

European Civil
Justice Systems

Delivering Collective Redress in Markets: New Technologies

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Policy Brief

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The Foundation for Law, Justice and Society

in association with **the Centre for Socio-Legal Studies**
and **Wolfson College, University of Oxford**

European Civil Justice Systems

The European Civil Justice Systems programme aims to evaluate all options for dispute resolution in a European state, and to propose new frameworks and solutions. It encompasses a comparative examination of civil justice systems, including alternative dispute resolution and regulatory redress systems, including aspects of system design, procedure funding and outputs. It aims to analyse the principles and procedures that should, or do apply, and to evaluate effectiveness, in terms of cost, duration and outcomes in redress and achieving desired behaviour.

The programme also involves research into substantive EU liability law, notably consumer and product liability law, harmonization of laws in the European Union, and in particular the changes taking place in the new Member States of central and Eastern Europe.

Executive Summary

This Policy Brief summarizes the findings of a joint project between Oxford University and the Catholic University of Leuven aimed at evaluating different mechanisms for delivering collective redress.

- 1. Incoherence in addressing market failures.** The cohort of case studies assembled in this project shows that EU Member States vary enormously in how they address the simple issues that arise in most consumer disputes (unfair contract terms, overcharges, etc.), particularly with regard to public and private enforcement. Where Member States rely on private parties pursuing litigation, the results can be notably slow, expensive, ineffective in providing remedies, and fail to address systemic issues.
- 2. Need for a coherent, modernized approach to market behaviour and enforcement.** National systems for addressing market regulatory behaviour badly need attention at policy and governmental levels, since almost no State has taken a sensible joined-up approach to either the relationship between public and private enforcement (including ADR and self-regulation) or how to affect behaviour (hence the concept of Ethical Business Regulation as a balanced policy).
- 3. Requirements for control of market oversight.** The objectives of an effective regulatory system should run in the following sequence:
 1. Establishing clear rules and their interpretation
 2. Identification of individual and systemic problems
 3. Cessation of illegality
 4. Decision on whether behaviour is illegal, unfair, or acceptable
 5. Identification of the root cause of the problem
 6. Identification of what actions are needed to prevent the reoccurrence of the problematic behaviour, or reduction of the risk
 7. Application of the actions (a) by identified actors (b) by other actors
 8. Dissemination of information to all (a) firms (b) consumers (c) other markets
 9. Redress
 10. Sanctions
 11. Ongoing monitoring, oversight, amendment
- 4. Private enforcement.** The EU has harmonized class actions for injunctive relief, and some Member States have introduced them for damages, but national models all differ. There have been relatively few (damages) class actions in Europe. The countries that have the highest usage figures are Italy and Poland, where lawyers and consumer associations try to bring class cases but suffer a high failure rate for certification.
- 5. A shift to new technologies.** The 'new technologies' of regulatory redress and consumer ombudsmen (in the UK sense, not the Nordic sense) are far more effective, quick, and cheap than the 'old technology' of collective litigation. These case studies demonstrate that unequivocally. The new technologies deliver the goals of affecting future behaviour, redress, and efficiency, which the old technology does not.

Delivering Collective Redress in Markets: New Technologies

Objectives of the project

This Policy Brief summarizes the findings of a joint project between Oxford University and the Catholic University of Leuven aimed at evaluating different mechanisms for delivering collective redress. First, **national reports** were obtained from a wide range of European States,¹ which gave short summaries of the relevant legislative schemes for different mechanisms used to deliver collective redress, and various metrics, but also **case studies** on significant cases.

Second, the data and case studies were evaluated against **criteria**, notably *ease of accessibility, speed, costs to users and overall transactional cost, ability to deliver effective outcomes, redress delivered, and effect on ongoing behaviour*. This evaluation was developed from work conducted at a conference held at Rüslikon, Zurich in January 2012. This project was timed to contribute to the review in 2017 of the European Commission's Recommendation relating to collective redress.² The results were discussed at an international **conference in Oxford on 12–14 December 2016** attended by around fifty officials, scholars, and practitioners.

This Policy Brief states the opinions of the two organizers of the project and conference, including what seemed to them to be a general consensus; however, it should not be understood necessarily to represent the views of any individual attendee.

National data on collective redress mechanisms and cases was kindly contributed from correspondents around the EU. The contributors are listed in Annex 1. The dataset comprised information on redress cases in around eighty class actions, four piggy-back cases, over twenty-four ombudsman cases, and at least

twenty-four regulatory cases. There was a further seventeen injunctions (non-damages-redress) cases, and twenty-one mixed cases identified by the European Consumer Organisation (BEUC) and the Consumer Justice Enforcement Forum (COJEF).³

New mechanisms

It was clear that some Member States have adopted new mechanisms that score highly against the criteria, principally, in the design of the critical intermediary body including regulatory authorities and/or consumer ombudsmen to deliver collective redress:

- **Regulatory authorities** need to have the function, role, powers, and ability to use redress powers. When these features exist, the evidence indicates that they are more successful, faster, and more economic in addressing systemic infringements of market rules. Rather than increasing the effort, cost, and time of investigations, authorities who have well-stocked toolboxes of enforcement powers, including an ability to order or seek a court order for redress, are able to resolve more cases more quickly, with most settling disputes without the need for court proceedings.
- Despite much interest in ADR mechanisms, especially consumer ADR, it is only **consumer ombudsmen** (the leading examples being the UK, Ireland, and Germany) who are able to resolve individual and collective cases. The design is able to deliver the following functions:
 - Consumer information and advice/Triage
 - Dispute resolution: individual collective redress⁴

- Capture and aggregation of data
- Feedback of information
- Identification of issues and trends
- Publication of data and information
- Pressure on market behaviour.

■ Litigation **class actions** are strikingly slow, costly, and ineffective when compared with regulatory and ombudsmen mechanisms.

■ The *partie civile* mechanism in which private parties may **piggy-back** on criminal prosecutions has proved somewhat effective (and involves no cost to individual claimants, since the State assumes the investigation and prosecution costs), but the success of the mechanism relies on defendants being convicted who have adequate funds to pay claimants (deep pockets), and for there to be criminal judges to be required to process the private actions (as in Belgium) rather than, in most States, merely to have the discretion to process such claims.

Data on collective actions

The dataset that was assembled is far from comprehensive, but appears to be more illuminating than has previously been available. The number of litigation collective actions identified is shown in Table 1. This suggests three conclusions:

- (a) In many Member States, there has so far been a low number of such ‘class actions’. Some jurisdictions have had such mechanisms in place since the early 2000s,

but numbers remain low. There are two exceptions—Italy and Poland—which have had class action laws since 2010, and where a larger number of actions have been commenced (whether by consumer associations or lawyers) but where success in obtaining certification of the action has been disappointing (roughly half of all actions commenced).

- (b) Almost without exception, class action mechanisms take time, involve cost (which can act as a significant barrier to claimants and those who wish to initiate an action), reduce sums paid to claimants through funders’ costs, and deliver limited outcomes. In Poland since 2010, only ten out of possibly 210 cases have yet reached a substantive decision.

- (c) In those Member States where regulators have deployed redress powers, or where consumer ombudsmen exist, they appear to have uniformly achieved notably swift, efficient, and effective resolution of mass cases, and prompt payment of redress.

The barriers to class litigation are well-known, and need not be examined in detail here. The two central problems relate to complexities of procedure (certification, investigating evidence, processing common and then individual issues, and enforcement) but especially, as Professor Linda Mullenix (University of Texas) commented, attorneys’ fees. The outcome is that there are numerous

Table 1: Number of cases brought under national collective redress laws since the mechanism was introduced

Jurisdiction	Year of Introduction	Number of Cases
Belgium	2014	5
England & Wales	2015	2
Finland	2007	0
France	2014	10
Italy	2010	41
Lithuania	2015	3
The Netherlands (Dutch Collective Settlement Act)	2005	9
Poland	2010	210
Sweden	2003	17

instances in which collective litigation faces serious challenges concerning viability and the delivery of fair, timely, efficient, and cost-effective redress.

The effects of these factors were clearly illustrated in many case studies from different jurisdictions. In Germany, the Deutsche Telekom case that led to the Capital Market Test Case Proceedings (KapMuG) has not been resolved after twelve years. Access to funding for claimants, consumer associations, or intermediaries who seek to pursue collective litigation, as well as costs rules and risk, present major challenges—and European policy rejects adoption of the liberalized rules (no cost shifting, contingency fees, third-party funding) that exist to promote private enforcement generally under the USA class action paradigm.⁵ Given the European Recommendation's emphasis on the need for safeguards to balance the risk of abuse, there will always remain a 'catch-22' between liberating access to justice and controlling abuse by private actors.⁶ Some States have been able to overcome this inherent problem by restricting enforcement of *both* regulatory and redress issues to public officials, in contrast to the US, where the opposite applies. A hybrid that exists in some European States of restricting control of injunctive action to approved NGOs may work on the basis of responding to individual infringements but does not address ongoing systemic behavioural aspects, and is treated with extreme caution in relation to empowerment to deliver redress.

It is not argued that barriers may exist to effective adoption of regulatory and ombudsmen policies in some States (that issue is beyond this Policy Brief, but includes issues of resource and governance), but it is clear that some States have solved such issues and their mechanisms are operating well, delivering significant amounts of redress, and responses to market behaviour and trends.

Some examples

The following are taken from the cohort of cases, to illustrate some of the mechanisms. Nine large cases have been settled in the Netherlands under its Collective Settlement Act (WCAM), of which the following are examples, giving numbers and total settlements:⁷

- DES: 34,000 DES present and future people injured by a medicine — \$48,000,000

- Dexia: 300,000 investment product purchasers — \$1,370,000,000
- Vie d'Or: 11,000 insurance policyholders sued a regulatory authority, auditors, and actuaries — \$62,000,000
- Royal Dutch Shell Petroleum: 500,000 shareholders alleging securities fraud related to restatement of petroleum reserves — \$352,600,000
- Vedior: 2000 shareholders alleging securities fraud related to merger and acquisition — \$5,770,000
- Converium: 13,000 shareholders alleging securities fraud related to failure to disclose accurately loss reserves — \$58,400,000

In France, the consumer association *UFC Que Choisir?* sued Foncia in October 2014 in the Nanterre High Court of First Instance, claiming that fees charged to 318,000 tenants for sending them monthly rent payment receipts for €2.30 per month were unfair. The estimated total loss is €27.60 per individual and €44 million in total. The case remains pending.

After the three main French mobile phone operators (Orange, SFR, and Bouygues) were found by the Competition Authority to have been involved in a cartel over prices and market sharing, and fined €534 million, *UFC-Que Choisir?* initiated a lawsuit in 2006 to obtain compensation of €1.2–1.6 million paid by their 20 million subscribers in overcharges of c. €60 each. 220,000 consumers registered on a website, but only 12,521 sent the documents required to join the action. In December 2007, the Paris Commercial Court held the action inadmissible as the procedure chosen was a disguised *action en representation conjointe*, under whose rules soliciting of consumers was not allowed. That result was upheld by the appeal court and the Court of Cassation in 2011.

In Lithuania, an investors' association claimed in 2013 against the auditor of an insolvent bank on behalf of shareholders who had bought shares in 2011. The court refused the class action as there was no commonality in the claims.

In Spain, court proceedings following an electricity outage took four years to reach the result that the case was dismissed because individual damages could not be proved, and the court upheld a

compensation package offered by the supplier three years earlier after the regulator had intervened. In a subsequent case, the company made a settlement offer that was accepted by 99% of customers.

In Belgium, 600 people joined a criminal action as *parties civiles*, and after some defendants were convicted, the court of appeal of Mons appointed two special masters to resolve the civil claims, who encouraged mediation, and the case was settled for around €10 million after two years.

In Denmark, the Consumer Ombudsman (the national enforcement authority) has, since 2008 and for antitrust since 2010), relied on the class action, which only the Ombudsman may use on an opt-out basis, as part of the toolbox of enforcement powers to reach a succession of agreed cases that include redress, without the need to bring an action. The redress power constantly influences discussions and assists businesses to reach holistic solutions.

In the UK, a range of redress powers are relied on by sectoral regulators, such as for financial services and energy to deliver large sums in redress. Other authorities, such as those for water or gambling, achieve redress without having explicit powers. All enforcers of consumer protection law are empowered under the Consumer Rights Act 2015 to adopt 'Enhanced Consumer Measures' that give flexibility to include behavioural, redress, and information outputs.⁸ Between April 2014 and November 2015, the Financial Conduct Authority established twenty-one informal redress schemes, which it estimates provided £131 million in compensation to consumers. The energy regulator Ofgem has switched its practice, with fines imposed falling from around £15 million in 2010 to £5 million in 2015, whilst redress paid by firms over the same period has increased from virtually zero to over £70 million, coupled with extensive discussions and agreements with firms on actions that they will take to change behaviour. In thirteen cases concluded by Ofgem in 2015/16, £43 million was paid out by licensees (£26m to customers and £19 million to charities). In the first half of 2016, the Environment Agency agreed payments to environment charities

by ten firms that contacted it and seven firms that it contacted, totalling £403,000. In 2014, Ofwat (the water regulator) accepted an undertaking by Thames Water on a £79 million prices reduction, spending £7 million on customers, and a £1 fine.

Since 2012, the Bank of Italy has initiated four proceedings in which the regulated entity involved promptly refunded their customers, or provided the Bank of Italy with detailed information about their initiatives, to a total of €692,345.67. In 2014, the Bank of Italy issued two redress orders concerning mistakes in the calculation of interest, for a total amount of €118,506,000. It is standard practice for the Bank of Italy to ask regulated entities to adopt initiatives in order to refund customers for sums unduly paid, even without initiating a proceeding. In 2015, refunds stemming from informal requests by the Bank of Italy totalled around €65,000,000.

An enforcement investigation by the Central Bank of Ireland into tracker mortgage options and rates resulted in firms agreeing to implement a redress and compensation programme in July 2015 to address detriment suffered by 1372 customers arising out of mortgage overpayments, mortgage arrears, legal proceedings, and, in some cases, loss of ownership of properties and some homes. An interim measure was to apply a reduced interest rate to all affected accounts.

Inquiries received by the UK Financial Ombudsman Service⁹ have increased from 562,340 in 2003 to around 1.5 million in 2015/16 (peaking at 2.3 million in 2013/14), leading to a total of 340,899 new complaints in 2015/16.¹⁰ The members of the National Energy Ombudsman Network (NEON) comprising just six Member States, handled 92,335 energy-related disputes in 2015 (27.43% more than the previous year), 47% of which deal with invoicing and (e-)billing, 11% with customer services, redress, and privacy, and 10% with provider change/switching.¹¹

The ombudsmen at the conference (Caroline Mitchell of the UK Financial Ombudsman, Luc Tuerlinckx the Belgian Telecommunications Ombudsman, and David Pilling from Ombudsman

Services, who spoke about the UK Energy Ombudsman) explained that their organizations systematically share their experience and knowledge with their sectoral regulator, the industry, and consumers. They have influenced behavioural change by businesses, policy by regulators, and legislation introduced by Parliaments.

It is important to recognize different types of ‘ombudsmen’. In Nordic States, the Consumer Ombudsman is the national enforcement official for consumer law, but does not act as a dispute resolution body between traders and consumer (for which there are separate Complaint Boards). In the UK, Ireland, and Germany, ombudsmen exist to handle consumer–trader disputes (the consumer ADR function) in some individual sectors, such as financial services, pensions, energy, communications, and so on. They operate differently from public sector ombudsmen, which exist in most States to investigate citizen–State complaints.

Fundamental goals of redress

We suggest that the fundamental objectives of redress (or payment of compensation through law) are:

1. To deliver appropriate compensation
2. To affect the future behaviour of a defendant and of the market generally, and thereby ensure that an unbalanced market is rebalanced so as to be a level playing field
3. To achieve both of these goals in the most efficient manner, in terms of speed/duration, costs, and finality.

The objective of ‘affecting future behaviour’ has traditionally been stated as the theory of deterrence, but research by Chris Hodges¹² has shown that (a) the empirical evidence for deterrence as a means of regulating individual or corporate behaviour is limited, (b) the science of behavioural psychology offers far more effective insights into how to affect future behaviour, through adopting a range of approaches in which most people are supported to achieve performance, as opposed to punished for non-compliance, (c) many UK regulatory agencies have adopted supportive, responsive, and often no-

fault regulatory policies rather than deterrence-based enforcement policies, and (d) the ideal model appears to be to encourage consistent systemic ethical behaviour, through various approaches that support relationships built on trust (and hence co-regulatory models).¹³

If the above approach has validity, it has fundamental implications for legal systems that are based on principles of fault and deterrence. Their ability to affect future behaviour can be significantly questioned. Equally, this demonstrates why effective regulatory and ombudsmen systems are more effective in affecting behaviour than litigation-based systems. The idea that a single response to a single instance of non-compliance will result in ongoing or systemic change in behaviour, for example, as a result of the imposition of a single financial penalty, is not supported by behavioural or management science.

The objectives for market regulation

It follows from the above that redress is only one aspect of how markets should be safeguarded and regulated. Public policy has developed swiftly in the UK in the past ten years,¹⁴ such that the role of regulators and public enforcers has broadened to move away from merely achieving safety or well-structured and priced markets, to encompass an aspiration to ensure, firstly, that consumers and vulnerable businesses receive redress as an integral part of a levelled playing field and, secondly, that behaviour is effectively changed. Accordingly, the objectives of the most effective regulatory systems (in relevant countries, such as in civil aviation safety, workplace safety, environmental protection, or delivery of energy services) runs in the following sequence:

1. Establishing clear rules and their interpretation
2. Identification of individual and systemic problems
3. Cessation of illegality
4. Decision on whether behaviour is illegal, unfair, or acceptable
5. Identification of the root cause of the problem and why it occurs
6. Identification of which actions are needed to prevent the reoccurrence of the problematic behaviour, or reduction of the risk

7. Application of the actions (a) by identified actors (b) by other actors
8. Dissemination of information to all (a) firms, (b) consumers, (c) other markets
9. Redress
10. Sanctions
11. Ongoing monitoring, oversight, amendment

In considering what mechanisms of public and/or private enforcement, either alone or in combination, can deliver these objectives, it can be seen how litigation addresses item 9 alone, whereas the integrated co- and public-regulatory and ombudsman systems in some countries are able to address all items.

An evolution in mechanisms for delivering collective redress: From litigation to regulators and ombudsmen

There have been some significant shifts in mechanisms. First, the EU rejected the US model of maximizing private enforcement in favour of a more balanced approach involving safeguards. Second, there has been extensive experimentation by Member States in collective action models for damages. The current position would present a huge challenge for harmonization. There is no coherence in national class action laws, none of which correspond to the European Commission's 2013 blueprint. Each national system is tailored to domestic need, often uninfluenced by the Commission's blueprint, and the overview is of piecemeal development, which is uncontrolled.

An important reason for such diversity is the difficulty of introducing the concept of collective litigation into national constitutional and procedural contexts that are based on individual rights, as was stated by Dr Rebecca Mooney. Professor Hans Micklitz suggested there is an 'absence of law' and that transnational societal values are being ignored in the obsessive procedural mayhem. He said that respect for cultural values is needed instead of harmonization; an integrated approach to collective redress was valuable but it led to organized irresponsibility. Mr Robert Bray (European Parliamentary Research Service) said he was in favour of law to protect consumers but against any EU class action legislation, since there is too much legislation already which is not being implemented properly.

Third, there has been a shift in the techniques by which redress is delivered. The 'old technology' of private litigation has been superseded in some Member States by a highly effective 'new technology'¹⁵ involving regulators and consumer ombudsmen. These techniques have been approved by UNCTAD, and deserve to be widely adopted.¹⁶ Examples of redress powers noted above are used by financial services authorities in Italy, Ireland, and the UK. The European Commission has proposed that redress and 'skimming-off' powers should be available for all national members of the Consumer Protection Cooperation Network,¹⁷ although the Council prefers freedom for Member States to organize powers inside national administrations.¹⁸

Implications for future policy on collective redress

The European Commission has committed itself to basing policy and rule-making on evidence, and to reducing regulatory burdens.¹⁹ It wants to concentrate on things that matter, rather than on details ('bigger and more ambitious on the big things, and smaller and more modest on small things'²⁰). It aims to simplify rather than complicate. Proposals must satisfy strict 'impact assessment' criteria, aimed at ensuring that EU legislation can only be proposed if it will make a significant impact on the market. While wishing to 'step up enforcement', the Commission notes that its aim here is 'to promote a more effective application, implementation and enforcement, in line with the Commission's political priorities.'²¹ In December 2016, it said that it will adopt 'a more strategic approach to enforcement in terms of handling infringements', will develop 'an inventory of the mechanisms of redress available at national level to which citizens may turn to seek remedies in individual cases', and 'will ensure the full application of the EU legislation on mediation and alternative dispute resolution'.²²

We suggest that a significant body of evidence in relation to improving enforcement generally, and collective redress in particular, has been assembled in this project, which suggests clear policy conclusions. The evidence suggests the following conclusions for future policy on collective redress for Europe:

1. Redress should not be considered on its own but as an integral part of contributing to strong and competitive markets. Hence,

- mechanisms that address the eleven market functions noted above need to be considered holistically. The goal should be to provide mechanisms that address all eleven functions and outputs in as economic a manner as possible, avoiding multiple mechanisms that only address individual functions.
2. The leading contenders for these tasks are the 'new technologies' of regulatory and ombudsmen mechanisms.
 3. Sectoral and generic regulators should have redress powers as part of their enforcement toolboxes, subject to appropriate oversight mechanisms.
 4. Both sectoral legislation that requires ADR and the generic consumer ADR legislation²³ should specify that consumer ombudsmen models should be required, rather than other types of general ADR.
 5. Traditional litigation procedures fail essential criteria of accessibility, speed, cost, efficiency, and outcomes. In comparison, newer technologies score well against those criteria, and when designed appropriately can deliver multiple objectives in relation to making markets work well and protecting consumers and businesses besides just redress.

Notes

- ¹ The National Reports and conference presentations are available at <https://www.law.ox.ac.uk/events/empirical-evidence-collective-redress-europe>.
- ² Recommendation 2013/396 of the European Commission of 11 June 2013 on Common Principles for Injunctive and Compensatory Collective Redress Mechanisms in the Member States Concerning Violations of Rights granted under Union Law (2013 OJ (L 206) 60 (EU)).
- ³ *Collective Redress. Where & how it works* (BEUC, 2012), <http://www.beuc.eu/publications/2012-00308-01-e.pdf>; *Guidelines for enforcement on consumer rights*, Consumer Justice Enforcement Forum, May 2013, available at http://www.cojef-project.eu/IMG/pdf/Conclusions_document_cases_FINAL_8_May.pdf; *Enforcement of Consumer Rights: Strategies and Recommendations* (COJEF II, 2016), http://www.beuc.eu/publications/beuc-x-2016-051_cojef_ii-enforcement_of_consumer_rights.pdf.
- ⁴ Caroline Mitchell, Lead Ombudsman of the Financial Ombudsman Service, uses the term 'individual "collective" redress'.
- ⁵ R.A. Kagan, *Adversarial Legalism: The American Way of Law* (Cambridge: Harvard University Press, 2001); S. Farhang, *The Litigation State: Public Regulation and Private Lawsuits in the U.S.* (Princeton: Princeton University Press, 2010).
- ⁶ R. Money-Kyrle and C. Hodges, 'European Collective Action: Towards Coherence?' (2012) *Maastricht Journal of International and Comparative Law* 19.4: 477.
- ⁷ F. Weber and W.H. van Boom, 'Dutch Treat: The Dutch Collective Settlement of Mass Damage Act (WCAM 2005)' (2011) *Contratto e Impresa/Europa* 1: 69; X.E. Kramer, 'Enforcing Mass Settlements in the European Judicial Area: EU Policy and the Strange Case of Dutch Collective Settlements (WCAM)', in C. Hodges and A. Stadler (eds), *Resolving Mass Disputes. ADR and Settlement of Mass Claims* (Edward Elgar, 2013); I. Tzankova, 'Collective redress in Vie d'Or: A reflection on a European cultural phenomenon', in D.R. Hensler, C. Hodges, and I. Tzankova (eds), *Class Actions in Context: How Culture, Economics and Politics Shape Collective Litigation* (Edward Elgar, 2016); D.R. Hensler, 'A class action 'mash-up': In Re Royal Dutch/Shell Transport Securities Litigation', in D.R. Hensler, C. Hodges, and I. Tzankova (eds), *Class Actions in Context: How Culture, Economics and Politics Shape Collective Litigation* (Edward Elgar, 2016).
- ⁸ R. Money-Kyrle, 'Collective Enforcement of Consumer Rights in the United Kingdom', in Martin Schmidt-Kessel, Christoph Strünc, and Malte Kramme (eds), *Im Namen der Verbraucher? Kollektive Rechtsdurchsetzung in Europa* (Jena, Schriften zu Verbraucherrecht und Verbraucherwissenschaften, Band 5 Jenaer Wissenschaftliche Verlagsgesellschaft, 2015).
- ⁹ See annual reports at <http://www.financial-ombudsman.org.uk/>.
- ¹⁰ *Annual report and accounts for the year ended 31 March 2016* (Financial Ombudsman Service, 2016).
- ¹¹ NEON Press Release, Brussels, 15 June 2016.
- ¹² C. Hodges, *Law and Corporate Behaviour: Integrating Theories of Regulation and Enforcement* (Oxford: Hart Publishing, 2015).
- ¹³ See the increasing interest and adoption of this approach by governments: C. Hodges, *Ethical Business Practice: Understanding the Evidence* (Better Regulation Delivery Office, 2016); C. Hodges, 'Ethical Business Regulation: Growing Empirical Evidence' (The Foundation for Law, Justice and Society, 2016) available at: <http://www.fljs.org/content/ethical-business-regulation>; *Striking the Balance. Upholding the Seven Principles of Public Life in Regulation* (Committee on Standards in Public Life, 2016); *Delivering better outcomes for consumers and businesses in Scotland* (Scottish Government, 2016).
- ¹⁴ Important milestones have been R.M. Macrory, *Regulatory Justice: Making Sanctions Effective* (HM Treasury, 2006); the Regulators' Code 2007 (revised 2013); the Regulatory Enforcement and Sanctions Act 2008.
- ¹⁵ This terminology of old and new technology was first used, to our knowledge, by Derville Rowland of the Central Bank of Ireland at the Law Reform Commission's annual regulatory conference, Dublin, 2016.
- ¹⁶ *Draft Manual on Consumer Protection* (UNCTAD, 2016), chapters 6 and 11, <http://unctad.org/en/PublicationsLibrary/webditclp2016d1.pdf>.
- ¹⁷ Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws, COM(2016) 283 final, Brussels, 25.5.2016, article 8.2 (n) and (o).
- ¹⁸ Presidency Note to the Council, 14604/16, 21 November 2016, <http://data.consilium.europa.eu/doc/document/ST-14604-2016-INIT/en/pdf>.
- ¹⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Better regulation for better results: An EU agenda*, COM(2015) 215 final, 19.5.2015.
- ²⁰ *Political guidelines for the next European Commission* of 15 July 2014 and mission letters of 1 November 2014 from the President to Vice Presidents and Commissioners.
- ²¹ Communication from the Commission to the European Parliament, the European Council and the Council, *Better Regulation: Delivering better results for a stronger Union* (European Commission, 2016), COM(2016) 615 final, 14.9.2016.
- ²² Communication from the Commission, EU Law: Better Results through Better Application C(2016) 8600, 21.12.2016.
- ²³ Directive 2013/11 of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes.

Annex 1: Contributors of national data

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Professor Dr Christopher Hodges is Professor of Justice Systems at the University of Oxford and a Supernumerary fellow of Wolfson College. He is Head of the Swiss Re/CMS Research Programme on Civil Justice Systems, Centre for Socio-Legal Studies, University of Oxford. His latest books are *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics* (Hart, 2016); (with Hensler and Tzankova) *Class Actions in Context: How Culture, Economics and Politics Shape Collective Litigation* (Edward Elgar, 2016); (with Benöhr and Creutzfeldt) *Consumer ADR in Europe* (Hart Publishing, 2012); (with Stadler) *Resolving Mass Disputes* (Edward Elgar, 2013).

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For further information please visit our website at www.fljs.org or contact us at:

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The logo for the Foundation for Law, Justice and Society (FLJS) features the letters 'FLJS' in a large, bold, sans-serif font. A small '+' sign is positioned between the 'J' and 'S'. The logo is rendered in a light red color against a dark red background.

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