickpress.com/releases/Detailed/77675005cp.shtml>

<sup>21</sup> <http://www.offt.gov.uk/news/press/2008/12-08>

<sup>22</sup> <http://www.offt.gov.uk/news/press/2008/65-08> and 67-08

<sup>23</sup> Evaluation Study, part III, Case from Austria

<sup>24</sup> [http://ec.europa.eu/consumers/redress\\_cons/collective\\_redress\\_en.htm](http://ec.europa.eu/consumers/redress_cons/collective_redress_en.htm)

<sup>25</sup> <http://www.ocu.org/derechos-del-consumidor-y-familia/accion-judicial-contra-fomento-e-iberia-por-el-caos-de-barajas-s434284.htm>

<sup>25</sup> Der Standard, 24 March 2009

#### 1.4. Reasons for deficiencies in the present redress systems

21. During the various formal and informal consultations of stakeholders, it became clear that the effectiveness of the legal framework enabling consumers to be adequately compensated in cases of mass claims is determined by various causes and drivers. These may vary depending on the value of each individual claim (low, medium, high). The main causes are the absence of consumers taking action, the lack of adequate instruments and the inefficiency of some existing instruments, in particular in cross-border situations.
22. The value of the claim is an important parameter when consumers decide whether to take action or not and how to act. Consumers are not likely to act when their claim is below a certain threshold. 11% of citizens from EU-15 indicated € 200 as the minimum amount for bringing a court case, for 18% it was €500 and for 18% it was € 1000<sup>26</sup>. The Problem Study indicates that the threshold for ADR is probably lower than the threshold for court proceedings but is still between € 50 and € 200. The thresholds vary among Member States, depending on the availability of specific procedures, the complexity of cases, whether litigation costs are high and the use of legal expenses insurance.
23. In mass claims with a very low or low value of the individual claim, consumers are, as shown above, not likely to act individually as this would not be economically efficient, either for consumers themselves or for the economy as a whole. In most cases with a very low or low damage rationally acting consumers would not be interested in pursuing their claim. In cases with an uncertain outcome this follows from a comparison of the expected litigation costs and the likely compensation. Even in cases with a higher expectation of winning, most consumers may behave in a risk-averse manner and even avoid the small risk of losing their case. Finally, every lawsuit entails psychological costs, which make it even more unlikely that consumers will pursue their low value claims.<sup>27</sup> Anticipating this passive behaviour of consumers, some traders may even have an incentive to infringe consumer rights and for some of them it may be strong enough to actually damage consumers, until they are stopped by court injunction, public pressure or a noticeable loss of custom. So even if there are effective ways to put an end to ongoing infringements, wrong-doing traders are still allowed to retain their illicit profits from past transactions. As long as this is the case, consumers are effectively deprived of their legal protection, competing law-abiding enterprises are unfairly disadvantaged and, finally, the economy as a whole is harmed. In cases where a significant number of consumers are harmed, it would be for the public benefit to remove this incentive to rogue trading.
24. In mass claims with a medium or high value of the individual claim, consumers are more likely to act individually. However, a high number of individual cases will be dealt with by traditional procedures, both judicial and non judicial, in a less efficient manner. Collective redress mechanisms, both judicial and non judicial, could be beneficial if they are designed in an appropriate manner, as they will reduce costs

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<sup>26</sup> EB on access to justice, Oct 2006

<sup>27</sup> See for example A. Duggan, *Consumer access to justice in common law countries: a survey of the issues from a law and economics perspective*, in: C. Rickett, T. Telfer, *International Perspectives on Consumers' Access to Justice*, Cambridge, 2003, pp. 46-50.

through economies of scale. For example, an Austrian consumer organisation took a collective action on behalf of 16 victims. The cost of this action was €65 000. In parallel, a consumer took an individual action for a total cost of €1 000. 16 individual actions would have cost €176 000. The savings due to the collective action were €110 000. In the Evaluation Study, a comparison of estimated litigation costs of claimants for collective and individual redress court cases based on hypothetical cases shows that collective redress mechanisms may significantly reduce the total litigation costs. The possible savings range between 46% and 99%<sup>28</sup>. Consumers also recognise the advantages of grouping together. 76% of consumers would be more willing to defend their rights in court if they could join together with other consumers<sup>29</sup>. However, not all consumers in the EU are in a position to use such mechanisms.

25. Even consumers in Member States with collective redress schemes face difficulties. The current schemes have shown weaknesses which limit the efficiency of such instruments. Three main categories of obstacles can be identified. First, whilst all existing collective redress mechanisms in the EU appeal to discourage unmeritorious claims by some sort of "gatekeeper procedure" and/or the application of the loser pays principle, the limited sources of funding collective redress actions and the financial risk linked to the application of the loser pays principle seem to constitute a serious obstacle for the use of such mechanisms. For instance, in Germany and Portugal the limited resources of consumer organisations seem to allow only a limited number of cases per year. Second, consumers in mass claims often are not aware of being part of a potential or already on-going action. There are two main reasons for this lack of awareness: consumers often are unaware that their rights have been infringed and that other consumers may be affected by such a breach. In addition, consumer organisations experience difficulties in informing potentially affected consumers about on-going proceedings<sup>30</sup>. For example, in France, for the "*action en représentation conjointe*" consumer organisations are not allowed to make public calls on television or radio, nor advertise such action by bills, leaflets and personal letters. Finally, in very low and low value cases the actual task of joining an action (i.e. time for signing up or to collecting the evidence, if still available) may be a barrier for consumers. The process of distributing the compensation may also for similar reasons be far from simple.
26. Harmed consumers with a residence in another Member State than the trader face additional difficulties. These difficulties include practical aspects such as language, a different legal system and higher costs. They may also face difficulties in joining a collective action because of their place of residence. For example, many consumer organisations are not entitled to represent consumers located in another Member State. BEUC, one of the European consumer organisations, in its reply to the Green Paper indicated that "*Out of 42 of their members, only a minority are entitled to act on behalf of foreign consumers*". In addition, the lack of awareness of potential or on-going actions could be even more acute. Finally, the rules on the determination of the competent jurisdiction and the applicable law may not be suited for cross-border mass claims.

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<sup>28</sup> Evaluation Study p. 63.

<sup>29</sup> EB on consumer protection in the Internal Market, September 2008

<sup>30</sup> Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems (Problem Study), p. 56.

## 1.5. Current lack of efficient remedies

27. Over the last fifteen years, 13 Member States introduced new means of handling, specifically, mass claims at national level. Although this development shows a certain trend in Member States to improving the effectiveness of their legal redress instruments, it is not likely that many other Member States will in the foreseeable future introduce similar judicial and non judicial collective redress schemes. This would mean that the diversity of situations between Member States having specific means designed for mass claims and those Member States where such means do not exist continues with the problems described above (point 25).
28. Some, but not all Member States which have introduced specific instruments for mass claims will revise their systems in the near future in order to make it more efficient. This would create a differentiation between those Member States having specific means to deal with mass claims which have become more efficient and those Member States which have not revised their systems. This would still mean that consumers in Member States having specific means to deal with mass claims would face differences in terms of efficiency depending on their residence. Finally, even those Member States which already have judicial collective redress systems and are currently assessing their systems, although they may adjust them in view of the experience gained, may not specifically address the cross-border dimension. As explained above (point 26), consumers who are located in Member States other than the trader's face additional difficulties in securing adequate compensation in a mass claim and may be treated differently compared to consumers of those Member States.
29. The result will be that consumers will not be able to enjoy a similar level of effective protection throughout the EU when they are part of a group of harmed consumers. At the same time, reputable businesses will not be able to benefit from a more level playing field and the uncertainty for consumers and traders created by the current differences between the national legal systems would persist. Therefore, individual action by Member States does not seem capable of addressing the problems described above.
30. The Community has already adopted some instruments related to consumer enforcement and redress at European level. Two Commission Recommendations facilitate the setting up of ADR. The recently adopted Directive on Mediation<sup>31</sup> promotes the amicable settlement of cross-border disputes by encouraging the use of mediation and by ensuring a sound relationship between the mediation process and judicial proceedings. The Injunctions Directive enables consumer associations and public authorities to seek an injunction to stop an illegal practice in another Member State. The Regulation on Consumer Protection Cooperation (CPC) enables public authorities to request their counterpart in another Member State to take investigation and enforcement measures. The Small Claims Regulation establishes a simplified European judicial procedure for cross-border claims below €2000.
31. The Brussels I Regulation on jurisdiction and recognition and enforcement of judgements as well as the Rome I/II Regulations on the applicable law for contractual

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<sup>31</sup> Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136, 24.5.2008, p. 3.

and non-contractual obligations may facilitate to a certain extent the use of the national and EU enforcement and redress instruments in cross-border situations. The Small Claims Regulation foresees that a judgement given in a Member State under the European Small Claims Procedure is automatically recognised and enforced in another Member State.

32. However, these tools are either not specifically designed with a focus on mass claims (i.e. Commission Recommendations on ADR and the Small Claims Regulation) or do not enable a group of consumers to receive compensation because of an illegal practice of a trader. The existing instruments related to jurisdiction and recognition and enforcement of judgements (i.e. Brussels I Regulation) as well as on applicable law (i.e. Rome I/II Regulations) do not contain specific provisions on mass claims. Therefore, the instruments currently available at EU level do not directly tackle the inefficiency of the current legal framework in compensating consumers in mass claims. The current situation with existing gaps and weaknesses of the existing system leads to uncertainty for consumers and traders and creates a justice gap, i.e. not all consumers and traders in the EU have the same possibilities to solve mass disputes efficiently.
33. As indicated above, reputable businesses throughout the EU currently are not able to benefit from a more level playing field and are confronted with the uncertainty created by the current differences between the national legal systems which they face in case of a mass claim. In the absence of an EU intervention there is a risk that the distortion of competition due to the inefficiency of the current legal framework as explained above increases due to the foreseeable increase of cross-border mass claims. This will be even more important in a market with increasingly harmonised consumer protection rules. The Directive on Unfair Commercial Practices which had to be implemented by 12 December 2007 and the Directive on Consumer Rights, once it is adopted, should complete the retail Internal Market and therefore encourage both consumers and traders to shop across border.

**2. THE POLICY OBJECTIVES**

<b>General objectives</b>	<b>Specific Objectives</b>	<b>Operational objectives</b>
To ensure access to effective means of redress for consumer mass claims across the EU	<p>To reduce consumer detriment resulting from not pursuing a mass claim</p> <p>To develop specifically designed instruments for mass claims</p>	<p>To increase the availability of means of redress for consumer mass claims.</p> <p>To improve the efficiency and cost-effectiveness of handling mass claims.</p> <p>To ensure that harmed consumers get adequate compensation.</p>

<p>To improve the functioning of the internal market by making it more competitive</p>	<p>To increase consumer confidence in shopping across the EU</p> <p>To increase the propensity of reputable traders to trade knowing that they and their competitors would be subject to similar redress procedures for mass claims throughout the EU.</p>	<p>To ensure that consumers throughout the EU can join a potential or on-going mass claim in any Member State</p> <p>To avoid unmeritorious claims</p> <p>To avoid competitive advantages to businesses that do not respect rules</p>
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34. The attainment of these objectives should enable both consumers and traders to benefit from an effective legal framework in case of mass claims wherever they are located in the EU.
35. The policy options will be assessed in the light of these general objectives which should be regarded as mutually reinforcing. If one policy option contributes to one of the general objectives (i.e. better access to efficient means of redress for mass claims) but falls short of achieving the other general objective (i.e. enhancing the better functioning of the Internal Market by making it more competitive), the overall assessment of such option would be less positive or negative and would finally not be chosen.

### 3. THE POLICY OPTIONS

#### 3.1. Identifying the policy options to be assessed

36. In order to address the problem defined above and in the light of the Green Paper consultation, a wide range of policy options has been assessed. The thorough analysis of the result of the consultation on the Green Paper shows that no single option as defined in the Green Paper was fully satisfactory to achieve the two main objectives envisaged. A common trend emerging from the consultation indicates that a combination of several instruments would be the most appropriate way forward.
37. The responses to the Green Paper show that consumer organisations generally favour an EU-wide judicial collective redress system. Industry takes a much more reserved position while showing some openness towards alternative dispute resolution. Member States seem to recognise the existence of a problem but take different views on the best way to tackle it.
38. If the development of efficient collective ADR mechanisms seems to be supported by a majority of respondents, some stakeholders, in particular consumer organisations, pointed out that such mechanisms can only function properly if they can rely on the existence of an efficient judicial collective redress system that could work as a "stick" to encourage use of the ADR mechanism. For example, there is an ongoing discussion

in the Netherlands on how to improve their existing collective judicial redress system by introducing a judicial element to give parties a stronger incentive to start negotiations. Industry mainly envisages ADR as a stand alone instrument and insists on its voluntary nature while consumer organisations consider ADR as an instrument that could be used as part of a judicial collective redress system or to organise the way the compensation is determined and distributed.

39. At the same time, industry also emphasises the need to respect the national legal traditions in the EU and the national judicial collective redress systems which already exist. In the light of the consultation on the draft benchmarks<sup>32</sup> that efficient judicial collective redress schemes should respect, a certain consensus appears on the following elements. All stakeholders, and in particular industry, insist on the necessity of safeguards to avoid abuses. Proceedings should be designed to efficiently manage cases and consumers should be aware of the potential and on-going collective actions. It should also be ensured that in cross-border mass claims consumers or their representatives can take part in potential or on-going collective actions in another Member State.
40. As regards the extension of the CPC Regulation consumer organisations are favourable. A number of the other stakeholders argue that this approach would be against the legal traditions of the Member States as in most Member States public authorities currently do not have powers to order compensation or skimming-off profits. However, the CPC Regulation leaves in Article 4 (3) to the Member States the choice to decide if competent authorities exercise such powers directly or by giving them a standing which they can exercise through an application to court. Therefore, the different approaches existing in some Member States can be accommodated. Other replies to the Green Paper underline the positive experiences made in some Member States (e.g. Denmark and the UK).
41. Option 2 of the Green Paper on co-operation between Member States overlaps to a large extent with option 4 of the Green Paper as both options are relying on collective judicial redress systems. The elements of these two options could be merged. Simplified court procedures, as mentioned under option 3 of the Green Paper, can ease individual consumers' access to justice and exist in almost every Member State. They may be used for handling certain types of mass claims (a limited number of harmed consumers and claims below a certain threshold) by joining individual proceedings. In order to work for cross-border cases, such a solution would imply a change to the Brussels I Regulation on jurisdictions<sup>33</sup>. As the issue of related actions is tackled by the Green Paper on the review of the Regulation on jurisdiction<sup>34</sup> this element is at present not yet finalised in this context. The Green Paper referred to the fact that consumers often are not aware of the means available to them to act in case of a problem with a trader. There are two main reasons for this lack of awareness: consumers often are unaware that their rights have been infringed and that several consumers may be affected by such a breach. In addition, consumer organisations experience difficulties in informing potentially affected consumers about on-going proceedings. As raised by some replies to the Green Paper increasing the awareness of

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<sup>32</sup> [http://ec.europa.eu/consumers/redress\\_cons/docs/feedback\\_benchmark\\_en.pdf](http://ec.europa.eu/consumers/redress_cons/docs/feedback_benchmark_en.pdf)

<sup>33</sup> See footnote 7

<sup>34</sup> COM(2009) 175 final of 21 April 2009

consumers on their rights is a broader issue than consumer redress for mass claims and therefore may be tackled in a larger context. The second element will be addressed as part of the efficiency of collective redress instruments.

42. In the light of the consultation to the Green Paper three main elements seem able to address various aspects of the problem: collective ADR combined with a judicial collective redress scheme as a "stick" and a strengthening of consumer protection authorities. Among the non-legislative instruments, the internal complaint-handling scheme and a standard model for collective ADR seem to be best placed. The following options group some of these various elements and are presented according to an increasing degree of EU involvement.

### **3.2. Description of the policy options to be assessed**

#### *3.2.1. Option 1: No action (baseline scenario)*

43. This option - as the baseline option - entails taking no actions at all at EU level with regards to the legal framework for consumers to get adequate compensation in case of mass claims. This means the resolution of mass claims will rely on the existing legal framework as described above.
44. Individual action by Member States could affect the status quo. Some Member States which already have means of redress specifically designed for mass claims may adjust them in view of the experience gained (e.g. the Netherlands, Germany or Sweden) or introduce a new system (e.g. France and Austria). A few Member States which currently do not have such means may consider introducing them (e.g. a judicial collective redress system in Belgium, a collective ADR scheme in Slovenia). This option will also mean waiting until more information is available on the effect of recently adopted both judicial (e.g. collective judicial redress system in Finland, Denmark, Greece and Italy) and non judicial (e.g. new individual ADR scheme in the Czech Republic) national measures and EU measures, such as the Small Claims Regulation and the implementation of the Directive on Mediation. The option implies a close monitoring of developments at national and EU level.
45. The assessment of the impact of option 1 examines the status quo and any developments considered likely to occur without any EU action.

#### *3.2.2. Option 2: Developing self-regulation*

46. This option foresees two non-legislative measures, namely the development of a standard model of collective ADR and a self-regulatory measure for traders to establish an internal complaint handling system.
47. The Commission would develop with stakeholders a standard model of collective ADR that respects the Commission Recommendations on ADR and encourage them to use it as a voluntary model when setting up collective ADR schemes.
48. The Commission would also encourage businesses, in collaboration with Member States and consumer organisations, to develop self-regulatory measures in the form of a code of conduct to set up complaint handling systems which are credible, work



efficiently and are subject to independent audit and monitoring. Such system should be designed to be able to manage efficiently mass claims.

3.2.3. *Option 3: Non-binding setting up of collective ADR schemes and judicial collective redress schemes in combination with additional powers under the Consumer Protection Cooperation Regulation*

49. This option includes a non-binding measure for setting up collective ADR schemes and judicial collective redress systems, including benchmarks that such judicial collective redress systems should respect. It is complemented by giving competent authorities additional powers such as a skimming-off power and a compensation order procedure for very low value cross-border claims by amending the Consumer Protection Cooperation Regulation. In addition, issues relating to the competent court and the applicable law would arise under this option (see point 62).
50. The non-binding instrument could encourage Member States to set up a collective ADR system that deals with all claims (all sectors and covering the entire territory), is open to consumers from all Member States and respects the existing ADR Non-binding instruments. Member States could either adjust and complete their existing schemes or establish one or more new schemes to deal with consumer collective claims. The availability of collective ADR mechanisms could be used for the purposes of early settlement before or during claims for collective redress in a judicial collective redress system or to organise the way the compensation is determined and distributed. The use of ADR would remain voluntary.
51. The non-binding instrument would also encourage Member States to set up judicial collective redress schemes where they do not exist or to complete or adapt their existing schemes. This non-binding instrument would include benchmarks that all these schemes should be encouraged to comply with.
52. The benchmarks would deal with the following issues at least:
  - Appropriate safeguards should be designed to avoid abuses (e.g. role of the judges).
  - Plaintiffs or entities representing plaintiffs located in another Member State should have access to the national collective redress schemes. National consumer organisations should be able to represent consumers located in another Member State.
  - Appropriate means of financing should be available (either through State funding or by awarding a share of the compensation to the representative entity to cover expenses necessarily incurred in connection with the relevant action).
  - Punitive damages should not be awarded.
  - Cases should be efficiently managed (e.g. length, bundling of cases).

53. This option also includes the development of a standard model of collective ADR together with stakeholders to be used as a voluntary model when there is a need to create new collective ADR.
54. Finally, this option foresees the strengthening of the powers of public authorities under the CPC Regulation for cross-border mass claims. Member States would have to implement both a skimming-off power and a compensation order power but would have the choice to decide if competent authorities could exercise such powers directly or via the court. The competent authorities would have the choice of deciding in cross-border mass claims made of very low value claims which power to use in a given case and whether to exercise these new powers directly or via a judicial redress scheme.
- 3.2.4. *Option 4: Binding setting up of collective ADR schemes and judicial collective redress schemes with benchmarks in combination with additional powers under the Consumer Protection Cooperation Regulation*
55. The difference between this option and option 3 is the obligation on Member States to set up collective ADR and judicial collective redress. This option foresees a binding measure to set up collective ADR and a judicial collective redress system and a non-binding measure to define benchmarks that judicial collective redress systems should respect. It is complemented by giving competent authorities additional powers such as a skimming-off power and a compensation order procedure for very low value cross-border claims by amending the Consumer Protection Cooperation Regulation. In addition, issues relating to the competent court and the applicable law would arise under this option (see point 62).
56. The binding instrument would create an obligation for Member States to set up a collective ADR system that deals with all claims (all sectors and covering the entire territory), is open to consumers from all Member States and respects the existing ADR Recommendations. Member States would have to adjust or complete their existing schemes or establish one or more new schemes to deal with consumer collective claims. The availability of collective ADR mechanisms could be used for the purposes of early settlement before or during a collective judicial redress action or to organise the way the compensation is determined and distributed. The use of ADR would remain voluntary. The binding instrument would also create an obligation for Member States to set up judicial collective redress systems where they do not exist or complete or adapt existing schemes.
57. A non-binding instrument would include benchmarks that all these schemes should be encouraged to comply with. These benchmarks would deal at least with the following issues:
- Appropriate safeguards should be designed to avoid abuses (e.g. role of the judges)
  - Plaintiffs or entities representing plaintiffs located in another Member States should have access to the national collective redress schemes. National consumer organisations should be able to represent consumers located in another Member State.

- Appropriate means of financing should be available (either through State funding or by awarding a share of the compensation to the representative entity to cover expenses necessarily incurred in connection with the relevant action).
  - Punitive damages should not be awarded.
  - Cases should be efficiently managed (e.g. length, bundling of cases).
58. This option also includes the development of a standard model of collective ADR together with stakeholders to be use as a voluntary model to create new collective ADR.
59. Finally, this option includes a Regulation to amend the CPC Regulation (see option 3).
- 3.2.5. *Option 5: An EU-wide judicial collective redress mechanism including collective ADR*
60. This option foresees a binding instrument establishing a detailed harmonised EU-wide judicial collective redress mechanism including collective ADR.
61. The binding instrument would create an obligation for Member States to set up a collective ADR system that deals with all claims (all sectors and covering the entire territory), is open to consumers from all Member States and respects the existing ADR Recommendations. Member States would have to adjust or complete their existing schemes or establish one or more new schemes to deal with consumer collective claims. The availability of collective ADR mechanisms could be used for the purposes of early settlement before or during a collective judicial redress system or to organise the way the compensation is determined and distributed. The use of ADR would remain voluntary.
62. The binding instrument would ensure that all Member States set up a judicial collective redress mechanism with harmonised features. The mechanism chosen would be a test case procedure with the following main features:
- Financing: the test case procedure constitutes the alternative which mitigates the funding problems which other types of procedures face. This is due to the fact that costs arise only for one case, i.e. the test case, and follow-up procedures for individual consumers for claiming the compensation should be less costly (see also point 24). Plaintiffs should be able to secure compensation for court and lawyers' fees as well as indispensable preparatory costs, but not more. The threshold for the number of litigants to launch such a procedure should be low (e.g. 10).
  - Standing: the test case procedure could be introduced by a consumer, a consumer organisation or a competent authority like an ombudsman on behalf of a number of harmed consumers. In order to balance the right of access with the risk of excessive litigation, consumer organisations should only be able to represent consumers if they fulfil certain certification criteria. Such organisations are mutually recognised by Member States.

- Avoid unmeritorious claims: in addition to the certification criteria for consumer associations, the court would be awarded a large discretion over the admissibility of such procedure and therefore would play the role of the gatekeeper by deciding whether a case is suitable for such a procedure.
  - Effect of the judgement: the effect of the judgement could be extended to all other consumers in the EU which have been harmed by the same practice and who identified themselves after the judgement. This means in practice that the issue of establishing the illegal practice would be decided in the test case procedure. Consumers would only have to undertake in a second step individual follow-up procedures dealing with issues proper to their case, for example establishing that they have been harmed by this illegal practice (causal link), verifying the application of prescription rules and to calculate the individual compensation.
  - Distribution of compensation: the court would order the trader to inform all possible victims if they are known to the trader and/or advertise the court decision and organise the way the compensation of consumers is determined and distributed, if needed via ADR. In order to achieve this, effective, dissuasive and proportionate sanctions for non-compliance would be needed. The consumer would always have the possibility to begin a follow-up procedure for individual compensation.
  - Competent court: in order to facilitate the handling of the case, the competent court should be the court of the Member State where the defendant is domiciled or the court of the Member State where the market is most affected by the illegal practice for the test case and the court of the Member State where the consumer is domiciled for the follow-up procedure. An adaptation of the Brussels I Regulation would be necessary.
  - Applicable law: in order to facilitate the handling of the case, the applicable law should be the law of the Member State where the market is most affected for the test case and the law of the Member State where the consumers have their habitual residence for the follow-up procedure. An adaptation of EU instruments of private international law would be necessary.
63. This option also includes the development of a standard model of collective ADR together with stakeholders to be used as a voluntary model when there is a need to create a new collective ADR.
64. This option does not include an amendment of the CPC Regulation. As a detailed harmonised EU-wide judicial collective redress mechanism would be established, the envisaged test case procedure could also deal with very low value cases and there would not be a need for another instrument.

## 4. ANALYSIS OF IMPACT

### 4.1. Assessment criteria

65. A multi-criteria analysis was used to assess and compare the impact: each option was assessed against a set of criteria relating to different potential benefits and costs. These are explained in more detail below.

#### 4.1.1. *Benefits*

##### **To increase the availability of means of redress for consumer mass claims**

66. This includes also the possibility for claimants or their representatives located in another Member State to have access to national collective redress schemes. Options will score higher to the extent that a group of consumers who are harmed by a trader has more possibilities of bringing together a claim. This is particularly relevant for harmed consumers with only small claims. It will also score higher the better the cross-border dimension is addressed.

##### **To improve the efficient handling of mass claims**

67. Efficient handling of mass claims means avoiding unnecessary delays and multiple proceedings.

68. Options will score higher to the extent that they allow higher efficiency gains. As the judicial system should not be overburdened, options will also score higher to the extent they allow cases to be settled out of court.

##### **To ensure adequate compensation of consumers**

69. Adequate compensation means that all harmed consumers get full compensation for the harm suffered.

##### **Avoid unmeritorious claims**

70. The purpose of this criterion is to measure to which extent the option prevents unmeritorious claims thereby discouraging a litigation culture. Options score higher to the extent they address this question with a greater chance of success. Options will score lower to the extent they offer claimants inappropriate incentives.

##### **A more level playing field**

71. For businesses, exposure to mass claims may remove a competitive disadvantage of reputable businesses compared to businesses that do not respect the rules. Fair competition on the Internal Market would therefore require comparable exposure to mass claims, which can be brought about only by similar means, both judicial and non judicial, to handle mass claims.

72. Options will score higher to the extent that they create a level playing field in Europe for defendants in consumer mass claims.

#### 4.1.2. *Costs*

##### **Litigation costs**

73. This category of costs covers both the litigation costs for parties to proceedings (both settlement costs and costs incurred when the case is brought to court) and the enforcement costs for public authorities (such as courts and responsible authorities). It also includes insurance costs (liability, legal expenses). Options will score higher on these costs to the extent that they offer incentives to litigate and/or suggest measures that increase the costs of litigation for parties or for public authorities (e.g. need for more resources).

##### **Implementation costs**

74. Implementation costs mean mainly costs incurred by national public authorities to adapt to new rules and to run national systems. Some costs for setting up new mechanisms, such as complaint handling system and/or ADR may also concern businesses. Although real, at least some of these costs are transitory. Options will score high on these costs to the extent that they lead to a considerable change in the regulatory framework.

#### 4.1.3. *Other impacts*

75. Apart from these categories of costs and benefits, the different options are assessed according to their impact on consumers and SMEs on the one hand and on macro-economic variables, such as competitiveness, innovation, growth and jobs in the whole Internal Market, on the other. Options that are more likely to achieve these results are therefore more likely to contribute positively to growth and employment. Such positive overall effects are likely to outweigh certain negative effects in those rare cases where the breach of consumer protection rules and the resulting liability for civil damages pose a financial threat to the survival of the infringing firm.

#### **4.2. Assessment of the options**

76. This section describes, in the form of tables, the positive and negative impacts that Options 1 to 5 would be likely to have, if implemented.
77. For the purposes of the discussion of this paper, the rating of the impacts has not yet been done as it may evolve further as part of the consultation process.

##### 4.2.1. *Option 1*

**Table 1 – Benefits of Policy Option 1**

<b>Benefits achieved/ problem addressed</b>	<b>Impact: zero (0) to high (✓✓✓✓✓)</b>	<b>Explanation of rating and aspects of the policy option most relevant to the benefits</b>
1. To increase the availability of means of redress for		Small improvements due to the Small Claims Regulation and the Mediation Directive, but they are not specifically designed for mass claims. Some improvements due to some changes in national CR systems (both adaptations of existing ones and the introduction of new ones). Such changes, however, are not

consumer mass claims		likely to tackle specific issues related to the cross-border element of mass claims.
2. To improve the efficient handling of mass claims		Depends entirely on national systems. The Evaluation study shows that all existing CR schemes have some elements that work and some that do not. Some improvements possible as some Member States are reviewing their collective redress schemes or plan to introduce new ones, also in the light of experience of other Member States (e.g. Belgium).
3. To ensure adequate compensation of consumers		Depends entirely on national systems. Some improvements possible. Some of the current CR schemes do not lead to the compensation of consumers (e.g. skimming-off in Germany, damages action taken for breach of the collective interest in France). Some schemes do not lead to the compensation of consumers in practice and they are rarely used due to their complexity (e.g. "action en représentation conjointe" in France).
4. Avoid unmeritorious claims		Depends entirely on national systems. According to the Evaluation study none of the existing national CR scheme has led to abuses. All the existing schemes contain safeguards.
5. A more level playing field		Little progress in relation to small claims and mediation, but main focus on individual claims and little impact on mass claims. Some gradual convergence might occur through an exchange of experiences between Member States. Substantial differences remain in relation to mass claims and various ways of dealing with them and could even become more important if more Member States act individually. In particular, ADR is not likely to develop much further, without a specific incentive through a legislative instrument.

**Table 2 – Costs of Policy Option 1**

<b>Costs</b>	<b>Costs: zero (0) to high (xxxxx)</b>	<b>Explanation of rating and aspects of the policy option most relevant to the costs</b>
1. Litigation costs		Depends on the evolution of the number of mass claims that will be pursued as a result of the introduction of new national CR systems or changes to existing ones. Increase, if any, would seem rather limited. Reputable business should not face any additional costs; all existing CR schemes show that sufficient safeguards are included to avoid abuses. There is no evidence that prices of insurance policies increased in those Member States where judicial CR schemes have been introduced (Evaluation Study, p. 78).
2. Implementation costs (including running costs)		Relatively low. Some costs due to the implementation of new measures (national collective redress systems or creation of new ADR by industry, consumer organisation or public authorities).

**Table 3 – Other impacts of Policy Option 1**

<b>Other impacts</b>	<b>Benefit: zero (0) to high (vvvvvv)</b>	<b>Explanation of rating and aspects of the policy option most relevant in this context</b>
1. Positive impact on SMEs and consumers		Consumers and SMEs will continue to suffer from persisting legal uncertainty. Small improvements due to the Small Claims Regulation, the Mediation Directive and some changes in national systems.
2. Likely macro-economic		Negligible contribution.

impact		
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#### 4.2.2. Option 2

**Table 4 – Benefits of Policy Option 2**

<b>Benefits achieved/ problem addressed</b>	<b>Impact: zero (0) to high (✓✓✓✓✓)</b>	<b>Explanation of rating and aspects of the policy option most relevant to the benefits</b>
1. To increase the availability of means of redress for consumer mass claims		<p>The model may encourage the creation of collective ADR mechanisms, in particular in Member States where no ADR mechanisms exist. But as the standard model is voluntary, the amount of Member States following-up is difficult to foresee. This model will be particularly adapted to cross-border situations.</p> <p>The internal complaint-handling system would encourage the development of a more consumer-oriented service of a higher companies, in particular SMEs, as currently many companies do not have such a systematic procedure.</p>
2. To improve the efficient handling of mass claims		<p>The model will be designed to deal efficiently with mass claims and may encourage the creation of efficient collective ADR mechanisms. But as the standard model is voluntary, the amount of follow-up action is difficult to foresee.</p> <p>The internal complaint-handling system would improve the way the first contact between the trader and the consumers take place. This first contact is a key element of consumer redress; a high number of complaints are solved at this stage. It would fit for all types of claims.</p>
3. To ensure adequate compensation of consumers		<p>The possibility of consumers to get compensation via one of both instruments will depend on their existence and the willingness of both parties to settle. But there is no strong incentive that ADR is used whenever possible.</p>
4. Avoid unmeritorious claims		<p>The voluntary nature both of ADR and the internal complaint-handling system will act as gatekeeper.</p>
5. A more level playing field		<p>Impact will depend on whether businesses follow up on the voluntary measures. Some incentives (e.g. "good reputation") exist for companies to settle claims early and out-of-court. Standard model could serve as a starting point (summarising "good practices") for national ADR mechanisms starting to converge more.</p>

**Table 5 – Costs of Policy Option 2**

<b>Costs</b>	<b>Costs: zero (0) to high (xxxxx)</b>	<b>Explanation of rating and aspects of the policy option most relevant to the costs</b>
1. Litigation costs		<p>Limited as both instruments should lead to direct contacts between the parties. Maybe some fees for the functioning of the ADR mechanism.</p>
2. Implementation costs (including running costs)		<p>Costs for businesses, consumer organisations and/or public authorities depend on the shape and funding system of the ADR mechanisms that would be proposed by the standard model. Costs for the EU of bringing together stakeholders to elaborate the standard model.</p> <p>Costs for businesses to set up and run internal complaint-handling systems which could be relatively important, in particular for SMEs. But companies may benefit from such mechanisms which solve disputes at an early stage. Costs for public authorities, both national and at EU level, depend on the level of involvement in the</p>



		development of the code of conduct and the monitoring.
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**Table 6 – Other impacts of Policy Option 2**

Other impacts	Benefit: zero (0) to high (✓✓✓✓✓)	Explanation of rating and aspects of the policy option most relevant in this context
1. Positive impact on SMEs and consumers		Consumers and SMEs may benefit from some convergence as regards ADR.
2. Likely macro-economic impact		Negligible contribution

4.2.3. Option 3

**Table 7 – Benefits of Policy Option 3**

Benefits achieved/ problem addressed	Impact: zero (0) to high (✓✓✓✓✓)	Explanation of rating and aspects of the policy option most relevant to the benefits
1. To increase the availability of means of redress for consumer mass claims		<p>The amount of collective ADR mechanisms and judicial CR systems available should increase to some extent. The fact that Member States are encouraged via a non-binding instrument creates an incentive for them. Although it is likely that not all of them will do so in all areas and for all claims, potentially in 25 Member States (except Sweden and Finland) collective ADR mechanisms could be set up or adjusted and in 14 Member States a CR scheme could be created as well as some of the 13 Member States with a CR scheme may adjust it. The non-binding instrument may encourage Member States to adjust or create mechanisms that are suitable for cross-border cases. In both cases, the implementation will be in the hands of the Member States.</p> <p>A specific emphasis will be put on cross-border mass claims via the CPC. A skimming-off procedure as well as a compensation order will be available in all Member States for such claims. However, it will be limited to the cross-border claims within the scope of the CPC Regulation.</p>
2. To improve the efficient handling of mass claims		Combining ADR with a judicial redress element which may provide effective redress if the defendant does not commit to the ADR mechanism will increase the likelihood that ADR is used. In addition, the benchmarks defined for CR schemes could encourage 13 Member States to improve the efficiency of their existing CR schemes and 14 Member States to create an efficient CR scheme. In all Member States, competent authorities would be able to act in cross-border situation upon breaches of consumer law which otherwise would not be followed up by consumers.
3. To ensure adequate compensation of consumers		Efficient compensation is likely to increase due to the development of new instruments in the Member States. But gaps will remain and some consumers may not get compensation. A skimming-off procedure via CPC may be an effective tool for very low/ low claims, but consumers will not receive compensation. On the other hand, introducing a compensation order procedure via CPC should enable consumers to get redress for very low and low claims.
4. Avoid unmeritorious		The specific benchmark on this issue in the non-binding instrument should put emphasis on this aspect and ensure that all Member States, as it is currently the case, design any new judicial CR scheme in the appropriate way to discourage

claims		unmeritorious claims. In the case of CPC, the competent authorities would act as gatekeeper.
5. A more level playing field		Due to an increase in the availability of instruments reputable businesses could benefit from a more playing field. But differences among Member States will remain. A skimming-off power could have a deterrent effect on wrong-doers.

**Table 8 – Costs of Policy Option 3**

Costs	Costs: zero (0) to high (xxxxx)	Explanation of rating and aspects of the policy option most relevant to the costs
1. Litigation costs		<p>In view of a possible increase of the amount of mass claims pursued, making collective ADR and efficient judicial CR schemes available at the same time should limit the increase of litigation costs for both consumers and reputable businesses. Parties would be encouraged to settle more often and this would reduce the litigation costs. The creation of new CR schemes or the adjustment of existing ones will, if cases are brought to court, allow some possible reductions of litigation costs resulting from the grouping of cases. Creating new powers for competent authorities may increase their litigation costs, but may be compensated or at least reduced by the gains made through the skimming-off.</p> <p>Reputable business should not face any additional costs; all existing CR schemes show that sufficient safeguards are included to avoid abuses. There is no evidence that prices of insurance policies increased in those Member States where judicial CR schemes have been introduced (Evaluation Study, p. 78).</p>
2. Implementation costs (including running costs)		<p>Possibly important costs for Member States who have to create collective ADR and CR; more limited in those Member States where such instruments already exist as only adjustments may be necessary. There may be some savings in the long-term due to the higher efficiency for the judiciary. Creating new powers for competent authorities may increase their running costs, but may be compensated or at least reduced by the gains made through the skimming-off. Possible costs for businesses and/or consumer organisations if they are involved in the setting-up and running of ADR. Costs for the EU to develop standard model, monitoring of the non-binding instruments and for the coordination under the CPC Regulation.</p>

**Table 9 – Other impacts of Policy Option 3**

Other impacts	Benefit: zero (0) to high (vvvvvv)	Explanation of rating and aspects of the policy option most relevant in this context
1. Positive impact on SMEs and consumers		Consumers and SMEs may benefit from a moderate level of convergence of the various instruments. SMEs may be more vulnerable by an increase of the number of mass claims pursued. Traders will pass on their increased costs (through price increases for goods and services) to consumers.
2. Likely macro-economic impact		

#### 4.2.4. Option 4

**Table 10 – Benefits of Policy Option 4**

Benefits achieved/	Impact: zero (0) to high	Explanation of rating and aspects of the policy option most relevant to the benefits

<b>problem addressed</b>	(✓✓✓✓✓)	
1. To increase the availability of means of redress for consumer mass claims		All MS will have to set up collective ADR and/or adjust their national ADR mechanisms to mass claims (this would involve 25 Member States) as well as to set up judicial CR systems (14 Member States) and/or adjust their existing ones (13 Member States). This would cover all consumer claims, in particular cross-border claims. In both cases, the implementation of details will be in the hands of the Member States and will respect existing legal traditions.  A specific emphasis will be put on cross-border mass claims via the CPC. A skimming-off procedure as well as a compensation order will be available in all Member States for such claims. However, it will be limited to the cross-border claims within the scope of the CPC Regulation.
2. To improve the efficient handling of mass claims		Combining ADR with a judicial redress element which may provide effective redress if the business party does not commit to the ADR mechanism will increase the likelihood that ADR is used. As all Member States will set up both instruments, the benchmarks defined for judicial CR schemes should encourage 13 MS to improve the efficiency of their existing CR schemes and 14 Member States to create an efficient judicial CR scheme. However, this benchmark is only non-binding and the concrete impact will depend on the way Member States implementing it in practice. In view of the experience with existing systems, the efficiency of any system will entirely depend on the respect of this benchmark. In all Member States, competent authorities would be able to act in cross-border situation upon breaches of consumer law which otherwise would not be followed up by consumers.
3. To ensure efficient compensation of consumers		Efficient compensation is likely to increase significantly due to the development of new instruments in the Member States covering all consumer claims, including cross-border claims. This should increase the number of consumers getting compensation. A skimming-off procedure via CPC may be an effective tool for very low/ low claims, but consumers will not receive compensation. On the other hand, introducing a compensation order procedure via CPC should enable consumers to get redress for very low and low claims.
4. Avoid unmeritorious claims		The specific benchmark on this issue in the non-binding instrument should put emphasis on this aspect and ensure that all Member States, as it is currently the case, design their new judicial CR scheme in the appropriate way to discourage unmeritorious claims. In the case of CPC, the competent authorities would act as gatekeeper.
5. A more level playing field		Due to a significant increase in the availability of instruments reputable businesses are likely to benefit from a high level of similar rules. Some differences among Member States will remain. A skimming-off power could have a deterrent effect on wrong-doers.

**Table 11 – Costs of Policy Option 4**

<b>Costs</b>	<b>Costs: zero (0) to high (xxxxx)</b>	<b>Explanation of rating and aspects of the policy option most relevant to the costs</b>
1. Litigation costs		In view of the likely increase of the amount of mass claims pursued, making collective ADR and efficient judicial CR schemes available at the same time should limit the increase of litigation costs for both consumers and reputable businesses. Parties would be encouraged to settle more often and this would reduce the litigation costs. The creation of new CR schemes or the adjustment of existing ones will, if cases are brought to court, allow some possible reductions of litigation costs resulting from the grouping of cases. Creating new powers for competent authorities may increase their litigation costs, but may be compensated or at least reduced by the gains made through the skimming-off.

		Reputable business should not face any additional costs; all existing CR schemes show that sufficient safeguards are included to avoid abuses. There is no evidence that prices of insurance policies increased in those Member States where judicial CR schemes have been introduced (Evaluation Study, p. 78).
2. Implementation costs (including running costs)		Important costs for MS who have to create collective ADR and CR; more limited in those MS where such instruments already exist as only adjustments may be necessary. There will be some savings in the long-term due to the higher efficiency for the judiciary. Creating new powers for competent authorities may increase their running costs, but may be compensated or at least reduced by the gains made through the skimming-off. Possible costs for businesses and/or consumer organisations if they are involved in the setting-up and running of ADR. Costs for the EU to develop standard model, monitoring of the non-binding/binding instrument and for the coordination under the CPC Regulation.

**Table 12 – Other impacts of Policy Option 4**

Other impacts	Benefit: zero (0) to high (✓✓✓✓✓)	Explanation of rating and aspects of the policy option most relevant in this context
1. Positive impact on SMEs and consumers		SMEs and consumers are likely to benefit most from a moderate level of convergence of the various instruments. SMEs may be more vulnerable by an increase of the number of mass claims pursued. Traders will pass on their increased costs (through price increases for goods and services) to consumers.
2. Likely macro-economic impact		

#### 4.2.5. Option 5

**Table 13 – Benefits of Policy Option 5**

Benefits achieved/ problem addressed	Impact: zero (0) to high (✓✓✓✓✓)	Explanation of rating and aspects of the policy option most relevant to the benefits
1. To increase the availability of means of redress for consumer mass claims		All MS will have to set up collective ADR and/or adjust their national ADR mechanisms to mass claims (this would involve 25 Member States) as well as to set up a harmonised judicial CR system (27 Member States). This would cover all consumer claims, both national and cross-border. Member States will have to implement a detailed harmonised scheme into their national judicial system.
2. To improve the efficient handling of mass claims		Combining ADR with a judicial redress element which may provide effective redress if the business party does not commit to the ADR mechanism will increase the likelihood that ADR is used. The harmonised scheme has been designed to tackle the main problems identified above (see point 62).
3. To ensure efficient compensation of consumers		Efficient compensation is likely to increase significantly due to the development of new instruments in the Member States covering all consumer claims, including cross-border claims. This should increase the number of consumers getting compensation.
4. Avoid		Under the harmonised system the court would act as gatekeeper in addition to the

unmeritorious claims		accreditation criteria for consumer organisations.
5. A more level playing field		Due to a significant increase in the availability of instruments reputable businesses are likely to benefit from a high level of similar rules. The harmonised judicial CR scheme will increase the level of legal certainty for businesses and consumers.

**Table 14 – Costs of Policy Option 5**

<b>Costs</b>	<b>Costs: zero (0) to high (xxxxx)</b>	<b>Explanation of rating and aspects of the policy option most relevant to the costs</b>
1. Litigation costs		In view of the likely increase of the amount of mass claims pursued, making collective ADR and efficient judicial CR schemes available at the same time should limit the increase of litigation costs for both consumers and reputable businesses. Parties would be encouraged to settle more often and this would reduce the litigation costs. The single EU-wide judicial CR scheme will, if cases are brought to court, allow some possible reductions of litigation costs resulting from the grouping of cases.  Reputable business should not face any additional costs; all existing CR schemes show that sufficient safeguards are included to avoid abuses. There is no evidence that prices of insurance policies increased in those Member States where judicial CR schemes have been introduced (Evaluation Study, p. 78).
2. Implementation costs (including running costs)		Very costly change for practically all Member States as all measures under this option require significant changes to the law of practically all Member States; slightly less costly for those Member States which already have collective ADR. There will be some savings in the long-term due to the higher efficiency for the judiciary. Possible costs for businesses and/or consumer organisations if they are involved in the setting-up and running of ADR. Costs for the EU to develop standard model, monitoring of the non-binding/binding instrument.

**Table 15 – Other impacts of Policy Option 5**

<b>Other impacts</b>	<b>Benefit: zero (0) to high (vvvvvv)</b>	<b>Explanation of rating and aspects of the policy option most relevant in this context</b>
1. Positive impact on SMEs and consumers		SMEs and consumers are likely to benefit most from a moderate level of convergence of the various instruments. SMEs may be more vulnerable by an increase of the number of mass claims pursued. Traders will pass on their increased costs (through price increases for goods and services) to consumers.
2. Likely macro-economic impact		