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CONSUMER PROTECTION IN PRACTICE – TRANSNATIONAL COMPARATIVE ACCOUNT OF COLLECTIVE REDRESS MECHANISMS

Part one: the Belgian approach²

The question of effective enforcement of consumer rights has been widely discussed for many years in the European Union. The models of consumer protection significantly vary in the individual Member States. Typically, consumers can claim their rights both at an individual and collective level. The systems of enforcement of consumer protection are either public, private or mixed, where both types of enforcement function in a parallel way. The goal of the paper is to discuss the issue of various legal mechanisms that function in the Member States, serving the consumers as a means of collective redress. The main analysis focuses on the legal solutions adopted in Belgium (first part of the paper), UK and the Netherlands (second part of the paper). In particular, the author presents the complementary character of the public and private mechanisms used to enforce the consumer rights. The paper utilises dogmatic and analytical methods for the process of interpretation of the normative material and for the analysis of case law. The study uses the comparative perspective to identify solutions emerging from effective practices found in legal systems of the Member States. The paper proposes several legal solutions to adopt in the Polish law. The findings emerging from the analysis show that both competent consumer organisations commencing group proceedings and experienced judges who choose between opt-in and opt-out systems are vital in the process of effective enforcement of consumer rights. The conclusions from the study are useful in mapping out the legislative process and the analysis discussed in the paper may be extended to legal systems of other Member States.

Keywords: consumer protection, consumer law enforcement, collective redress, private enforcement, comparative analysis.

1. INTRODUCTION

The freedoms of the internal market guarantee the traders the possibility to conduct business activities in the European Union, that is to sell goods and to provide services,

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whereas the consumers are able to purchase the above mentioned items and services. The synergy of the national markets, connected into one internal market, shall, in principle, provide the consumers with the added value in terms of better quality, higher diversity, reasonable prices and high safety standards of goods and services. However, the possibility to use the benefits of the extensive trade between various entities from different Member States is not the only consequence of the way the internal market functions. The increase of business activity on the part of traders and consumers is accompanied by the increased volume of the disputes arising out of the contracts concluded between the parties involved. Having in mind the possible infringements of consumer rights, it is indispensable to ensure the possibility of seeking redress in order to guarantee high level of consumer protection.

Efficient enforcement of the consumer rights is of significant practical application. By way of justification, every day transactions which are not related to the professional activity of average consumers³ may potentially lead to the disputes which can be resolved by at least two main means. First of all, consumers may seek redress within the framework of the court or administrative proceedings (individually or collectively) or they can pursue their claims out of the court. The foregoing paper refers only to the specific mechanisms within the first path, namely the consumer collective redress before courts or administrative bodies. This paper tackles the issue of both the private and public enforcement of consumer rights within this mode.

The characteristic features of consumer disputes cause that their resolution in a traditional way, that is within the framework of classic civil proceedings is very cumbersome, which discourages consumers from enforcing their rights. Passive attitude of consumers is due to the such specificity of consumer disputes as low value of claim. Therefore, from the economic point of view only, exercising rights before courts is usually unprofitable. In spite of the court fees, it is often indispensable to pay for the expert opinions and professional legal advice. Psychological barriers constitute another reasons for consumers passive attitude in point. Lack of confidence in the successful dispute resolution is the key factor here. It emerges from the anxiety related to the confrontation with the traders, who have stronger position in the said proceedings by virtue of their former experience and possibility to hire professional advisers, which is out of the budget of consumers. Thus, the specificity of consumer disputes requires us to come up with a mechanism which would enable consumers to exercise their rights regardless the low value of the dispute and without having to follow the formalized procedures. Collective redress is a legal mechanism which could enable us to overcome rational apathy and viability issues through claim aggregation (Money-Kyrle, 2015).

The concept of collective redress broadens the traditional understanding of civil proceedings, putting individual claims at the heart, by the possibility to obtain redress collectively (Wrbka, Uytsel, Siems 2012). For reasons of procedural economy and efficiency of enforcement it allows many similar legal claims to be bundled into a single action brought before the court or administrative body. Collective redress facilitates access to justice in particular cases, where the individual damage is so low that potential claimants would not think it is worth pursuing an individual claim. It also strengthens the negotiating power of potential claimants and contributes to the efficient administration of justice by avoiding the proceedings concerning the claims resulting from the same infringement of law (Commu-

³ In terms of the standard of protection of the average consumer see: (Mak, 2011; Theocharidi, 2016).

nication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Towards a European Horizontal Framework for Collective Redress, COM(2013) 401 final version). It seems to be obvious that traders are not interested in introducing the collective redress mechanisms since it entails the risk of abuse of court proceedings by consumers and the negative image of the trader suited in consumer environments. Hence, it is indispensable to strike a balance and find such measure which would be efficient both from the perspective of consumers' and traders.

2. TERMINOLOGICAL REMARKS

Collective redress refers to a wide range of procedural mechanisms enabling the collective enforcement of consumer law. Although these mechanisms are very diverse – collective redress models and types differ significantly worldwide – they serve the same purpose, namely to enable a large number of claimants to seek redress (European Parliament, Collective redress in the Member States of the European Union, 2018). National laws of the Member States provide a variety of legal means to enforce the consumer rights, which can be performed either within the framework of judicial, administrative or mixed path. The proceedings can be initiated by the private entities (the group of consumers or representative entity) or public enforcers such as governmental administrative bodies, public regulators or ombudsman.

European approach in terms of the definition of collective redress has changed over the years (Mucha, 2019a). Although the overview of the evolution of the EU approach in this field is not the main subject of this paper, some recent findings shall be presented here. First of all, in reference to the legal standing, it needs to be noted that the European Parliament favours the court-based redress mechanisms initiated by private entities. According to the definition employed by the Parliament, collective redress enables

“(...) a group of claimants (which can be natural or legal persons) who have suffered similar harm, resulting from the same illicit behavior of a legal or natural person, to get redress as a group. This encompasses mechanisms granting to a member of the affected group or to a representative entity, standing to bring an action on behalf of the group in order to obtain either compensatory relief, injunctive relief, or both” (European Parliament, Collective redress in the Member States of the European Union, 2018).

Secondly, quite in the same spirit the European Commission also currently prefers private over public enforcement (Stadler, 2019). However, it takes into account different traditions of the Member States and allows national legislators to decide whether the harmonized instruments should be used by private entities or public regulators. In the recent proposal for a directive on representative actions the Commission states that the collective actions can be brought on behalf of consumers, among others, by the consumer organisations and independent public bodies, and the actions can be brought either before the national courts or administrative authorities (Article 4 point 3 in connection with Article 4 point 5 of the Proposal for a directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC, COM (2018) 184 final.).

In the literature of the subject there are many classifications of the collective redress mechanisms. The narrow classification, limited to the private law enforcement mechanism is presented by Micklitz and Durovic. The authors recognise four major forms of collective

redress: i) the representative action in which standing to bring an action on behalf of the group in order to get redress is granted to a representative entity, ii) the group action, in which the aforementioned legal standing is granted to a member of the group, iii) the model or test case in which the action is initiated by one or more persons and in which the adopted judgment establishes the grounds for other cases brought against the same defendant and – finally – iv) United States class action style which is a form of group action led by professional lawyers who receive fees for their services and claim compensation for the clients (Durovic, Micklitz, 2017.)

Notably, these mechanisms of enforcement of collective interests operating in the domain of private law are not the only procedural instrument serving the purpose of delivering collective redress, which exist in the national legislation of the Member States. In the research project regarding different techniques for delivering collective redress, Hodges and Voet identified also regulatory redress that was ordered or brought about by the intervention of public enforcers, civil claims piggy-backing on criminal prosecutions and consumer ombudsmen, being a specific form of alternative dispute resolution entirely independent from the courts (Hodges, Voet, 2018). To verify the thesis specified in the paper which is, among others, the comparison of private and public collective law enforcement mechanisms, the regulatory redress will be scrutinized in some more details.

Amongst many characteristics of the national collective redress mechanisms operating in the Member States, the question of participation in the group has a significant meaning. There are two basic approaches according to which the individuals affected by illegal behavior of traders may participate in the group and they are referred to as opt-in and opt-out systems. In the first system, potential members of the group are obliged to actively join part of the group represented. This procedure requires class members to file a formal claim or power of attorney, authorizing the lead litigant to act in the representative capacity (Money-Kyrle, 2015). Consequently, if the individuals do not expressly join the group, they could not benefit from the judgement and they remain free to pursue their damage claims individually. By contrast, under the opt-out system the group is composed of all the individuals who belong to the specific group and claim to have been harmed by the same or similar infringement. Formal litigants have legal standing on behalf of the so called diffused class. The judgement is binding on them unless they actively opt out of the group⁴.

Both approaches have their supporters and opponents. The opt-in procedures are perceived as more consistent with the Member States' legal and constitutional traditions, namely the principle of party autonomy (European Parliament, *Collective redress...*). However, it is also criticized in the literature of the subject since it "(...) lacks sufficient incentives or coercion to ensure individual self-interest does not prejudice efficient and effective public interest outcomes and does not necessarily resolve rational apathy problems." On the other hand, opt-out procedures derogate from the autonomy principle. Final judgment, binding on all class members who have not opted out, precludes future individual claims. The opt-out model, combined with compensatory relief is, however, considered to be the most efficient solution to deal with widespread and disperse damages

⁴ The opt-in system is imposed by the legislation of most Member States, including Poland. The opt-out principle is applied by two Member States, namely the Netherlands and Portugal, while four Member States (Belgium, Bulgaria, Denmark and in competition cases also the UK) provide for a mixed system. See: (European Parliament, *Collective redress...*; see also: Stuyck, 2009).

(See: Ervo, 2010). It helps to overcome the rational apathy of victims and provide for better deterrent effect (See: Ervo, 2010).

In the following discussion, the term collective redress is used in the very broad sense. Under this term I understand all the mechanisms which serve the purpose of collective enforcement of consumer rights.

3. COLLECTIVE ENFORCEMENT OF CONSUMER RIGHTS IN BELGIUM

The first national legislation which is worth scrutinizing in terms of collective enforcement of consumer rights is Belgian legislation. Under this law, it is possible to enforce collective consumer rights both within the private and public path. As regards the first one, consumers can obtain collective redress before courts thanks to the class action law, introduced in 2014 (<http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel#LNK0119>). On the other hand, there are also many public enforcers or regulators in Belgium, however their primary concern is a deterrence and not the compensation (Hodges, Voet, 2018). The course of the collective proceedings under the Belgian law was already described in the literature of the subject (Nowak, 2015). Therefore, in the following subsection I present only a brief account of some highlights of the Belgian system of collective enforcement of consumer rights with focus on the latest class action procedures.

3.1. Private enforcement – Belgian class action system

Book XVII of the Belgian Code of Economic Law provides for the procedural instrument called ‘an action for collective redress’. Such action can be submitted on behalf of the group of consumers or, since June 2018, also by small and medium-sized enterprises, (SMEs) by the class representative. In order to represent the group, the class representative does not need any prior authorization from the members of the class. The class action proceedings can be commenced before the Commercial Court of Brussels (before 2018 also before the court of the first instance), and the judgment can be appealed against at the Brussels Court of Appeal.

The class representative must fulfill specific criteria designated by the law. It must be either: i) a consumer protection organization or ii) a non-profit organisation with legal personality meeting certain legal criteria, iii) Consumer Ombudsman Service⁵ (only representing the group in the stage of negotiation of an agreement on collective redress) or iv) a representative body recognized by the Member State of EU or the European Economic Area to act as a representative according to the Commission’s recommendation on collective redress. In case of SME the class representative must be either i) an interprofessional organization with legal personality that defends the interest of SME’s, ii) a non-profit organization with legal personality whose corporate purpose is directly connected with the collective damage suffered by the group or iii) a representative body recognized by the Member State of EU or the EEA mentioned above in terms of consumer claims. Such precise enumeration of the specific categories of the entities entitled to bring representative actions serve the purpose to avoid frivolous or abusive litigation which could occur if the group of the eligible entities would be broadly defined (Boularbah, Van den Bossche, 2019). The case can be brought against the trader only as a result of the violation of its contractual obligations or in case of the infringement of rights granted to the consumers or SMEs by

⁵ “Consumer Ombudsman Service” is sometimes translated also as a “Consumer Mediation Service”.

the European or Belgian regulations or acts which are enumerated in the Code of Economic Law.

The Belgian class action procedure comprises of 4 phases: the admissibility (certification) phase, the compulsory negotiation phase, the litigation phase and the enforcement phase. Under the Belgian Code of Economic Law, the admissibility (certification) phase should be completed within 2 months after bringing an action, but in practice it lasts minimum a few months. During this phase the court is verifying three admissibility criteria: i) whether a possible infringement of the law by the trader falls into the scope of class action, ii) whether the representative entity meets statutory requirements and is adequate and iii) whether the class action is superior to an individual claim. There are some elements which can be taken into the consideration by the judge (such as potential size of the group, the existence of individual damage that is sufficiently related to the collective damage, the complexity and legal efficiency of the action of collective redress), but they are of a very broad nature. The last criterium is said to be very discretionary (Hodges, Voet, 2018). In the decision of certification which ends the admissibility phase, the court chooses between the opt-in or opt-out system. The first model is mandatory if any physical or moral damages are claimed, for the consumers who does not reside in Belgium or for SMEs that do not have there their main establishment. The second phase is the compulsory negotiation phase which lasts from three to six months after the decision of certification. If the collective settlement is reached, it shall be approved of by the court. In case of lack of the settlement the third phase referred to as the litigation phase is to be started. The court adjudicates on the merits of the case and decide on the liability of the trader. The main principle in terms of the damages is the principle of full compensation, while punitive damages are not allowed. The last phase concerns the enforcement of the court decision and the distribution of compensation (if such was awarded). The court appoints the settler who oversees the enforcement of the decision or settlement and provides a report to the court.

3.2. Case studies

Starting from 2014, when the class action law was introduced in Belgium, nine class actions have been initiated before the court. The majority of the cases was brought by the Belgian non-profit consumer organization Test Achats (<https://www.test-achats.be/>). Five of them, initiated by Test Achats, were already discussed in the literature of the subject (Hodges, Voet, 2018). In order not to repeat the findings which have been already discussed, in what follows only the most recent cases will be presented.

3.2.1. Groupon (Luirebox) case

The first case discussed here was brought against Groupon- the website service which offers virtual coupons to get deals for various products and services. One of the Groupon's partners includes Luirebox, a company which offered its customers a subscription of a monthly delivery of diapers for 300 or 350 euros. However, the nappies have never been delivered to the subscribers (<https://www.test-achats.be/famille-prive/jeunes-parents/news/grouponluierbox>). Almost 1 200 consumers were involved. Groupon did not want to give the refund to the customers as it considered itself as an intermediary only. As a consequence, Test Achats, initiated the class action proceedings before the court of the first instance in October 2017. The proceedings did not reach the certification decision, since in August 2018, which was still during the admissibility phase of the proceedings, Test Achats

signed an agreement with Groupon in Luirebox (<https://www.test-achats.be/actions-collectives/action-collective-groupon-compensation>). This amicable solution allowed consumers to obtain a refund in amount of 200 euro in cash and 100 euro in the forms of credits on the customers Groupon account (<https://www.test-achats.be/actions-collectives/action-collective-groupon-compensation>). The agreement terminated the ongoing class action proceedings.

3.2.2. Facebook case

The class action was initiated as a consequence of the Facebook-Cambridge Analytica scandal, revealed in March 2018. It was reported that the Cambridge Analytica, a company which specializes in psychological profiling, harvested the personal data of Facebook users without their consent and passed it for the political advertising purposes. As a result, four European consumer organisations: Test Achats in Belgium, OCU in Spain, Deco Proteste in Portugal and Altroconsumo in Italy started a campaign called “My Data Is Mine” making consumers aware of the violation of their rights by Facebook (<https://www.mydataismine.com/>). The Cambridge Analytica scandal gave rise to the proceedings for unfair commercial practices. In September 2018, the UK Information Commissioner’s Office fined Facebook with the 500 000 pounds fine for lack of transparency and failing to protect user’s information (<https://www.theguardian.com/technology/2018/oct/25/facebook-fined-uk-privacy-access-user-data-cambridge-analytica>). Quite in the same spirit, the Italian Competition Authority confirmed misuse of data by social network and in December 2018 ordered Facebook to pay 10 millions euros for unfair commercial practices using users data for commercial practices (<https://www.theguardian.com/technology/2018/dec/07/italian-regulator-fines-facebook-89m-for-misleading-users>).

After unsuccessful negotiations with Facebook, the above mentioned consumer organisations launched collective actions in each country (<https://www.beuc.eu/press-media/news-events/euroconsumers-launch-collective-action-against-facebook>; <https://www.consumersinternational.org/news-resources/blog/posts/not-your-puppets-euroconsumers-interview/>). In May 2018 the Test Achats initiated the collective action against Facebook before the Commercial Court in Brussels. 42 281 people have registered for class action so far and they claimed compensation of 200 euro each for the misuse of the data. According to Test Achats “(...) the amount of € 200 represents a minimal estimate of the damage suffered by Facebook users on the basis of several criteria such as the commercial advantage Facebook has gained in communicating the data of its users to third parties, but also the value of the data shared by Facebook. users on Facebook, according to several tools, as well as on the basis of figures published by Facebook itself.” (<https://www.test-achats.be/actions-collectives/facebook>). The first phase of the proceedings is still ongoing. In November 2019 parties to the proceedings will be debating in front of the judge during the oral hearing. After that, the decision on the admissibility of the collective action is expected. Once the certification (admissibility) phase will be finished, the judge will decide on the merits of the case, that is whether data protection and consumer rights were infringed and whether the compensation is due to the Facebook users (<https://blogs.dlapiper.com/privacymatters/europe-european-consumers-organisations-launching-collective-gdpr-actions/>).

3.2.3. Energy suppliers case

This case is unique since for the first time in the short history of Belgian class action system it was initiated not by the leading consumer organization Test Achats but by the member of the Belgian Consumer Ombudsman Service. The said entity is competent to issue such proceedings for the purpose of reaching collective settlement only so the class action cannot lead to the decision on the substance or to the payment of compensation. It is also unique because for the first time complaints have been brought not only by consumers but also by small and medium-sized enterprises.

In September 2018 the Belgian Energy Ombudsman, being one of the members of the Belgian Consumer Ombudsman Services (<http://www.neon-ombudsman.org/2018/09/26/the-belgian-energy-ombudsman-initiates-a-collective-redress-action-against-hidden-termination-fees/>) has initiated class action against several energy suppliers (electricity or natural gas) before the Brussels Commercial Court. It disputed the legality of a fixed amount of fees charged by energy suppliers for a full year supply in case when the customer terminated the energy contract earlier during the year. The fees amounted to 60 euro or more per energy source for a full year. In the press release the Energy Ombudsman stated that it received over 300 complaints from the customers affected by this practice, however it estimates that the number of the customers concerned is over 40,000 and the total financial compensation of the collective redress exceeds 1,000,000 Euros per year (http://www.neon-ombudsman.org/wp-content/uploads/2018/09/Press_release_Group-litigation_fixed-fees_20180925.pdf). It also admits that in spite of the fact that over 100 relevant recommendations were sent in to energy companies, they have not been followed by the addressees.

The success of the collective settlement is doubtful for at least two reasons. First of all, the competent Minister for Consumer Affairs signed an agreement with the energy providers authorizing them to charge the customers with the full year fee even if they terminated the contract before the end of the year. This did not stop the Energy Ombudsman to question the legality of the market practice in question. Secondly, it is questionable whether the Energy Ombudsman itself had a legal standing to initiate class action proceedings since under the Belgian law such class action can be brought by the Consumer Ombudsman Service and not directly by its members. There was no court decision on the admissibility of claim so far.

3.2.4. Ryanair case

The most recent class action was brought by Test Achats against the Ryanair in July 2019 (<https://www.test-achats.be/actions-collectives/ryanair>). As a result of the four days strikes which took place in summer 2018 many flights from and to Belgium were delayed or cancelled⁶. According to Test Achats, passengers were not sufficiently informed in advance about it. Almost 170 flights were cancelled or delayed, which affected almost 40.000 passengers. In such case, under the EU law consumers may claim compensation in the amount of 250 –600 euros, depending on the flight distance⁷. However, Ryanair refused to

⁶ Similar situation took place in the UK, where the Civil Aviation Authority started a legal action against Ryanair after the company terminated his agreement with alternative dispute resolution body: <https://www.bbc.co.uk/news/business-46451702>.

⁷ Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied

compensate the customers invoking that ‘extraordinary circumstances’ occurred and the strikes were outside of its power to be prevented (<https://www.brusselstimes.com/all-news/business/60496/test-achats-starts-class-action-suit-against-ryanair/>). Under the Regulation 261/2004, an operating air carrier shall not be obliged to pay compensation if it can prove that the cancellation of flight is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken⁸.

However, this argument posed by Ryanair seems to be doubtful in the light of the in the recent judgement of the European Court of Justice. In the case C-195/17 the Court ruled that the airlines must compensate their passengers for flight delays and cancellations even though the reason for this was a strikes of their own staff⁹. The Court ruled that “(...) the spontaneous absence of a significant part of the flight crew staff (‘wildcat strikes’), such as that at issue in the disputes in the main proceedings, which stems from the surprise announcement by an operating air carrier of a restructuring of the undertaking, following a call echoed not by the staff representatives of the company but spontaneously by the workers themselves who placed themselves on sick leave, is not covered by the concept of ‘extraordinary circumstances’ within the meaning of that provision.”

The class action against Ryanair is pending before the Brussels Commercial Court. The introductory hearing took place in September 2019. The decision on the admissibility is expected early in the 2020.

3.3. Public enforcement of consumer collective interests

In spite of the fact, that in Belgium there are multiple public enforces and regulators that can potentially play a key role in resolving mass problems (Voet, 2013), they focus rather on the deterrence than restitution or civil sanctions. As a general rule, consumers may claim compensation in the separate proceeding, following the public decision issued by the regulator or enforcer. This is because the parties to the proceedings are the trader who does not comply with the regulations and regulator or public enforcer itself. Consumers are not the party to the proceedings even if the consumer complaint may start the investigation and administrative action. Therefore, in order to claim compensation consumers have to recourse to the instruments outside the regulatory framework (Voet, 2018).

Bearing above mentioned in mind, Voet (2018) gives an example of two Belgian regulators which decisions could have an impact on consumers. First of them is the Financial Services and Markets Authority (FSMA), autonomous public institution, which alongside the National Bank of Belgium, supervises the Belgian financial sector (<https://www.fsma.be/>; for the wide range of actions which fall within the supervisory tasks of the FSMA see: [Voet, 2013].) Despite the fact that the consumers are not the party to the proceedings and the decision issued by the FSMA, settlement concluded between the regulator and the non-complying trader or financial institution may influence consumers indirectly. In the settlement, the non-complying trader may undertake to pay to the clients a certain amount of money by the way of commercial compensation.

boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91, OJEU L 46/1, art. 7 a)-c).

⁸ Regulation (EC) No 261/2004..., art. 5 point 3.

⁹ Judgement of the European Court of Justice of 17 April 2008 in case C-195/17 Kruesemann and Others v. TUIfly GmBH, ECLI:EU:C:2018:258.

The second example identified by Voet (2018) relates to the activity of Commission for the Regulation of Electricity and Gas (CREG), an autonomous organization granted with legal personality (<https://www.creg.be>; see also: [Haverbeke et al, 2009]). According to the Law on the organization of the electricity market (The law of 29 April 2009 on the organization of the electricity market, OG BS 11 May 1999, art. 29) this regulator shall launch the Dispute Resolution Chamber which is competent to resolve the disputes between the network administrator (system operators) and its users. However, as follows from the CREG's annual report, such body of CREG could not yet start to work in 2018 in the absence of the decision on the appointment of its members (<https://www.creg.be/sites/default/files/assets/Publications/AnnualReports/2018/CREG-AR2018-EN.pdf>).

4. CONCLUSIONS

The discussion shows that the Belgian model of collective enforcement of consumer rights focuses primarily on the private enforcement. The major entity involved on behalf of consumers is Test Achats, which initiated 8 out of 9 proceedings. Considering that the Belgian legislation on consumer collective redress was introduced 5 years ago, the number of cases (approximately two per year) is not significant. However, it should be taken into account that the number of consumers involved in each of these cases is vital so – all in all – the action for collective redress has impact on the hundred thousands of consumers. This is possible, among others, thanks to the possibility of the court to choose between the opt-in or opt-out mechanism. The use of the second one allows to include a big number of affected consumers. This freedom of choice is a very interesting legal solution which in my opinion shall be introduced to the Polish law as it makes the system more efficient. Additionally, it should be noted that involving a huge number of consumers would not be possible without the activity of Test Achats. Therefore, it is crucial to create a consumer organisation in Poland which would be aware of the consumer problems and successful in the introduction of collective proceedings to the national legal system. It needs to be stated at this point, there is no such organisation operating in Poland currently (Mucha, 2019b). Regrettably, the activities the public enforcers in terms of collective redress are rather limited. To conclude, the possibility to include compensation for the consumers in the settlement between the enforcer and trader seems to be a very efficient solution which – in my opinion – shall be followed in other Member States.

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