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LIST OF ABBREVIATIONS

ACM	Autoriteit Consument & Markt (Authority for Consumers and Markets)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
CAT	Competition Appeals Tribunal
CDC	Cartel Damage Claims
CJEU/ECJ	Court of Justice of the European Union / European Court of Justice
EU	European Union
GWB	Gesetz gegen Wettbewerbsbeschränkungen (Act against Restraints of Competition)
KapMuG	Kapitalanleger-Musterverfahrensgesetz (Capital Markets Model Case Act)
NGO	Non-governmental organisation
TFEU	Treaty on the Functioning of the European Union
UOKiK	Urząd Ochrony Konkurencji i Konsumentów (Office of Competition and Consumer Protection)
UWG	Gesetz gegen den unlauteren Wettbewerb (Act Against Unfair Competition)
WCAM	Wet Collectieve Afwikkeling Massaschade (Dutch Collective Settlements Act)

EXECUTIVE SUMMARY

This document sets out the results of the research findings of the Task 3 Political rights and the EU's new policy of "regulation by litigation" that is part of Work Package 8 Political rights within the bEUcitizen research consortium. The efforts of the research team aimed to answer the central question of the research, i.e. whether and how the policy of "regulation by litigation" influences the political choice options? Inevitably, the research team also arrived at the question of whether it is possible, with the lack of uniform institutional bases and the empirical data that is currently available, to arrive at useful conclusions and what types of data collection endeavours are most feasible for the attempts to address the research question.

The report provides a useful guide to the theoretical framework of the problem, the country studies in six Member States and addresses the findings on litigation data.

CHAPTER 1. INTRODUCTION

SECTION 1.1. RESEARCH QUESTIONS

The research conducted within the present Task was limited to two closely related areas – consumer protection and competition law. It examined the EU’s new policy of “regulation by litigation”, which is, in its essence, the encouragement of consumers and entities affected by infringements of competition law to litigate in order to influence the “rules of the game”, i.e. change the existing regulations or enforce the existing regulations and therefore enhance compliance with the rules. The ultimate aim was to answer the following key questions:

- Do court decisions increasingly trump democratic decision-making in the two policy areas?
- Could litigation become a new model of participation?

SECTION 1.2. GEOGRAPHICAL SCOPE

The study covered six Member States of the Union: France, Germany, Poland, Sweden, the Netherlands and the United Kingdom, which have been selected due to their difference on important independent variables: their national legal institutions and culture, the presence and strength of interest associations, which offer assistance in class, group or representative actions. The Member States that were subject of the present study all have varying legal systems and EU membership background. France, Germany and the Netherlands were among the founding members of the European Union. All three countries have distinctive legal systems that are part of the civil law family, as well as different legal cultures. The United Kingdom is the only common law country in the study and became part of the EU in 1973. Sweden became a member in 1995 and Poland is the “youngest” of the Member States involved, having joined the EU in 2004 with the wave of Eastern enlargement. It should be noted here that due to differences in legal systems that exist within the United Kingdom itself, the present research touches upon England and Wales in particular. Therefore, any references to the United Kingdom here should be understood as meaning England and Wales.

SECTION 1.3. METHODOLOGY AND STRUCTURE

It should be noted that the WP 8 description of work initially suggested the questions posed in Task 3 could be answered by a detailed examination of litigation data, i.e. by analysing who – individuals or collectives – has sued, how frequently, how successfully and whether legal institutions, culture and interest associations have facilitated or hindered the attempts at obtaining redress. However, as will be addressed in detail below² such a broad research exercise within six Member States is impracticable. Instead, the research of litigation data was limited and adapted to the available time and resources.

Thus, the research first addresses the theoretical framework relevant to the research questions (Chapter 2.). Second, in order to answer the research questions, it is important to understand the legislative framework of competition and consumer law enforcement in the Member States (Chapter 3.). This provides the information on the weight and influence the court may have on regulation as well as the access to the courts. In this context, particular attention was paid to the mechanisms of collective and representative redress in the Member States as well as the participation and role of non-governmental actors in litigation, which is vital to the understanding of the way in which courts can become engines of new rights in Europe and “regulate through litigation”.

² See section **Section 4.1. Scope of Research.**

Furthermore, litigation data was evaluated in order to determine whether litigation is becoming more common and whether it is perceived as a means of regulation (Chapter 4.). In particular, the scope of litigation data research extended to the study of: the tendency for increase of general litigation rates; the publically available data on collective and representative litigation; the developments in private enforcement of competition law; the outcomes of the online survey on consumer litigation carried out by the researchers amongst the non-governmental organisations and a selection of middle-sized law firms that focus in their work on private persons. The collected data allowed the researchers to reach certain findings and make recommendations that will be set out at the end of this report (Chapter 5.).

CHAPTER 2. THEORETICAL FRAMEWORK

SECTION 2.1. CAUSES AND CONSEQUENCES OF EXPANDING RIGHTS IN EUROPE

The relation between citizenship and rights is ambiguous: any concept of citizenship rests on rights whereas rights do not necessarily constitute citizenship. The European Community has shaped rights for quite a long time. The treaties constitute rights of free movement and citizenship, the ECJ extracted fundamental rights from Member States' shared traditions, and through directives and regulations a range of statutory rights have been crafted, e.g. consumer rights, worker rights and other economic and social rights (Stone Sweet 2000).

Yet for decades, the concept of positive, individual rights was not in the limelight. Creating a common market was much more based on "negative" rights, shielding individuals from government intervention. Even the ECJ limited his mandate to protecting those negative rights (Scharpf 1997, 1999). The so called "rights revolution" in Europe is about positive rights that started spreading in the 1990ies. Negative rights aim to primarily to protect citizens and consumers against intrusion by governments or companies. Positive rights turn citizens and consumers into more active persons that can actively seek to get information or goods. Against the backdrop of European Integration, rights have a peculiar meaning. In an abstract way rights simply mean "judicially enforceable rules", set up by EU institutions. As the Common Market took shape, the intrusion of European laws and regulations challenged the legitimacy of the European Union (de Burca 1995).

Different groups and actors demanded both fundamental citizen rights and positive social rights: member states, interest groups, as well as the President of the European Commission, Jacques Delors. A "Social Europe" should accompany the Single Market. Practically, the Social Protocol to the Treaty of Maastricht represented this approach. In the aftermath, secondary legislation in Europe shaped also positive consumer rights. Preparing the Treaty of Amsterdam, urges to enact civil rights as well as social rights converged (Maas 2005).

Most interest groups that championed rights insisted that policy-makers made no difference between civil and social rights. For example, antidiscrimination rights were enshrined in the Treaty of Amsterdam. It was not until the adoption of the Maastricht Treaty (1992) that human rights were formally acknowledged as part of EU law. The Charter of Fundamental Rights came with a regular "Bill of Rights" but had no binding effect. Yet new European rights have had a significant impact on legal systems in member states (Aziz 2004).

Many of those rights have paved the way to litigation in Member States, effectively strengthening European institutions (Schimmelfennig 2006). Most visibly, the European Court of Justice has interpreted new rights often generously and has even created new rights that empower European citizens and their advocates.

SECTION 2.2. CONVERGING TOWARDS THE US?

However, what exactly are the causes and consequences of the "rights revolution" in Europe? There is a controversial debate on why rights have become a prominent tool of European integration. Daniel Kelemen (2011) insists that a pattern of adversarial legalism has emerged which he labels "Eurolegalism". The two main driving forces are side effects of the single European market and political fragmentation at EU level.

As the European market unfolded the traditional way of informal policy-making and insider networks in the EU did no longer work. Thus, more formal and legalistic rules proved to be an equivalent that helped to maintain the growing market sphere. Secondly, powerful European actors tried to overcome the obstacle of fragmented

policy-making and multiple principal-agent problems by delivering rights. The European Commission even actively trains activists to trigger test cases and streamline litigation strategies (Vanhala 2011).

This explanation casts doubt on a crucial thesis in bEUcitizen's theoretical framework. That thesis states that delegating decision-making to courts, comitology and commissioners has shrunk transparency and accountability. This may be true in general, yet creating more "judicially enforceable rules" could also increase transparency compared to long-established informal policy-making in the EU. There are prominent counterarguments to the causes and the scope of "Eurolegalism".

Concerning causes, proponents of policy diffusion argue that Eurolegalism was much more invented from the outside. Major factors include US law firms swept to Europe through the dynamics of globalization, higher degrees of judicial activism and policy brokers seeking to emulate US regulatory style (Shapiro/Stone 1994; Levi-Faur 2005, van Waarden/Hildebrand 2009). Diffusion theories contribute significantly to explaining the spread of rights and legalism in Europe. However, US adversarial legalism is widely feared as a specter of irrational and costly excesses.

Thus, processes like mimicking meet strong opposition. As for the scope of Eurolegalism, barriers towards enforcing European rights can be found in the culture of national legal systems (van Waarden 1995). There are different rules of standing, of legal aid or incentives to interest groups when it comes to litigation (Strünck 2008). Also, most European countries do not allow for class action, they ban contingency fees and other features of US adversarial legalism (Kagan 2007). Yet the question remains whether legal systems in Member States are slowly changing, opening up space for Eurolegalism.

The expansion of rights in Europe is well documented in the literature of law and political science. There are new studies that aim to explain growing judicial activism in Member States (Rehder 2009). There are also comparative studies on granting more rights to citizens to challenge government regulation (Rose-Ackerman/Lindseth 2010). Whether citizens are called upon to invoke new rights or regulatory agencies are in charge is another topic of comparative studies (Vogel 2012). Finally, the debate on whether creating enforceable rights diminishes democratic accountability is picking up speed (Kelemen 2012).

SECTION 2.3. INSTITUTIONAL FEATURES OF PUBLIC INTEREST LITIGATION

As for standing rights, ex-ante and ex-post standing rights have to be distinguished (Cafaggi/Micklitz 2009). Following the ex-ante-principle it is governments that determine beforehand which type of public interest organization is entitled to litigate. This resembles patterns of corporatist policy-making although ex-ante procedures are not strictly linked to corporatism in countries. Ex-post standing rights leave the legal arena open to a wide range of established and emerging organizations. In this case public interest groups face tougher competition. Some experts think that Europe is heading slowly towards ex-post competition US style (Cafaggi/Micklitz 2009).

One example is the much-debated Capital Markets Model Case Act (KapMuG) in Germany. This law was enacted after 16 000 shareholders sued German Telecom in 2008. They claimed the company had not disclosed vital information on time because it would have influenced sales of shares. Subsequently, a class-action-like model was introduced for the very first time (Halfmeier et al. 2010). Self-help organizations gathered and lawyers bundled claims. Consumer organizations are excluded from cases yet are granted a monopoly in test cases. This

is rather an exception to the rule and most other European countries grant standing privileges to consumer organizations, as well.

Another example is the European cement cartel that was unearthed some years ago. A private company named Cartel Damage Claims (CDC) has set up its headquarters in Brussels. It specializes in corporate claims concerning antitrust matters (Strünck 2008). Cartel Damage Claims has been assigned claims by German companies that were the customers of the parties to a cartel in the cement industry. The German Federal Court of Justice has confirmed that the proceedings initiated by the CDC based on the assigned claims is admissible in principle³ but the Regional Court of Düsseldorf has subsequently dismissed the case finding that the manner in which the claims were transferred to the CDC in this particular case was not valid. The court found that the transfer of claims was only done for the purpose of shifting cost risks to an entity that is not sufficiently funded.⁴ Further court actions in Germany and the Netherlands have already been taken up by the CDC.⁵ This precedent has opened up the possibility for companies to sue for competition-related damages with reduced risks.

Also, forum shopping will become more likely because private companies like the CDC will seek promising countries for claims. For example, the simplified procedure of follow-on claims for damages may be brought to the Competition Appeals Tribunal (CAT) in the UK when such claims are based on a decision finding a violation of competition rules. This will motivate companies to seek a connection with the UK jurisdiction in order to enforce their claims for damages there. Or using the Dutch provisions that provide the courts with the power to certify a mass damages settlement agreement and to make that agreement binding on members of the "class" unless they actively opt out (Kelemen 2011). Also, the cartel damages groups like the CDC challenge classic public interest groups because they are well equipped to contribute to public goods such as a stable order of competition. But which group is better equipped to attract individual claimants to engage in class action? Here the classic distinction of opt-in or opt-out clauses comes into play. Claimants rather have to opt out of a particular case in which their interests are negotiated, or they have to opt-in. If they do not opt out the result will restrict future individual claims. Opting in as an alternative device means that lawyers or public interest groups have to attract claimants. The Antitrust Damages Directive⁶ could, potentially, also create incentives for litigation. However, as the Directive is only set to be implemented by the Member States by the end of 2016, its effects would still need to be evaluated in the future.

There is no clear picture in European class action about opt-in and opt-out currently. Sweden has famously switched to opt-in whereas countries as diverse as Portugal, Spain, Denmark, Norway, the UK and Germany have introduced opt-out clauses, at least in consumer protection law (Cafaggi/Micklitz 2009). Traditionally, European

³ German Federal Court of Justice, 7 April 2009, Case No. KZR 42/08.

⁴ Regional Court of Düsseldorf, 17 December 2013, Case No. 37 O 200/09.

⁵ For overview of cases see CDC website <http://www.carteldamageclaims.com>.

⁶ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

countries pursue opt-in strategies due to their legal tradition of individually authorized lawyers. Opt-in procedures benefit public interest groups as long-term oriented repeat players in litigation (see below).

The US tradition of opt-out not only raises questions of accountability but also increases pressure to settle prematurely as do contingency fees. Interestingly, opt-in clauses take lead plaintiffs that are committed and credible towards their members. This is the case with most public interest groups that are better equipped to handle opt-in cases than private attorneys. Another institutional device that affects the activities of public interest groups is the role of government agencies. In this respect there is no clear relation between corporatist tradition and government regulation (Strünck 2008).

In Sweden, for instance, government agencies lead public interest litigation despite its corporatist tradition. In corporatist Austria it is the federal consumer organization that dominates litigation. The role of government touches on the issue of funding, as well. Third party financing is an underestimated factor whenever scope of representation is at stake. Above all, “loser pays” rule is predominant in Europe (Hodges et al. 2009). For public interest groups it means that cases they are likely to win will not pose any financial burden on them.

The “loser pays” rule also results in high predictability, compared to punitive damages in the United States. It renders legal expenses insurance a predictable business, too. Thus conditions for external funding are good. This does not necessarily mean public interest groups can rely on funding from third parties. Some European governments delegate litigation to public interest groups and provide sufficient funding, as well. In Austria the ministry of consumer protection regularly assigns the federal consumer organization litigation to carry out (Micklitz/Stadler 2006).

In other countries like France it is membership fees that are a vital source of funding. This creates negative incentives to sue, however. The same is true for the German Act Against Unfair Competition (UWG). It allows for skimming profits if corporate misconduct can be proven. Consumer organizations are entitled to act on behalf of consumers before courts. Yet damages go to the public purse so the incentive to sue is rather weak. Since 2004 consumer organizations succeeded in just two trials; altogether eight trials were held, with skimmed profits not exceeding EUR 4000,00 (Meller-Hanich/Höland 2011).

Therefore, the tool turns out to be a paper tiger. To overcome the obstacle of financial risk new forms of funding are sometimes invoked. But this cannot compensate for the shortcomings in the law. In other cases and countries insurance companies provide legal expenses coverage. This brings in a third party with its own collective interests. For instance, an insurance company paying lawyers’ fees might urge the leading plaintiff to settle (Steinitz 2010).

Thus, litigation of public interest groups might be eased but their strategies are affected, as well. In the US possible plaintiffs like public pension funds turn to law firms as lead plaintiffs because they seek campaign contributions. This has fuelled pay-to-play strategies that are widely criticized. In Europe neither law firms nor campaign contributions play a significant role. Summed up, legal culture with its institutional devices has an imprint on litigation. Class action is fuelled by North America’s approach towards settlements.

In 20th century it became a device of social change with fringe groups gaining access to justice (Piché 2009). Current legislative regulation of litigation is also influenced by lobbyism. Thus, policy analysis should devote more attention to this kind of policy (Shapiro/Stone Sweet 2002). Equally important, public interest groups show distinctive but different abilities to broaden representation through litigation.

SECTION 2.4. REPEAT PLAYERS FOR BROAD REPRESENTATION? THE ROLE OF ASSOCIATIONS AND GROUPS IN LITIGATION

Why can public interest groups make a difference in litigation? The current debate in the United States sheds light on possible merits of non-profit-claimants compared to law firms. Among several proposals for reform the idea of “public advocate” is one of the latest (Helveston 2012). Critics claim that the private law firm based model of class actions supports narrow patterns of representation.

Creating a “public advocate” would at first glance resemble representative action familiar in most European countries. However, public advocates are supposed to not side with any party. Public interest groups do side with a party they represent before courts. So what is the merit of “partisan” groups to the concept of public interest litigation? Granting standing rights to public interest groups widens the scope of interests represented. It can even increase competition among interests that are negatively affected by corporate or government action. For instance, granting standing to self-organizations to accelerate competition and pluralism exerts pressure on traditional public interest groups in Europe. In special cartel cases, for instance, ad-hoc non-profit-organizations gather to bundle claims and sue more effectively. But this is a rather new trend. Generally, representative action by ombudsmen or public interest groups is the European alternative to class actions, contingency fees and punitive damages. Its traditional realms are injunctive relief and claims against polluting companies or regulatory agencies in environmental policy.

The European Commission’s White Paper in 2008 suggested that representative action could be stretched to violations of competition law. Representative action by public interest groups is a functional equivalent to the lead plaintiff in US securities litigation (Coffee 2010). When public interest groups show up as leading plaintiffs their position is different from lawyers or private parties:

“The association’s relationship with the claimants depends on more than a fortuitous utility resemblance, but rather an active interest to maximize its constituent’s utility.” (Gousgounis 2009: 16)

Some experts decry conflicts of interest when public interest groups seek publicity and follow their self-interest. However, there are striking differences to interests of private interest groups or law firms:

“Most importantly, since they are not long term shareholders or vendors of services to defendant corporations, they are not prone to conflicts of interest that would compromise their decision to bring an action or the level of settlement amount. Nor will associations be worried about protecting their own investment practices or proprietary information [...] Lastly, the governance structure of associations that usually gives voice or voting rights to its members, renders the association more accountable, it improves litigation monitoring, and aligns association’s interest more with those of the underlying claimants.” (Gousgounis 2009: 18)

Public interest groups are committed to a long-term strategy, they do not seek swift settlement, and they bring in expertise. Thus they are not focused on single cases and might help to represent “general interests” beyond individual claimants involved. Private corporate plaintiffs do not see litigation as a test to reputation because they pursue profits not public interests.

“Put simply, reputational capital is a solution to problems of accountability because the public interest plaintiff inherently pledges it to assure class members of its loyal and competent performance.” (Coffee 2010: 81)

From this perspective public interest groups are more likely to be solid repeat players with high functional knowledge. This might also be in line with business interests. European business is haunted by the “specter” of US class actions (Kagan 1997, 2008). Lobby groups warn about its unpredictability. Public interest groups could raise predictability because of their repeat player status. Given their outreaching strategies of communication and mobilization they tend to use new technologies more comprehensively than single case private attorneys to attract claimants. As for incentives, most public interest groups are not exclusively interested in pecuniary damages because advancing law will do, as well.

Thus the peculiarities of public interest groups might help to foster public interest by litigation. This is theory but practice is still open to scrutiny. Some cases from different policy fields pinpoint effects for defining public interest through litigation. Depicting public interest groups as repeat players fits in Marc Galanter’s famous typology of litigants.

“‘One-shotters’ have cases that are either too large or too small to get handled. ‘Repeat players’ enjoy lots of advantages over ‘one-shotters’: [Repeat players] have advance intelligence; they are able to structure the next transaction and build a record [...] [Repeat players] develop expertise and have ready access to specialists. They enjoy economies of scale and have low start-up costs for any case [...] [Repeat players] have opportunities to develop facilitative informal relations with institutional incumbents [...] [The repeat player’s] interest is in his ‘bargaining reputation’. [Repeat players] can play the odds. The larger the matter at issue looms for [the one-shotter], the more likely he is to adopt a minimax strategy (minimize the probability of maximum loss). Assuming that the stakes are relatively smaller for [repeat players], they can adopt strategies calculated to maximize gain over a long series of cases, even where this involves the risk of maximum loss in some cases. Repeat players can play for rules as well as immediate gains [...] [A repeat player] may be willing to trade off tangible gain in any one case for rule gain [...] We would then expect repeat players to ‘settle’ cases where they expected unfavorable rule outcomes [...] [One-shotters] should be willing to trade off the possibility of making ‘good law’ for tangible gain.” (Galanter 1974: 98)

Most of those features apply to public interest groups as litigants. Ironically, Galanter stressed that those advantages benefitted the “haves” in society. Yet if public interest groups can take on positions of repeat players, diffuse and weak interests can turn into powerful actors. Why is litigation an important tool for public interest groups?

“As the preceding research on social movements makes clear, litigation can build public awareness, help frame problems as injustices, and reinforce a sense of collective identity, all of which can build a political base for reform.” (Cummings/Rhode 2009: 648)

Not only in the US with its salient trials is litigation a feasible way to go public. Some powerful strategies of framing by public interest groups have been propelled into the media via trials in Europe and elsewhere. This holds true for issues like genetically modified food or non-smoker-protection (Strünck 2005). In other words: Litigation can support public interest groups’ goals and creeds. If you consider those goals legitimate and an added value to pluralist interest intermediation the argument sticks. Of course, litigation brings many more effects than empowering powerless groups. It generally helps making law work.

How about accountability? Environmental policy reveals thorny issues of accountability and interest group capture. At EU level as well as in Member States, standing rights for environmental groups are a contentious

issue. Of course, public interest groups are better barriers against interest group capture than government agencies. Yet some experts see conflicts of interests, and they maintain that legal action by environmental groups undermines discretionary authority by government agencies (Hunter 2000).

This debate touches directly on the question of public interest in a normative manner: Which model is best to serve the public interest: is it government agencies alone or a mix of agency and public interest groups? It is interesting to note that some scholars deny environmental groups the status of “public interest groups” because they concentrate on environmental issues and do not take negative economic effects into account (Bergkamp 2001). This is why government agencies might be better equipped to serve the public interest, in their point of view.

Also, they can be held accountable. However, those arguments rest on a narrow concept of law enforcement. Public interest groups sometimes specialize more than government agencies. This is why they can detect flaws, loopholes or just missing pieces of legislation as can be seen in the US. Although representative action is not prominent in the US environmental groups such as the Sierra Club are entitled to take to higher courts. They strive to “advance legal positions in the pursuit of long-term political or ideological goals” (Coffee 2010: 6).

Additionally, interest groups are independent from government. This is why some might be willing to take risks and pick unusual strategies. They are not entangled in institutional networks and loyalties the way government is. Thus, they can pursue litigation more actively than government agencies.

Thus litigation by public interest groups is not necessarily confined to law enforcement. It is true that accountability of public interest groups might be murky. But seen from a procedural perspective of pluralism, increasing representation is more important than increasing accountability. By the way, accountability is bolstered by opt-in clauses that oblige public interest groups to actively seek claimants. How do public interest groups’ strategies affect policies and claimants’ positions? There is scattered evidence across policies and countries.

SECTION 2.5. CASES MADE

Representative action by public interest groups figures prominently in consumer policy throughout Europe, for instance. Consumer organizations often act as lead plaintiffs, although institutional settings and

options for funding vary substantially between Member States. However, European countries have chosen different paths. In Sweden a much debated law on group actions was introduced back in 2002. The first big case for public enforcement action came from environmental policy: In 2007 the new ombudsman sued an electricity company on behalf of 7000 customers. The company had failed to provide energy on a fixed price base. Along with evidence from Belgium and other countries those cases hint that public interest groups can manage to lure enough plaintiffs for opt-in litigation (Coffee 2010; Stadler 2007).

The most common legal tool in German consumer policy is an injunction. Here you can find two major plaintiffs: consumer organizations and the Center of Competition (Wettbewerbszentrale), a self-governing body of companies. The Center of Competition issues 7000 injunctions per year, on average. Among the consumer organizations it is the Hamburg branch as well as the federal peak organization in Berlin that specialize in injunctions (Meller-Hannich/Höland 2011). This is a classic case of “repeat players” that benefit from experiences and routines. Repeat players can keep investments low and resources high when it comes to legal cases; they

build up economies of scale. Injunctions seem to effectively deter most companies since the number of trials is relatively low.

Another example is patient rights. In Germany a new law is under way, for instance. Although it simply bundles all existing regulation it brings about change. Most patient rights have been defined through court rulings. Yet the law has sparked a public debate on existing flaws when it comes to enforcing patient rights. A by-product is the debate on third-party funding for litigation. Some experts hold health insurance companies accountable to cover expenses when patients take to the courts.

Another example is rights of disabled people. Since the UN Convention on the Rights of Persons with Disabilities has been ratified new opportunities to change policies have sprung up. The UN convention does not force national providers of social services or schools to introduce inclusive policies. Yet it enables self-help groups, parents' groups or other non-profit organizations to pose legal threats. This threat has spread in numerous countries (Vanhala 2011). Subsequently, segregated housing projects, firms and schools were partly abolished and replaced by more inclusive settings.

Additionally, the subject has been propelled onto the public agenda. Is it "just" about minority rights or is it about equal opportunities as a core pillar of public good? Courts have found different answers and the legal conflict will loom bigger in the future. In the case of the UN convention it was the very non-profit-organizations and their experts that helped to get it enacted who use its principles as legal weapons at home. In a two-level-playing-field eleven public interest groups pushed through a framework that allows them to change policies through courts.

SECTION 2.6. DYNAMICS AND DIRECTION OF PUBLIC INTEREST (GROUP) LITIGATION

What are the driving forces of public interest litigation and how does it affect ideas of the "public good"? Generally, granting rights is a cost-effective tool of regulatory politics. This is why the European Commission enacts collective rights as a major tool to bypass Member States' reluctant legislation (Kelemen 2011).

Thus there is a European dynamic that opens windows of opportunity to public interest groups. However, the European Commission favours government regulation in some respective policies such as consumer policy. Countries with litigating public interest groups like Austria or Germany are somewhat irritating to the Commission when new initiatives are launched. To public interest groups litigation is an ambiguous tool. They can gain a lot and get awareness through litigation. On the other hand, it is hard work which takes a lot of specific resources and experiences.

Depending on funding they face a time-consuming and very sophisticated legal process. Whether litigation brings in new opportunities to frame public discourses depends on subjects and claimants that are affected. Some types of public interest groups – like Foodwatch – are small, understaffed organizations that run campaigns. They are just not experienced enough to undertake ambitious legal efforts.

Plus, campaigning gets quicker media attention for less effort. Thus it is a strategic choice for public interest groups whether to embark on legal venues at large scale. Certainly, outcomes for diffuse and weak interests are different when private parties or lawyers act instead of public interest groups. In the European setting effects are mostly restricted to parties involved. It might lead to policy changes if the case is highly salient and expensive.

But even smaller damage to the environment, to consumers or to patients might harm public interests. In this case third party funding and standing rights are crucial whether public interest groups pick up litigation as a strategy. Further comparative research on legal systems, legal rights and legal funding might provide new insights into how public interest and public good are maintained. Suing is no surrogate for policies; but in a new era of legalism litigation is a tool of interest intermediation to be scrutinized.

CHAPTER 3. INSTITUTIONAL BASES

This section brings together the country studies for the six Member States subject to this research. It provides a general overview of the legal institutions governing the enforcement of competition law and consumer protection. A particular focus is made on the mechanisms of private enforcement, collective and representative redress in the Member States. The aim of the research of the legislative frameworks was to obtain the understanding of the access to the judicial system and the information on the weight that the court decisions may have on regulation thus determining how interest organisations may access the courts, which is vital to the understanding of whether the courts can become the engines of new rights in Europe at all and, if so, how one “regulates through litigation”.

The Chapter demonstrates that the six researched Member States have varying approaches to the enforcement of consumer protection and consumer rights. Furthermore, the Member States have differing types of collective and/or representative redress mechanisms which have been introduced relatively recently. The researchers aim to evaluate their efficiency based on the available data in Chapter 4. Litigation Data.

SECTION 3.1. FRANCE

France was one of the founding members of the European Union. The national competition provisions are fixed within the French Commercial Code and are divided into two categories: anticompetitive practices, which correspond to the competition provisions in Articles 101 and 102 of the TFEU, and restrictive practices, which have no textual equivalent in the EU law (Momège/Bessot 2004). A distinctive feature of French competition law is the presence of criminal responsibility provision within the Commercial Code. Article L420-6 provides that the person that is fraudulently participating in anticompetitive practices (the national law provisions similar to those of Articles 101, 102 of the TFEU) could be sentenced to 4 years imprisonment and/or a fine of EUR 75,000.00. It should be noted though, that due to strict interpretation of criminal law such criminal responsibility would not be applicable to the violations of the similar EU competition law provisions (Momège/Bessot 2004).

3.1.1. Public enforcement

The public enforcement of competition law is a complex system with authorities that have overlapping responsibilities. In addition to the central and sectorial authorities, competition violations may also be dealt with by the public prosecutor.

The Competition Authority (Autorité de la concurrence) is the central authority dealing with the public enforcement of competition law. The decisions of the Authority are subject to scrutiny through appeal to the Court of Appeal of Paris in anti-competitive actions and to the Conseil d'Etat in cases of concentrations. The Competition Authority has the power to issue injunctions and impose financial sanctions.

Additionally, even after the creation of an independent Competition Authority in 2008, the Directorate General for Competition Policy, Consumer Affairs and Fraud-Control (Direction générale de la concurrence, de la consommation et de la répression des fraudes) retained some investigative competition-related powers in the area of anticompetitive practices with the reservation that such investigations need to be first notified to the Competition Authority to proceed. Due to the fact that the directorate has a local network of representatives it is best suited to react locally to violations of competition regulations. In order to achieve its goals, the Directorate has the power to impose fines. These powers are exercised under the responsibility of the Minister of Economy and Finance. The Directorate was also entrusted with the responsibility of monitoring the unfair commercial

practices may bring on behalf of the Minister of Economy and Finance claims in court for injunctions against the traders that violate the relevant provisions as well as initiate actions for damages. The Directorate is responsible for the monitoring of correct application of consumer protection laws and investigating the violations. It is also concerned with matters of consumer safety overseeing the correct application of corresponding regulations. The Directorate General does not, however, deal with individual consumer cases.

Furthermore, the enforcement of certain competition rules is not only carried out by the competition authorities, but proceedings may also be initiated in civil or commercial courts by the Public Prosecutor in cases that concern restrictive practices.

3.1.2. Private enforcement

Injured parties can pursue individual claims for violations of competition law and their consumer rights in general civil and commercial courts. The commercial courts will accept disputes between traders while the private persons may choose to bring a case against a trader both to the civil and commercial courts (Momège/Bessot 2004). On the other hand, when a delegated legislation is concerned or decisions of persons acting with prerogatives of public authorities which results in violation of competition rules it is the administrative court that will hear cases regarding the annulment of such acts (Momège/Bessot 2004).

It should be noted that there is no specific legal basis for a claim of damages originating from the infringements of competition law, general provisions applicable to all actions for damages will apply. The compensation that the plaintiffs are eligible to seek are the compensation of a financial nature in the form of damages, which is the most common form of compensation sought, or, alternatively, a restitution. On a non-financial side of the possible remedies that may be sought in court are the injunctive relief, finding the contract to be null as well as the possibility to seek publication at the cost of defendant of the court judgement in the media (Momège/Bessot 2004).

France also has many alternative dispute resolution schemes, e.g. Conciliation service of the justice system (Conciliateur de justice),⁷ public companies' mediation services,⁸ Consumer Complaints Board (Commission de

⁷ A special institution characteristic to the French dispute resolution system where the Conciliators are appointed by the President of the Court of Appeal and work on a voluntary basis. The services provided by them are free of charge to the parties. Conciliation may be initiated either by a party to the dispute privately or ordered by the court in the case that is already pending. The whole procedure takes normally a month to complete. Should the conciliation result in an amicable settlement such settlement will either be fixed in a form of an agreement or communicated to the judge in front of whom the case between the parties is pending.

⁸ Most of the publicly owned companies in France have their own mediation and dispute resolution services, which deal with consumer complaints. They all work under a similar procedure: the mediation is not binding on the parties unless they have agreed for it to be binding, the complaints are accepted only after there has been no resolution of the dispute directly with the company, if the parties did not agree to bind themselves by the recommendation of the mediation service they are still free to bring a law suit in court.

Règlement des Litiges de Consommation).⁹ Self-regulation initiatives are also typical for France, there is a number of such initiatives, e.g. Federation of Direct Selling (Fédération de la Vente Directe).¹⁰

3.1.3. Representative and collective actions

3.1.3.1. Group actions

After some years of debate, the French Parliament introduced a group action procedure in 2014 through the Loi Hamon. The mechanism is available in the area of consumer protection and in litigation originating from violations of competition law that are based on the same act and when the individuals are in a similar position (Javaux/de Combes de Nayves 2014).

Under the provisions of the French Consumer Code, national consumer associations may initiate group actions on behalf of consumers in cases originating from sale of goods and services or from violations of the provisions of the national competition law as well as Articles 101 and 102 of the TFEU.¹¹ The associations that are allowed to initiate the class actions require a special approval by the Ministry responsible for consumer affairs (currently the Ministry of Economic Affairs) under the same provisions that relate to the approval of organisations allowed to initiate representative actions.¹² In general, the requirements are that the association can demonstrate the capacity to represent consumers in different industries, territories and has the necessary financial resources to carry out such activities (Javaux/de Combes de Nayves 2014).

Upon receiving a group claim, the court will address in a judgment the question of liability of the defendant, establish the description of the group that may seek compensation and establish the relevant rules for such compensation. The invitation to join the group through an opt-in procedure will be published by means determined by the court and disseminated at the expense of the defendant.¹³ The consumers will only be informed after the judgment on liability has entered into force. Within the time established in the judgement individuals will be able to join the group and seek individual compensation from the company.

A simplified procedure would apply to those cases where all of the consumers sustained the same damage or when it is known beforehand how big the group is and which individuals belong to it.

⁹ The Consumer Complaints Boards are set up with the support of local authorities in order to resolve disputes with the use of mediation between consumers and companies to reach an amicable solution. The mediation procedure takes about two months to complete and should the parties not be happy with the suggested resolution they retain their right to go to court.

¹⁰ The Federation of Direct Selling maintains a Code of Ethics to which the members of the Federation are signed up. In case of complaints or violations of the Code of Ethics the cases can be brought in front of the Direct Selling Mediation Commission. The Commission is composed of legal and economic experts from the area as well as representatives of the industry and of consumer associations. The Commission also hears cases submitted voluntarily for mediation that are outside of the scope of the Code.

¹¹ Article L423-1 French Consumer Code.

¹² Article L423-1 French Consumer Code.

¹³ Article L423-4 French Consumer Code.

3.1.3.2. Representative actions

According to the French Consumer Code, national associations that are accredited by the Ministry of Economy of France have the possibility to initiate court actions on behalf of several individual consumers. The provisions on such representative actions demand that at least two individual consumers specifically authorise the organisation to bring the lawsuit on their behalf for damages that are caused by the same business act and have the same origin.¹⁴ In accordance with this provision the associations may not initiate any solicitation of claims through mass media, publication of information or through individual letters. Therefore, the associations do not have any means of attracting individuals to join the law suit in great numbers. In this type of action the association is entitled to seek damages in the name of the individuals that have requested the action to be taken on their behalf. In order to be accredited by the Ministry the association has to meet certain criteria of minimum membership, independence and the duration of activity in defending consumer rights.

3.1.4. Litigation financing

Legal aid is quite widely available to natural persons for all types of proceedings. Legal persons, on the other hand, are generally excluded from legal aid and may only obtain it in exceptional circumstances (Javaux/de Combles de Nayves 2014). The availability of legal aid depends on the level of income of the person and varies from a full coverage by the state for persons to partial contribution by the state for higher incomes. In exceptional circumstances. Legal aid may also be obtained when the personal income of the individual does not fit in the gradation set up by the state if the matter in the case is of particular importance.

Legal insurance is also available in France.

SECTION 3.2. GERMANY

Germany is a founding member of the European Union and the biggest by population. The case of Germany is interesting to study due to the fact that no public institution has been entrusted here with the enforcement of collective consumer interests.

3.2.1. Public enforcement

The enforcement of collective consumer rights in Germany is not handled by any public institutions, Germany does not have any central supervisory authorities dealing with consumer protection. The task is, however to a certain extent “delegated” by law to be taken care of by consumer organisations. Therefore, the German competition authority does not have the mandate to handle consumer matters and focuses only on protection of competition. Generally, consumers are expected to enforce their rights in courts themselves individually.

It should be noted that a Federal Office of Consumer Protection and Food Safety (Bundesamt für Verbraucherschutz und Lebensmittelsicherheit) exists in Germany. Its competences, however, lie in the area of food safety and product safety. It does not deal with the public enforcement of consumer rights.

The German Competition Authority (Bundeskartellamt) is independent from the government and tasked with protection of competition in Germany and enforcement of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen (GWB)), which follows the EU competition law provisions. It contains provisions on cartel prohibition, merger control and abuse of dominant position. In order to fulfil its tasks the

¹⁴ Article L422-1 French Consumer Code.

Competition Authority has the power to impose fines, issue cease and desist orders and use the provision for “skimming off” of profits that the undertaking has obtained as a result of its anticompetitive behaviour.

3.2.2. Private enforcement

According to the German law it is not possible for public agencies to be involved in litigation of competition law in terms of public interest litigation (Wach, Bonacker et al 2004). The situation is similar with the consumer protection. The task of going to courts is, therefore, “outsourced” and left to the private actors – individuals, companies and associations.

The general legal basis for claims in tort is §823 of the German Civil Code (BGB), which, in paragraph 2 provides that breach of the statute that is intended to protect another person results in liability in damages to that person. The key requirement is that the person falls within the group whose protection is intended under the relevant statute. The provisions of the Competition Act are, on the other hand, more broad. More specifically, the liability for damages resulting from the violation of national or European competition law is foreseen by §33 of the Act Against Restraints of Competition. The claims are facilitated by the provision contained in §33(4) that specifies that German courts will be bound by the finding of the occurrence of the infringement contained in the final decisions of national competition authorities of EU Member States or the final decision of the European Commission.

If the damage is caused by unfair competition practice, the affected competitors are entitled to claim compensation of damages arising out of those practices under §9 of the Act Against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb (UWG)).

The courts of general civil jurisdiction, Regional Courts (Landgerichte), have exclusive jurisdiction to hear cases in relation to the civil claims resulting from infringement of both national and EU competition law¹⁵ as well as actions relating to unfair competition practices.¹⁶ The matters of compulsory health insurance and care insurance, even if they include elements of competition law, will be tried in Social Courts (Wach, Bonacker at al 2004).

Similar to other analysed countries, Germany has a number of self-regulating bodies that provide out-of-court dispute resolution services. For instance, credit institutions and insurance companies in Germany are usually members of industry associations, which are independent from the industry itself and appoint consumer ombudsmen who deal with dispute resolution. The industry associations are, normally, financed by the industry itself. Usually, the consumer would be required to lodge a complaint directly with the company and if the matter is not resolved may resort to the ombudsman. The procedure is free for consumers and should the outcome not be satisfactory consumers may take legal action in court.

3.2.3. Representative and collective actions

The standard joinder of parties is available in Germany where matters in the dispute relate to the same or similar factual and legal basis. The German legal system does not provide for a mechanism similar to a group or class action. There are, however, some collective dispute resolution mechanisms that are worth mentioning here.

¹⁵ §87 Act Against Restraints of Competition (GWB).

¹⁶ §13 Act Against Unfair Competition (UWG).

3.2.3.1. Capital markets model case actions

The Capital Markets Model Case Act (Kapitalanleger-Musterverfahrensgesetz (KapMuG)) is a mechanism set up in 2005 to handle a flood of some 16 000 cases brought against Deutsche Telekom by its shareholders in the Frankfurt Regional Court. In order to be able to handle all the cases a special law was introduced – Capital Markets Model Case Act – creating a test case procedure where one case would be established and considered by the Higher Regional Court and the rest of the similar cases stayed until its resolution. All of the cases would still need to be initiated individually. The mechanism is designed for claims of damages resulting from false, misleading or omitted public capital markets information and for specific performance in the context of takeover offers. The claims may be brought by shareholders or investors.

There has to be at least 10 similar cases in order to allow for the model case proceedings¹⁷ and the mechanism functions in three phases:

1. The first instance court establishes a model case and submits it to the Higher Regional Court;
2. The Higher Regional Court resolves the model case;
3. The first instance court resolves all the similar cases that were suspended based on the solution of the model case (Baetge 2009).

There may be a settlement reached between the model case claimant and defendant that has to be approved by the court. The claimants of other lawsuits that are awaiting the resolution of the model case may announce their withdrawal from the settlement and if the amount of such claimants is more than 30% of the total number the settlement will not take effect.¹⁸

3.2.3.2. Assignment of claims

Another recent development in the area of collective claims in Germany is the assignment of multiple claims to a third party, which will, in turn, pursue all of them together in front of the court. This approach is used by Cartel Damage Claims (CDC), a corporation established in Belgium that specialises on enforcement of competition damages for companies that were harmed by violations of competition law (Baetge 2009).

The biggest case brought by CDC in front of German courts is a case concerning a cement cartel, where CDC was assigned some 36 claims from the customers of six German cement producers. While initially the admissibility of the damages claim was acknowledged by the Federal Supreme Court of Justice,¹⁹ the court considering the claim in the first instance dismissed the case finding that the manner in which the claims were transferred to the CDC in this particular case was not valid. The court found that the transfer of claims was only done for the purpose of shifting cost risks to an entity that is not sufficiently funded.²⁰

3.2.3.3. Representative action

German law foresees a mechanism of a complaint that can be brought by an association or an interest group in a form of a representative action – Verbandsklage. It was first introduced in 1896 by the Act Against Unfair

¹⁷ §6 Capital Markets Model Case Act (KapMuG).

¹⁸ §17-19 Capital Markets Model Case Act (KapMuG).

¹⁹ Federal Court of Justice, decision of 7 September 2009, Case No. KZR 42/08.

²⁰ Regional Court of Düsseldorf, judgment of 17 December 2013, Case No. 37 O 200/09.

Competition (UWG) for associations whose purpose is to promote commercial interests. With the new law they got the power to seek injunctions in cases of use of unfair competition practices (Baetge 2009). Nowadays commercial interest associations have the right to seek injunctions for violations of either national or EU competition law.²¹

Since then, the right to injunctive relief under the Verbandsklage mechanism was extended to consumer associations in all cases of violation of competition law,²² of dishonest competition practices²³ including the cases of unfair contract terms²⁴ and generally for violations of all the provisions aimed at protection of consumer interests.²⁵ Furthermore, standing to bring claims is also afforded to Chambers of Industry and Commerce or Craft Chambers.²⁶

In order for the associations whose purpose is to promote commercial interests to have standing in front of the court to bring a representative action they need to demonstrate that they have legal personality, considerable amount of members and have sufficient resources to promote the commercial or independent interests.²⁷ In order for consumer associations to be entered on the list of entities that have standing to apply for injunctive relief with the courts they need to have legal personality and their statutes have to include promotion of consumers' interests through education and advise on a non-commercial permanent basis. They need to have as their members either associations that are active in the area of consumer protection (umbrella association) or at least 75 natural persons as members. The associations need to exist for at least one year and their previous activity needs to demonstrate that they perform their functions correctly.²⁸ There are currently 77 organisations entered on this list.²⁹

3.2.3.4. Profit skimming-off

The profit "skimming-off" mechanism (Gewinnabschöpfungsklage) was introduced in 2004 as an addition to the unfair competition actions under the Act Against Unfair Competition (UWG) (Baetge 2009). This action enables the associations that promote commercial interests, consumer associations and Chambers of Industry and Commerce or Craft Chambers, to bring an action requesting the court to force the company involved in

²¹ §33(2) Act Against Restraints of Competition (GWB).

²² §33(2) Act Against Restraints of Competition (GWB).

²³ §3, 8 Act Against Unfair Competition (UWG).

²⁴ §1, 3 Act on Injunctive Relief (UKlaG).

²⁵ §2, 3 Act on Injunctive Relief (UKlaG).

²⁶ §3(1)(3) Act on Injunctive Relief (UKlaG), §8(3)(4) Act Against Unfair Competition (UWG) and §33(2) Act Against Restraints of Competition (GWB).

²⁷ §3(1)(2) Act on Injunctive Relief (UKlaG), §8(3)(2) Act Against Unfair Competition (UWG) and §33(2)(1) Act Against Restraints of Competition (GWB), §50, 51 Civil Procedure Code (ZPO).

²⁸ §4(2)(1) Act on Injunctive Relief (UKlaG).

²⁹ List available on the website of the German Ministry of Justice.

deliberate unfair competition activities to surrender all the profits made out of them to the Federal budget.³⁰ All of the damages that were claimed from the company that violated the law will be, in the first place settled from the “skimmed-off” profit³¹ and in the end the state will only keep the amount that was left unclaimed.

The Competition Authority will reimburse associations that have made “skimming-off” claims for their litigation costs if the association is at least partially successful in its claim (Köhler 2014).

3.2.4. Litigation financing

Private legal insurance is available in Germany, but the general terms and conditions that are commonly used by insurance companies explicitly exclude all claims related to competition law or unfair competition practices (Wach, Bonacker et al 2004).³² Third-party funding also appears to be on the rise in Germany and gaining popularity.

Under the German Code of Civil Procedure legal aid is available to both natural³³ and legal persons³⁴ under certain circumstances. The party has to be in a situation that does not allow it to finance either bringing or defending a law suit with their own resources and the law suit itself needs to not be frivolous and have sufficient prospects of success. Furthermore, in order for a legal person or an organisation to obtain legal aid the case needs to meet the test: “if any failure to bring an action or to defend against an action would contradict the public interest”.³⁵ Scholars further specify that this requirement would be met if without the litigation the legal person will not be able to carry out its statutory goals or if the ruling will affect a substantial part of the population or economy, etc. (Seiler in Thomas, Putzo 2013).

SECTION 3.3. THE NETHERLANDS

The Netherlands was one of the founding members of the European Union. The country belongs to the civil law family and has in the recent years developed two new mechanisms of collective dispute settlement. The tradition of private enforcement of competition law, on the other hand, is not strongly developed in the Netherlands. This is due to the fact that the Dutch antitrust law until 1998 did not contain provisions that were similar to those introduced at the European Union level and only severe infringements attracted the attention of enforcement authorities (VerLoren van Themaat et al. 2004).

3.3.1. Public enforcement

The Authority for Consumers and Markets (Autoriteit Consument & Markt (ACM)) is the main authority dealing with public enforcement of compliance with the rules on competition and consumer protection. The ACM was

³⁰ §10(1) Act Against Unfair Competition (UWG).

³¹ §10(2) Act Against Unfair Competition (UWG).

³² §4(1)(e) Allgemeine Bedingungen für die Rechtsschutzversicherung (ARB 75) and §3(2)(e) Allgemeine Bedingungen für die Rechtsschutzversicherung (ARB 94).

³³ §114 et seq. Civil Procedure Code (ZPO).

³⁴ §116, no. 2 Civil Procedure Code (ZPO).

³⁵ §116, no. 2 Civil Procedure Code (ZPO).

created out of three separate regulators: the Netherlands Consumer Authority, the Netherlands Competition Authority and the Netherlands Independent Post and Telecommunications Authority on 1 April 2013. It is tasked with the enforcement of competition and consumer law. The authority has power to investigate infringements, issue binding instructions explaining how the law should be applied, impose a periodic penalty payment in case of a continuation of the infringement, issue a public warning about the business that violates consumer protection rules and impose fines. A business can make a commitment which would contain conditions that have to be complied with in order to prevent future enforcement actions. The ACM does not act in individual cases and does not sue on behalf of consumers to obtain damages, but rather works for the general good of the public.

There are further sectorial regulators that also have a competition and consumer enforcement mandate, e.g. the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten).

3.3.2. Private enforcement

Injured parties can pursue individual claims for violations of competition law and their consumer rights in general civil courts. There are no specialized courts to hear competition or consumer cases and therefore these are claims within the general civil law jurisdiction. Furthermore, there is a specialized court that hears appeals from companies to the decisions of the ACM. It is the Trade and Industry Appeals Tribunal in The Hague (Over het College van Beroep voor het bedrijfsleven), which is the highest administrative court in the Netherlands in the field of socio-economic administrative law. There is no specific statutory basis for a claim of antitrust damages in the Netherlands, thus, a law suit would be based on the general provisions of the civil code, i.e. tort of breach of duty imposed by law, unjust enrichment (VerLoren van Themaat et al. 2004).

Alternative dispute resolution is also possible in the Netherlands, e.g. Court of Arbitration for Construction Sector (Raad van Arbitrage voor de Bouw),³⁶ Health Insurance Complaints and Disputes Foundation (De Stichting Klachten en Geschillen Zorgverzekeringen).³⁷ There is also a number of self-regulation initiatives, e.g. Foundation for Consumer Complaints Board (Stichting Geschillencommissies voor Consumentenzaken),³⁸ Financial Services Complaints Institute (Klachteninstituut Financiële Dienstverlening).³⁹

³⁶ An independent foundation with the statutory purpose to arbitrate disputes relating to all types of construction services.

³⁷ A foundation established to resolve disputes between consumers and insurers either through mediation or binding arbitration.

³⁸ The foundation resolves disputes between consumers and business based on the standard terms and conditions drafted by representatives of companies and consumers together. The companies need to be registered with the foundation in order to have the possibility of benefiting from the dispute resolution schemes. 54 commissions that deal with disputes in different sectors with the consumers as well as 12 commissions that concern disputes between businesses.

³⁹ Independent complaints body whose services are funded by the affiliated service providers. The organisation mediates disputes between consumers and banks, insurers, brokers and other participants of the financial services market. The decisions are binding if the parties have agreed to this beforehand.

3.3.3. Representative and collective actions

3.3.3.1. Representative action

Article 3:305a-c of the Dutch Civil Code was introduced in 1994 to set up representative action. The action may be initiated by representative organizations that are established for a long time or ad hoc organisations established specifically for the purpose of litigation – the duration of their existence is of no relevance to the proceedings. The statute of the organisation needs to cover the interests of the group that it aims to protect through the representative action, which will be the basis for the court to recognise the standing of the organisation. All forms of relief may be pursued through the representative action except for the claim of monetary relief (Tzankova, Lunsingh Scheurleer 2009).

In practice, the relief that is sought most frequently is either injunctive relief or a declaratory judgement confirming that respondent acted unlawfully regarding the group that the court action seeks to protect and that it is in principle liable for the injuries that the violation has caused (Tzankova, Lunsingh Scheurleer 2009). Such a declaratory judgement allows follow-on claims from individuals, who can use it as a basis to ask for a subsequent award of damages.

3.3.3.2. Group action

Both the possibility of a joinder and an assignment of claims is possible under the Dutch law. These are also used in combination with the representative relief with an ad hoc foundation receiving assignment of claims (Tzankova, Lunsingh Scheurleer 2009).

3.3.3.3. Collective settlement

The WCAM (Dutch Act on Collective Settlements) is a unique mechanism that has no equivalents elsewhere in Europe. The reasons behind its introduction are similar to those of the German shareholders' test case litigation, i.e. the circumstances of specific settlement negotiations in a case of DES in the pharmaceutical industry. The company wanted to give the settlement finality and ensure that no further claims will arise out of the case. A special piece of legislation needed to be introduced to allow for the mechanism that would achieve this (Tzankova, Lunsingh Scheurleer 2009).

Articles 7:907-910 of the Civil Code and Articles 1013-1018 of the Code of Civil Procedure regulate a procedure of court approval of collective settlements based on an opt-out approach. If the parties – representative organisations as defined in the representative actions and business – reach a settlement during negotiations they can jointly apply to the Amsterdam Court of Appeal to approve the settlement in its judgement (Tzankova, Lunsingh Scheurleer 2009). The settlement agreement between the parties should describe the class and provide the information about the number of its members, amounts and eligibility for compensation, the method for its calculation and the way in which the payment can be obtained. The settlement will be published in a newspaper and the individual class members that are known will also be notified in order to allow them the possibility to opt out of the agreement. The court, before approving the settlement, will examine the conditions of compensation and its amount in order to verify that it is fair.

3.3.4. Litigation financing

Private individuals that have low income and limited property can take the advantage of state-financed legal aid. Such persons can file an application with one of the five counsels for legal aid and pay a one-off contribution the amount of which depends on their marital status and their net income. They then may choose an attorney freely from the list of attorneys that register themselves with the counsels. Organisations established for the

purpose of bringing representative actions are normally expected to bear their own legal costs (VerLoren van Themaat et al. 2004).

Furthermore, legal insurance is available in the Netherlands to both private individuals and companies. Third-party litigation funding is also allowed and exists in the Netherlands (Hodges, Vogenauer, Tulibacka 2010). It is especially popular in collective actions. The Dutch Consumers' Association and the Dutch Shareholders' Association have been acting as repeat players in collective actions funding, which is financed from their membership fees and donations (Tzankova, Lunsingh Scheurleer 2009).

SECTION 3.4. POLAND

Among the countries that are the subject of this study, Poland was the last to accede to the European Union in 2004 with the wave of Eastern enlargement. When joining the EU Poland was obliged to accept the whole *acquis* of the Community as is and adopt it into its national law, which also meant accepting the rules on competition and consumer protection. Scholars noted that when Poland faced the implementation of the *acquis communautaire* it was subject to a more rigorous scrutiny by the Commission compared to the existing Member States. It also faced demands for retention of the literal wording of the Directives upon their transposition, which created *i.a.* a lack of correlation with its existing national legislation (Łętowska et al. 2007).

Poland comes from a different political and socio-economic background. Under the state socialist regime, the vast majority of the economy was owned by the state and, in theory, also belonged to the whole society. It was therefore difficult to uphold the paradigm of opposition of interests between consumers and traders, which is the basis of consumer protection (Mańko 2012). Similarly, the safeguarding of well-functioning of markets through the means of competition law as we know it was also irrelevant in Central and Eastern European socialist regimes (Varady 1999). Finally, the notion of public interest litigation in general in a socialist system was hardly imaginable, since the state was itself the expression of the public's interest making the creation of an alternative non-governmental view of the public interest impossible (Goldston 2006).

All these factors on the background of Poland being one of the countries with the lowest levels of civic engagement of the public in Europe (Gliński 2006) make Poland one of interesting cases for the present study.

3.4.1. Public enforcement

Poland, like many other Member States of the EU, amended its national competition legislation in line with the provisions of the Treaties. The Act on Competition and Consumer Protection⁴⁰ contains provisions prohibiting violations of competition rules in a purely national dimension similar to those on the Community level in cases of abuse of dominant position, horizontal and vertical agreements, and concentrations. Consumer protection was also brought in line with the EU law.

The central body of public enforcement in the area of competition law and protection of collective consumer interests is the Office of Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów (UOKiK)). The other relevant bodies are sectorial regulators that have certain powers to enforce legislation and conduct investigations into possible violations. On the other hand, the public bodies that work directly with the individual consumers are the many consumer ombudsmen around the country. UOKiK has the power to

⁴⁰ Act of 16 February 2007 on competition and consumer protection (Ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów, Dz.U. 2007 nr 50 poz. 331).

investigate infringements of competition law and collective consumer rights. The turn to a purely public enforcement model took place in 2007. Prior to that it was still possible for the interested parties i.a. consumer associations to file a complaint with the UOKiK and demand an actual hearing to take place even in cases where the authority believed that the claim was unfounded (Wise 2003). The government reasoned that a clear delimitation between private and public enforcement will serve as a motivation for the private actors to bring their enforcement proceedings in front of the courts (Jurkowska 2008).

The common remedies used by the UOKiK are cease and desist orders and fines. The decisions of the UOKiK may be appealed to the Competition and Consumer Protection Court in Warsaw (XVII Wydział Sąd Ochrony Konkurencji i Konsumentów) – a specialised court set up to deal with such appeals. It also has jurisdiction in certain cases of consumer protection. UOKiK can also file a complaint directly with the Competition and Consumer Protection Court to have a standard consumer contract clause recognised as abusive.

The implementation of consumer policy on the local level is entrusted to the local consumer ombudsmen (about 360 across the country). The local consumer ombudsmen offer assistance to individual consumers, providing free consumer advice, legal information including assistance in bringing consumer disputes to court. The functioning of local consumer ombudsmen is financed by the state. The local consumer ombudsmen are not subordinated to the UOKiK but cooperate closely by providing yearly reports on their activity and notify in cases of suspected infringements of collective consumer interests and possible related competition violations.

3.4.2. Private enforcement

There are no special provisions on enforcement of damages for violation of competition law or consumer protection, therefore, any claims would fall within the general civil jurisdiction. When it comes to infringements of competition law, a party has a choice of either submitting the case to be resolved in court directly or submit a complaint to the UOKiK and wait for its decision before bringing the case to the court. A decision by the UOKiK may help the court to justify the verdict and assess the compensation and was found by the Supreme Court of Poland to be binding and have prejudicial character for the civil courts (Jurkowska 2008).

The rules of the Act against Unfair Competition⁴¹ allow entrepreneurs or organisations whose statutory objective is to protect the interests of entrepreneurs to lodge claims for violations of the provisions of the Act. Consumers would not be able to lodge complaints under the provisions of this act to obtain compensation of damages resulting from the infringements. They would only be able to file such complaints based on the general provisions contained within the Civil Code (Jurkowska 2008). It is interesting that under the Act against Unfair Competition allows for remedies of, i.a.: public statements recognising fault, award of an appropriate amount to be donated for a specific charitable cause.⁴²

Finally, alternative dispute resolution is also available in the areas of competition and consumer law, e.g. Trade Inspectorate Permanent Consumer Courts of Arbitration (Stałe polubowne sądy konsumenckie Inspekcji

⁴¹ Act of 16 April 2007 against unfair competition (Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji, Dz.U. 1993 nr 47 poz. 211).

⁴² Art. 18 of the Act of 16 April 2007 against unfair competition (Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji, Dz.U. 1993 nr 47 poz. 211).

Handlowej),⁴³ Insurance Ombudsman (Rzecznik Ubezpieczonych).⁴⁴ There is also a number of self-regulation initiatives in Poland, e.g. Polish Union of Developers (Polski Związek Firm Deweloperskich).⁴⁵

3.4.3. Representative and collective actions

Public prosecutors, ombudsmen and social organizations have significant powers to initiate representative actions or join litigation in representative capacity at a later stage, file appeals and initiate cassation proceedings as well as being passive participants to the proceedings presenting their views and opinions on the case. Prosecutors are given powers to bring claims in civil, administrative and criminal cases if they feel their action is required by the need to safeguard the rule of law, social interests, public property, or the rights of citizens.⁴⁶

The representative powers of non-governmental organizations are not as wide as those of prosecutors. Non-governmental organizations may initiate civil litigation or join ongoing litigation⁴⁷ with the agreement of the plaintiff, also in cases involving consumer protection.⁴⁸ Additionally, in cases where the organizations are not taking part in the proceedings they may also present to the court the view certified by their representative bodies, if it is relevant to the matters of the case (i.e. *amicus curiae*).⁴⁹ In practice there is more activity on the side of public bodies, i.e. prosecutors and ombudsmen in representative proceedings, than on the side of organizations (Tulibacka 2009).

⁴³ The regional offices of the Trade Inspectorate maintain Permanent Consumer Courts of Arbitration, which can provide services of mediation as well as binding arbitration. The only way that disputes may be brought to arbitration is through submission to arbitration.

⁴⁴ Insurance Ombudsman is a public body that maintains a Court of Arbitration at the Insurance Ombudsman, which deals with disputes in the area of insurance between insurance companies and consumers. Arbitration proceedings are only initiated through submission to arbitration.

⁴⁵ The Union adopted a Code of Good Practice that binds the members of the Union in their relations with the clients. The customers alleging violation of the Code may file a complaint. If the violation of the code of ethics is taking place the Board will demand that the company ceases such activity and in case that does not happen, the membership of the company in the Union will be terminated and this information will be made public.

⁴⁶ Art. 7 of the Act of 17 November 1964 - Code of Civil Procedure (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego, Dz.U. 1964 nr 43 poz. 296).

⁴⁷ Art. 8 of the Act of 17 November 1964 - Code of Civil Procedure (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego, Dz.U. 1964 nr 43 poz. 296).

⁴⁸ Art. 61 of the Act of 17 November 1964 - Code of Civil Procedure (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego, Dz.U. 1964 nr 43 poz. 296).

⁴⁹ Art. 63 of the Act of 17 November 1964 - Code of Civil Procedure (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego, Dz.U. 1964 nr 43 poz. 296).

In 2010 Poland introduced an opt-in group action through the Act on Group Proceedings.⁵⁰ A number of requirements that need to be made in order to initiate a group action:

- There are at least 10 plaintiffs;
- The action relates to the same factual grounds and the amount of damages sought by each individual is equal;
- The action relates to a breach of consumer rights, damage caused by dangerous products, tort, but not to the protection of personal rights;
- The representative of the group needs to be either a member of the group itself, or a consumer ombudsman;
- The lawyer's fees for the representation of the group may be set by an agreement between the group and the lawyer at a percentage rate of the damages awarded, but no more than 20%.

After the certification by the district level court, an announcement will be made in the press with the following information: the court in front of which the proceedings are taking place, the sides involved in the dispute and its subject matter, information on the possibility of joining the group, the conditions of remuneration of the lawyer and a statement that the judgement is binding on all individual members of the group.

The decisions regarding the procedural steps, e.g. on the change of the representative of the group, settlement, withdrawal of the law suit are taken by at least half of the members of the group. Since there is a requirement for the amount of damages to be the same for all individual claimants, the group proceedings may be simply limited to the establishment of the violation by the defendant and individual proceedings may then be subsequently brought to determine the damages sustained by each plaintiff individually. The court may, at any point of the proceedings direct the parties to resolve the conflict through mediation.

3.4.4. Litigation financing

In Poland legal aid is based on a system of court fee waivers as well as the possibility of appointment of a legal representative by the court *ex officio*. According to the law, an exemption from the court fees is possible upon the consideration of the court for:

- A natural person if they cannot afford the costs without the costs affecting their family's financial situation;⁵¹
- Legal persons or persons recognised by the law to have legal capacity if they do not have sufficient resources to cover the costs.⁵² It should be noted that even though undertakings are entitled to such legal aid, courts have been reluctant to satisfy these requests (Lisiecka et al. 2004);

⁵⁰ Act of 17 December 2009 on group proceedings (Ustawa z dnia 17 grudnia 2009 r. o dochodzeniu roszczeń w postępowaniu grupowym, Dz.U. 2010 nr 7 poz. 44).

⁵¹ Art. 102, para. 1 of the Act of 28 July 2005 on court costs in civil cases (Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych, Dz.U. 2005 nr 167 poz. 1398).

⁵² Art. 103 of the Act of 28 July 2005 on court costs in civil cases (Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych, Dz.U. 2005 nr 167 poz. 1398).

- Civil society organisations if the court proceedings can further the accomplishment of the organisation's statutory goals and if such civil proceedings are necessary for the accomplishment of those goals.⁵³

Furthermore, the law directly exempts from the obligation to pay the court fees:

- Consumer ombudsmen in cases on practices limiting competition or practices violating the collective consumer interests⁵⁴ and in cases on protection of individual consumer interests;⁵⁵
- Organisations that work for the benefit of the public if the litigation is brought in line with their non-profit work and not their economic activities.⁵⁶

The fact that a person was granted legal aid in the form of a waiver of court fees or legal representation does not exempt such person from the "loser pays" rule. Therefore, if the party is unsuccessful, the costs of the successful party would still need to be reimbursed.⁵⁷

Insurance companies in Poland offer legal aid insurance. The insurance could cover not the costs for bringing a law suit to the court but also reimbursement of the costs of the winning party, costs of arbitration, costs of proceedings in front of administrative bodies, etc.

3.4.5. Public interest litigation

In Poland there is a possibility for non-governmental organisations, where cases concern consumer protection, to submit amicus curiae briefs for the consideration of the court without direct participation in the proceedings. There is, however, no research on whether and how often this procedure is used by NGOs (Ordowska, Dekierowski 2014).

The procedure of review of unfair contract terms in Poland could serve as an example of the public interest litigation. The Polish Code of Civil Procedure contains the following provisions:⁵⁸

1. Art. 479⁶³ grants exclusive jurisdiction in matters of review of unfair contract terms to the Competition and Consumer Protection Court in Warsaw;

⁵³ Art. 104, para. 1 of the Act of 28 July 2005 on court costs in civil cases (Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych, Dz.U. 2005 nr 167 poz. 1398).

⁵⁴ Art. 96, para. 1, subpara. 7 of the Act of 28 July 2005 on court costs in civil cases (Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych, Dz.U. 2005 nr 167 poz. 1398).

⁵⁵ Art. 96, para. 1, subpara. 11 of the Act of 28 July 2005 on court costs in civil cases (Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych, Dz.U. 2005 nr 167 poz. 1398).

⁵⁶ Art. 104, para. 1 of the Act of 28 July 2005 on court costs in civil cases (Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych, Dz.U. 2005 nr 167 poz. 1398).

⁵⁷ Art. 108 of the Act of 28 July 2005 on court costs in civil cases (Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych, Dz.U. 2005 nr 167 poz. 1398).

⁵⁸ Act of 17 November 1964 - Code of Civil Procedure (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego, Dz.U. 1964 nr 43 poz. 296).

2. Art. 479³⁸ grants standing to a variety of claimants: individuals who may potentially be harmed by the contract term, non-governmental organizations which have consumer protection as their statutory aim, local consumer ombudsmen, President of the UOKiK, EU consumer organizations;
3. Art. 479⁴³ provides an *erga omnes* effect to the judgement that finds a certain clause unfair. Such effect comes into force following the publication of the clause in the Register of Unfair Terms, which is maintained by the UOKiK.⁵⁹

The *erga omnes* effect of the judgements on unfair contract clauses was confirmed by the Supreme Court of Poland⁶⁰ for cases when both the literal wording of the clause is reproduced and when a similar term having the same practical consequences is used.

SECTION 3.5. SWEDEN

Upon accession to the EEA, Sweden introduced a new Competition Act in replacement of previous competition legislation. The Competition Act created a regime that is similar to that of the competition regime of the European Union with prohibitions covering anti-competitive agreements, abuse of dominant market position and a provision introducing the right to damages resulting from the infringements of the prohibitions with the latter applicable both to national and EU competition law violations. Sweden has, similarly, transposed the European Union consumer protection acquis.

3.5.1. Public enforcement

In Sweden public enforcement of competition law is handled by the Swedish Competition Authority and consumer protection by the Swedish Consumer Agency. Unlike in some other Member States, the Swedish authorities dealing with consumer protection and competition enforcement work separately and their independent enforcement powers differ.

The Swedish Competition Authority is an independent government authority established in 1992. The Competition Authority is responsible for the enforcement of competition rules including control of notified mergers and supervision of public procurement. Additionally, the Authority submits proposals for changes in the competition rules that would eliminate obstacles to effective competition.

The sanctions foreseen for the violation of the prohibitions of the Competition Act include administrative fines, orders imposing obligations (backed up by default fines), nullity and damages. Administrative fines are imposed at the request of the Competition Authority by the Stockholm City Court, alternatively if the fine is agreed upon by an undertaking and the Competition Authority, the fine order that was accepted by the undertaking is regarded to be a legally binding judgement. An obligation ordering the undertaking to cease the infringement may be imposed by the Competition Authority directly. These kind of obligations may also be imposed under penalty of a fine for default, which would need to be enforced through the general court in case of default. Similarly, the imposition of a trading prohibition would depend on the decision of the general court following the application by the Competition Authority.

⁵⁹ Art. 479⁴⁵ of the Act of 17 November 1964 - Code of Civil Procedure (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego, Dz.U. 1964 nr 43 poz. 296).

⁶⁰ Case no. III SZP 3/06 of 13 July 2006, Towarzystwo Finansowo-Inwestycyjne Spolka z o.o. v. Prezes UOKiK.

When the Competition Authority has not taken an action any undertaking that is affected by the infringement may institute proceedings in front of the Market Court to impose an obligation. Appeals against decisions of the Competition Authority are brought before the Stockholm District Court or the Market Court.

The Swedish Consumer Agency is a state agency tasked with protection of consumer rights. It does not deal with individual consumer complaints but matters that affect consumers in general. The Swedish Consumer Agency is headed by a Director General who is also Consumer Ombudsman (Konsumentombudsman). The Consumer Ombudsman can represent consumer interests in relations with businesses and pursue legal action in courts.

The Agency and the Consumer Ombudsman may take action in cases of misleading advertising and other types of marketing, unfair contract terms, incorrect price information and dangerous products and services. The Consumer Ombudsman only takes up individual cases if they are relevant for the application of the law or if they are of general consumer interests affecting a great number of consumers. Should the Consumer Ombudsman take the case on, the legal expenses of the consumer will be covered by the state.

The Consumer Ombudsman, in case of violation of consumer protection laws, can bring an action against a trader in the Market court or issue an information or prohibition order. When the trader decides to comply with the order voluntarily it obtains the same value as a judgement. The orders are always connected to a fine and in severe cases the Consumer Ombudsman may ask the Market Court to issue a market disruption fee. Appeals to decisions of the Consumer Agency are heard in the Market Court.

3.5.2. Private enforcement

Injured parties can pursue individual claims for violations of competition law and their consumer rights in general civil courts. Furthermore, the Stockholm City Court is always competent to examine cases relating to damages stemming from infringements of national or EU competition law.⁶¹ It is both possible to bring an individual claim as well as institute proceedings under the Group Litigation Act. Anyone who has sustained damages as a result of the infringement of competition law has standing in front of the court to institute proceedings for damages.

Local consumer advisers assist the consumers with advice on goods and services prior to the purchase and provide information on complaint and dispute resolution procedures available to individual consumers and the steps that need to be taken in case of problems with already purchased goods. The local consumer advisers are financed by the local government.

3.5.3. Representative and collective actions

Similar to other jurisdictions, a simple joinder of the parties is possible in Swedish courts under the general provisions of the Code of Civil Procedure, but in such cases all the parties participate in the proceedings individually with an eventual possibility of introducing a common counsel (Lindblom 2007).

Group actions are governed in by the Group Proceedings Act that entered into force in 2003. It introduced an opt-in group actions framework. There are three types of actions that may be initiated:

- Private action, where the lead claimant has their own interest and claim in the proceedings;

⁶¹ Art. 26 of the Swedish Competition Act.

- Organisation action, which is initiated by an organisation without a claim of its own. This option is available only in consumer and environmental disputes. In consumer disputes it must be a non-profit organisation of consumers or workers initiating proceedings against business entities regarding goods or services offered in the course of their business to consumers for primarily personal use (Lindblom 2009);
- Public action, which is initiated by an authority appointed by the government to litigate on behalf of a group of persons where public interests demand such an action.

It should be noted that the provisions of the Act may also be applied to the provision of the Competition Act on damages originating from infringements of national or EU competition law.

The remedies that can be requested through the group proceedings are those of individual damages or injunctive relief. The group actions are heard by the designated district courts of general jurisdiction. A group action should be: based on circumstances or matters that are common or similar, the group must be adequately defined, the representative of the group must be suitable to represent the group with his financial affairs being in good order, the group must be represented by a member of the bar and the group litigation should be the most suitable method of resolving the individual disputes of the group members (Lindblom 2009).

The persons wishing to join the group action must actively apply to become part of the group, but even then they do not become parties to the proceedings. Only the group representative leads the proceedings. The resulting judgment is binding on all individual group members (Lindblom 2009). Conditional fee agreements with a lawyer are permissible and their binding effect on the individual members of the group is subject to the approval of such an agreement by the court (Lindblom 2009).

Furthermore, an interesting institution in Sweden is the Market Court. It hears mostly public actions with a few organisation actions and no private actions. It has the jurisdiction to rule on cases stemming from the Marketing Practices Act, the Consumer Contracts Act, and the Competition Act with the standing granted to Consumer Ombudsman and the Ombudsman for Free Trade. Individual consumers do not have standing in the Market Court and the court also does not hear claims for damages. Only if the government agencies that have the primary standing or the Ombudsmen decide to not initiate the proceedings, individual traders or organisations of traders or consumers are allowed to take action to the court. All of the cases heard by the Market Court are of prospective nature, i.e. they aim to provide an effect to the future, not to rectify the past (Lindblom 2009).

Finally, there alternative dispute resolution matters are also available, e.g. National Board for Consumer Complaints (Allmänna reklamationsnämnden).⁶² Self-regulation initiatives also exist, e.g. Ethical Council for Premium Rate Telecommunications Services (Etiska Rådet för Betalteletjänster).⁶³

3.5.4. Litigation financing

Private legal insurance is widely available in Sweden but according to reports it is rarely or never used in consumer matters (BEUC 2012). The public legal aid, on the other hand, is very limited. It is also completely unavailable to legal persons (Pettersson et al. 2004), the same exception also applies to legal insurance (Lindblom 2009).

It should be noted that insurance companies played a negative role in the development of group actions and when the Group Proceedings Act came into force, one of the major insurance companies specifically excluded insurance coverage for plaintiffs in group actions (Lindblom 2007).

When it comes to third party funding, there are no legal prohibitions in Sweden against third parties paying for the legal expenses of the parties to the proceedings so long as the litigating party and the third party have agreed on this (Bird & Bird 2008).

3.5.5. Public interest litigation

Interestingly enough, the researchers were able to locate a Swedish non-profit organisation which positions itself as the “first non-profit public interest law firm in Sweden”. It was founded by a Swedish lawyer based on the idea of transplanting the US experience of litigating in the public interest to Sweden (Strømmer 2008). The organisation, Centre for Justice,⁶⁴ was founded in 2002 and provides litigation services in cases of principle. These services are free of charge to the persons that the organisation represents. The Centre for Justice also participates actively in the public debate. Since the founding in 2002, the organisation has litigated more than 100 cases involving issues in the field of equal protection (non-discrimination), freedom of association, property rights, economic liberty and various aspects of the rule of law. The organisation functions thanks to donations from private individuals and private foundations and does not accept any donations from the state or business.

SECTION 3.6. THE UNITED KINGDOM

The case of the United Kingdom is interesting to evaluate from the public interest litigation perspective. The common law system has the features which present the bases for public interest litigation’s success, e.g. the

⁶² Consumers can file claims before the Board free of charge. The procedure is conducted in writing and may be instituted no later than 6 months after the business operator rejects the complaint of the consumer. The disputes are resolved by a chairperson who is a lawyer with court experience and four other members from consumer and trade organisations. Simple matters are settled directly by the secretariat. The submitted solution is not binding on the parties, but compliance rate is about 70-75%. Companies that do not comply are entered on a “black list”. In any case, the parties can still go to court if they are not satisfied with the solution.

⁶³ A foundation that manages a code of ethics for the providers of premium telephone services regarding both the services themselves and their marketing. Complaints may be submitted to the Council that will publish its decisions on the website.

⁶⁴ Centrum för rättvisa, <http://centrumforrattvisa.se>.

rulemaking by the judiciary through precedents. It should be noted, though, that the common law system of the United States, where public interest litigation was born, has developed differently from that of the United Kingdom, which means that the success of public interest litigation in the UK should not be automatically presumed. For instance, one of the key public interest litigation tools of punitive damages that are common practice in the United States are almost unknown in the United Kingdom (Hodges 2009).

3.6.1. Public enforcement

The Competition and Markets Authority, the central body for competition and consumer protection matters, has the power to act as competition law enforcement body. The authority can issue cease and desist orders and penalties in competition cases as well as impose fines on market participants. There are also various sectorial regulators that have the power to act in the area of competition law and consumer protection parallel to the Competition and Markets Authority, e.g. Financial Conduct Authority, Ofgem, Ofwat, Ofcom. Under Part 8 of the Enterprise Act 2002 the regulators and other designated enforcement bodies⁶⁵ can apply to courts to stop traders from infringing consumer protection legislation and harming collective interests of consumers. The provisions of the Injunctions Directive 98/27/EC also allow for injunction applications to be submitted by community enforcers from other EU Member States.

In accordance with the 1998 Competition Act individuals or businesses have the possibility to make complaints to the competition authority directly, as well as to the sectorial regulators. However, there is no obligation on the part of the authorities to take up the complaints for investigation. Individual cases can be referred to the local Trading Standards offices (Holmes 2006). The Trading Standards may investigate individual cases and initiate legal action against traders to stop the illegal activity.

3.6.2. Private enforcement

Injured parties can pursue individual claims for violations of competition law and their consumer rights in general civil courts. In addition, rule 30.8 of the Civil Procedure Rules provides that, as a general rule, cases related to violations of competition law are transferred to the Chancery Division of the High Court at the Royal Courts of Justice. Furthermore, the Competition Appeals Tribunal (CAT) is competent to hear appeals on the competition infringement decisions of the various national regulatory authorities. It is also competent to hear follow-on claims in relation to competition law. The follow-on claims are based on infringement decisions of the Competition and Markets Authority and the European Commission that have entered into force. The Competition Appeals Tribunal also has the power to order injunctive relief.

The legal basis for the claim of damages stemming from the infringements of competition law in English courts is section 2(1) of the European Communities Act 1972, which provides for the recognition of the direct effect of Community's rights and duties in the English legal system thus making the Articles 101 and 102 of the TFEU directly applicable. The violation of these provisions of Community law will equal to the tort of breach of statutory duty. The principles of English law that are applicable to such torts will also apply. Furthermore, the case of *Garden Cottage Foods Limited v Milk Marketing Board*⁶⁶ is the authority for the availability of the remedy

⁶⁵ A designated enforcer is any public or private body which the Secretary of State designates in a separate Statutory Instrument if the person or body has the protection of the collective interests of consumers as one of its purposes.

⁶⁶ *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] 1 AC 130; [1983] 2 A11 ER 770, HL.

of damages for breaches of EU competition law in courts (Clough/McDougal 2004). The Competition Act 1998 similarly foresees remedies for the breach of the UK national competition law provisions. Section 58A of the Competition Act 1998 binds the ordinary civil courts to respect the decisions of the Competition and Markets Authority as well as the Competition Appeals Tribunal. Section 47A binds the Competition Appeals Tribunal to the decisions of the competition authority and the European Commission.

The parties are not limited by these provisions only to the claim of damages in front of the CAT, they are still free to bring injunction proceedings in front of civil courts or initiate other proceedings in respect of the same claim (Clough/McDougal 2004). Under provisions implementing the Injunctions Directive 98/27/EC an injunction may also be sought against a trader by qualified consumer associations in order to stop illegal practice.

One of the interesting aspects of the damage claims for competition law violations is the wide standing that was granted by the case law in *Provimi*⁶⁷ where the court ruled that a non-UK claimant who has not directly done business with a defendant within the English jurisdiction would have standing to sue in the UK courts other non-UK co-defendants if that claimant has purchased products, or would have purchased products if they were not subject to cartel prices, from any member of the group of companies (Clough/McDougal 2004). This, arguably, provides a wide enough standing to attract plaintiffs to the UK jurisdiction and allow forum shopping.

Finally, alternative dispute resolution methods are also available. There is a large number of different providers of alternative dispute resolution services, e.g. Small Claims Mediation Service,⁶⁸ Financial Ombudsman Service,⁶⁹ Institute of Dispute Resolution Schemes.⁷⁰ A variety of self-regulation initiatives are also available across different sectors. The number of self-regulation schemes is reported to be about 95 throughout 35 sectors (Hodges 2010). The state itself and the local authorities are actively involved in promoting self-regulation schemes.⁷¹

3.6.3. Representative and collective actions

The Civil Procedure Rules in Part 19 foresee two types of group actions – Group Litigation Orders and collective actions. The Consumer Rights Act 2015 also introduced a class action for standalone and follow-on claims in front of the CAT.

⁶⁷ *Provimi and Trouw v Aventis and Roche* [2003] EWHC 1211 (Comm); [2003] ALL ER (D) 59 (Jun).

⁶⁸ An alternative dispute resolution scheme offered by the state deals with claims under GBP 10,000 which would normally go through the standard court procedure. Parties need to agree to use mediation and most are dealt with over the telephone. The cost is based on a fixed fee, depending on the value of the dispute.

⁶⁹ An alternative dispute resolution scheme established by an act of the Parliament. Its services are free of charge to the consumers, the fees are paid by the business. The decisions are only binding on the business but not on the consumer enabling the consumer to bring the claim to court if not satisfied with the outcome.

⁷⁰ An institution offering resolution of disputes between businesses and their consumers. It manages a series of services that businesses can subscribe to, e.g. Communications and Internet Services Adjudication Scheme, Postal Redress Service, Independent Consumer Redress Service, Travel Redress.

⁷¹ E.g. the Consumer Codes Approval Scheme for the different codes of ethics managed by the Trading Standards Institute.

3.6.3.1. Group Litigation Order

The Group Litigation Order in Part 19, Rule 19.11 of the Civil Procedure Rules provides for a group action, which resembles more a multiple case management system rather than a class action. Such a group action can be brought under a Group Litigation Order by multiple claimants each of whom initiates an individual claim in relation to common issues of law or related facts. A Group Litigation Order is made with the consent of a senior judge and contains directions on maintaining the group register of the claims, the issues that will be dealt with under the order and the identification of the claims that can be managed under it, nomination of the court that will manage the group litigation. Furthermore, a Group Litigation Order may provide that a few claims will proceed as test cases leaving the rest stayed until further order. Any judgement issued by a court in relation to a claim on the group register would normally be binding on the parties to all the other claims as well as have effect on the claims that were added after the judgement was delivered.

The standard rules of civil procedure apply to the matter of costs of the group litigation proceedings, which leads to a need for complex arrangements between the individual participants of the group (Hodges 2009). At the moment there is no possibility for “ideological” claimants to apply for a Group Litigation Order, it may only be done by claimant or defendant (Mulheron 2007). Therefore, consumer organisations may not institute group proceedings in the UK.

3.6.3.2. Representative actions

Part 19 Rule 19.6 of the Civil Procedure Rules foresees a possibility to bring a representative action when more than one party has the same interest in a claim. There is no need for each participant of the group to initiate individual claims, only the representative will be party to the claim. An opt-in into the action is, however, required. Representative actions may only be brought where the relief sought is by its nature beneficial to all whom the claimant seeks to represent. The Court of Appeal has also not allowed for this general rule to be extended further to claims that were not identical (Hodges 2010).

3.6.3.3. Class actions

Schedule 8 of the Consumer Rights Act 2015 introduced new class action regime for CAT claims. Therefore, claims may only be made in relation to competition law matters, either standalone or follow-on. Both opt-in and opt-out options are available. The CAT will specify the type of action in a collective proceedings order. If an opt-out action is certified it will not extend to individuals not domiciled in the UK, but they are free to opt-in into the action. A class representative may either be a class member or, also, a body that is not part of the class. Therefore, presumably, consumer organisations would be able to initiate cases. The class needs to be identifiable, give rise to common issues and collective action should be the appropriate means of resolving the dispute. If part of awarded damages remains unclaimed after an opt-out action, it will be transferred to a charity or the class representative to compensate all of the expenses incurred in connection with the proceedings. It remains to be seen what will be the results of the application of the new regime.

3.6.4. Super-complaints

Section 11 of the Enterprise Act 2002 introduced a new procedure of super-complaints, which may be brought by the consumer bodies designated by the Secretary of State to the Competition and Markets Authority and other regulators. The designated consumer bodies can bring a complaint where they consider that there is any market feature, or a combination of features, such as the structure of a market or the conduct of those operating within it, that is or appears to be significantly harming the interests of consumers. The regulator must provide a

reply to the super-complaint within 90 days stating what action, if any, it proposes to take in response to the complaint and provide its reasoning.

The Enterprise Act 2002 only provides a short guideline on which organisations can be “designated consumer bodies”. It states that the Secretary of State may designate a body only if it appears to him to represent the interests of consumers of any description, and must publish other criteria to be applied in determining whether to make or revoke a designation.

The Secretary of State in the guidelines set out for the designated consumer bodies for the purposes of section 234C of the Financial Services Act 2012 sets out the “other” criteria as e.g. independence, impartiality and complete integrity of the body, demonstrate considerable experience and competence in representing interests of consumers of any description, capability to put together a reasoned super-complaint on a range of issues.

3.6.5. Litigation financing

The legal aid system has been for many years very extensive and the government expenditure on legal aid the highest in Europe, which motivated a reform and restriction in 1995 (Hodges 2009).

When the case relates to public law, issues of general public interest are raised and the claimant has no personal interest in the outcome of the case, a Protective Costs Order can be issued in order to limit or extinguish claimant’s exposure to costs (Hodges 2009).

Legal aid is available to help pay for legal advice, family mediation, representation in court and some tribunals. Individuals that qualify for legal aid also benefit from the costs protection, which in practice means that they are not likely to be awarded to pay the costs of the opponent or only be liable for a reasonable amount of the costs (Working Group on Facilitating Public Interest Litigation 2006). However, it appears that individuals would not qualify for legal aid for “routine” consumer protection matters but rather only cases of denial to provide service or provision of bad service due to discrimination. Legal insurance is also available in the UK for civil proceedings. Third-party funding is also increasingly used for the purposes of litigation. Finally, Damage-Based Agreements (contingency fee agreements) with lawyers are also possible. The lawyers’ fee can be set as a percentage of the amount awarded in the case.

3.6.6. Public interest litigation

Lord Justice Maurice Kay described the situation of public interest litigation in the UK in a report “Litigating the Public Interest” in the following manner:

“It is now widely accepted that there is something recognisable as “public interest litigation”. Developments in substantive and procedural law in recent years have done much to facilitate its pursuit. However, it remains the case that there are public interest cases which merit litigation but which are excluded from the courts for reasons of cost. There are limits to the availability of funding from the Legal Services Commission and, in the area of judicial review, it is difficult to find insurers who will back conditional fee agreements for an affordable premium. The courts are attempting to assist by the development of protective costs orders but here, too, there are claimants, both individual and organisational, who find it difficult to fulfil the present requirements.” (Working Group on Facilitating Public Interest Litigation 2006: 9).

There is no definition of “public interest” as such and it was also noted in the discussions of the Working Group on Facilitating Public Interest Litigation that many different circumstances of cases might legitimately be considered to be of public interest, therefore making a limited definition would be counterproductive (Working Group on Facilitating Public Interest Litigation 2006). As the members of the Working Group noted, some guidance as to the definition of the public interest cases was provided in the case *Corner House*⁷² referring to the requirements that the case should concern issues of general public importance and that the public interest requires that those issues should be resolved.

While public interest litigation is believed to have migrated to the UK from the US, in reality, test cases in the UK as a strategy of pressure groups litigation for political goals can be traced all the way to the 18th century (Smith 2003). It is both “legal” NGOs and law centres that are the traditional test case litigators in the United Kingdom, but also private practitioners are interested in test case litigation founding privately funded public interest law firms (Smith 2003). Aside to direct involvement in public interest litigation as claimants, non-governmental organisations and law centres are also exploring the possibility of third party interventions into cases of special importance. A less invasive alternative is participation in the proceedings in the role of a witness (Smith 2003).

⁷² R (Corner House Research) v the Secretary of State for Trade and Industry [2005] EWCA Civ 192, [2005] 1 W.L.R. 2600.

CHAPTER 4. LITIGATION DATA

This chapter addresses the results of a number of desktop and empirical studies conducted in relation to litigation data in the six Member States. First, it will set out the limitations that research on the litigation data faces (section 4.1.). Second, the chapter will deal with the general tendency for increase in litigation rates over the recent years (section 4.2.), the findings from the study of the publically available data on collective and representative litigation (section 4.3.) and the recent developments in private enforcement of competition law (section 4.4.). Finally, it will deal with the outcomes of the online survey on consumer litigation (section 4.5.).

SECTION 4.1. SCOPE OF RESEARCH

Obtaining and analysing detailed litigation data on court actions in the Member States is a rather challenging matter. A number of issues arise when approaching such a research, i.a.: the language barriers, the availability of access to the court decisions, the filing and systematisation of court decisions or the lack thereof. Furthermore, differences between the court systems in the Member States present further challenges for comparing the litigation data between the Member States. Different litigation cultures in the Member States also influence the litigation rates, thereby affecting the comparison of litigation data of different Member States. Such an exercise may, therefore, not be useful for the determination of the influence of certain EU legislative or policy changes on different Member States. A temporal comparison within the same Member State is more likely to produce useful results, even though such a comparison is also influenced by many independent factors, e.g. other, unrelated legislative changes, developments in the market.

The statistical authorities, generally, collect aggregate litigation data on the number of cases initiated or resolved during any given year in courts on different levels of jurisdiction. However, there is no detailed data with regard to consumer-related litigation. It is, also, understandable that no consumer litigation data is collected. Many court proceedings initiated by private individuals can be labelled as related to consumer rights in a variety of areas. In order to be useful, the collection of data would require further specification of the particular types of cases on which the data should be collected. Furthermore, for the purposes of comparative research between different Member States, one would need to be able to define the criteria that would be similar in all of the States. On the other hand, some of the statistical authorities do collect some data on the competition-related case law. This information will be addressed below.

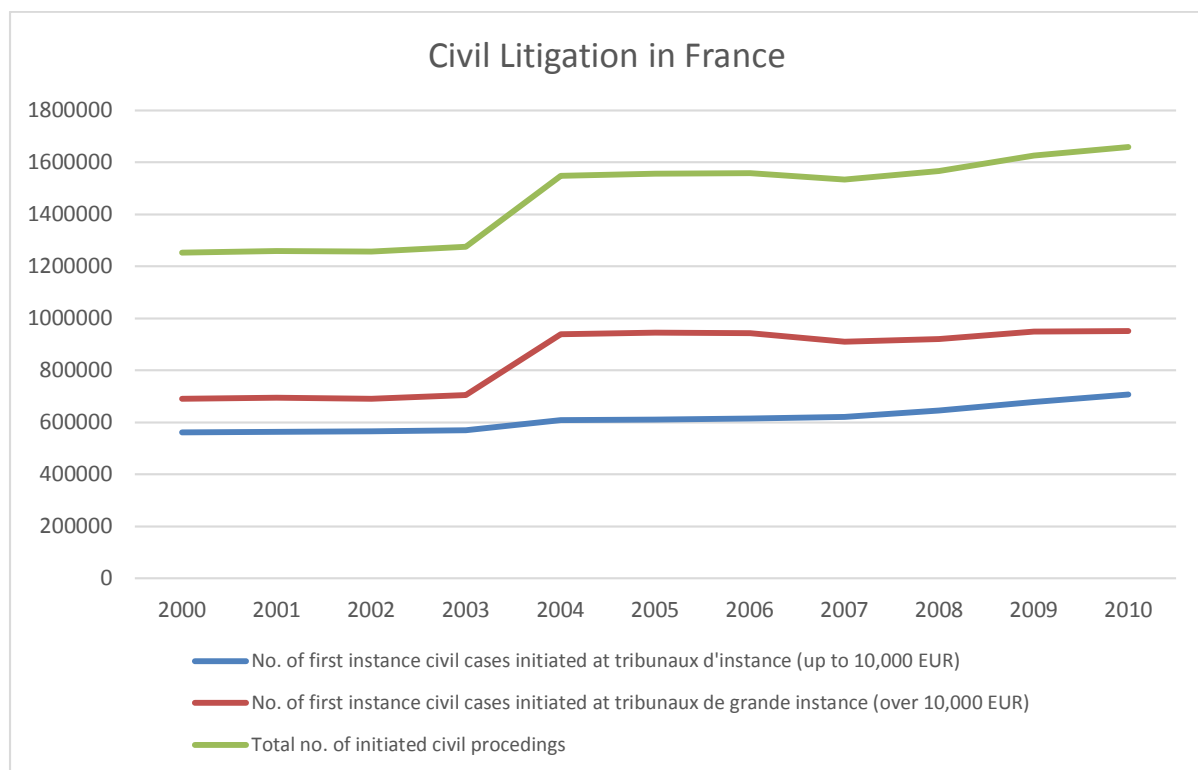
As mentioned previously, many cases initiated by private individuals may be labelled as consumer-related. This leads to the fact that, unless the statistical offices take it up upon themselves to collect the specific details of these cases within their case reporting systems, there is no feasible way to collect this data from scratch. There are a few barriers to such an exercise. Firstly, in order to do so one would need to almost manually search all the case law in the six Member States and single out cases that relate to consumer-related matters. A priori, this would require the researchers to have access to all court judgements from a certain selected period of time. However, not all of the Member States make such judgements publically available, or make accessible only selected judgements, or remove some of the crucial information that is of special interest to the research on consumer-related litigation (e.g. who has sued). Due to this, a comprehensive collection of data is challenging at its very basis. Even if all the judgements were available the researcher would need to examine them in order to determine the details of the case. This would require the researchers to have the knowledge of the six languages of the Member States that are subject to evaluation in the present study and sizeable commitment of human resources. Having in mind the overall numbers of civil law cases it becomes clear that collection of litigation data on consumer case law is impracticable.

As a result, it is rather the forward-looking research that is possible if the statistical offices are tasked with the collection of the relevant data, since they are in the best position to do so. Therefore, the present research focused on studying collective and representative litigation, since the data on such cases is more readily available. Furthermore, the developments in the private enforcement of competition law were evaluated. The enforcement of consumer rights was also addressed via the survey on consumer litigation addressed to non-governmental organisations and middle-sized law firms that work with private persons.

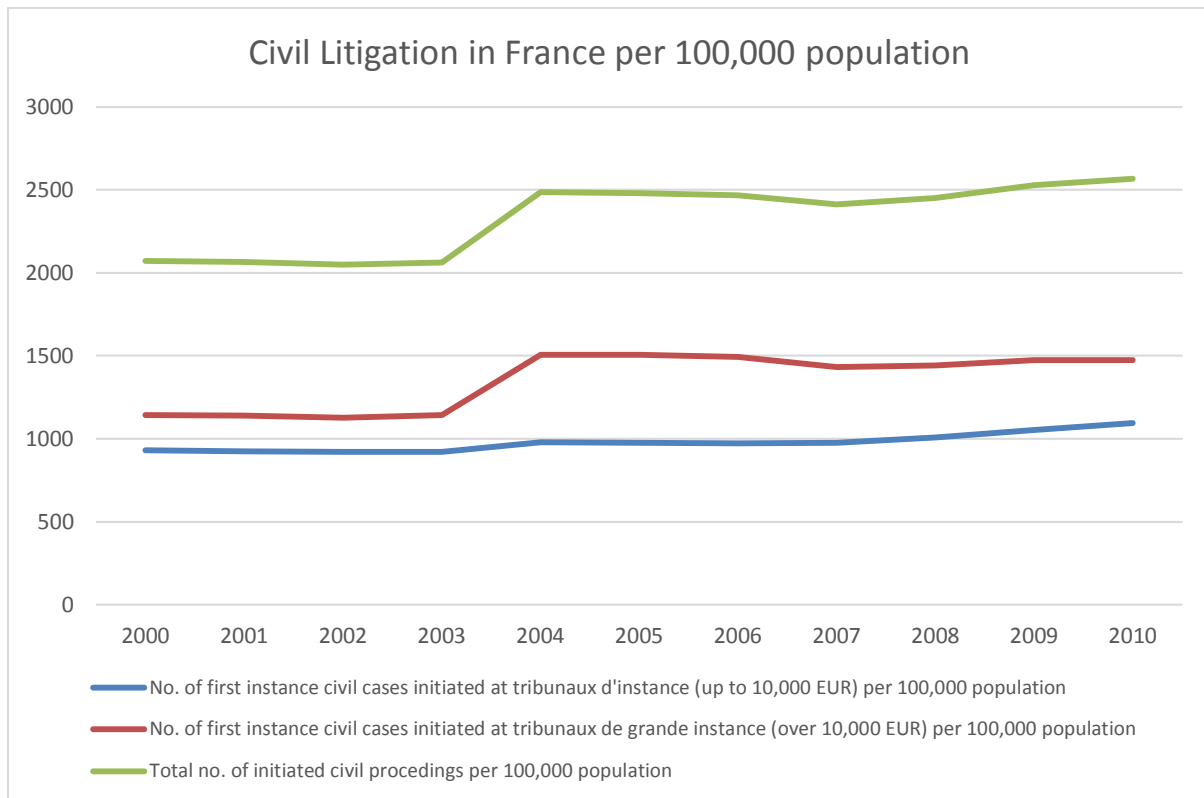
SECTION 4.2. GENERAL LITIGATION RATES

4.2.1. France⁷³

In France civil cases start at the level of Tribunal d'instance. This court hears cases of value under EUR 10,000. Claims over EUR 10,000 are heard by regional courts Tribunaux de Grande Instance which also have general jurisdiction and would hear every dispute with unspecified amount that does not fall within the jurisdiction of another court.



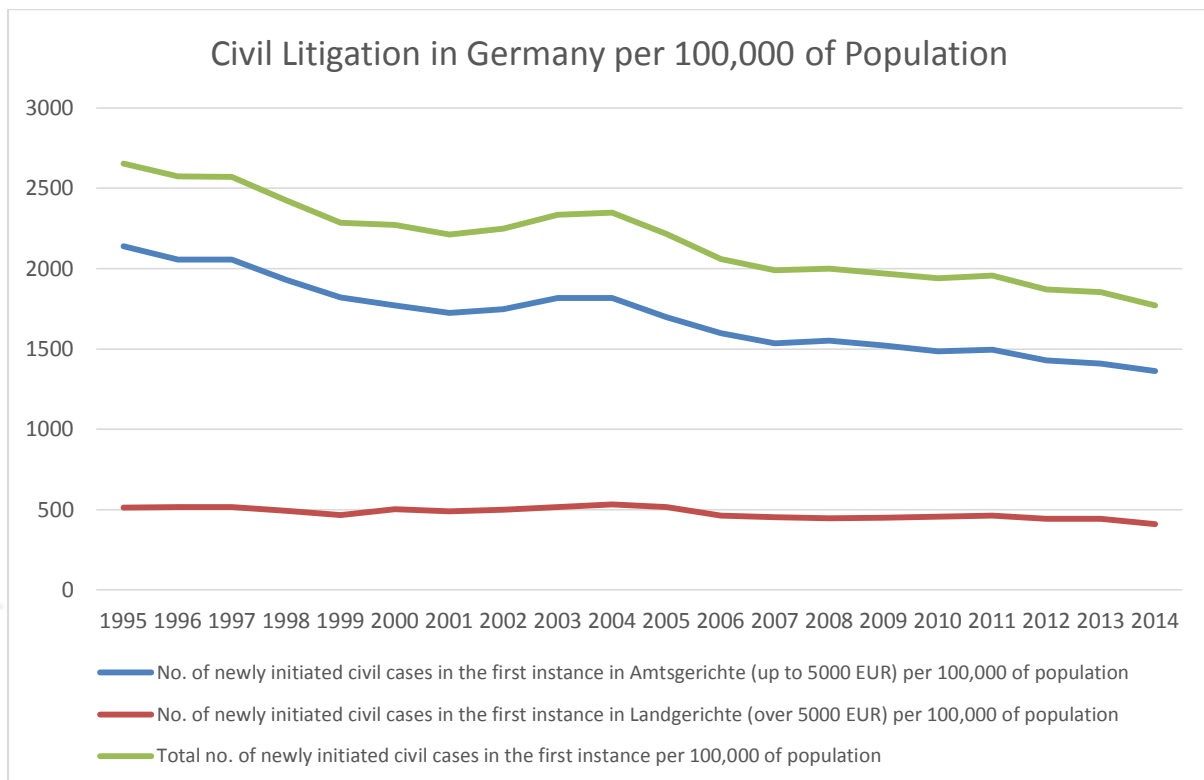
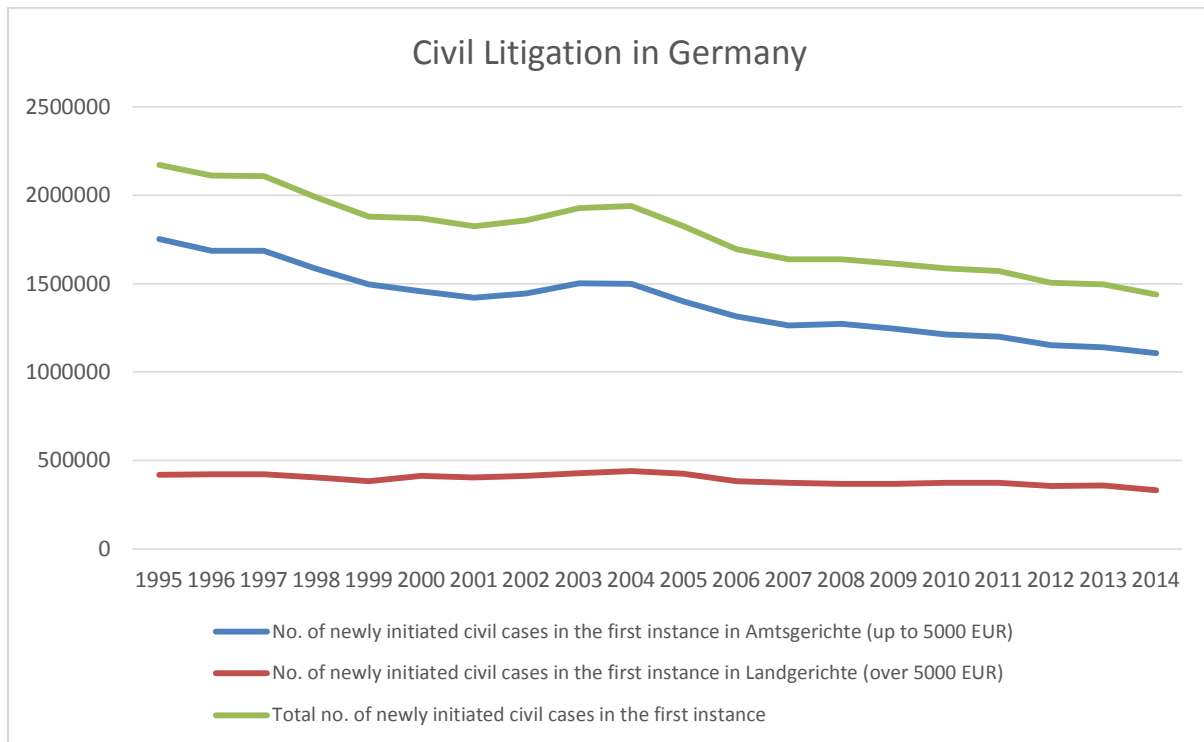
⁷³ Litigation data of Ministry of Justice of France and population data of National Institute of Statistics and Economic Studies (INSEE).



4.2.2. Germany⁷⁴

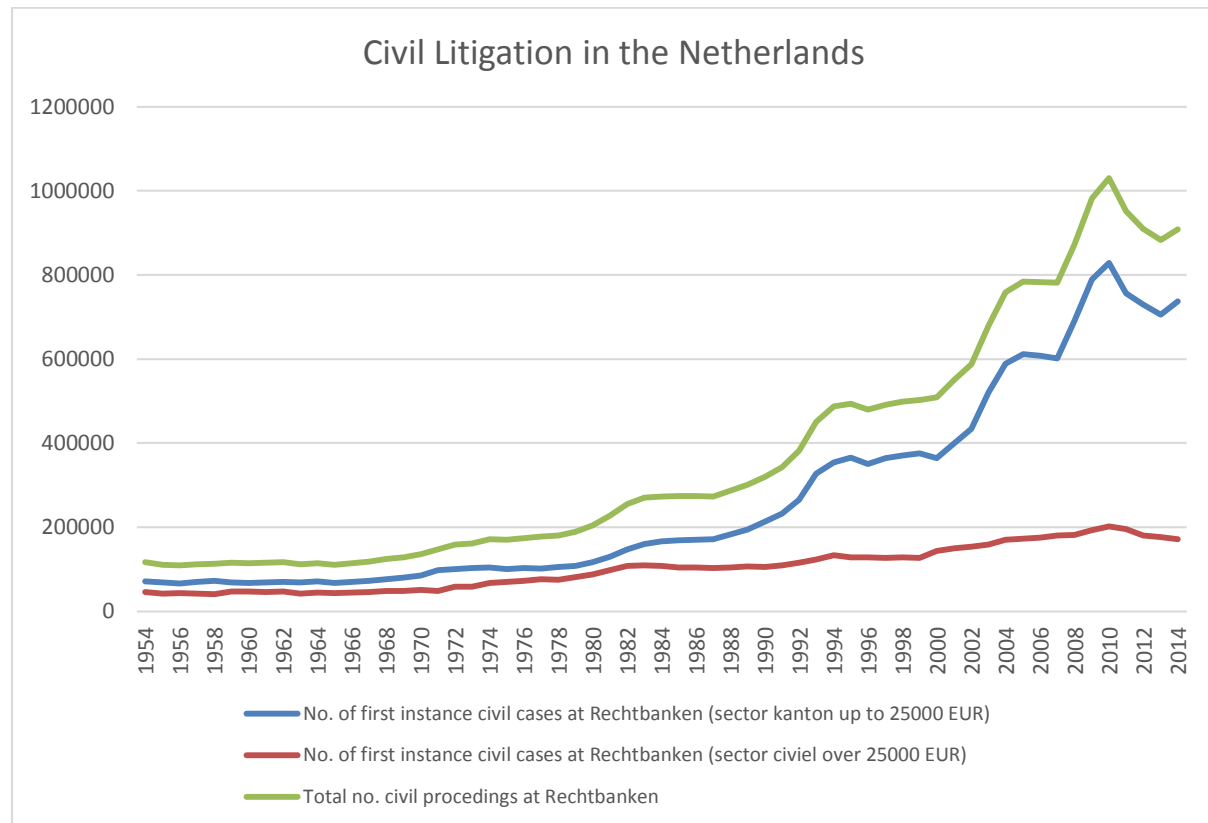
In Germany the cases that concern disputes with value of less or equal EUR 5,000 will arrive to Amtsgericht in the first instance. All the cases with value over EUR 5,000 are heard at Landgericht. Representation by a lawyer is optional in Amtsgericht and necessary in Landgericht.

⁷⁴ Data of the German Statistical Office (Statistisches Bundesamt).



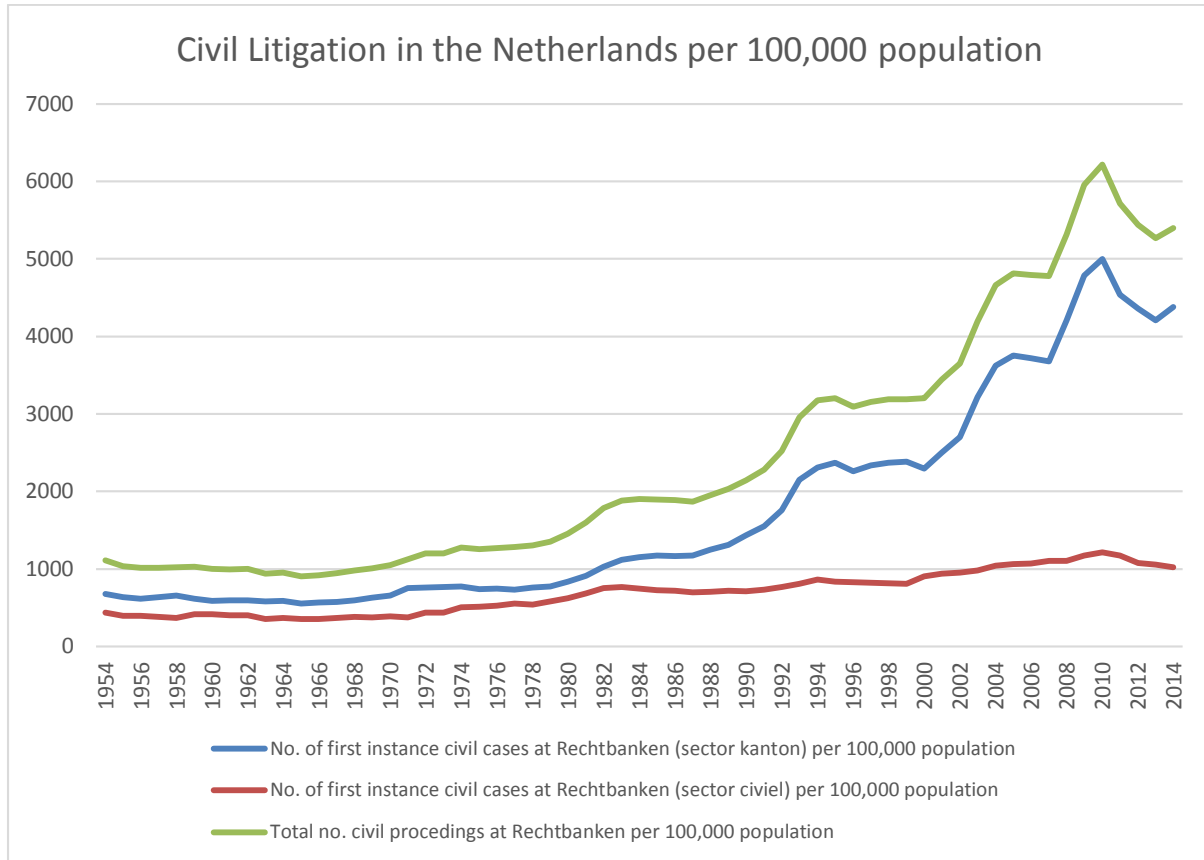
4.2.3. The Netherlands⁷⁵

Generally, civil cases in the Netherlands will, in the first instance end up in two types of courts. First, cases that concern value of less or equal to EUR 25,000⁷⁶ will be submitted at Rechtbanken, sector kanton. There is no requirement of legal representation by a lawyer at these courts. The cases that concern a dispute with value of over EUR 25,000 will be submitted to Rechtbanken, sector civiel.



⁷⁵ Data of the Central Statistical Office (Centraal Bureau voor de Statistiek). Please note that the data relates to the number of resolved cases and not newly initiated cases.

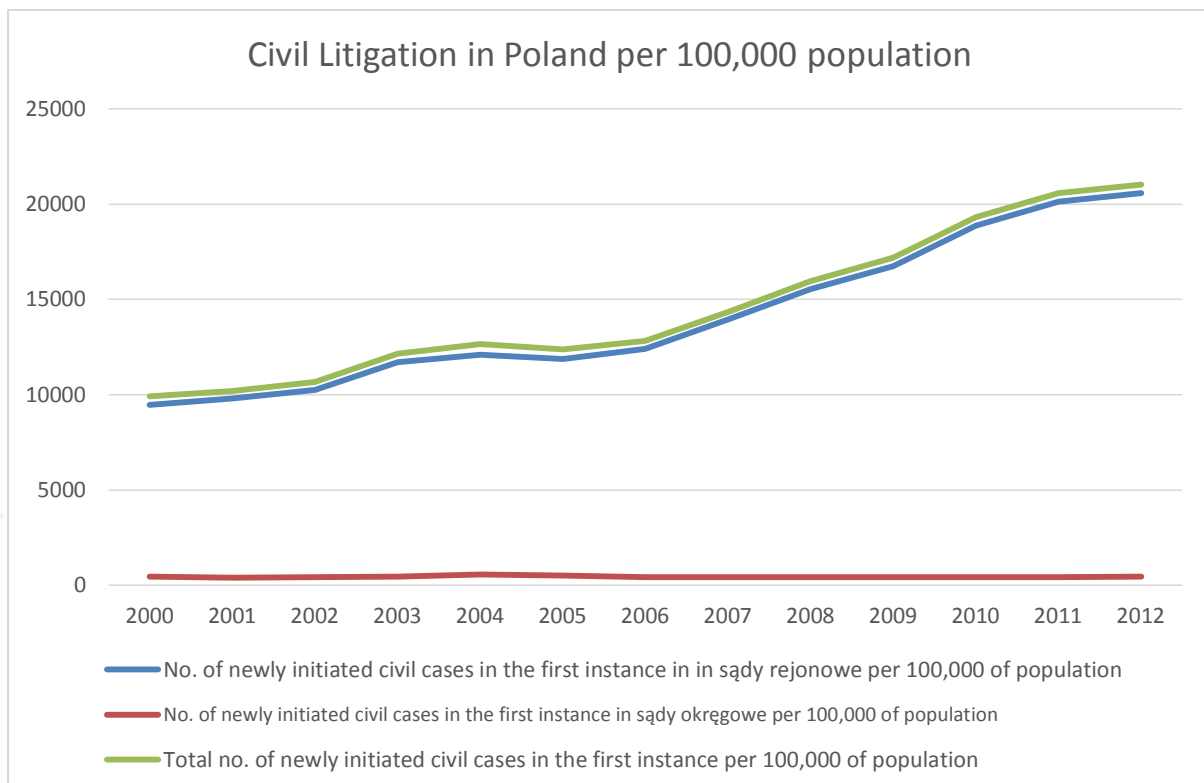
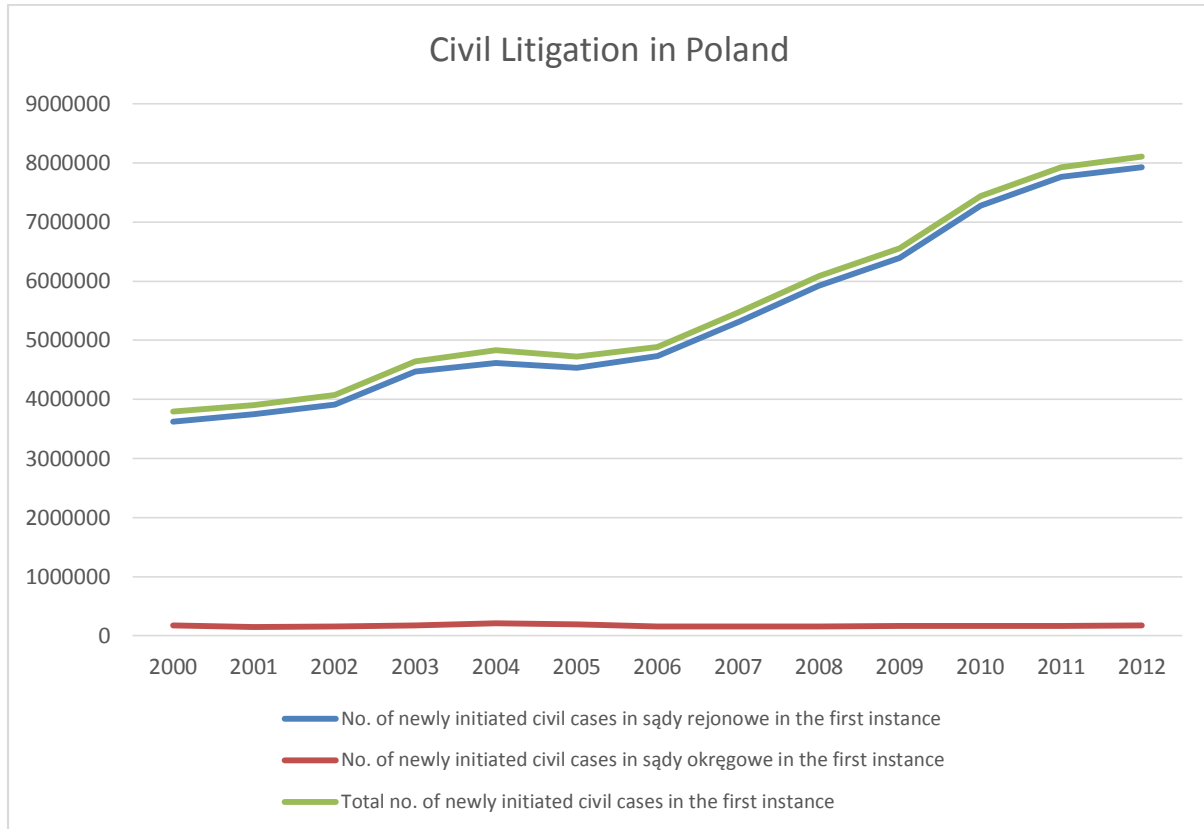
⁷⁶ It should be noted that the limit was raised to EUR 25,000 only in 2011. Previously it has been EUR 5,000.



4.2.4. Poland⁷⁷

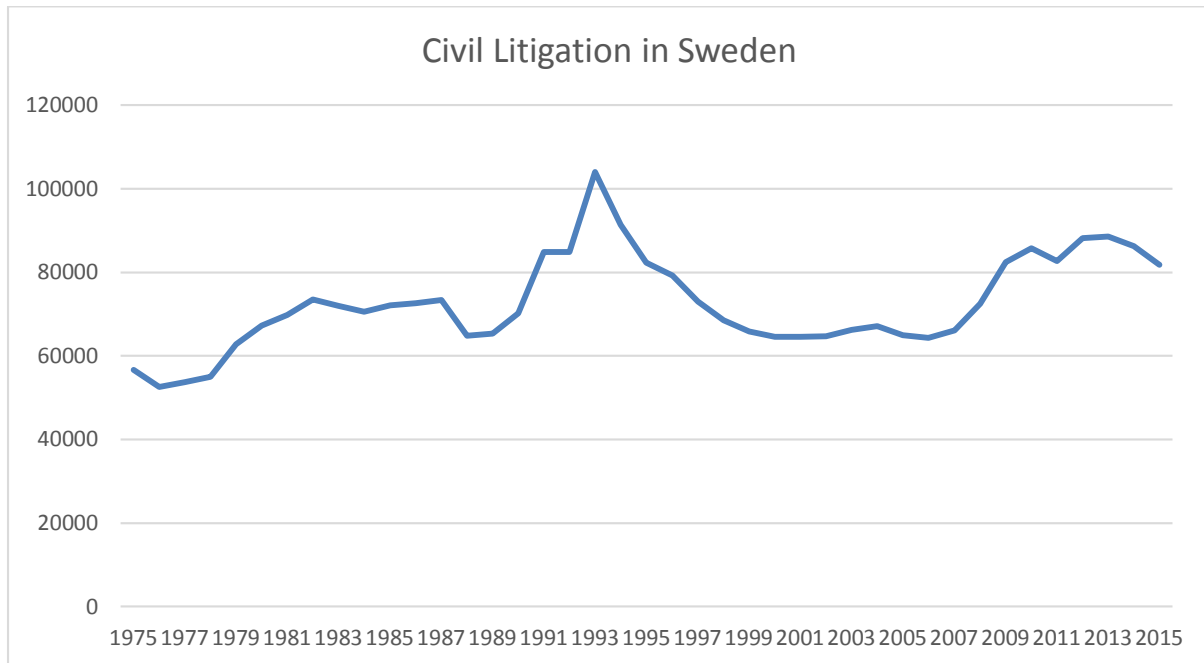
Civil cases in Poland will end up in the first instance in two types of courts. First, Sąd rejonowy (District court), which is the lowest level court in Poland. According to the general jurisdiction rule, the cases with value of PLN 75,000 will be heard in these courts. Second, Sąd okręgowy (Regional court) will hear cases in the first instance when their value exceeds PLN 75,000.

⁷⁷ Data on case law of the Ministry of Justice of Poland and population data of the Statistical Office (Główny Urząd Statystyczny).

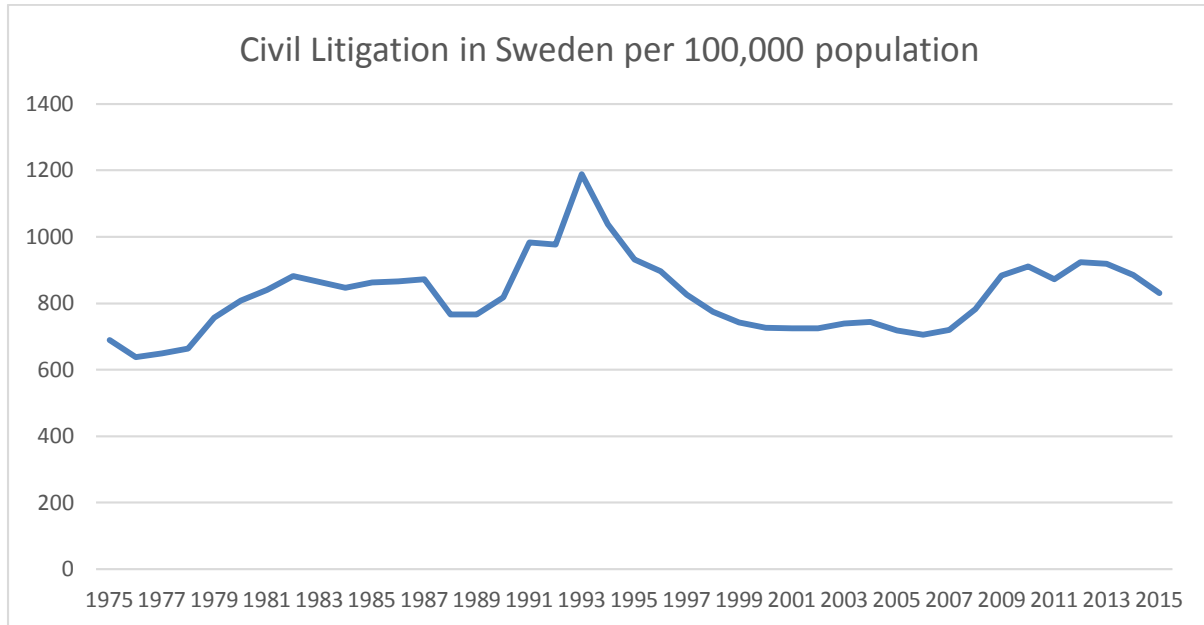


4.2.5. Sweden⁷⁸

In Sweden the court system is more straightforward, with the lowest general court of first instance for civil cases being the tingsrätt (district court). The only difference is that the cases that fall under a certain amount are always determined by a single judge as opposed to the standard hearing by three judges.



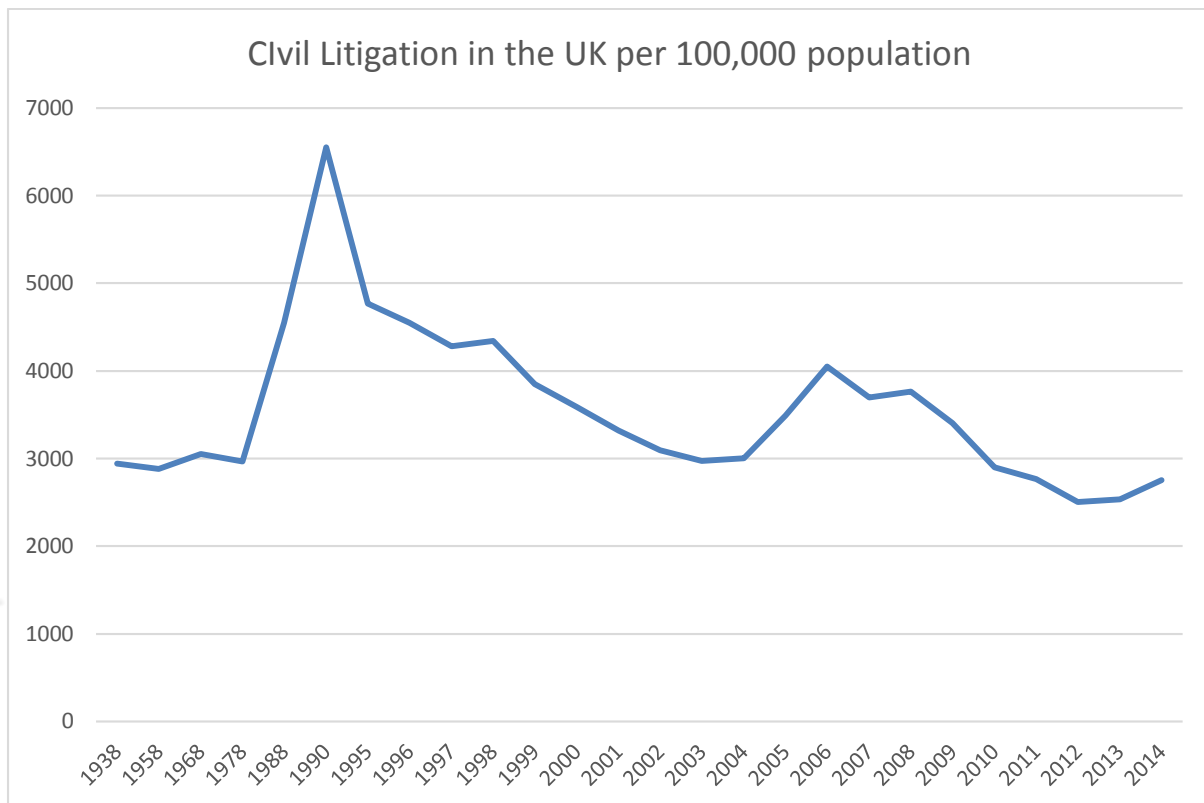
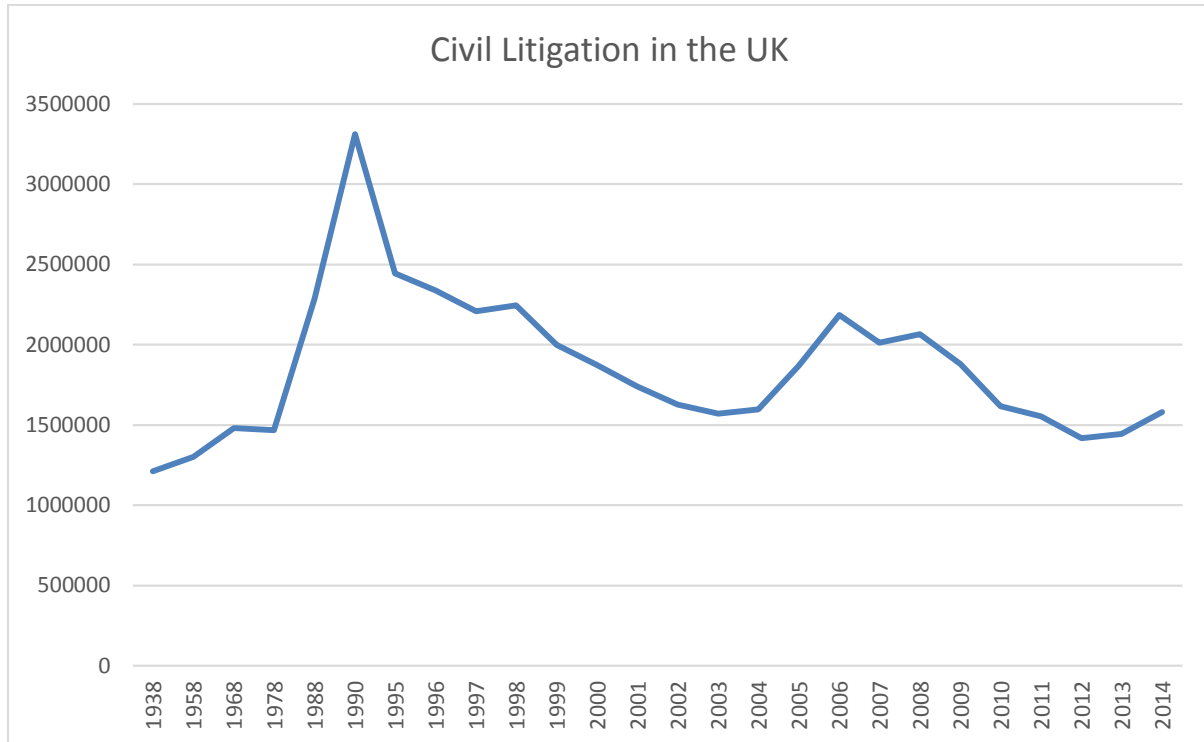
⁷⁸ Litigation data of Courts Administration (Domstolsverket) and population data of Statistics Sweden (Statistiska centralbyrån).



4.2.6. The United Kingdom⁷⁹

The majority of civil cases in England and Wales are heard by the County Courts, while the High Court usually handles more substantial, important and complex cases. Below is the data on the new cases initiated at the County Courts over the year.

⁷⁹ Litigation data of the UK Ministry of Justice and population data of the Office for National Statistics.



SECTION 4.3. COLLECTIVE AND REPRESENTATIVE LITIGATION

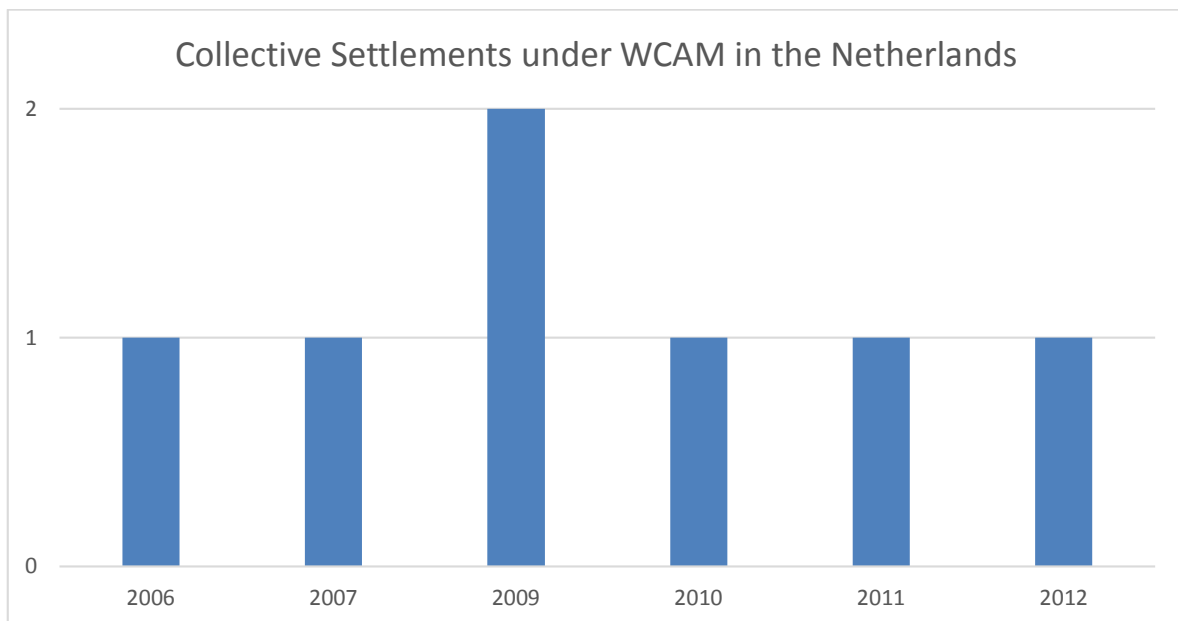
4.3.1. France

The representative action in France proved to not be very popular and was only seldom used. From the 1992 until 2013 there have only been five actions initiated under this procedure (Javaux, de Combes de Nayves 2014).

It is interesting to note that the researchers also located a recently set up website ActionCivile.com which describes itself as a first French class action service. It aims to bring together the maximum amount of plaintiffs with the same problem with the same company. Once a certain number of persons has signed on a mediation procedure will be carried out with the company in order to attempt to obtain compensation for each person. If the mediation fails, the individual claims will be submitted to relevant courts.

4.3.3. The Netherlands⁸⁰

Since the introduction of the collective settlement mechanism, some 7 settlements have been certified by the Amsterdam Court of Appeal:



4.3.4. Poland⁸¹

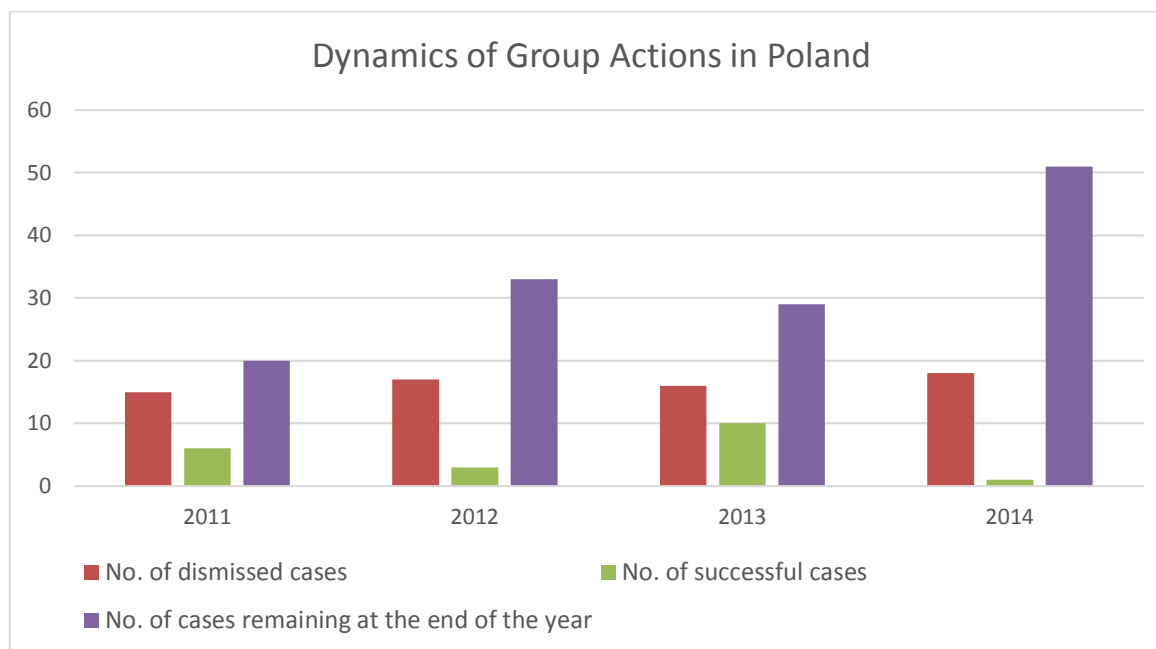
From 2010 to 2014 there have been some 156 group actions initiated in Poland:

⁸⁰ Data of the British Institute of International and Comparative Law.

⁸¹ Data of the Ministry of Justice of Poland.



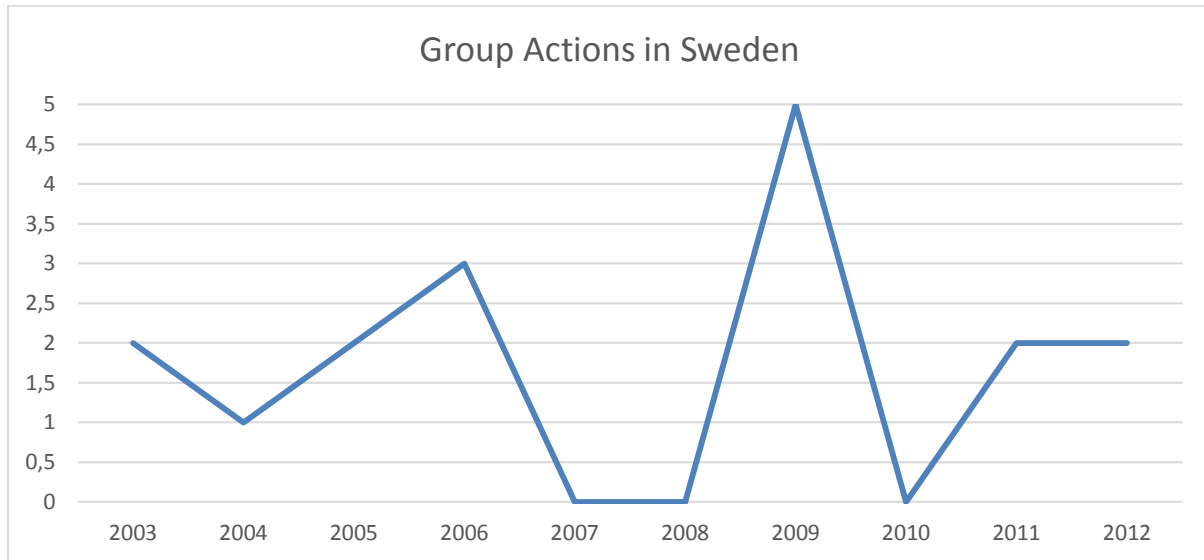
The outcomes of the group actions are as follows:



The high levels of dismissed cases could likely be due to the lack of courts' and claimants' experience with the new type of proceedings.

4.3.5. Sweden⁸²

There have been some 17 group litigation cases initiated in Sweden under the Group Proceedings Act:



The majority of the group actions were initiated in the form of a private action:

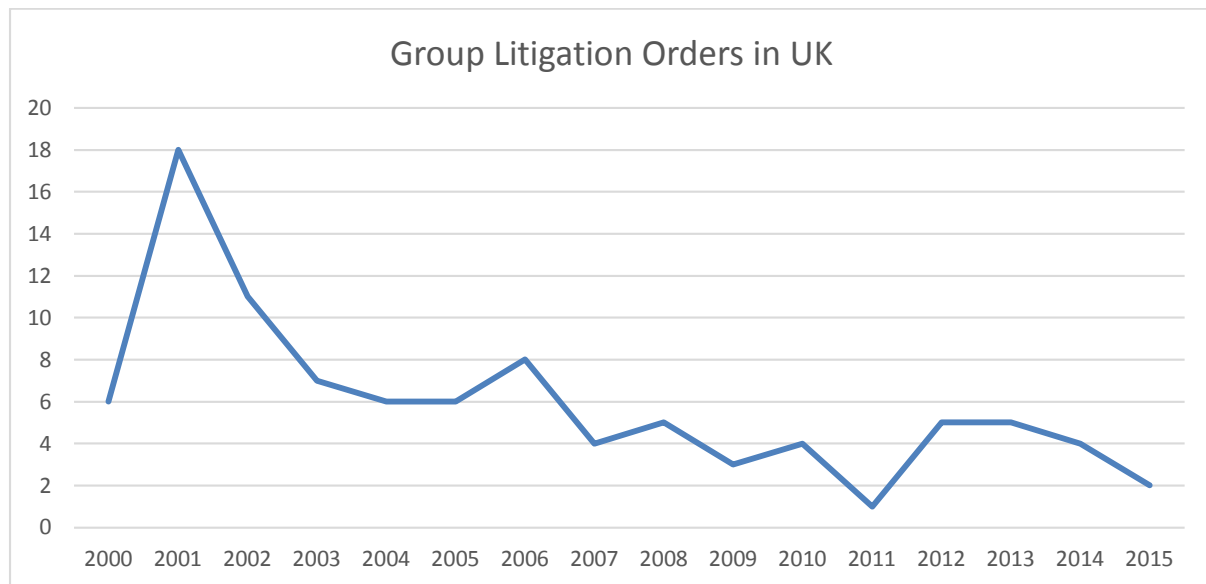


⁸² Data of the British Institute of International and Comparative Law.

The one public action was initiated by the Consumer Ombudsman. No actions were initiated by organisations, but on the other hand, the organisations have participated in group actions by taking over a claim of a private person in order to join the proceedings (Lindblom 2009).

4.3.6. The United Kingdom

According to the statistics available at the website of the UK Ministry of Justice,⁸³ from 2000 to 2015 there were some 94 Group Litigation Orders:



It is apparent that following the initial interest for the procedure after its introduction in 2000 it is not frequently used.

The litigation data for representative actions is not collected. The information about the future competition class actions in front of the CAT will be easy to locate, since the CAT has an online database of cases on its website.⁸⁴ It is worth noting that prior to the newly introduced class actions, there was a possibility of bringing representative actions to the CAT.⁸⁵ From 2002 until 2015 one case was brought where 130 persons signed up.⁸⁶

SECTION 4.4. COMPETITION LITIGATION

⁸³ Statistics on the UK Ministry of Justice available at <https://www.justice.gov.uk/courts/rcj-rolls-building/queens-bench/group-litigation-orders>.

⁸⁴ Competition Appeals Tribunal, <http://www.catribunal.org.uk>.

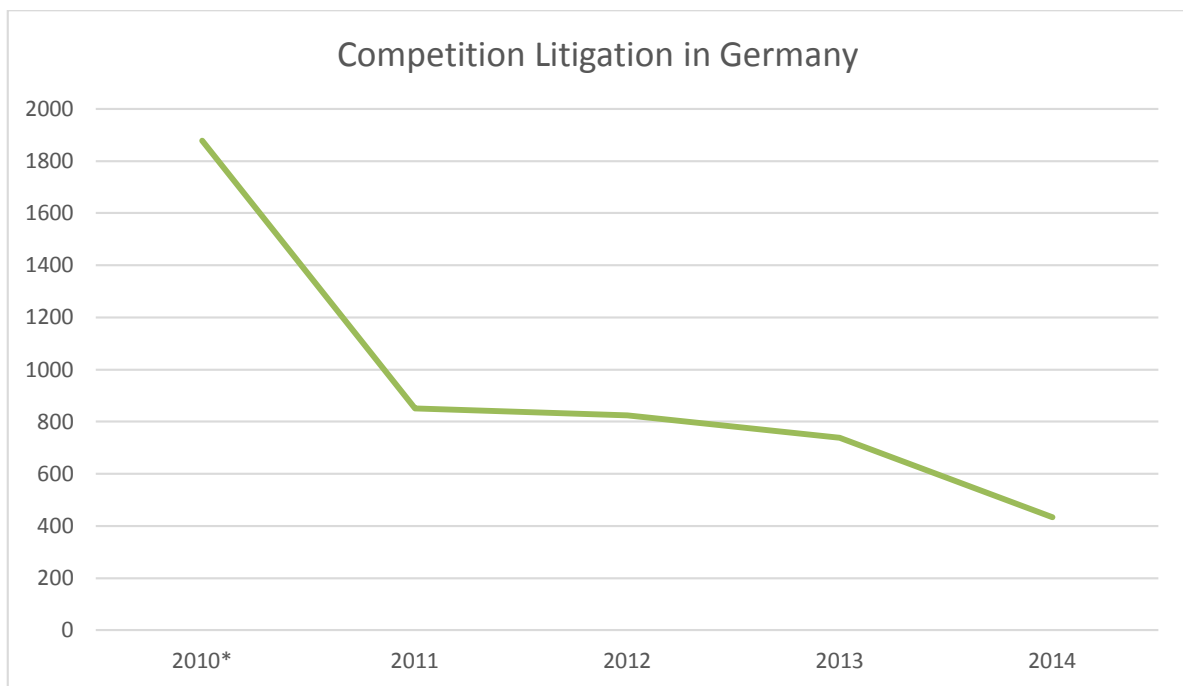
⁸⁵ Section 47B of the Competition Act 1998, which was inserted by the Section 19 of the Enterprise Act 2002.

⁸⁶ Competition Appeals Tribunal, *The Consumers Association v JJB Sports PLC*, 5 March 2007, available at <http://catribunal.org.uk/237-640/1078-7-9-07-The-Consumers-Association.html> (last accessed 27.02.2016).

The amount of competition-related litigation has been influenced by the CJEU case-law establishing the right to damages for the infringements of competition law⁸⁷ as well as Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, which i.a. allowed the national courts to directly apply Art. 101 and 102 TFEU.⁸⁸

When it comes to competition-related case law, some of the six Member States concerned do collect the information on the number of cases.

The data of competition cases in Germany:⁸⁹



*The number of cases might contain a mistake due to the failure in the database of the Statistical Office in 2010.

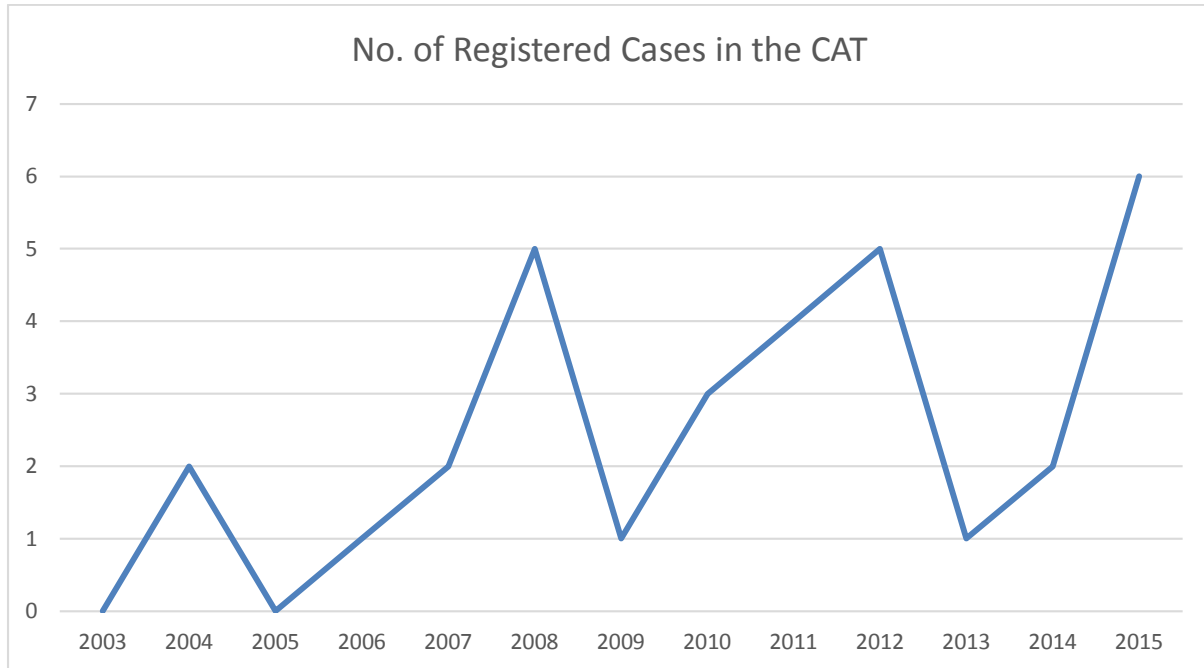
The data on follow-on cases registered in front of the Competition Appeals Tribunal in the UK:⁹⁰

⁸⁷ Court of Justice of the European Union, *C-453/99 Courage and Crehan*, 20 September 2001.

⁸⁸ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

⁸⁹ Data of the German Statistical Office.

⁹⁰ Data of the Competition Appeals Tribunal.



SECTION 4.5. SURVEY ON CONSUMER LITIGATION

4.5.1. Scope of the survey

During September 2015 – March 2016 the research team carried out an online survey on consumer litigation. It was not feasible to include or develop a questionnaire targeting competition litigation due to the fact that such disputes would be mainly initiated by the companies that have suffered from an infringement of competition law. Therefore, identifying the questionnaire recipients would be challenging and require more resources than were available to the team. We refer to our recommendations in the Section 4.1. Scope of Research above for a suggestion on how this could be overcome efficiently.

The survey was set out in six Member States that are subject to the research: France, Germany, the Netherlands, Poland, Sweden, the United Kingdom.

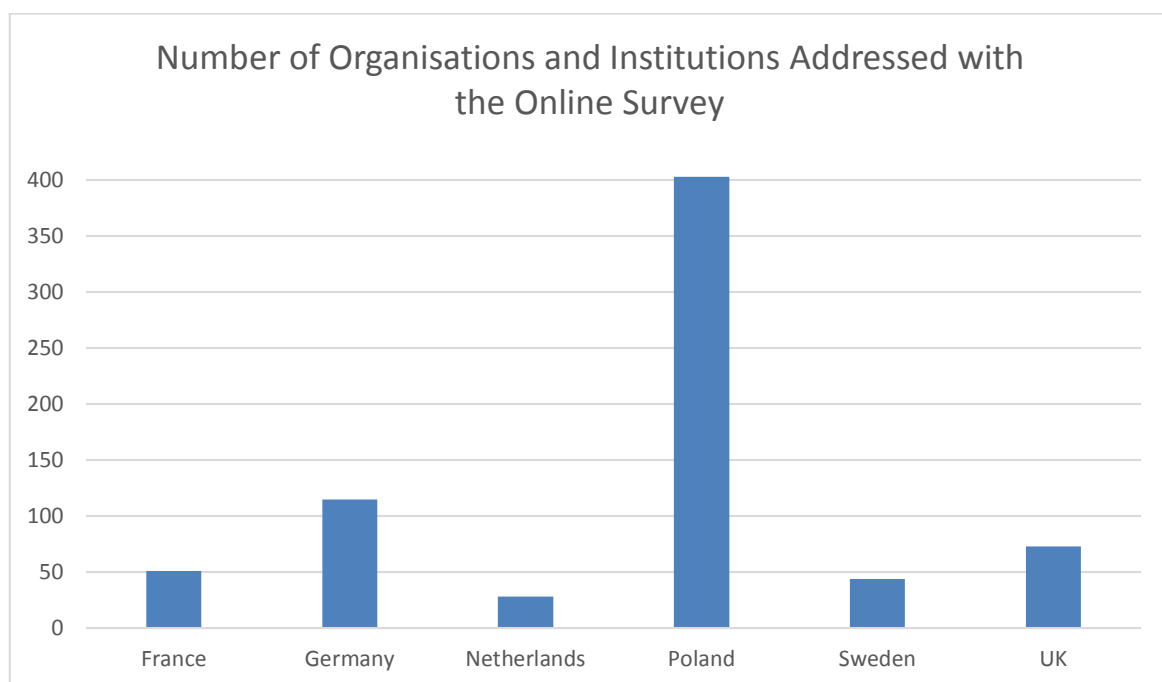
The questions addressed to the recipients aimed to determine whether litigation is used by various actors and what are the aims of such litigation activities. Here, the research team aimed to find out whether litigation is seen as a means of pursuing statutory goals in the area of consumer protection and as a means of introducing or amending the existing regulation. Further information on the profile of the organisations was sought in order to understand whether there are certain common features among the organisations that engage in litigation. Finally, the recipients were asked to give their opinion as to what facilitated or hindered their attempts at litigation and whether they expect increase in the litigation numbers in the future. For more details on the questions posed in the survey see ANNEX I: Overview of Online Survey Questions below.

4.5.2. Target groups

There were two main groups targeted with the survey: consumer organisations and institutions, and consumer-oriented law firms. The list of recipients of the online survey was determined through a desktop search for consumer organisations as well as other actors that may be involved in litigation on behalf of consumers due to

the particular institutional features of each Member State. If it was possible to locate any lists of organisations that are entitled to initiate representative and/or collective actions, these were included into the contact database and received the invitations to participate in the survey. Similarly, if the organisations were part of an umbrella organisation that dealt with consumer matters, they were also included on the list. The search was conducted through internet search engines, therefore, any organisations that might not have an online presence or any contact data available online would not have been included.

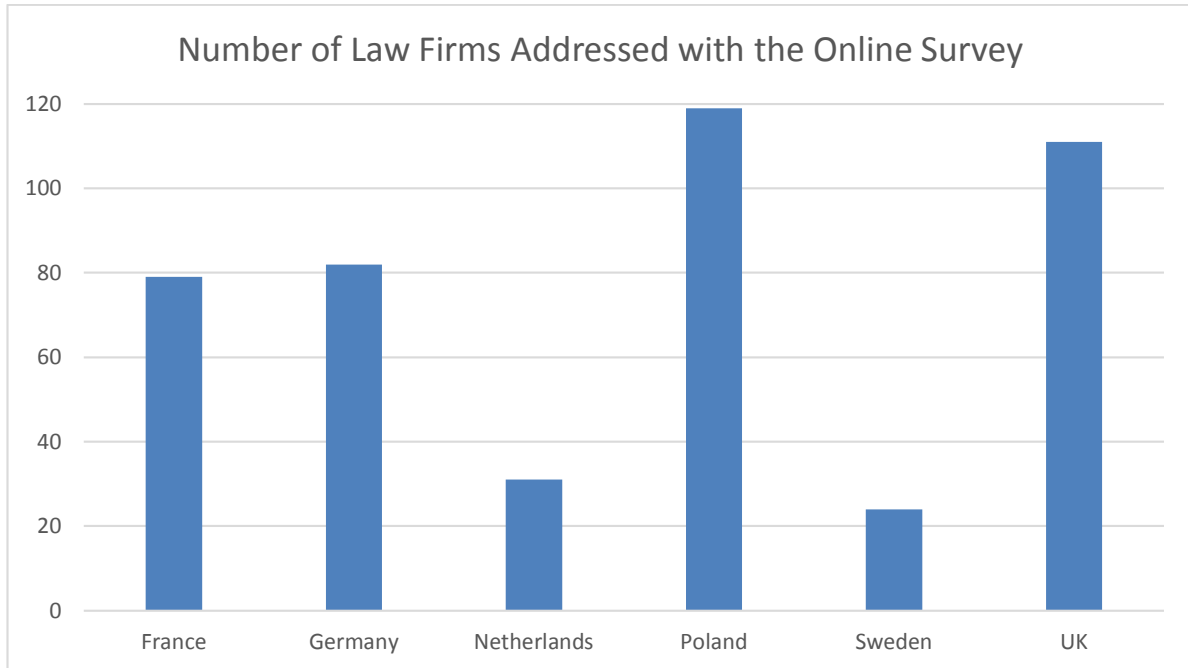
The number of organisations and institutions addressed with the survey is as follows:⁹¹



Another group of recipients were middle-sized and small law firms which advertise themselves as being competent in and dealing with the consumer issues. Please note that it is possible that many other law firms deal with consumer issues without specifically advertising it on their website. Furthermore, the number of law firms addressed with the questionnaire is in no way representative of the number of law firms actually specialising in the area – it was necessary to make a “cut off” for the online search at a certain point, therefore, only some 20-30 first pages with the search hits were used to source the contact details.

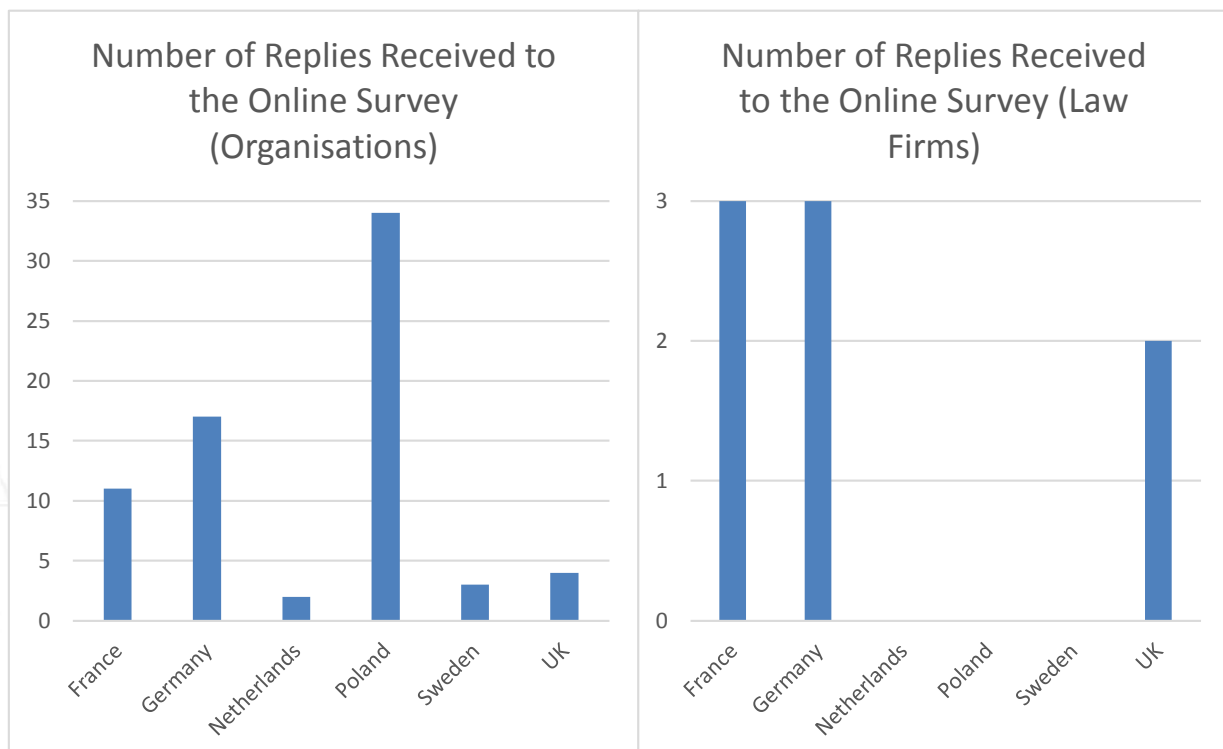
The number of law firms addressed with the survey is as follows:

⁹¹ For the lists of organisations addressed with the survey see ANNEXES II – VII below.



4.5.3. Results⁹²

The overall number of valid full replies received to the survey was 81, 2 of which were unidentifiable as to their location and therefore taken out of evaluation. In the end, 79 of the full replies were evaluated. The number of organisations and law firms which replied to the survey by country is as follows:



The response rate of law firms is, obviously, quite low, thus, the replies provided will be shortly addressed separately in the last section below. The response rate for organisations, on the other hand, is as follows:



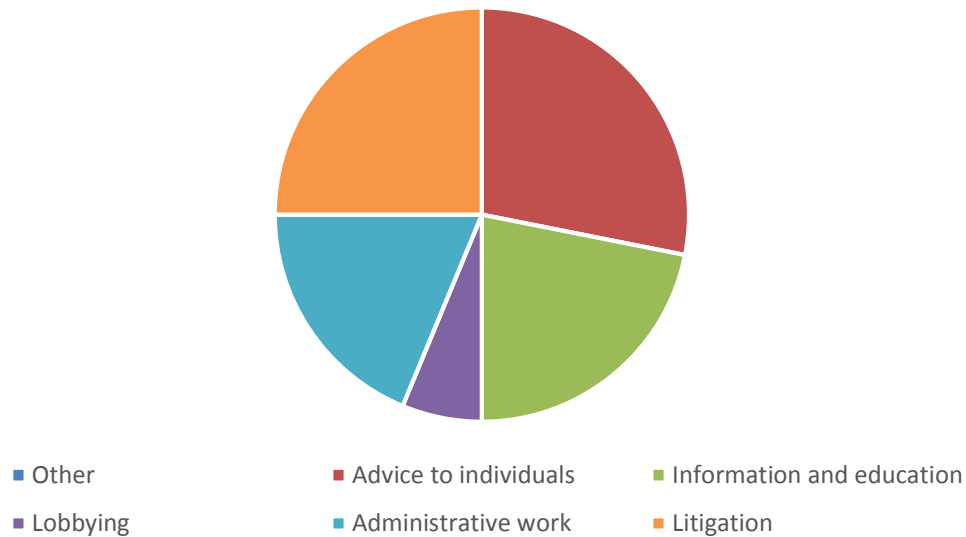
Having in mind that a rather limited number of replies was received, it is difficult to assess how representative the results are of the situation of consumer litigation in the six Member States. Please note that the respondents also did not necessarily provide replies to every single question in the survey. Therefore, this should be kept in mind when reviewing the results that are set out below.

4.5.3.1. France

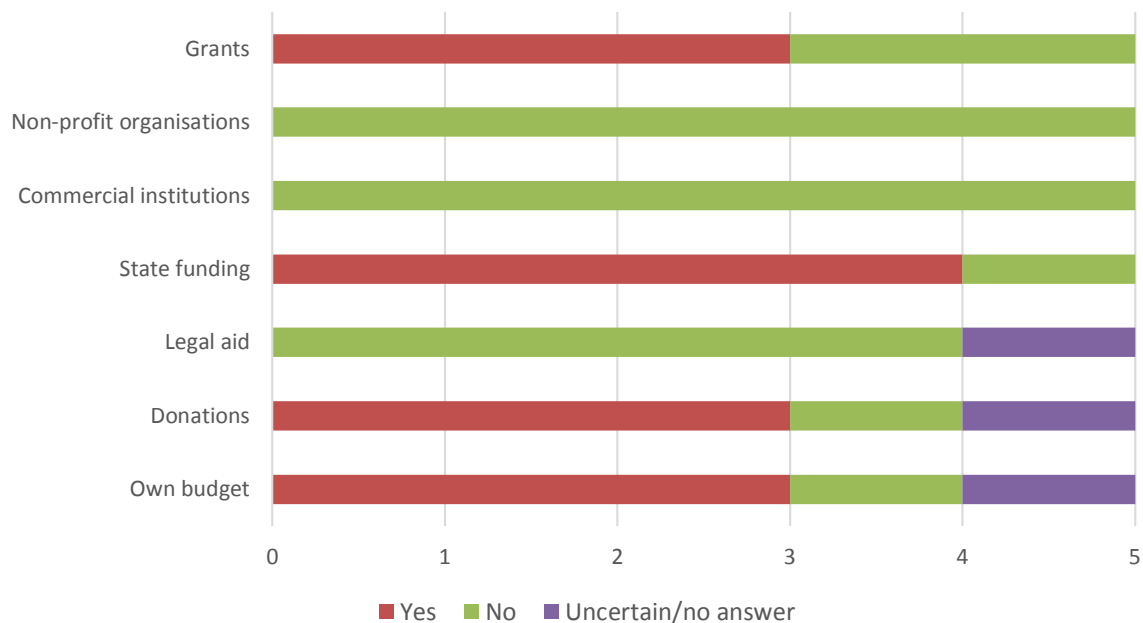
Out of 11 replies received from the organisations and/or institutions 5 stated they engage in litigation as part of their consumer protection work. The other 6 organisations stated they do not engage in litigation. Furthermore, all 5 stated that they have been engaged in litigation work for 15 years or longer. 4 of these specified that they are a non-profit organisation and 1 that they were a “conciliation committee”. Below are some further results based on the replies given to the questions of the survey.

When asked to rank the importance of the types of certain consumer-related work, the information provided by the 5 organisations can be systematized as following:

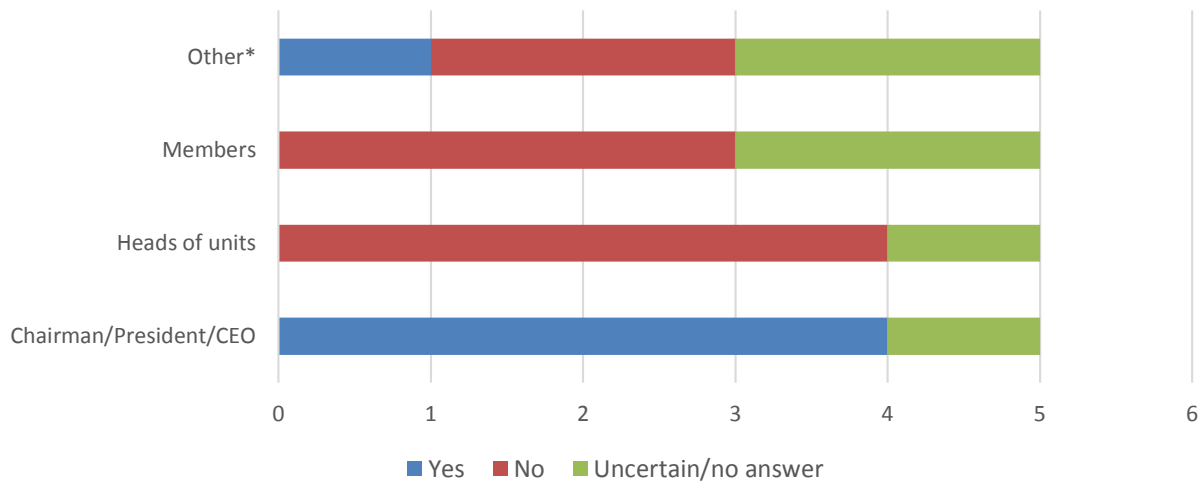
France - How important are the following tasks for your consumer-related work?



France - Sources of consumer litigation financing

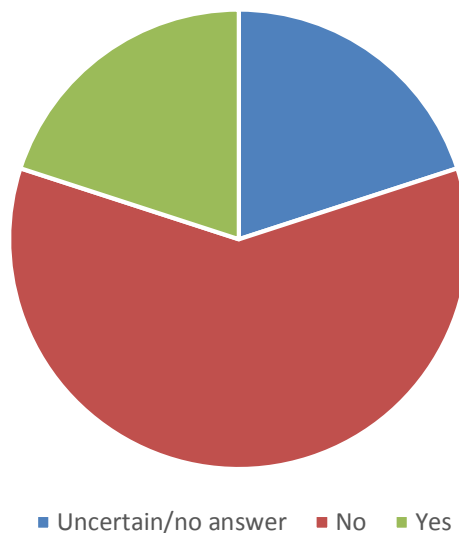


France - Who decides on getting involved in specific cases of litigation

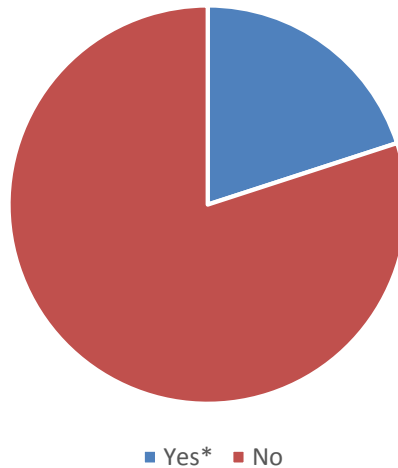


*The positive answer in the category specified further information that the “Secretary General in charge of the consumer division” takes a decision together with the Chairman/President/CEO.

France - Whether government agencies assign legal cases

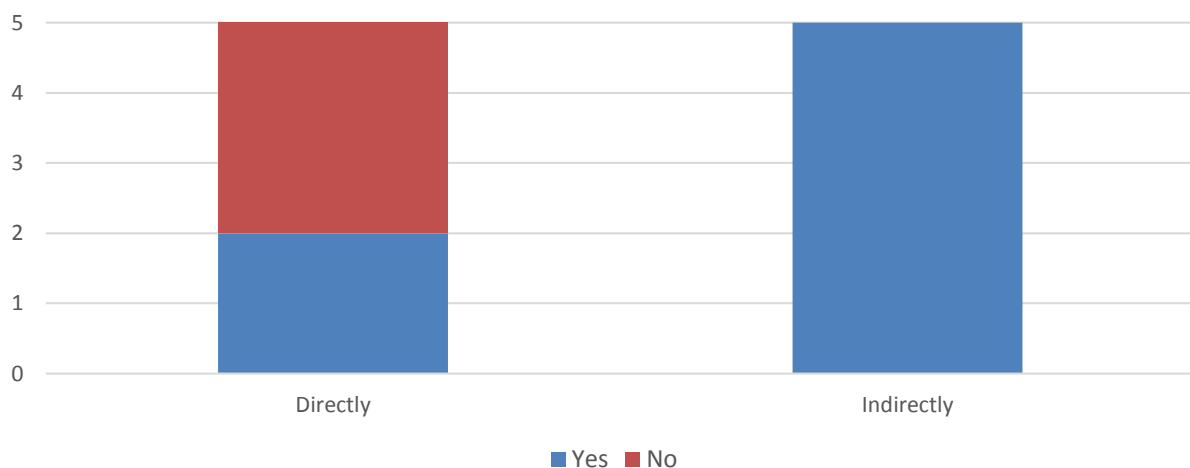


France - Whether organisations allowed to keep a certain percentage of damages awarded in consumer litigation



*The positive answer also provided further details that the percentage of such damages is 20%.

France - How organisations get involved in litigation



The two organisations which stated they are involved in litigation directly also selected both types of such direct participation:

- Representative of the consumer
 - Taking an active part in the court proceedings on the side of an individual consumer or a group of consumers enforcing their individual rights
- Claimant where general consumer rights are affected

- The organization has the possibility under the law to initiate litigation when the general interests of consumers are affected without any particular individual consumer being involved in the court proceedings

Furthermore, 4 out of 5 organisations that indicated they are involved in litigation indirectly elaborated that their involvement consists of the following:

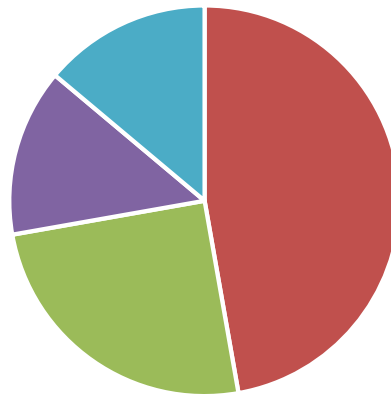
- Assisting consumers in bring their case to court
- File preparation
- Providing technical and legal assistance to consumer associations of the region
- Providing legal arguments that will be developed by an adherent association on behalf of consumers

The participants were then requested to rank different goals that may be pursued through litigation by grades of importance to their consumer litigation work:

- Enforcing existing consumer rights (Enforcing consumer rights that are fixed in laws/statutes e.g. in order to rectify their violations with the aim of restoring the damage caused to individual consumers or to the general consumer interests)
- Clarifying fundamental legal issues (Initiating court proceedings with the aim of obtaining a clarification/interpretation of certain legal issues/questions)
- Urging legal reform (Initiating court proceedings in order to bring a certain problem into a spotlight, attract public attention to it or the attention of the lawmaker, which would eventually lead to a legal reform)
- Creating new consumer rights (Attempting to achieve introduction of new consumer rights through litigation)

The outcomes of the exercise were as follows:

France - How important are the following goals of the consumer cases your organization was involved in?



- Other
- Enforcing existing consumer rights
- Clarifying fundamental legal issues
- Urging legal reform
- Creating new consumer rights

Addressing the number of consumer litigation cases over the years, 3 organisations answered the related questions and gave the following answers:

Number of consumer litigation cases	How many cases ended in your favour?	How many cases were settled?
<ul style="list-style-type: none"> • More than 20 • 100 • More than 200 	<ul style="list-style-type: none"> • More than 20 • 90 • 150 	<ul style="list-style-type: none"> • 0 • 50 • 20

Further, when asked to address what facilitated or hindered their attempts at litigation the organisations stated:

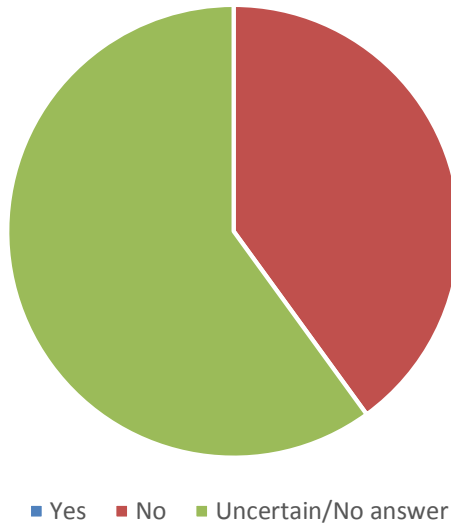
What facilitated your litigation activities (e.g. certain changes to legislation, procedural rules, availability of legal aid, legal insurance)?

- Law firm
- Changes in legislation, legal insurance
- Legal insurance

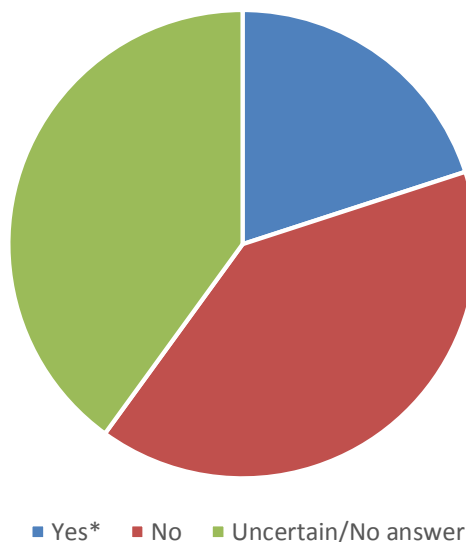
What hindered your litigation activities (e.g. lack of funding, resources, procedural rules, duration of court proceedings)?

- Lack of financial resources
- Lack of funds and length of proceedings
- Lack of funds to pay for lawyers

France - Did EU measures facilitate litigation activities?



France - Did EU measures hinder litigation activities?



*The positive answer elaborated as following as to which measures and how hindered litigation activities: "Standards implemented into the French law. The EU minimises the protection of consumers in comparison to the protection levels of French laws."

When addressing the question of what specific consumer rights the organisations deal with in their consumer litigation the following valid answers were provided:

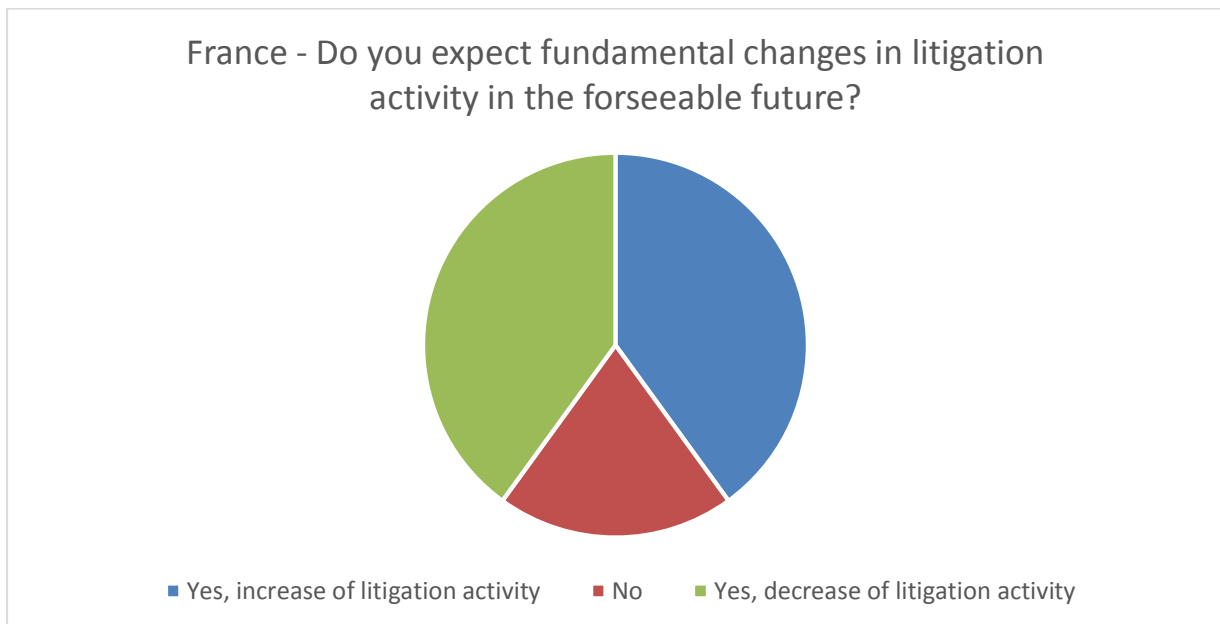
- Consumer act: abusive contract clauses or abusive practices, advertising etc.
- Rental law, insurance, shopping, mail order, all consumer rights

- Insurance services phone rental housing

It is interesting to note that 3 organisations also answered the question regarding the number of cases resolved through alternative dispute resolution (arbitration, mediation, etc., without the involvement of the court) and stated the following:

- 0
- 20
- Thousands

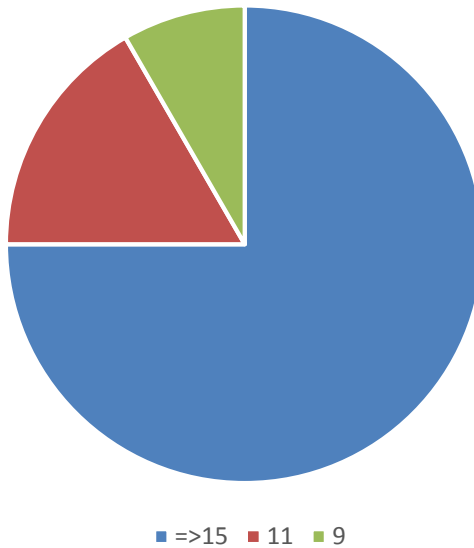
Finally, when asked to predict the future development of litigation activity, the organisations provided the following answers:



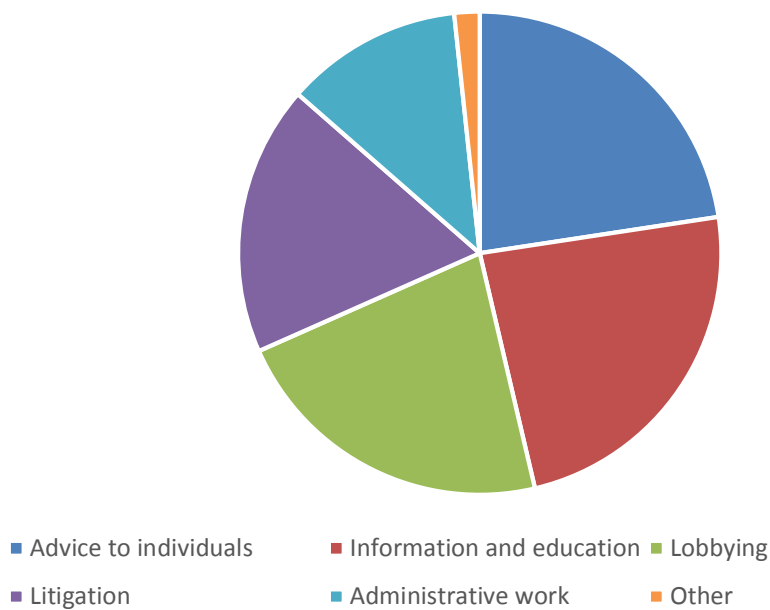
4.5.3.2. Germany

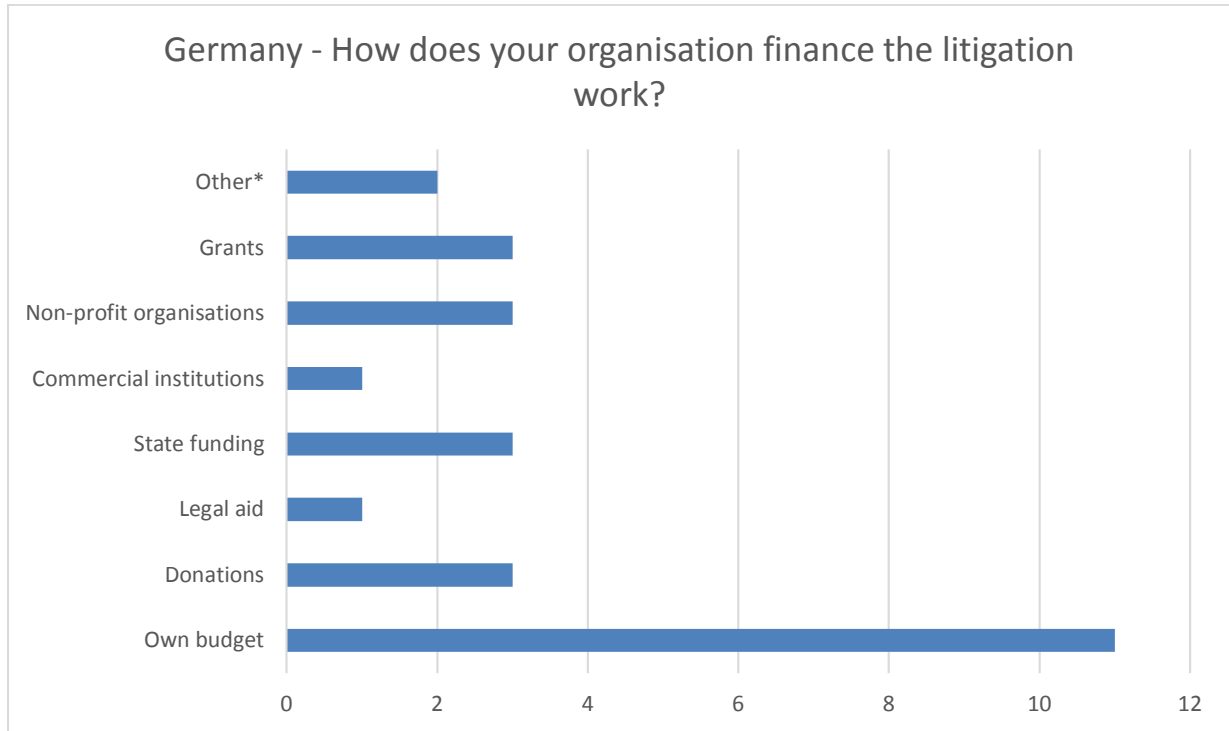
Out of 17 replies received, 12 respondents stated they engage in litigation as part of their consumer protection work. The other 5, accordingly, stated they do not engage in litigation. The majority of the 12 respondents that engage in litigation stated that they are non-governmental organisations, however, it is not possible to say whether all of them are non-profit or some might be for-profit. 10 out of these, however, stated they are mainly focused on consumer work. Below are some further details regarding the replies received from the organisations that do engage in consumer litigation:

Germany - How long does your organisation engage in consumer litigation?



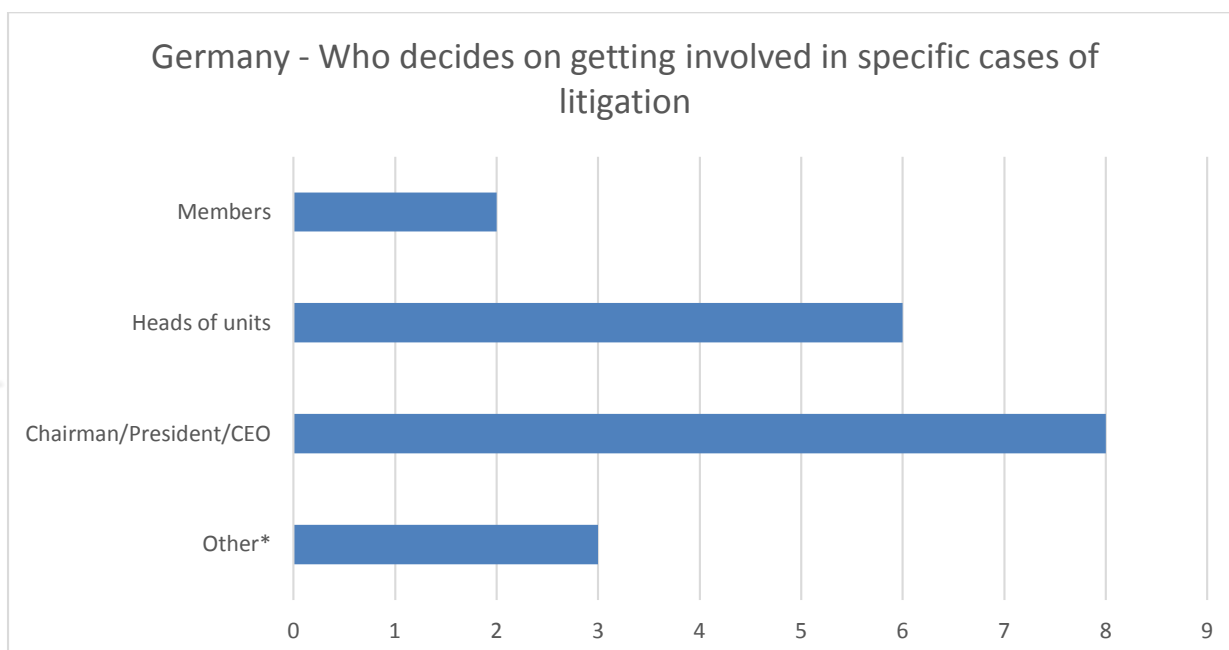
Germany - How important are the following tasks for your consumer-related work?





*The organisations that answered “other” have specified further that it is “Fines and penalties” and “Membership fees” that are used to finance litigation work.

Only one organisation stated that it is entitled to keep percentage of the damages awarded in consumer litigation specifying that it is “Depending on the agreements with the consumers involved in the claim (between 10 and 30 percent).”



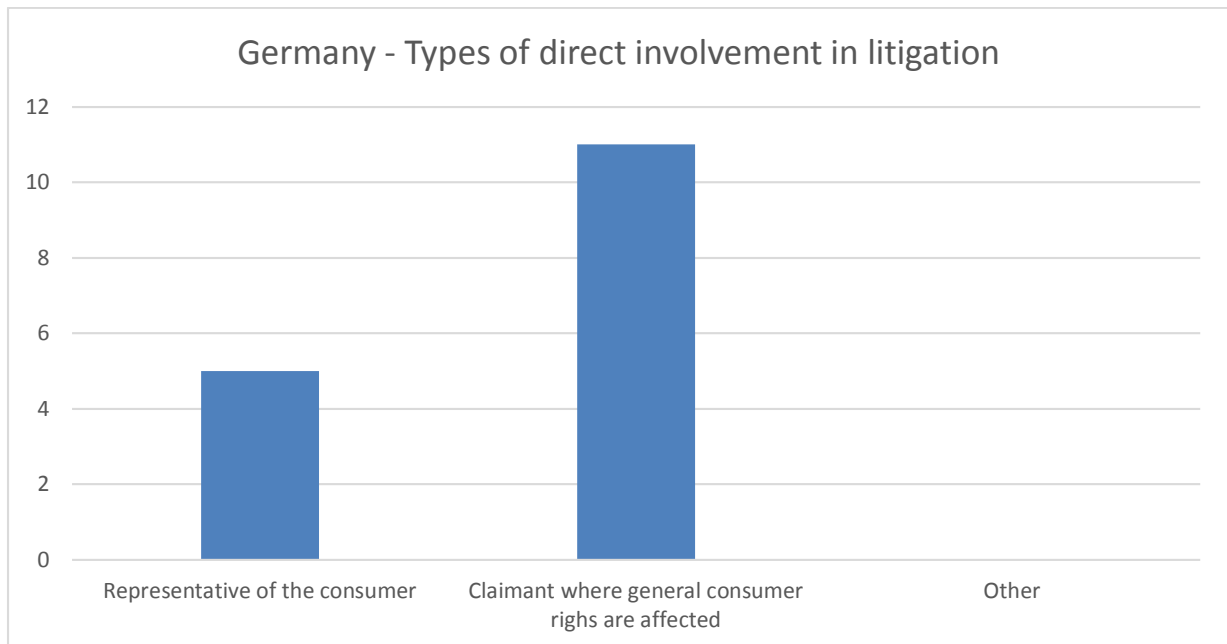
*The organisations that answered “other” have specified further that the decisions on getting involved in litigation come from “Management”, “Lawyer with CEO” and “Proposals for model case proceedings are also developed by the legal department and its employees and head and coordinated with the executive board, which takes the final decision on which procedures will be started and pursued.”

A few organisations provided multiple answers and were, therefore, prompted by the system to elaborate how different bodies cooperate when taking the decisions on getting involved in litigation. The answers provided were:

- Depends on the amount in dispute
- Proposals for model case proceedings are also developed by the legal department and its employees and head and coordinated with the executive board, which takes the final decision on which procedures will be started and pursued
- Proposals are made by every department head within their area and the management takes the final decision
- Depending on circumstances and relevance

Further, only two organisations specified that government agencies assign cases to them.



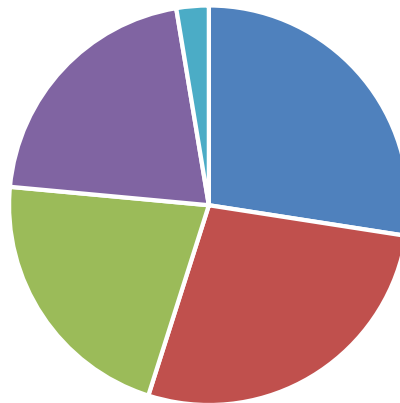


The organisations were also prompted to elaborate on the manner of their indirect involvement in litigation and the following answers were provided:

- Partially we forward consumer cases to our federal association
- In individual cases we support consumers as claimants with legal advice and/or the bearing of the legal costs
- Advisory and supporting
- Legal advice and/or financial support and/or taking part in the preparation of the statement of claim
- Legal advice in individual cases
- Advice and legal support for the consumer and its lawyer if necessary, partially commitments to bear legal costs

The participants were then requested to rank different goals that may be pursued through litigation by grades of importance to their consumer litigation work:

Germany - How important are the following goals of the consumer cases your organization was involved in?



- Enforcing existing consumer rights
- Clarifying fundamental legal issues
- Urging legal reform
- Creating new consumer rights
- Other

Addressing the number of consumer cases over the years, the organisations gave the following answers:

How many court cases in consumer issues have been initiated by your organization?

- 150
- 3
- 33
- 5
- Approx. 120
- Approx. 80-90
- 84
- Approx. 10-15
- Approx. 200
- Approx. 3600 (up to 2014)
- Approx. 20

How many cases ended in your favour?

- 100
- 3
- 90%
- 5
- 70
- Approx. 40-50
- 66
- 90%
- Approx. 80%
- Approx. 1750 (up to 2014)
- Majority

How many cases were settled?

- 45
- 0
- 0%
- 3
- 20
- Approx. 30-40
- 0
- 1
- Approx. 10%
- Approx. 540 (up to 2014)
- None

How many consumer disputes has your organization resolved through alternative dispute resolution (arbitration, mediation, etc., without the involvement of the court)

- 0
- 2000
- 1000
- 0
- Approx. 100
- No

Among the specific consumer rights that the organisations' litigation activities involve the following answers were given:

- Transparency of terms and conditions, publication of information, above all: turnkey construction projects
- Rent Law
- Invalid terms and conditions in the real estate area
- Service contracts
- Unlawful terms and conditions; Violation of unfair competition; Provisions of consumer protection according to the German Civil Code (BGB), e.g. rights of withdrawal
- Model case proceedings about issues of private insurance law, e.g. in the area of life insurance
- Financial services, insurance law, travel law, energy law, food law, purchase contracts stationary trading, online purchase contracts, contracts to produce a work, service contracts, unlawful fees and charges, misleading advertisements, unlawful price raises, invalid terms and conditions, etc.
- Unfair competition, law of terms and conditions, energy law, telecommunication
- All consumer areas
- Information rights; Health protection
- Rights according to the consumer selling directive; Rights according to the passenger rights regulation; Rights according to the package travel directive

Further, when asked to address what facilitated or hindered their attempts at litigation the organisations stated:

What facilitated your litigation activities (e.g. certain changes to legislation, procedural rules, availability of legal aid, legal insurance)?

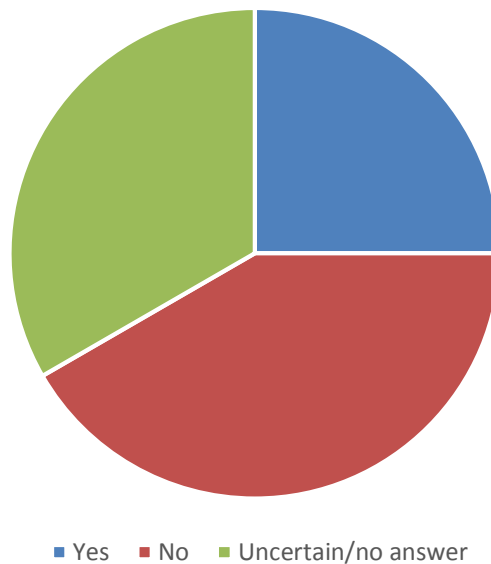
- Laws; Case law
- Laws; Procedural rules
- Right for representative actions under UKlaG; Autonomy and independence of the association - no financial assistance from the state.
- Laws (UWG, UKlaG), etc.
- Laws; Legal expenses insurance
- Information for consumers (most important source of knowledge); Publicity (the collective character of consumer interests can only be achieved by publicity); High professional competence and engagement of our employees and lawyers
- To be awarded the standing for injunction claims as consumer association; recognition of different labelling rules as enforceable market behaviour rules
- Laws

What hindered your litigation activities (e.g. lack of funding, resources, procedural rules, duration of court proceedings)

- Clarification of facts, the jurisdiction helps with that partially with prima facie evidence presumptions (especially the intention of several uses)
- Duration of proceedings
- Resources; Procedural rules
- Sometimes financial resources
- Lack of financial resources; Lack of human resources; Procedural law
- The will of the members/consumers; No cost recovery
- Lack of resources; Duration of proceedings
- Representative actions result in injunctive relief but no damages awarded to consumers; § 10 UWG is a toothless tiger (requirement of intent + payment of the levy to the treasury); Many courts do not know § 12 Abs. 4 UWG (with the result that unfairly acting companies do also participate in the subject value privilege)

- Duration of proceedings; Cost of proceedings; Limited collective action instruments
- Resources

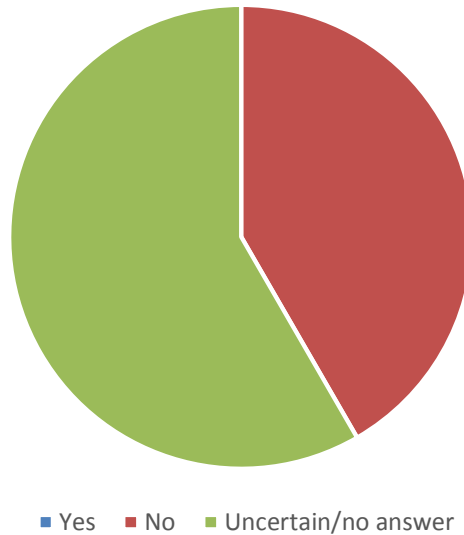
Germany - Did EU measures facilitate litigation activities?



Having been prompted to specify which EU measures in particular facilitated the attempts at litigation, the following answers were given by the organisations:

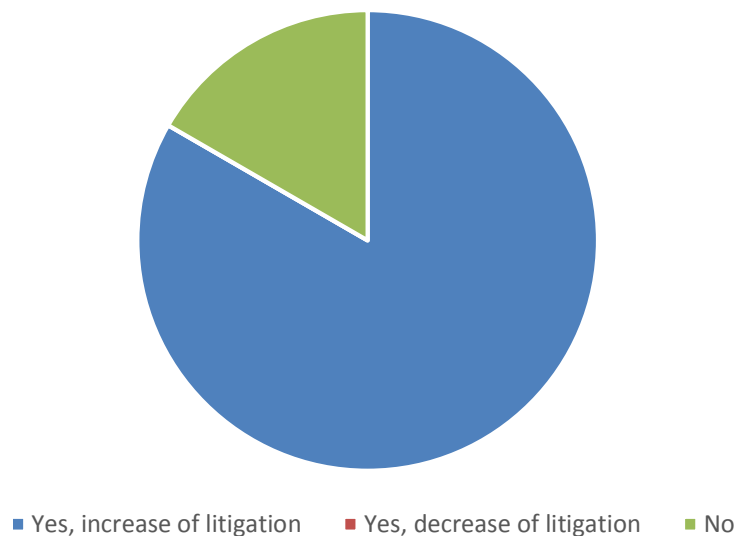
- Subject of a procedure in front of the CJEU that we won was the interpretation of the Conversion Rates Regulation (DM to Euro)
- Directive 2009/22/EC on injunctions for the protection of consumers' interests; Directive 2005/29/EC on unfair commercial practices; Eco-design directive and regulation; Labelling directive und regulation; Directive 2010/31/EU on energy performance of buildings; Directive 1999/94/EC; other labelling and limit value rules
- With regard to the subject of the claims, consumer rights were strengthened by the consumer selling directive, the passenger rights regulation and the packaged travels directive, but there were always basic questions regarding individual provisions to be clarified

Germany - Did EU measures hinder litigation activities?



Finally, when asked to predict the future development of litigation activity, the organisations provided the following answers:

Germany - Do you expect fundamental changes in litigation activity in the foreseeable future?

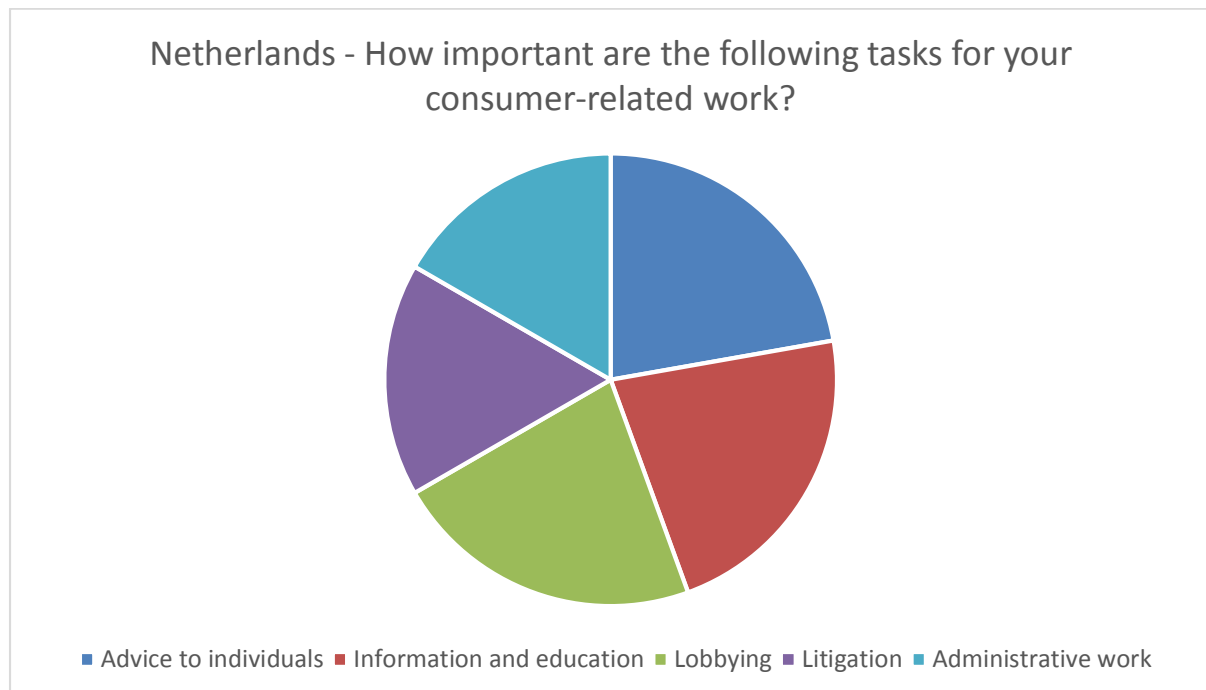


4.5.3.3. The Netherlands

From the Netherlands, the research team received only 2 submissions to the survey. Both replies specified that they come from non-profit organisations. One organisation stated it is not involved in consumer litigation and

one that it has been involved in such activities for some 10 years. Once again, it is difficult to say how representative the results of the survey for the Netherlands are due to the low number of replies. In any case, below you will be able to find a summary of the replies provided by the organisation claiming to engage in consumer litigation.

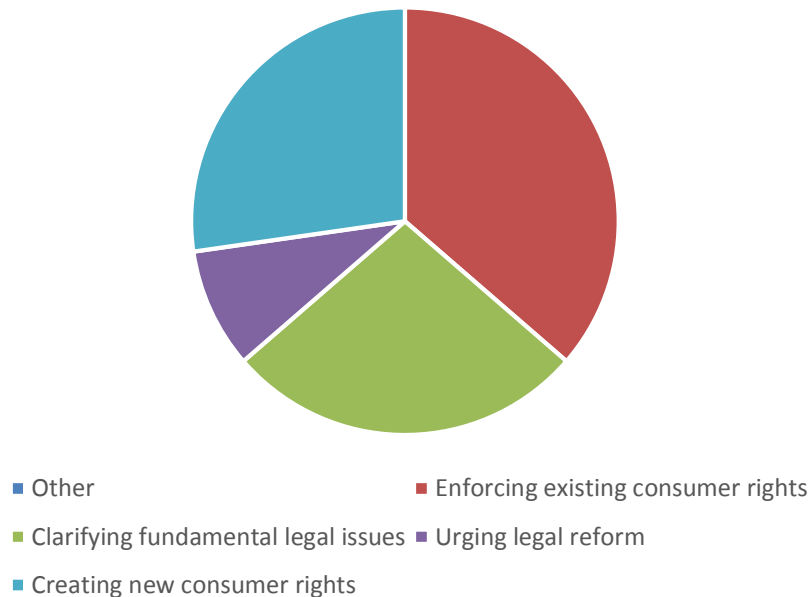
When asked to rank the importance of the types of certain consumer-related work, the information provided by the organisation was the following:



The organisation stated that it finances its litigation work through state funding. At the same time, state agencies do not assign legal cases to the organisation and it is not entitled to keep a percentage or a certain amount of damages awarded in litigation.

Further, it was stated that the organisation does not have any direct involvement in litigation but only indirect through “helping to prepare the case, finding out where the competent court is established, and what the applicable law is”. The survey entries further specified that the organisation was specifically involved with the “air passenger rights, guarantee”. When evaluating the importance of the litigation activities, the following answers were given:

Netherlands - How important are the following goals of the consumer cases your organization was involved in?



Finally, the organisation stated it did not expect any changes in consumer litigation.

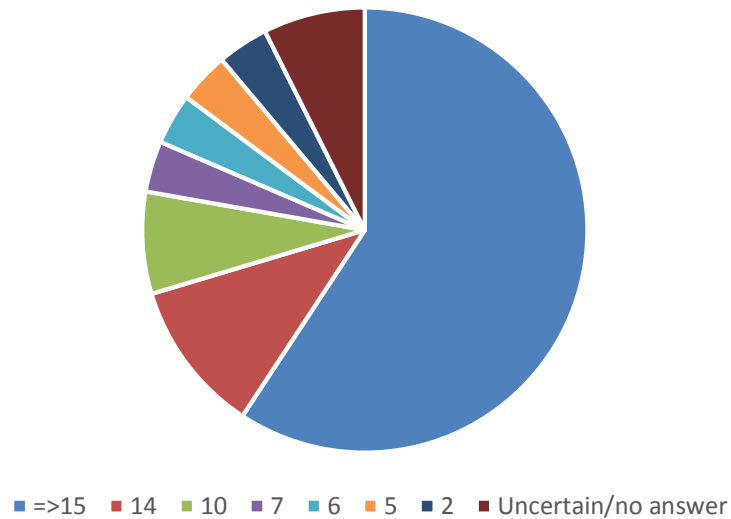
4.5.3.4. Poland

Out of the 34 replies submitted to the online survey from Poland, 7 respondents stated they were not involved in litigation in their consumer protection work. Among these, 1 was a non-governmental organisation and 6 a public institution.

The 27 remaining respondents stated they were involved in consumer litigation. 2 of them were non-governmental organisations and the rest – public institutions. This is explained by the particular role that consumer ombudsman has in Poland in relation to consumer litigation as well as the sheer number of such consumer ombudsmen around the country.

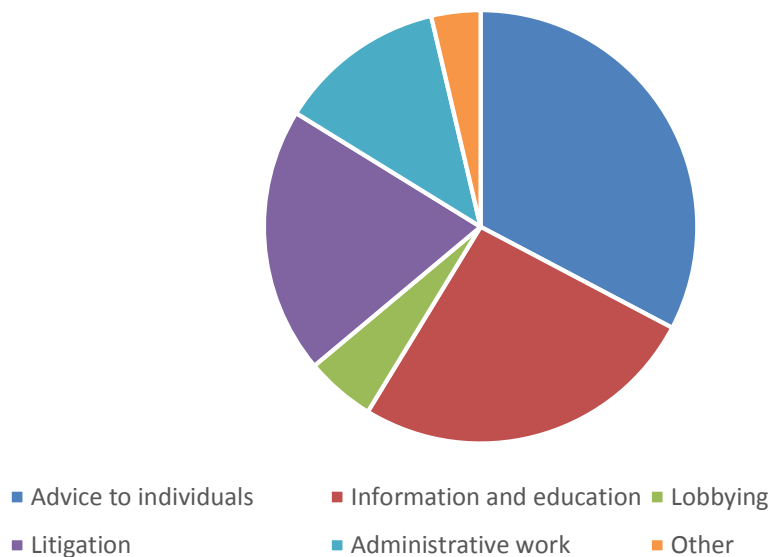
For 22 of the respondents who engage in litigation consumer work was the main focus. The majority of the respondents stated they have been doing consumer litigation work for 15 or more years:

Poland - How long does your organisation engage in consumer litigation?



When asked to rank the importance of the types of certain consumer-related work, the information provided can be systematized as follows:

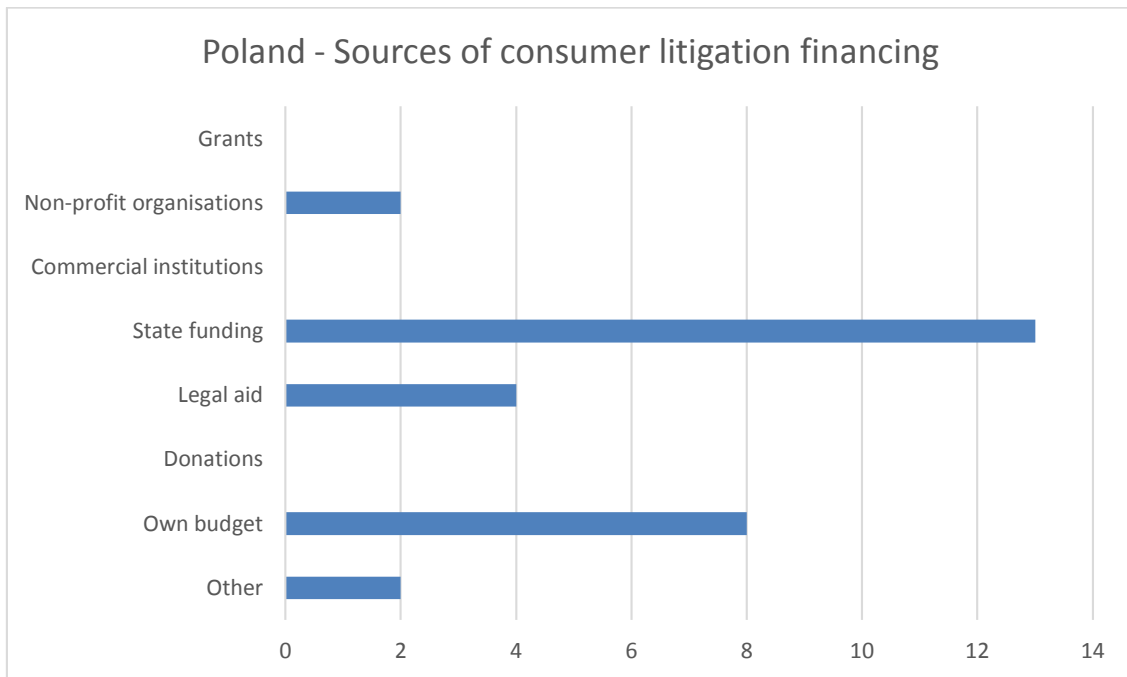
Poland - How important are the following tasks for your consumer-related work?



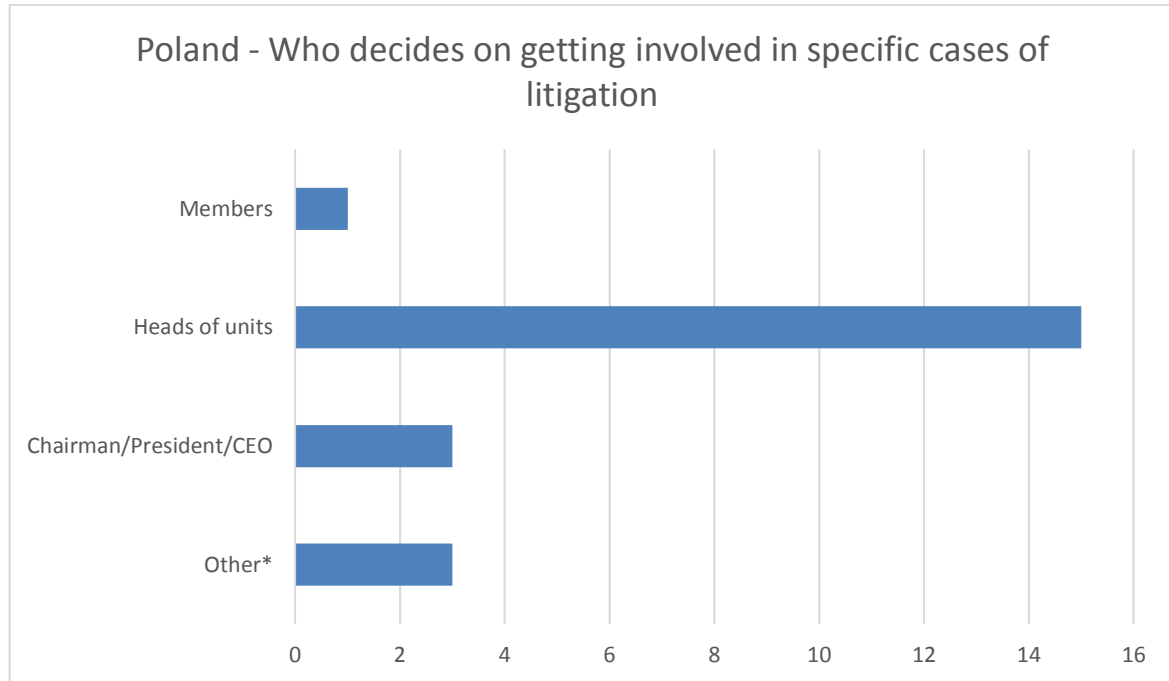
Among the category of “other” activities the respondents mentioned the following:

- Negotiating in the interest of consumers
- Cooperation with governmental institutions and non-governmental organisations
- Mediation, attempts at amicable resolution of disputes
- Helping indebted persons, which to some extent overlaps with consumer protection

According to the replies provided, consumer litigation work is financed through the following means (please note that the organisations could chose a few different sources of funding):



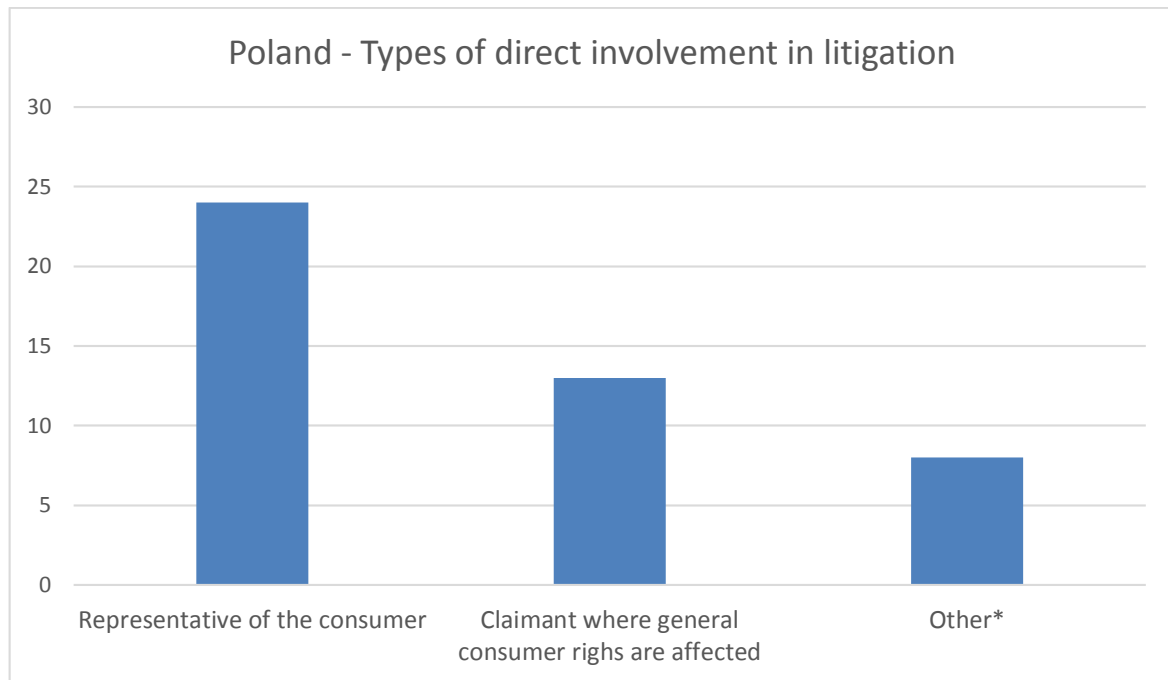
Only one public institution answered that government agencies assign cases to it and none of the respondents seem to be allowed to keep a percentage/amount of damages awarded in consumer litigation. Further information is presented in the graphs below:



*The respondents who chose "other" all pointed to consumer ombudsman taking the decision.



The respondents that answered they are entitled to engage in litigation directly noted that the manner of such engagement is as follows:



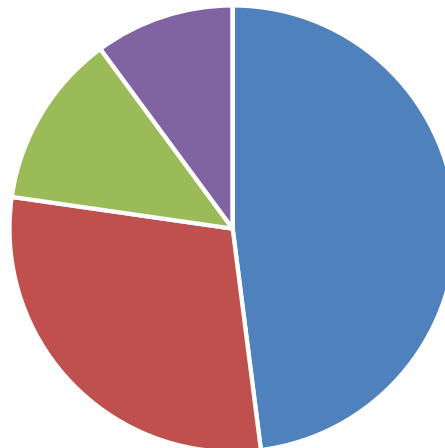
The respondents that chose “other” further elaborated that they are directly involved in the following manner:

- Public claimant in cases on violation of consumer rights
- Intervening on the side
- Consumer ombudsman can be group representative in a group proceeding
- Presenting an opinion in a case (Art. 63 of the Code of Civil Procedure)
- Submission of an opinion on a case to a court
- Submission of an opinion to the court, joining court proceedings on the side of the consumer, consumer representative in group proceedings
- Presenting the court with an opinion in the case

Furthermore, the respondents who elaborated on how they are involved in litigation indirectly in their majority of 15 stated they assist consumers in preparing the case and/or procedural letters and some further 4 stated they are entitled to present their opinion to the court.

When requested to rank different goals that may be pursued through litigation by grades of importance to their consumer litigation work the respondents provided the following answers:

Poland - How important are the following goals of the consumer cases your organization was involved in?



- Enforcing existing consumer rights
- Clarifying fundamental legal issues
- Urging legal reform
- Creating new consumer rights
- Other

Addressing the number of consumer litigation cases over the years, the respondents gave the following answers:

Number of consumer litigation cases initiated	How many cases ended in favour?	How many cases were settled?	How many consumer disputes has your organization resolved through alternative dispute resolution (arbitration, mediation, etc., without the involvement of the court)
<ul style="list-style-type: none"> 0 Directly: 0 			<ul style="list-style-type: none"> Approx. 10 In majority of cases (500-600 a year) we led mediation A few thousand cases (500 yearly)
<ul style="list-style-type: none"> Approx. 50 	<ul style="list-style-type: none"> 40 	<ul style="list-style-type: none"> 5 	<ul style="list-style-type: none"> 0 2000 900 2000 Approx. 15000 5
<ul style="list-style-type: none"> 5 700 5 20 Approx. 150 12 22 0 0 5 Approx. 100 A few 	<ul style="list-style-type: none"> 5 5 15 Approx. 120 7 Approx. 300 4 Majority 	<ul style="list-style-type: none"> 0 0 2 Approx. 10 5 50 0 1 or 2 	<ul style="list-style-type: none"> 0 2000 900 2000 Approx. 15000 5 200 400

- | | | | |
|-----------------|-----------------|--------------|------------------------|
| • More than 100 | • More than 90% | • 1 | • More than 90% |
| • Approx. 30 | • Approx. 30 | • 0 | • 0 |
| • More than 100 | • Approx. 80 | • Approx. 15 | • 80% of interventions |
| • 220 | • 280 | • 20 | |
| | | | • Several dozen |
| • 4 | • 3 | • 1 | |
| • 0 | • 0 | • 0 | • Majority |
| • 255 | • 230 | • 8 | • 0 |
| • 5 | • 5 | • 0 | |
| • 0 | • 0 | • 0 | |

Most of the respondents also noted that it takes about 1-2 years from the initiation of proceedings until the final judgment. When elaborating on what hindered or facilitated the consumer litigation activities the respondents noted:

What facilitated your litigation activities (e.g. certain changes to legislation, procedural rules, availability of legal aid, legal insurance)?

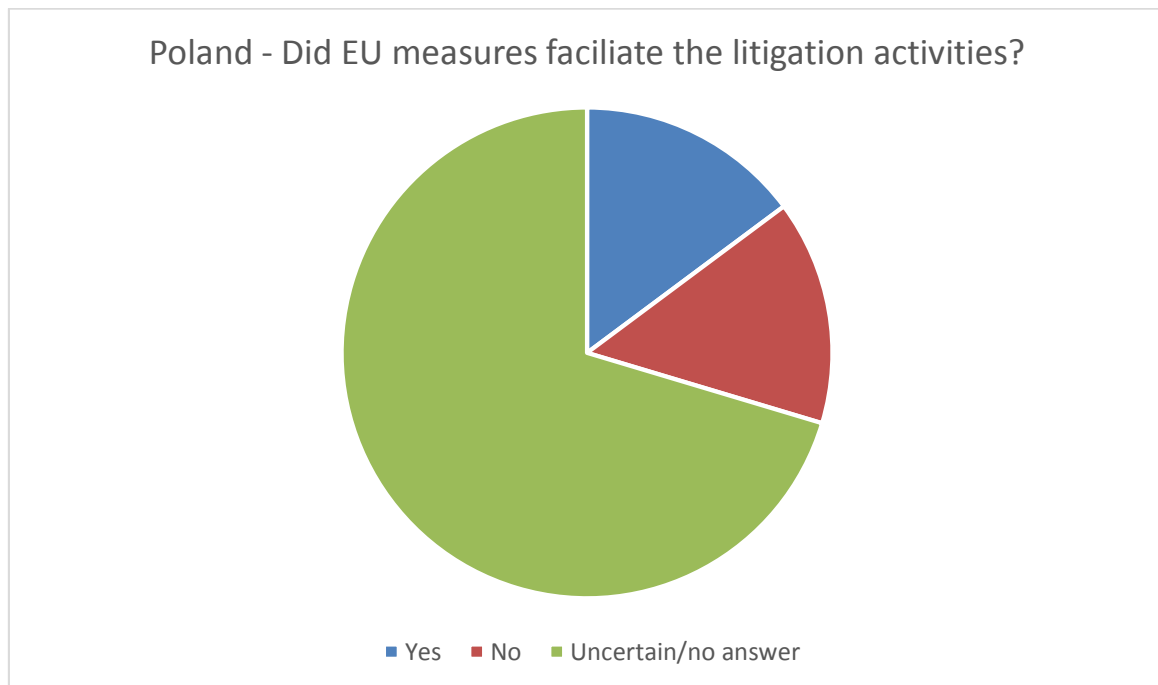
- Granting of the right to submit an opinion in a case
- Changes in the law
- Exemption from court fees for consumer ombudsmen
- No facilitation noted
- Legal expenses insurance; Procedural rules"
- Exemption from court fees for consumer ombudsmen
- Availability of legal assistance
- Conduct writ
- Changes in the law
- Appropriate salary/training; Legal insurance
- Exemption from court fees
- Changes in the law allowing consumer ombudsman to participate in court proceedings directly
- Exemption from court costs; Granting of the procedural standing in cases on consumer agreements
- Changes in the law; Procedural rules; Availability of legal assistance
- Procedural rules
- Changes in the law
- Changes in the law
- Nothing

What hindered your litigation activities (e.g. lack of funding, resources, procedural rules, duration of court proceedings)

- Lack of possibility to bring cases in the interest of consumers
- Lack of human resources
- Lack of time; Lack of human resources
- Lack of financial resources to pay employees that could offer advice and be representatives
- Human resources
- Lack of financial resources; Duration of proceedings
- Lack of human resources
- Lack of financial resources
- Lack of specialist assistance in civil procedural code
- Did not have hindrances
- Lack of financial resources; Budget cuts
- Fear of paying legal costs in the event of losing a dispute
- Uneducated judges
- Lack of resources
- Duration of proceedings; Problems with the reliability and credibility of experts; Possibility to charge legal representation costs; Lack of own budget
- Lack of human resources; Duration of proceedings
- Lack of financial resources; Duration of court proceedings

- Lack of financial resources; Duration of proceedings
- Duration of proceedings
- Lack of financial resources

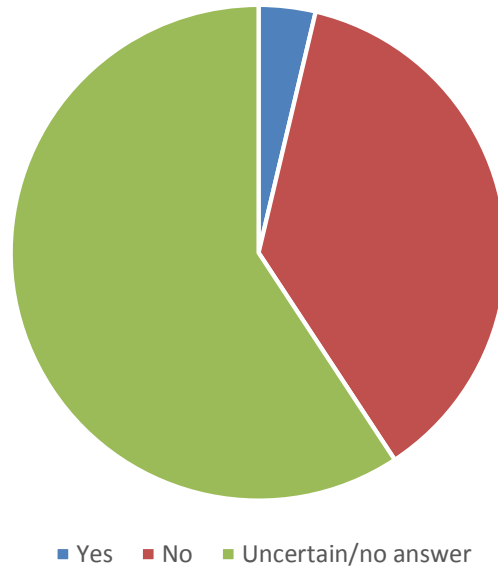
When asked to evaluate the influence of EU measures on the litigation activities the respondents have provided the following information:



When asked to elaborate which measures in particular had some kind of effect, the following was reported:

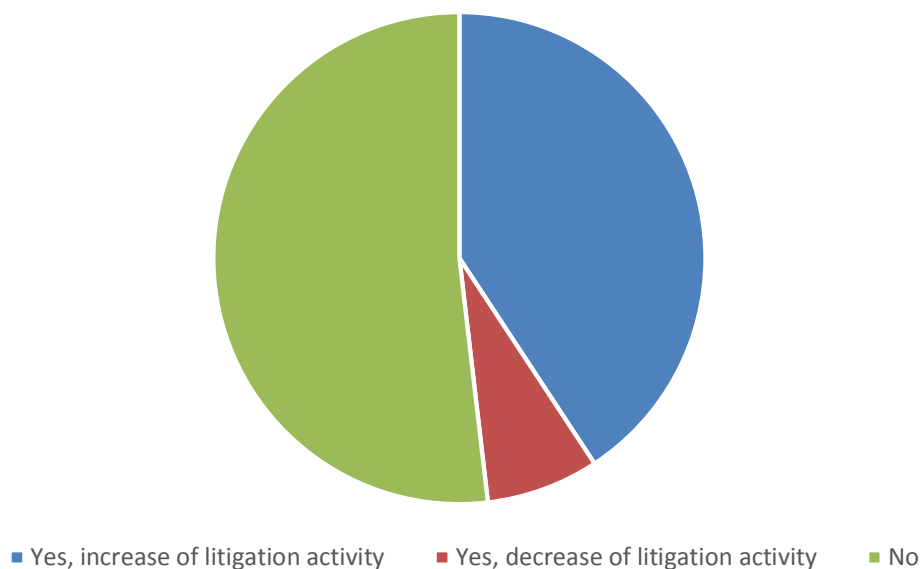
- Directives on distance selling and doorstep selling
- Consumer Credit Directive
- Consumer directives
- New legislation influences development of national law

Poland - Did EU measures hinder the litigation activities?



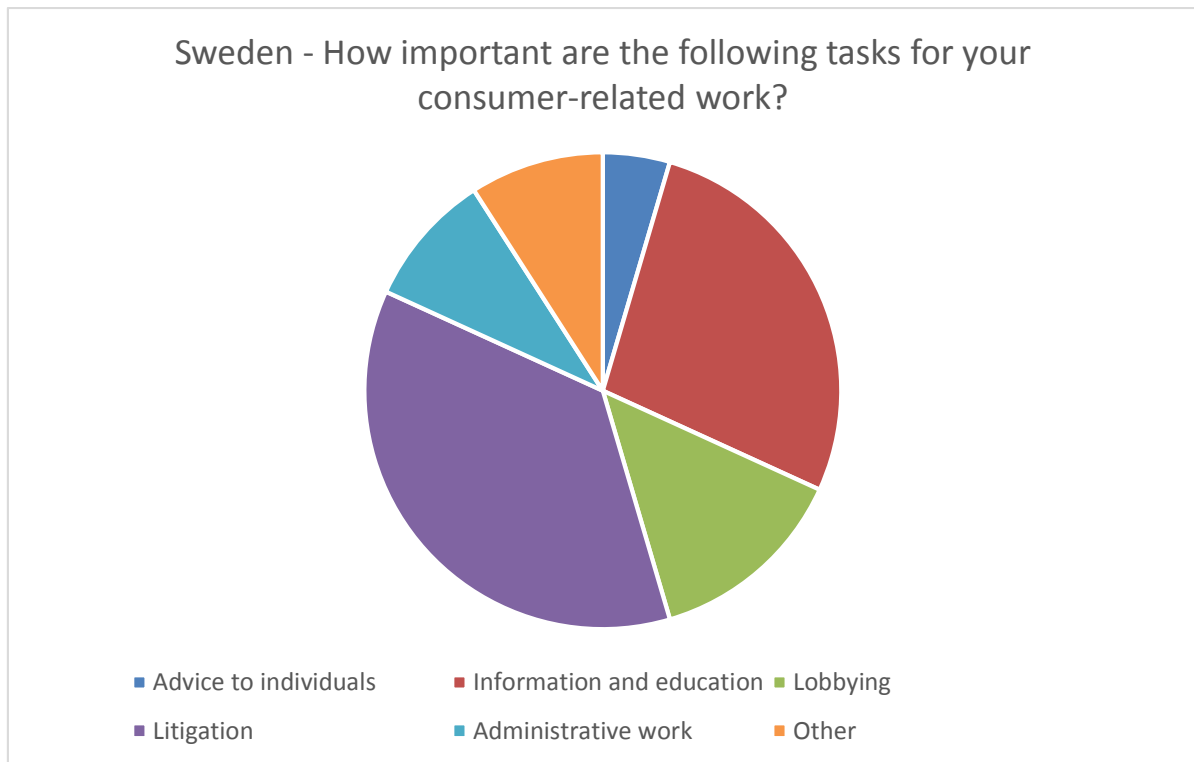
Finally, when asked to predict the future development of litigation activity, the respondents provided the following answers:

Poland - Do you expect fundamental changes in litigation activity in the foreseeable future?



4.5.3.5. Sweden

There were only 3 replies to the survey that came from Sweden. 1 of them that came from a non-profit organisation stated it is not involved in litigation in line of the consumer work. The other 2 came from a public institution which stated they have been engaged in consumer litigation for 15 years or longer. When elaborating on the different levels of importance of consumer-related activities the two public institutions stated the following:

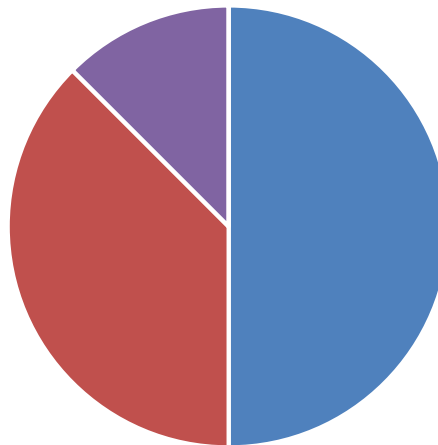


Both of the public institutions specified that they finance the litigation work through state funding. Further, while one of the institutions had the Chairman/President/CEO decide on whether there should be involvement in specific cases of litigation, the other stated it has the Heads of units decide on such matters. Government agencies do not assign litigation cases to the two public institutions. The respondents stated they are not allowed to keep a percentage or an amount of damages awarded in a consumer litigation.

One institution stated it is entitled to directly litigate on behalf of consumers as (i) a representative of the consumer and (ii) claimant where general consumer rights are affected but does not engage in litigation indirectly. The other, interestingly enough, stated it is neither involved in litigation directly or indirectly. It further clarified that it is a central administrative agency to which a consumer cannot apply at all. It, therefore, seems that the institution misunderstood the purpose of the survey and could have provided a wrong initial answer as to whether it engages in consumer litigation in the first place.

One of the public institutions specified that over the years they had “approx. 20 (civil rights) approx. 300 (market law)” court cases initiated. Also, only one institution provided answers regarding the goals pursued in consumer cases:

Sweden - How important are the following tasks for your consumer-related work?



- Enforcing existing consumer rights
- Clarifying fundamental legal issues
- Urging legal reform
- Creating new consumer rights
- Other

Within the litigation activities this institution stated that the specific consumer rights its litigation activities involve are: “Several. In mainly all consumer rights market law areas and a number of civil rights cases.” The institution further specified that:

How many cases ended in your favour?

- Approx. 75%

How many cases were settled?

- Approx. 25% civil rights cases (none in market law)

The public institution also stated that it normally does not work in alternative dispute resolution but they “have been involved in three class actions”.

Further, the public institution also did not notice anything that facilitated or hindered litigation. On the other hand, the second public institution that stated earlier it did not engage in consumer litigation directly or indirectly has specified that changes in legislation facilitated its attempts at litigation and lack of resources hindered such attempts. It is difficult to say how this information should be interpreted. Neither of the two noticed any facilitation or hindrance in litigation activities on the side of EU measures.

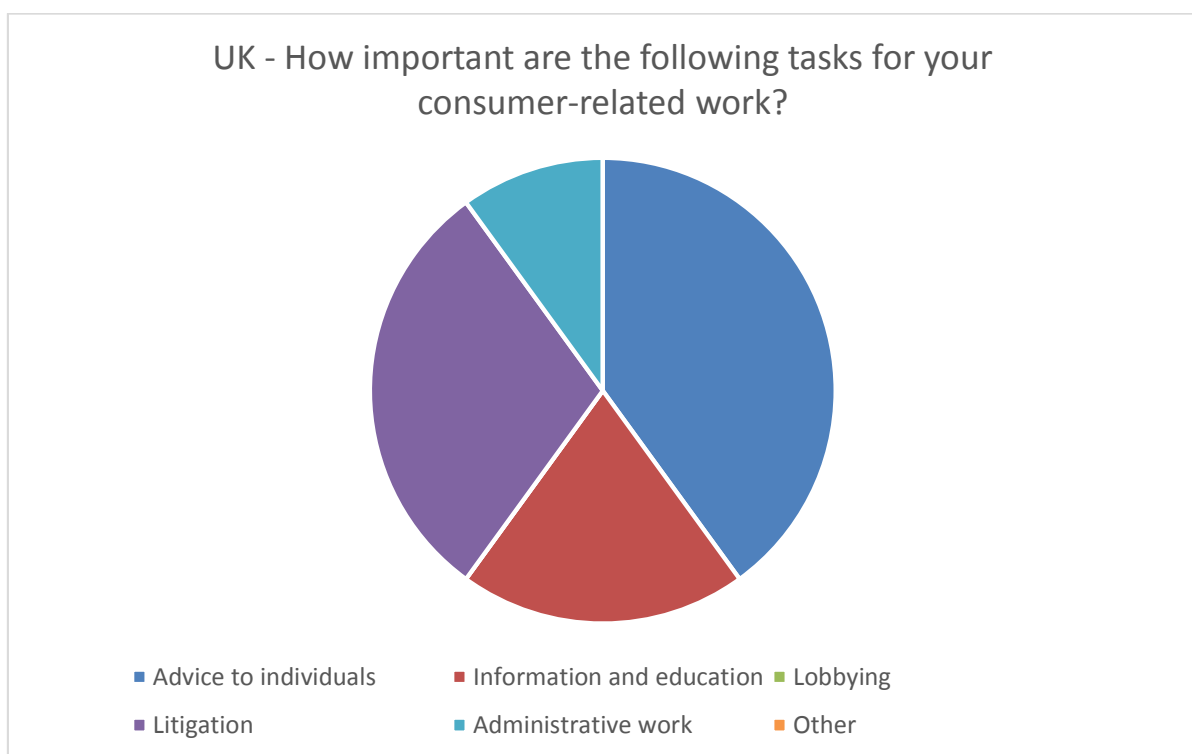
Finally, neither of the two public institutions expected any change in litigation activities in the foreseeable future.

4.5.3.6. The United Kingdom

Only 4 replies were provided by organisations/institutions from the UK and only 1 stated that it does engage in litigation identifying itself as a university law clinic. The other 3 entries specified that they came from non-profit organisations. It further specified that it has been engaging in litigation for 3 years. Therefore, it seems that the majority of organisations in the UK do not engage in litigation. It is worth mentioning that while the 3 other

organisations stated they are not involved in litigation, 2 of them submitted a comment clarifying that they do advise individuals on litigation. Therefore, it may be assumed that they do get involved in litigation indirectly. The 2 organisations, however, did not elaborate any further on the matter.

Furthermore, even though it is hard to say that the replies provided to the survey by just one organisation can be representative of the situation with consumer litigation in the UK, they will, nevertheless, be shortly set out below. This way, when asked to rank the importance of the types of its consumer-related work, the information provided by the organisation was the following:

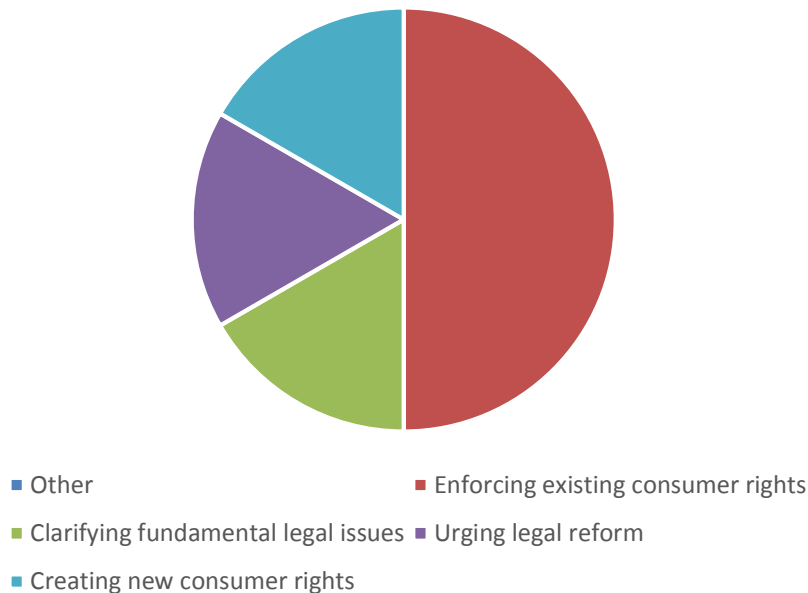


The respondent further specified that the consumer litigation activities are financed by its own budget and by donations and that it is the Chairman/President/CEO who takes the decision on getting involved in specific cases. Also, the cases are not assigned to the organisation by government agencies.

The organisation stated that it is entitled to engage in litigation directly as a claimant where general consumer rights are affected and indirectly by “advising on steps in court process and merits of case”. The particular organisation is not allowed to keep percentage or a certain amount of damages awarded in consumer litigation. At the same time, during the 3 years that the organisation has been active in the area of consumer litigation it has not initiated any court cases on consumer-related issues. Therefore, it must be assumed that the organisation is active through indirect participation.

The goals pursued through the involvement in consumer litigation are:

UK - How important are the following goals of the consumer cases your organization was involved in?



Over the 3 years, 3 of the organisation's cases ended in its favour and 1 ended in settlement. No cases were resolved through alternative means of dispute resolution (arbitration, mediation, etc., without the involvement of the court).

The organisation further indicated that the EU measures neither facilitated nor hindered its litigation activities.

Finally, the organisation stated that it expects increase of litigation activity in the future.

4.5.3.7. Law firms

The research team received a small number of replies from law firms, which will be presented in the following section. This way, there were 3 replies from Germany, 3 replies from France and 2 from the United Kingdom. Unfortunately, the replies from the United Kingdom were provided in a manner that did not allow for any conclusions to be drawn, therefore, these had to be disregarded.

How many years have you been engaged in consumer litigation?

France

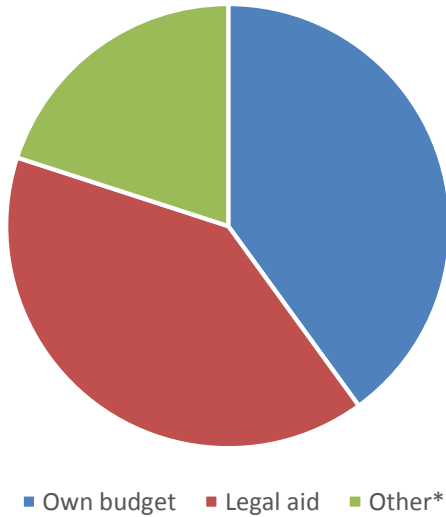
- 15 years or longer
- 7 years
- 4 years

Germany

- 15 years or longer
- 15 years or longer
- 10 years

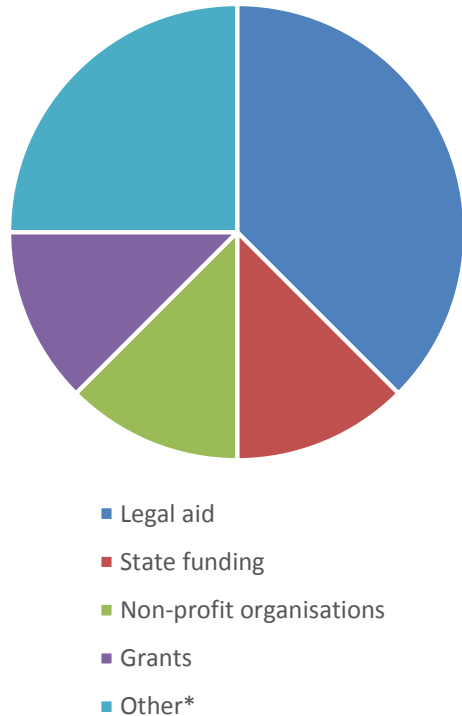
In France it is the "Chairman/President/CEO" who decides on whether to engage in litigation. In Germany one law firm chose the same option and the other two selected "other" and further specified that it is the client who makes the decision and that it is the respective lawyer or the law firm in case of overriding importance.

France - How does your organisation finance litigation work?

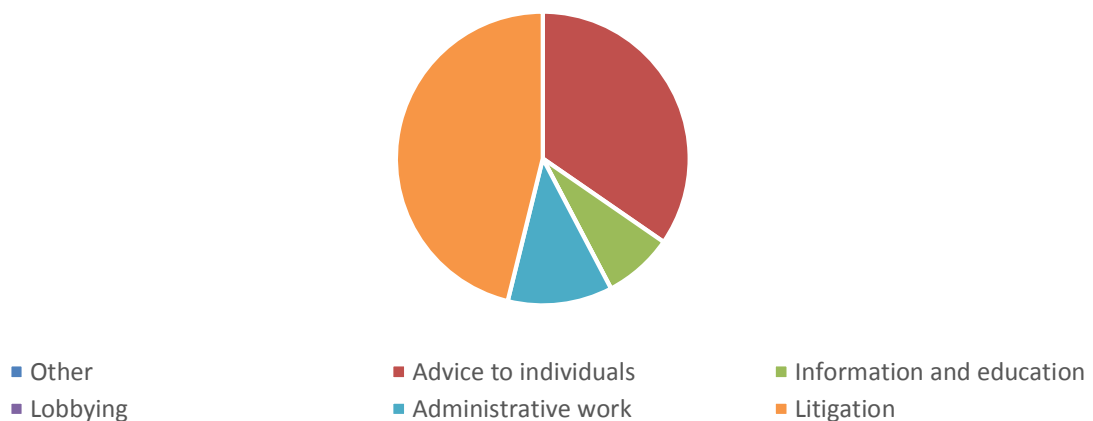


*Law firms in both countries when specifying "other" stated those were client fees charged

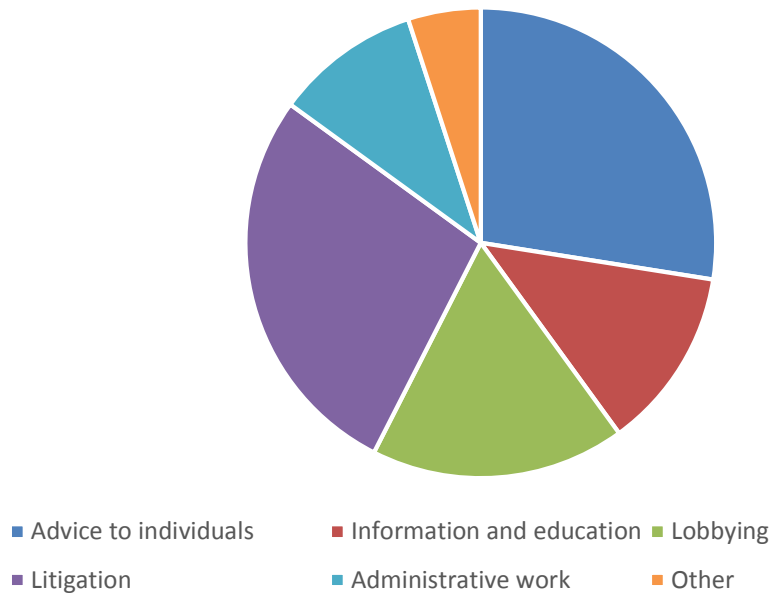
Germany - How does your organisation finance litigation work?



France - How important are the following tasks for your consumer-related work?



Germany - How important are the following tasks for your consumer-related work?



One German law firm stated that government agencies assign cases to it. None of the 3 law firms from France, on the other hand, have cases assigned to them.

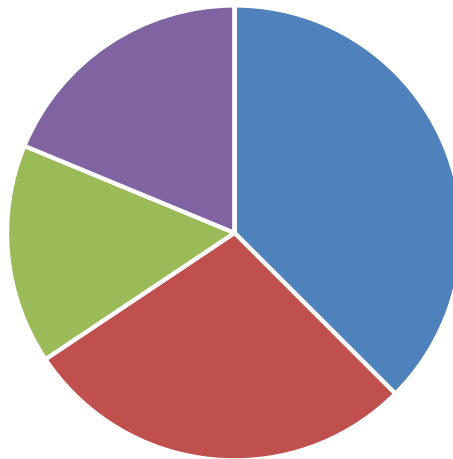
Further, 2 of the German law firms specified that they are entitled to engage in consumer litigation directly (2 as a representative of the consumer and 1 as a claimant where general consumer rights are affected) and indirectly (consultation and extrajudicial representation of clients). 1 law firm, for some reason, stated that it is not entitled to litigate directly and provided no answer as to indirect participation in litigation.

In France the situation was the same with only 2 out of 3 law firms stating they engage in litigation directly (both as a representative of the consumer only) but only one stated it is entitled to engage in litigation indirectly. As an explanation of such indirect participation the law firm only stated “lawyer” in the relevant field, therefore, it is hard to make any kind of conclusions from this information.

While German law firms stated they are not allowed to keep a percentage or an amount of damages awarded, one French law firm stated it is entitled to keep 15% of such damages.

When asked to rate the importance of different goals that may be pursued in consumer litigation the law firms stated the following:

Germany - How important are the following goals of the consumer cases your organization was involved in?



- Enforcing existing consumer rights
- Clarifying fundamental legal issues
- Urging legal reform
- Creating new consumer rights
- Other

France - How important are the following goals of the consumer cases your organization was involved in?



- Other
- Enforcing existing consumer rights
- Clarifying fundamental legal issues
- Urging legal reform
- Creating new consumer rights

Addressing the number of consumer litigation cases over the years, the respondents in Germany gave the following answers:

Number of consumer litigation cases initiated	How many cases ended in your favour?	How many cases were settled?
<ul style="list-style-type: none"> • >1000 • Approx. 1000 	<ul style="list-style-type: none"> • No idea • Approx. 85% 	<ul style="list-style-type: none"> • 80% • Approx. 5%

The French respondents gave the following answers:

Number of consumer litigation cases initiated	How many cases ended in your favour?	How many cases were settled?
<ul style="list-style-type: none"> • 50 • 80 	<ul style="list-style-type: none"> • 30 • 60 	<ul style="list-style-type: none"> • 10 • 5

One of the French law firms also stated that it resolved 6 consumer disputes through the means of alternative dispute resolution without the involvement of the court.

When elaborating on what hindered or facilitated the consumer litigation activities the German respondents noted:

What facilitated your litigation activities (e.g. certain changes to legislation, procedural rules, availability of legal aid, legal insurance)?	What hindered your litigation activities (e.g. lack of funding, resources, procedural rules, duration of court proceedings)
<ul style="list-style-type: none"> • Legal insurance • Laws • Legal insurance 	<ul style="list-style-type: none"> • Clients usually evaluate expenses prior to litigation • Scarcity of resources, legal fragmentation in amount in dispute and urgency jurisdiction for summary proceedings, enforcement risks, limitation of the jurisdiction on liability (BGH 06.18.2014 I ZR 242/12 "management liability") currently affects as a carte blanche for fraudulent models • Duration of proceedings; Financial resources

The French respondents replied as following:

What facilitated your litigation activities (e.g. certain changes to legislation, procedural rules, availability of legal aid, legal insurance)?	What hindered your litigation activities (e.g. lack of funding, resources, procedural rules, duration of court proceedings)
<ul style="list-style-type: none"> • Internet website; law • Number of similar cases throughout the country 	<ul style="list-style-type: none"> • Length of proceedings; cost of proceedings • Procedural rules • Length of judicial proceedings

When asked whether EU measures facilitated or hindered litigation activities, two German law firms stated that EU measures facilitated litigation and one noted they did not. The measures, which the firms found to be of help were: EU directives; European law clarifying the concept of advertising. None of the law firms found EU measures to be hindering their attempts at litigation.

Answering the same questions, only one French law firm noted that EU measures facilitated litigation activities but failed to provide any explanation as to which specifically those were. None of the law firms found EU measures to be a hinderance to litigation.

Finally, all 3 French law firms thought litigation will increase in the future while only 1 German law firm thought so. The other 2 German law firms thought there will be no fundamental changes in litigation activitiy in the foreseeable future.

CHAPTER 5. CONCLUSION AND RECOMMENDATIONS

Reaching out to consumer organisations and law firms proved to be a daring task. Our online survey unwittingly reveals that experiences of private groups should be monitored more efficiently for the sake of the rights agenda. Despite limits of our sample and methodological approach we can draw some conclusions and answer our research questions.

SECTION 5.1 SUMMARY OF EMPIRICAL FINDINGS

Our empirical findings point out that national legal legacies still matter a lot. There is no substantial convergence among member states. In fact, path-dependent developments seem to have prevailed. “Eurolegalism” might be a somewhat exaggerated term. However, litigation might potentially unfold its power even in those countries that restrict more adversarial relations. Almost half of all consumer organisations expect consumer litigation to increase in the foreseeable future. Equally, most of them cite a lack of funding as main obstacle.

Since only about a sixth of the organisations and institutions clearly stated that EU measures did facilitate their litigation activities, it would seem that the EU is not the driving power behind public interest litigation. However, having in mind that about three sixths of respondents selected “uncertain/no answer” it is difficult to draw a definitive conclusion in this regard. Additionally, since EU directives are turned into national law, many organisations might also be unaware where the provisions that facilitate litigation have actually originated. A follow-up study with more specific and detailed queries could be useful.

Some differences between our countries are striking. Sweden and Poland rely much more on public institutions than private litigation. Ombudsman schemes and mechanisms of alternative dispute resolution create a less adversarial playing field. At the same time, consumer rights are enforced by public institutions rather than non-profit consumer organisations, contrary to Germany or the UK. The Swedish case seems to be very stable: Respondents do not expect raising rates of litigation.

Other findings are rather similar in all countries. Enforcing existing rights ranks first for most organisations, followed by clarifying fundamental legal issues. Yet urging legal reform through litigation is a substantial task of consumer organisations, too. Even creating new consumer rights is something that quite a few organisations strive to achieve through litigation. These findings reveal that litigation might work as an equivalent for policy-making. Do they back our assumption that court decisions increasingly trump democratic decision-making? Following our findings, the answer is mixed. It is not necessarily court decisions that replace policy-making. In quite a few cases litigation did not lead to rulings. Instead, settlements were one of the favorite instruments. However, consumer organisations’ and law firms’ activities in litigation highlight strengths and flaws of consumer rights in Europe. Litigation does not only help to enforce rights, it helps to evaluate them.

Public regulation through private litigation in Europe is still very different from the US way of law. Case law does not figure prominently in member states. Additionally, European consumer organisations and law firms face very different styles of regulation. In countries such as Poland and Sweden, public regulation is backed up by public litigation, mainly. There is no sense of growing adversarial legalism, either. In countries such as France, Germany, and the UK, private litigation seems to empower public regulation. In addition, government agencies assign claims to organisations. This seems to be a European way of bridging the gap between regulatory policies and class action US style.

Yet, open questions remain: Are consumer rights a powerful tool in the hands of private law firms? Are public interest groups more reliable and effective? Will public interest groups be more interested in creating new rights and urging legal reform than law firms? Our findings hint that private litigation could render legislation more effective if there was more solid funding for litigation. Court decisions would not trump decision-making but rather transform enforcement.

Could litigation thus become a new model of participation? This depends on what participation is about. Our findings suggest that litigation is driven by “political entrepreneurship”, not by grassroots campaigning. What we can see is that consumer rights potentially yield new power to public interest groups, providing advocacy. This process resembles experiences in the US. Consumer interests are represented better than before. Consumers may not participate more actively; yet their interests rank higher. Further improvements depend on what the European Union pursues in the field of class action.

SECTION 5.2: CONCLUSIONS AND POLICY RECOMMENDATIONS

Against the backdrop of European policies, some lessons can be drawn. First, reliable data is vital for effective policy reforms. There are many challenges in conducting empirical research involving comparative litigation data. At the same time, without such data it is difficult to know whether litigation is a widespread means of pursuing regulatory changes and what effect it has on regulation, or whether and to what extent it affects the democratic decision-making. The European Commission could introduce a monitoring system for categories of litigation cases in. Such a system might be incorporated on the level of the bodies which collect court statistics in each Member State. This would allow monitoring whether an increase in litigation occurs following the introduction of a particular legislative measure. For instance, implementation of the Antitrust Damages Directive is expected to broaden access to courts in competition cases.

Secondly, consumer rights have opened up space for private litigation in member states. However, a crucial bottleneck is legal funding, especially for public interest groups. New schemes of legal aid might be helpful to strengthen rights of European consumers.

Thirdly, to focus on regulatory agencies when it comes to consumers’ rights might be misleading for European authorities. To gather regulators at European level overlooks how important private and non-profit-organisations are for enforcing and transforming European consumer rights. If their “evaluative” functions are supposed to enrich the European agenda of rights, their national experiences would be worth consulting. Thus, consumer organisations that are entitled to sue should be part of permanent consultation processes.

Fourthly, consumer rights’ effectiveness depends on the future framework for class action and collective action in Europe. Along with sound schemes of legal funding, public interest groups and more and more experienced associations, groups, and law firms could make use of rights and improve them. There is no sign in our findings that organisations and law firms act abundantly aggressively. On the contrary, given the European institutional legacy, public interest groups could be turned into “repeat players” that avoid irrational excesses of litigation. Regulatory agencies need a decentralized landscape of repeat players to make rights more effective for citizens. Those players are not necessarily law firms but public interest groups. A comprehensive European framework could lend support.

LIST OF REFERENCES

- Aziz, M., 2004. *The impact of European rights on national legal cultures*. Oxford: Hart.
- Baetge, D., 2009. Germany. *The ANNALS of the American Academy of Political and Social Science* 622, 125-137.
- Bergkamp, L., 2001. Are Standing Rights for Environmental Groups in the Public Interest? *SSRN eLibrary*.
- Berry, J. M., 1978. On the Origins of Public Interest Groups: A Test of Two Theories. *Polity* 10 (3), 379–397.
- BEUC, 2012. Litigation funding in relation to the establishment of a European mechanism of collective redress: BEUC position. Available at <http://www.beuc.eu/publications/2012-00074-01-e.pdf>, last accessed on 14.05.2014.
- Bird & Bird, 2008. Commentary: Third party funding for litigation. Available at <http://documents.lexology.com/7f6b23d7-eb67-4e4a-907b-e86eb8cb6a8e.pdf#page=1>, last accessed on 14.05.2014.
- de Búrca, G., 1995. The language of rights and European integration. In: J. Shaw and G. More, eds. *New legal dynamics of European Union*. New York: Clarendon Press, 24-54.
- Cafaggi, F. and Micklitz, H.-W., 2009. *New frontiers of consumer protection: The interplay between private and public enforcement*. Intersentia.
- Coffee, J. C., 2010. Litigation Governance: Taking Accountability Seriously. *Columbia Law and Economics Working Paper No. 359; ECGI - Law Working Paper No. 145/2010*.
- Clough, M. and McDougall, A., 2004. National Report: United Kingdom: Study on the Conditions of Claims for Damages in Case of Infringement of EC Competition Rules. Brussels, DG Competition, European Commission.
- Cummings, S. and Rhode, D., 2009. Public Interest Litigation: Insights from Theory and Practice. *Fordham Urban Law Journal*, Vol. XXXVI, 2009.
- Erichson, H. M., 2004. Doing Good, Doing Well. *Vanderbilt Law Review*, Vol. 57, p. 2087, 2004.
- Galanter, M., 1974. Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review* 9 (1).
- Gliński, P., 2006. *Style działań organizacji pozarządowych w Polsce: grupy interesu czy pożytku publicznego?* 1st ed. Warszawa: IFiS PAN.
- Goldston, J., 2006. Public Interest Litigation in Central and Eastern Europe: Roots, Prospects, and Challenges. *Human Rights Quarterly*, 28 (2), 492-527.
- Gousgounis, M. A., 2009. Association-Driven Class Actions: Peanuts Effect and Democratization of Litigation Governance. *SSRN eLibrary*.

Halfmeier, A., Rott, P. and Feess, E., 2010. *Kollektiver Rechtsschutz im Kapitalmarktrecht: Evaluation des Kapitalanleger-Musterverfahrensgesetzes*, 1st edn. Frankfurt-School-Verl, Frankfurt am Main.

Helveston, M. N., 2012. Promoting Justice Through Public Interest Advocacy in Class Actions. *Buffalo Law Review*, *Forthcoming*.

Hodges, C., 2009. England and Wales. *The ANNALS of the American Academy of Political and Social Science*, 622 (1), 105-113.

Hodges, C., Vogenauer, S. and Tulibacka, M., 2009. Costs and Funding of Civil Litigation: A Comparative Study. *Oxford Legal Studies Research Paper No. 55-2009*.

Hodges, C., Vogenauer, S. and Tulibacka, M., 2010. *The Costs and Funding of Civil Litigation*. Hart Publishing, Oxford.

Hodges, C., 2010. Developments in Collective Redress in the European Union and United Kingdom 2010. Global Class Actions Exchange. Available at <http://globalclassactions.stanford.edu/sites/default/files/documents/1010%20Class%20Actions%20UK%202010%20Report.pdf>, last accessed on 28.02.2016.

Holmes, P.M., 2006. United Kingdom. Available at <http://competitionregimes.com/pdf/Book/Europe/100-United%20Kingdom.pdf>, last accessed on 28.02.2016.

Horwitz, M. J., 1982. The History of the Public/Private Distinction. *University of Pennsylvania Law Review* 130 (6), 1423–1428.

Hunter R., 2000. European Commission White Paper Proposals on NGO Rights of Action: Wrongful Rights of Action. TMA/ELLR 2000, 125-126.

Javaux, B. and de Combles de Nayves, D., 2014. France - Class and Group Actions 2014. International Comparative Legal Guide, Class and Group Actions 2014.

Jurkowska, A., 2008. Antitrust Private Enforcement – Case of Poland. *Yearbook of Antitrust and Regulatory Studies*, 1(1), 51-79.

Kagan, R. A., 1997. Should Europe Worry about Adversarial Legalism? *Oxford Journal of Legal Studies* 17 (2), 165–183.

Kagan, R. A., 2001. *Adversarial legalism. The American way of law*. Harvard Univ. Press, Cambridge.

Kagan, R. A., 2008. The Non-Americanisation of European Law. *European political science* 7 (1), 21–31.

Kagan, R.A., 2007. Globalization and legal change: The "Americanization" of European law? *Regulation & Governance*, 1 (2), 99–120.

Kelemen, R. D., 2008. The Americanisation of European Law? Adversarial Legalism à La Européenne. *European political science* 7 (1), 32–42.

- Kelemen, R.D., 2011. *Eurolegalism: The transformation of law and regulation in the European Union*. Cambridge, Mass: Harvard University Press.
- Kelemen, R.D., 2012. Eurolegalism and democracy. *Journal of common market studies: JCMS*, 50 (2012), 55–71.
- Köhler, H., Bornkamm, J., 2014. 32. Auflage, *Gesetz gegen den unlauteren Wettbewerb (UWG)*. Munich: Verlag C.H. Beck.
- Leonard, E. W., 2007. Beyond Compensation: Using Torts to Promote Public Health. *Journal of Health Care Law & Policy*, 10 (2007).
- Łętowska, E. et al., 2007. Implementation of Consumer Law in Poland. *European Review of Private Law*, 15 (6), 873–889.
- Levi-Faur, D., 2005. The Political Economy of Legal Globalization: Juridification, Adversarial Legalism, and Responsive Regulation. A comment. *International Organization*, 59 (02), 473–484.
- Lindblom, P.H., 2007. National Report: Group Litigation in Sweden, The Globalization of Class Actions. Available at http://globalclassactions.stanford.edu/sites/default/files/documents/Sweden_National_Report.pdf, last accessed on 7.05.2014.
- Lindblom, P.H., 2009. Sweden. *The ANNALS of the American Academy of Political and Social Science*, 622 (1), 231–241.
- Lisiecka, A., et al., 2004. National Report: Poland: Study on the Conditions of Claims for Damages in Case of Infringement of EC Competition Rules. Brussels, DG Competition, European Commission.
- Lyall, F., 2002. *An introduction to British law*. 2nd ed. Baden-Baden: Nomos Verlagsgesellschaft.
- Maas, W., 2005. The genesis of European rights. *Journal of common market studies: JCMS*, 43 (5), 1009–1025.
- Meller-Hannich, C. and Höland, A., 2011. *Abschlussbericht Forschungsprojekt kollektiver Rechtsschutz*. Martin-Luther-Universität Halle-Wittenberg.
- Mańko, R., 2012. Resistance towards the Unfair Terms Directive in Poland: the Interaction between the Consumer "acquis" and a Post-Socialist Legal Culture. *European Consumer Protection: Theory and Practice*, 412–434.
- Micklitz, H.-W. and Stadler, A., 2006. The Development of Collective Legal Actions in Europe, Especially in German Civil Procedure. *European business law review* 17 (5), 1473.
- Momège, C. and Bessot, N., 2004. National Report: France: Study on the Conditions of Claims for Damages in Case of Infringement of EC Competition Rules. Brussels, DG Competition, European Commission.
- Mulheron, R., 2007. Justice Enhanced: Framing an Opt-Out Class Action for England. *Modern Law Review*, 70 (4), 550–580.

Olson, M., 2000. *The logic of collective action public goods and the theory of groups: Harvard economic studies*, 124, 18th print... Harvard Univ. Press, Cambridge.

Ordowska, B. and Dekierowksi, A., 2014. Poland Chapter - Competition Litigation 2014. International Comparative Legal Guide, Competition Litigation 2014.

Pettersson, T., Lindeborg, S.P., and Giolito, M.P., 2004. National Report: Sweden: Study on the Conditions of Claims for Damages in Case of Infringement of EC Competition Rules. Brussels, DG Competition, European Commission.

Piché, C., 2009. The Cultural Analysis of Class Action Law. *LSU Law Center Journal of Civil Law Studies*, Vol. 2, 2009.

Rehder, B., 2009. "Adversarial legalism" in the German system of industrial relations? *Regulation & Governance*, 3 (3), 217–234.

Reisch, L. A. and Micklitz, H.-W., 2006. Consumers and deregulation of the electricity market in Germany. *Journal of consumer policy* 29 (4), 399–415.

Rose-Ackerman, S. and Lindseth, P. L., 2010. *Comparative administrative law*. Cheltenham, U.K, Northampton, Mass: Edward Elgar.

Scharpf, F. W., 1997. *Balancing positive and negative integration: The regulatory options for Europe*. Florence: European University Institute, Robert Schuman Centre.

Scharpf, F. W., 1999. *Governing in Europe: Effective and democratic?* Oxford, New York: Oxford University Press.

Schimmelfennig, F., 2006. Competition and community: constitutional courts, rhetorical action, and the institutionalization of human rights in the European Union. *Journal of European Public Policy*, 13 (8), 1247–1264.

Schuck, P. H., 1977. Public Interest Groups and the Policy Process. *Public Administration Review* 37 (2), 132–140.

Shapiro, M. and Stone, A., 1994. *The New constitutional politics of Europe*. Thousand Oaks, Calif: Sage Publications.

Shapiro, M. M. and Stone Sweet, A., 2002. *On law, politics, and judicialization*. Oxford University Press, Oxford; New York.

Smith, R., 2003. Experience in England and Wales: Test case strategies, public interest litigation, the Human Rights Act and legal NGOs. Available at http://www.essex.ac.uk/armedcon/story_id/000696.pdf, last accessed on 15.03.2014.

Sorauf, F. J., 1957. The Public Interest Reconsidered. *The journal of politics* 19 (4), 616–639.

Stadler, A., 2007. Collective action as an efficient means for the enforcement of European competition law. In: *Private enforcement of EC competition law*. Kluwer Law International, Alphen a. d. Rijn, 195–213.

- Steinitz, M., 2010. Whose Claim Is This Anyway? Third Party Litigation Funding. *Minnesota Law Review*, Vol. 95, No. 4, 2011.
- Stone Sweet, A., 2000. *Governing with judges: Constitutional politics in Europe*. Oxford, New York: Oxford University Press.
- Strömmer, G., 2008. Litigating for Liberty, Swedish-Style. Available at <https://www.ij.org/litigating-for-liberty-swedish-style-2>, last accessed on 14.05.2014.
- Strünck, C., 2005. Mix-Up: Models of Governance and Framing Opportunities in U.S. and EU Consumer Policy. *Journal of consumer policy* 28 (2), 203–230.
- Strünck, C., 2008. Claiming Consumers' Rights: Patterns and Limits of adversarial Legalism in European Consumer Protection. *German Policy Studies*, 4 (1), 167–192.
- Thomas, H., Putzo, H., 2013. *Zivilprozessordnung Kommentar*. Munich: Verlag C.H. Beck.
- Tulibacka, M., 2009. Poland. *The ANNALS of the American Academy of Political and Social Science* 622, 190-200.
- Tzankova, I. and Lunsingh Scheurleer, D., 2009. The Netherlands. *The ANNALS of the American Academy of Political and Social Science* 622, 149-160.
- Vanhala, L., 2011. *Making rights a reality? Disability rights activists and legal mobilization*. Cambridge: Cambridge University Press.
- Varady, T., 1999. The Emergence of Competition Law in (Former) Socialist Countries. *The American Journal of Comparative Law*, 47 (2), 229-275.
- VerLoren van Themaat, W., Hetteema, J., Buruma, H., 2004. National Report: The Netherlands. Study on the Conditions of Claims for Damages in Case of Infringement of EC Competition Rules.
- Vogel, D., 2012. *The politics of precaution: Regulating health, safety, and environmental risks in Europe and the United States*. Princeton NJ: Univ. Press.
- van Waarden, F., 1995. Persistence of national policy styles: a study of their institutional foundations. In: B. Unger and F. van Waarden, eds. *Convergence or diversity?: Internationalization and economic policy response*. Aldershot, Brookfield, USA: Avebury, 333–372.
- van Waarden, F. and Drahos, M., 2002. Courts and (epistemic) communities in the convergence of competition policies: Journal of European Public Policy. *Journal of European public policy* 9 (6), 913–934.
- van Waarden, F. and Hildebrand, Y., 2009. From corporatism to lawyocracy? On liberalization and juridification. *Regulation & Governance*, 3 (3), 259–286.
- Wach, K., Bonacker, E. et al., 2004. National Report: Germany. Study on the Conditions of Claims for Damages in Case of Infringement of EC Competition Rules.

Wise, M., 2003. Review of Competition Law and Policy in Poland. OECD Journal: Competition Law and Policy, 5(2), 83-132.

Working Group on Facilitating Public Interest Litigation, 2006. Litigating the Public Interest, Liberty. Available at <http://www.liberty-human-rights.org.uk/policy/reports/litigating-the-public-interest-july-2006.pdf>, last accessed on 11.03.2014.

ANNEX I: OVERVIEW OF ONLINE SURVEY QUESTIONS

I. General information on organization

1. Is your organization active in the area of consumer protection?
*Here, "being active in the area of consumer protection" is not necessarily only limited to being a purely consumer organization, but also having consumer-related activities in certain aspects of your work.
2. What is your type of organization?
(Law firm, Public institution, Non-profit organization, For profit organization, Other)
3. How many people work for your organization currently?
4. What is your organization's annual budget in your national currency?
5. Does your organization engage in litigation within your consumer protection work?
*Here "engaging in litigation" means any manner of involvement in court proceedings in relation to your organization's consumer work – either direct involvement as a claimant, representative of the consumer or indirect involvement – assistance provided to consumers to bring their cases to court, providing the funding, helping prepare the case, etc.
6. For how many years has your organization been engaged in consumer litigation?

II. Organizational resources and structure

7. How much does your organization focus on consumer related work?
8. How important are the following tasks for your consumer related work?
(Advice to individuals, Information and education, Lobbying, Litigation, Administrative work, Other)
9. How does your organization finance the litigation work?
(Own budget, Donations, Legal aid, State funding, Commercial institutions, Nonprofit-organizations, associations, foundations (other than your own), Grants (Domestic or Foreign), Other)
10. Who within your organization takes decisions on getting involved in specific cases of litigation?
(Chairman/President/CEO, Heads of units, Members, Other)
11. Do government agencies assign legal cases to your organization?

III. Patterns of litigation

12. Is your organization entitled to directly litigate on behalf of consumers?
*Here "on behalf of consumers" means that the organization is taking an active part in the court proceedings on the side of an individual consumer or a group of consumers enforcing their individual rights. The term also encompasses having the right to sue in court when the general interests of

consumers are affected without any particular individual consumer being involved in the court proceedings.

13. Does your organization engage in litigation indirectly?

*Here "indirectly" means e.g. assisting consumers in bringing their cases to court, providing the funding, helping to prepare the case, etc.

14. Is your organization entitled to keep a percentage/amount of damages awarded in consumer litigation?

15. How many court cases in consumer issues have been initiated by your organization over the years?

16. How important are the following goals of the consumer cases your organization was involved in?

- Enforcing existing consumer rights (Enforcing consumer rights that are fixed in laws/statutes e.g. in order to rectify their violations with the aim of restoring the damage caused to individual consumers or to the general consumer interests)
- Clarifying fundamental legal issues (Initiating court proceedings with the aim of obtaining a clarification/interpretation of certain legal issues/questions)
- Urging legal reform (Initiating court proceedings in order to bring a certain problem into a spotlight, attract public attention to it or the attention of the lawmaker, which would eventually lead to a legal reform)
- Creating new consumer rights (Attempting to achieve introduction of new consumer rights through litigation)

17. What specific consumer rights did your organization's litigation activities involve?

18. How many consumer cases ended in a judgment in your favour over the years?

19. How many consumer cases ended in a settlement over the years?

20. In your organization's experience, what is the average time (in months) from the institution of the proceedings until the final court ruling?

21. What facilitated your litigation activities? (e.g. certain changes to legislation, procedural rules, availability of legal aid, legal insurance)

22. What hindered your litigation activities? (e.g. lack of funding, resources, procedural rules, duration of court proceedings)

23. Did EU measures (regulations, directives, etc.) facilitate your litigation activities?

24. Did EU measures (regulations, directives, etc.) hinder your litigation activities?

25. How many consumer disputes has your organization resolved through alternative dispute resolution (arbitration, mediation, etc., without the involvement of the court) over the years?

26. Which of your organization's litigation activities were the most successful/important and why?
27. Do you expect fundamental changes in litigation activity in the foreseeable future?

ANNEX II: LIST OF ORGANISATIONS – FRANCE

1. Aide à domicile en milieu rural (ADMR)
2. Association atlantique des consommateurs coopérateurs (AACC)
3. Association de défense, d'éducation et d'information du consommateur (ADEIC)
4. Association européenne pour la coordination de la représentation des consommateurs pour la normalisation (ANEC)
5. Association Force Ouvrière Consommateurs (AFOC)
6. Association française des utilisateurs de télécommunications (AFUTT)
7. Association Léo Lagrange pour la Défense des Consommateurs
8. Association nationale des médecins conseils de victimes d'accident avec dommage corporel (ANAMEVA)
9. Association pour l'information et la défense des consommateurs salariés-CGT (INDÉCOSA-CGT)
10. Centre de Recherche pour l'Étude et l'Observation des Conditions de Vie (CREDOC)
11. Centre Technique Régional de la Consommation Provence Alpes Île de France (CTRC Île de France)
12. Centre Technique Régional de la Consommation Provence Alpes Poitou-Charentes (CTRC Poitou-Charentes)
13. Centre Technique Régional de la Consommation Provence Alpes Aquitaine (CTRC Aquitaine)
14. Centre Technique Régional de la Consommation Provence Alpes Auvergne (CTRC Auvergne)
15. Centre Technique Régional de la Consommation Provence Alpes Basse Normandie (CTRC Basse Normandie)
16. Centre Technique Régional de la Consommation Provence Alpes Bourgogne (CTRC Bourgogne)
17. Centre Technique Régional de la Consommation Provence Alpes Bretagne (CTRC Bretagne)
18. Centre Technique Régional de la Consommation Provence Alpes Centre (CTRC Centre)
19. Centre Technique Régional de la Consommation Provence Alpes Champagne Ardenne (CTRC Champagne Ardenne)
20. Centre Technique Régional de la Consommation Provence Alpes Corse (CTRC Corse)
21. Centre Technique Régional de la Consommation Provence Alpes Côte d'Azur (CTRC PACA)
22. Centre Technique Régional de la Consommation Provence Alpes Franche-Comté (CTRC Franche-Comté)

23. Centre Technique Régional de la Consommation Provence Alpes Limousin (CTRC Limousin)
24. Centre Technique Régional de la Consommation Provence Alpes Lorraine (CTRC Lorraine)
25. Centre Technique Régional de la Consommation Provence Alpes Midi-Pyrénées (CTRC Midi-Pyrénées)
26. Centre Technique Régional de la Consommation Provence Alpes Nord-Pas-de-Calais (CTRC Nord-Pas-de-Calais)
27. Centre Technique Régional de la Consommation Rhône-Alpes (CTRC Rhône-Alpes)
28. Chambre de consommation d'Alsace (CCA)
29. Collectif Interassociatif Sur la Santé (CISS)
30. Commission de la sécurité des consommateurs (CSC)
31. Commission des clauses abusives (CCA)
32. Commission nationale de l'informatique et des libertés (CNIL)
33. Confédération de la Consommation, du Logement et du Cadre de Vie (CLCV)
34. Confédération générale du logement (CGL)
35. Confédération nationale des associations familiales catholiques (AFC)
36. Confédération nationale du logement (CNL)
37. Confédération syndicale des Familles (CSF)
38. Conseil National de la Consommation
39. Conseil National des Associations Familiales Laïques (CNAFAL)
40. Conseil national des chambres régionales de l'économie sociale (CRESS)
41. Familles de France
42. Familles Rurales - Premier mouvement familial en France
43. Fédération Nationale des Associations d'Usagers des Transports (FNAUT)
44. foodwatch France
45. Force Ouvrière
46. Institut National de la Consommation
47. L'Agence nationale de sécurité du médicament et des produits de santé (ANSM)

- 48. Le Défenseur des droits
- 49. Maison de la consommation et de l'environnement de Rennes (MCE)
- 50. Union Fédérale des Consommateurs – Que Choisir
- 51. Union nationale des associations familiales (UNAF)

ANNEX III: LIST OF ORGANISATIONS – GERMANY

1. aid infodienst Ernährung, Landwirtschaft, Verbraucherschutz e. V.
2. Aktion Bildungsinformation e.V. (ABI)
3. Allgemeiner Deutscher Automobil-Club e.V. (ADAC)
4. Allgemeiner Deutscher Fahrrad-Club e.V. (ADFC)
5. Arbeiterwohlfahrt Bundesverband e.V. (AWO)
6. Bauherren-Schutzbund e.V.
7. Berliner Mieterverein e.V.
8. Bund der Energieverbraucher e.V.
9. Bund der Versicherten e.V.
10. Bund für Umwelt und Naturschutz Deutschland e.V.
11. Bundesarbeitsgemeinschaft der Senioren-Organisationen (BAGSO) e.V.
12. Bundesverband für Wohnen und Stadtentwicklung (vhw)
13. Bundesverband hauswirtschaftlicher Berufe MdH e.V.
14. Bundesverband Selbsthilfe Körperbehinderter e.V.
15. Deutsche Gesellschaft für Ernährung e. V.
16. Deutsche Gesellschaft für Hauswirtschaft (dgh)
17. Deutsche Gesellschaft für Sonnenenergie e.V.
18. Deutsche Schutzvereinigung Auslandsimmobilien e.V.
19. Deutsche Stiftung Patientenschutz Förderverein e.V.
20. Deutsche Umwelthilfe e.V.
21. Deutscher Caritasverband e.V.
22. Deutscher Evangelischer Frauenbund e.V. (DEF) - Arbeitsgemeinschaft evangelischer Haushaltsführungskräfte (AEH)
23. Deutscher Familienverband e.V. (DFV)
24. Deutscher Frauenring e.V. (DFR)
25. Deutscher Gewerkschaftsbund (DGB)

26. Deutscher Konsumentenbund e.V.
27. Deutscher LandFrauenverband (dlv)
28. Deutscher Mieterbund – Landesverband Hessen e.V.
29. Deutscher Mieterbund – Landesverband Mecklenburg-Vorpommern e.V.
30. Deutscher Mieterbund – Mieterverein Bochum, Hattingen und Umgegend e.V.
31. Deutscher Mieterbund e.V.
32. Deutscher Mieterbund Hannover e.V.
33. Deutscher Mieterbund Kieler Mieterverein e.V.
34. Deutscher Mieterbund Landesverband Schleswig-Holstein e.V.
35. Deutscher Mieterbund Mieterbund Schwerin und Umgebung e.V.
36. Deutscher Mieterbund Mieterverein Bremen e.V.
37. Deutscher Mieterbund Mieterverein Hamm und Umgebung e.V.
38. Deutscher Mieterbund Mieterverein Iserlohn und Umgebung e.V.
39. Deutscher Mieterbund Mieterverein Leverkusen e.V. für Leverkusen und Umgebung
40. Deutscher Mieterbund Siegerland und Umgebung e.V.
41. Deutscher Mieterbund, Mieterverein Baden-Baden und Umgebung e.V.
42. Deutscher Mieterbund, Mieterverein Velbert und Umgebung e.V.
43. Deutscher Verbraucherschutzverein e.V.
44. DHB - Netzwerk Haushalt. Berufsverband der Haushaltsführenden e.V.
45. Diagnose-Funk – Umwelt- und Verbraucherorganisation zum Schutz vor elektromagnetischer Strahlung e.V.
46. Diakonisches Werk der Evangelischen Kirche in Deutschland e.V. (EKD)
47. DMB – Mieterverein Stuttgart und Umgebung e.V.
48. DMB Deutscher Mieterbund Dortmund, Mieter u. Pächter e.V., Mieterschutzverein
49. DMB Mieterbund Nordhessen e.V.
50. DMB Mieterschutzverein Frankfurt am Main e.V.

51. Eurotoques-Stiftung
52. Fachverband Glücksspielsucht e.V.
53. Fairtrade Deutschland
54. Familienbund der Katholiken e.V. (FDK)
55. Foodwatch e.V.
56. Germanwatch
57. Katholische Arbeitnehmer-Bewegung Deutschlands e.V. (KAB)
58. Katholische Frauengemeinschaft Deutschland e.V. Bundesverband
59. Miet- und Pachtverein e.V. Bad Kreuznach
60. Mieter helfen Mietern, Hamburger Mieterverein e.V.
61. Mieter helfen Mietern, Münchner Mieterverein e.V.
62. Mieterbund Rhein-Ruhr e.V.
63. Mieterbund Wiesbaden und Umgebung e.V.
64. Mieterschutz-Verein Oberlausitz/Niederschlesien e.V.
65. Mieterverein Düsseldorf e.V.
66. Mieterverein Flensburg e.V.
67. Mieterverein für den Regierungsbezirk Trier e.V.
68. Mieterverein Gelsenkirchen e.V. im Deutschen Mieterbund
69. Mieterverein Heidelberg und Umgebung e.V.
70. Mieterverein Ingolstadt und Umgebung e.V.
71. Mieterverein Karlsruhe e.V.
72. Mieterverein Köln e.V.
73. Mieterverein München e.V.
74. Mieterverein VIADRINA Frankfurt (Oder) und Umgebung e.V.
75. Mieterverein zu Hamburg von 1890 r.V.
76. PRO BAHN e.V.

77. PRO BAHN Regionalverband Oberbayern e.V.
78. Schutzgemeinschaft der Kapitalanleger e.V. (SdK)
79. Schutzgemeinschaft für Bankkunden e.V.
80. Schutzvereinigung für Anleger e.V.
81. Slow Food Deutschland e. V.
82. Stiftung Warentest e.V.
83. Transparency International Deutschland e.V
84. UMKEHR e.V.
85. Verband Privater Bauherren e.V.
86. Verband Wohneigentum e.V.
87. VerbraucherInitiative e.V.
88. Verbraucherorganisation GVI
89. Verbraucherrat (VR) des DIN
90. Verbraucherschutzverein gegen unlauteren Wettbewerb e.V.
91. VerbraucherService Bayern im Katholischen Deutschen Frauenbund e.V.
92. VerbraucherService im Katholischen Deutschen Frauenbund e.V. Bundesverband
93. Verbraucherzentrale Baden-Württemberg e.V.
94. Verbraucherzentrale Bayern e.V.
95. Verbraucherzentrale Berlin e.V.
96. Verbraucherzentrale Brandenburg e.V.
97. Verbraucherzentrale Bremen e.V.
98. Verbraucherzentrale Bundesverband e.V. (VZBV)
99. Verbraucherzentrale des Saarlandes e.V.
100. Verbraucherzentrale Hamburg e.V.
101. Verbraucherzentrale Hessen e.V.
102. Verbraucherzentrale Mecklenburg-Vorpommern e.V.

- 103. Verbraucherzentrale Niedersachsen e.V.
- 104. Verbraucherzentrale Nordrhein-Westfalen e.V.
- 105. Verbraucherzentrale Rheinland-Pfalz e.V.
- 106. Verbraucherzentrale Sachsen e.V.
- 107. Verbraucherzentrale Sachsen-Anhalt e.V.
- 108. Verbraucherzentrale Schleswig-Holstein e.V.
- 109. Verbraucherzentrale Thüringen e.V.
- 110. Vereinigte Schutzgemeinschaft Auslandsimmobilien e.V.
- 111. Vereinigung kritischer Verbraucher e.V.
- 112. Verkehrsclub Deutschland e.V. (VCD)
- 113. Wettbewerbszentrale
- 114. Zentralverband deutscher Konsumgenossenschaften e.V. (ZdK)
- 115. Zentrum für Europäischen Verbraucherschutz e.V.

ANNEX IV: LIST OF ORGANISATIONS – THE NETHERLANDS

1. Consumentenbond
2. ConsuWijzer
3. ECC Netherlands
4. EerlijkWinkelen
5. FairTrade
6. foodwatch Nederland
7. Goede Waar
8. Keurmerkinstituut
9. Koninklijke Nederlandse Toeristenbond ANWB
10. Kritische Massa
11. Milieu Centraal
12. Milieudefensie
13. Nationaal Instituut voor Budgetvoorlichting
14. Nederlandse Patiënten Consumenten Federatie
15. Nederlandse Vegetariërsbond
16. Nederlandse Vereniging Voor Veganisme
17. Netwerk Bewust Verbruiken
18. OCO
19. Omslag
20. Rank a Brand
21. Rover
22. Stichting Consument en Veiligheid
23. Stoere Vrouwen
24. SuperMacht
25. Vereniging Eigen Huis

- 26. Voedingsunie
- 27. Werkgroep Voetafdruk Nederland
- 28. Wijzer in geldzaken

ANNEX V: LIST OF ORGANISATIONS – POLAND

1. Biuro Rzecznika Ubezpieczonych
2. European Consumer Centre Poland
3. Federacja Konsumentów
4. Fundacja Kupuj Odpowiedzialnie
5. Stowarzyszenia Krzewienia Edukacji Finansowej
6. Stowarzyszenie Konsumentów Polskich
7. Stowarzyszenie Rzeczników Konsumentów
8. Aleksandrów Kujawski, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
9. Augustów, woj. Podlaskie Powiatowy Rzecznik Konsumentów
10. Bartoszyce, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
11. Będzin, woj. Śląskie Powiatowy Rzecznik Konsumentów
12. Bełchatów, woj. Łódzkie Powiatowy Rzecznik Konsumentów
13. Biała Podlaska, woj. Lubelskie Miejski Rzecznik Konsumentów
14. Biała Podlaska, woj. Lubelskie Powiatowy Rzecznik Konsumentów
15. Białobrzegi, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
16. Białogard, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
17. Białystok, woj. Podlaskie Miejski Rzecznik Konsumentów
18. Białystok, woj. Podlaskie Powiatowy Rzecznik Konsumentów
19. Bielsk Podlaski, woj. Podlaskie Powiatowy Rzecznik Konsumentów
20. Bielsko-Biała, woj. Śląskie Powiatowy Rzecznik Konsumentów
21. Białystok, woj. Śląskie Powiatowy Rzecznik Konsumentów
22. Biłgoraj, woj. Lubelskie Powiatowy Rzecznik Konsumentów
23. Bochnia, woj. Małopolskie Powiatowy Rzecznik Konsumentów
24. Bolesławiec, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
25. Braniewo, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów

26. Brodnica, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
27. Brzeg, woj. Opolskie Powiatowy Rzecznik Konsumentów
28. Brzesko, woj. Małopolskie Powiatowy Rzecznik Konsumentów
29. Brzeziny, woj. Łódzkie Powiatowy Rzecznik Konsumentów
30. Brzozów, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
31. Busko-Zdrój, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
32. Bydgoszcz, woj. Kujawsko-pomorskie Klub Federacji Konsumentów
33. Bydgoszcz, woj. Kujawsko-pomorskie Miejski Rzecznik Konsumentów
34. Bydgoszcz, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
35. Bytom, woj. Śląskie Klub Federacji Konsumentów
36. Bytom, woj. Śląskie Miejski Rzecznik Konsumentów
37. Bytów, woj. Pomorskie Powiatowy Rzecznik Konsumentów
38. Chełm, woj. Lubelskie Miejski Rzecznik Konsumentów
39. Chełm, woj. Lubelskie Powiatowy Rzecznik Konsumentów
40. Chełmno, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
41. Chodzież, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
42. Chojnice, woj. Pomorskie Biuro Porad Prawnych i Informacji Obywatelskiej
43. Chojnice, woj. Pomorskie Powiatowy Rzecznik Konsumentów
44. Chorzów, woj. Śląskie Miejski Rzecznik Konsumentów
45. Choszczno, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
46. Chrzanów, woj. Małopolskie Powiatowy Rzecznik Konsumentów
47. Ciechanów, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
48. Cieszyn, woj. Śląskie Powiatowy Rzecznik Konsumentów
49. Czarnków, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
50. Częstochowa, woj. Śląskie Miejski Rzecznik Konsumentów
51. Częstochowa, woj. Śląskie Powiatowy Rzecznik Konsumentów

52. Człuchów, woj. Pomorskie Powiatowy Rzecznik Konsumentów
53. Dąbrowa Górnicza, woj. Śląskie Miejski Rzecznik Konsumentów
54. Dąbrowa Tarnowska, woj. Małopolskie Powiatowy Rzecznik Konsumentów
55. Dębica, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
56. Drawsko Pomorskie, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
57. Działdowo, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
58. Dzierżoniów, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
59. Elbląg, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
60. Ełk, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
61. Garwolin, woj. Mazowiecki Powiatowy Rzecznik Konsumentów
62. Gdańsk, woj. Pomorskie Biuro Porad Prawnych i Informacji Obywatelskiej
63. Gdańsk, woj. Pomorskie Klub Federacji Konsumentów
64. Gdańsk, woj. Pomorskie Miejski Rzecznik Konsumentów
65. Gdynia, woj. Pomorskie Biuro Porad Prawnych i Informacji Obywatelskiej
66. Gdynia, woj. Pomorskie Miejski Rzecznik Konsumentów
67. Giżycko, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
68. Gliwice, woj. Śląskie Miejski Rzecznik Konsumentów
69. Gliwice, woj. Śląskie Powiatowy Rzecznik Konsumentów
70. Głogów, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
71. Głubczyce, woj. Opolskie Powiatowy Rzecznik Konsumentów
72. Gniezno, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
73. Gołdap, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
74. Goleniów, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
75. Golub-Dobrzyń, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
76. Gorlice, woj. Małopolskie Powiatowy Rzecznik Konsumentów
77. Gorzów Wielkopolski, woj. Lubuskie Miejski Rzecznik Konsumentów

78. Gorzów Wielkopolski, woj. Lubuskie Powiatowy Rzecznik Konsumentów
79. Gostyń, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
80. Gostynin, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
81. Grajewo, woj. Podlaskie Powiatowy Rzecznik Konsumentów
82. Grodzisk Mazowiecki, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
83. Grodzisk Wielkopolski, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
84. Grójec, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
85. Grudziądz, woj. Kujawsko-pomorskie Miejski Rzecznik Konsumentów
86. Grudziądz, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
87. Gryfino, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
88. Hajnówka, woj. Podlaskie Powiatowy Rzecznik Konsumentów
89. Hrubieszów, woj. Lubelskie Powiatowy Rzecznik Konsumentów
90. Iława, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
91. Inowrocław, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
92. Janów Lubelski, woj. Lubelskie Powiatowy Rzecznik Konsumentów
93. Jarocin, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
94. Jarosław, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
95. Jasło, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
96. Jastrzębie Zdrój, woj. Śląskie Miejski Rzecznik Konsumentów
97. Jawor, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
98. Jaworzno, woj. Śląskie Miejski Rzecznik Konsumentów
99. Jędrzejów, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
100. Jelenia Góra, woj. Dolnośląskie Miejski Rzecznik Konsumentów
101. Jelenia Góra, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
102. Kalisz, woj. Wielkopolskie Klub Federacji Konsumentów
103. Kalisz, woj. Wielkopolskie Miejski Rzecznik Konsumentów

104. Kalisz, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
105. Kamień Pomorski, woj. Zachodniopomorskie Powiatowy Rzecznik Praw Konsumenta
106. Kamienna Góra, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
107. Kartuzy, woj. Pomorskie Powiatowy Rzecznik Konsumentów
108. Katowice, woj. Śląskie Klub Federacji Konsumentów
109. Katowice, woj. Śląskie Miejski Rzecznik Konsumentów
110. Kędzierzyn Koźle, woj. Opolskie Powiatowy Rzecznik Konsumentów
111. Kępno, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
112. Kętrzyn, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
113. Kielce, woj. Świętokrzyskie Klub Federacji Konsumentów
114. Kielce, woj. Świętokrzyskie Miejski Rzecznik Konsumentów
115. Kielce, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
116. Kłobuck, woj. Śląskie Powiatowy Rzecznik Konsumentów
117. Kłodzko, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
118. Kluczbork, woj. Opolskie Powiatowy Rzecznik Konsumentów
119. Kolbuszowa, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
120. Kolno, woj. Podlaskie Powiatowy Rzecznik Konsumentów
121. Koło, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
122. Kołobrzeg, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
123. Konin, woj. Wielkopolskie Biuro Porad Prawnych i Informacji Obywatelskiej
124. Konin, woj. Wielkopolskie Miejski Rzecznik Konsumentów
125. Konin, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
126. Końskie, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
127. Kościan, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
128. Kościerzyna, woj. Pomorskie Powiatowy Rzecznik Konsumentów
129. Koszalin, woj. Zachodniopomorskie Miejski Rzecznik Konsumentów

130. Koszalin, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
131. Kozienice, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
132. Kraków, woj. Małopolskie Klub Federacji Konsumentów
133. Kraków, woj. Małopolskie Powiatowy i Miejski Rzecznik Konsumentów
134. Krapkowice, woj. Opolskie Powiatowy Rzecznik Konsumentów
135. Kraśnik, woj. Lubelskie Powiatowy Rzecznik Konsumentów
136. Krasnystaw, woj. Lubelskie Powiatowy Rzecznik Konsumentów
137. Krosno Odrzańskie, woj. Lubuskie Powiatowy Rzecznik Konsumentów
138. Krosno, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
139. Kutno, woj. Łódzkie Powiatowy Rzecznik Konsumentów
140. Kwidzyn, woj. Pomorskie Powiatowy Rzecznik Konsumentów
141. Łańcut, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
142. Łask, woj. Łódzkie Powiatowy Rzecznik Konsumentów
143. Łębork, woj. Pomorskie Powiatowy Rzecznik Konsumentów
144. Łęczna, woj. Lubelskie Powiatowy Rzecznik Konsumentów
145. Łęczyca, woj. Łódzkie Powiatowy Rzecznik Konsumentów
146. Legionowo, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
147. Legnica, woj. Dolnośląskie Miejski Rzecznik Konsumentów
148. Legnica, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
149. Lesko, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
150. Leszno, woj. Wielkopolskie Biuro Porad Prawnych i Informacji Obywatelskiej
151. Leszno, woj. Wielkopolskie Miejski Rzecznik Konsumentów
152. Leszno, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
153. Leżajsk, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
154. Lidzbark Warmiński, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
155. Limanowa, woj. Małopolskie Powiatowy Rzecznik Konsumentów

156. Lipno, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
157. Lipsko, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
158. Łobez, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
159. Łódź Wschodnia, woj. Łódzkie Powiatowy Rzecznik Konsumentów
160. Łódź, woj. Łódzkie Klub Federacji Konsumentów
161. Łódź, woj. Łódzkie Miejski Rzecznik Konsumentów
162. Łomża, woj. Podlaskie Miejski Rzecznik Konsumentów
163. Łomża, woj. Podlaskie Powiatowy Rzecznik Konsumentów
164. Łosice, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
165. Łowicz, woj. Łódzkie Klub Federacji Konsumentów
166. Łowicz, woj. Łódzkie Powiatowy Rzecznik Konsumentów
167. Lubaczów, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
168. Lubań, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
169. Lubartów, woj. Lubelskie Powiatowy Rzecznik Konsumentów
170. Lubin, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
171. Lublin, woj. Lubelskie Miejski Rzecznik Konsumentów
172. Lublin, woj. Lubelskie Powiatowy Rzecznik Konsumentów
173. Lubliniec, woj. Śląskie Powiatowy Rzecznik Konsumentów
174. Łuków, woj. Lubelskie Powiatowy Rzecznik Konsumentów
175. Lwówek Śląski, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
176. Maków Mazowiecki, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
177. Malbork, woj. Pomorskie Powiatowy Rzecznik Konsumentów
178. Miechów, woj. Małopolskie Powiatowy Rzecznik Konsumentów
179. Międzychód, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
180. Międzynarodowa Fundacja Praw Człowieka i Ochrony Konsumentów
181. Międzyrzecz, woj. Lubuskie Powiatowy Rzecznik Konsumentów

182. Mielec, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
183. Mikołów, woj. Śląskie Powiatowy Rzecznik Konsumentów
184. Milicz, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
185. Mińsk Mazowiecki, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
186. Mława, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
187. Mogilno, woj. kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
188. Mońki, woj. Podlaskie Powiatowy Rzecznik Konsumentów
189. Mrągowo, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
190. Myślenice, woj. Małopolskie Powiatowy Rzecznik Konsumentów
191. Myślibórz, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
192. Mysłowice, woj. Śląskie Miejski Rzecznik Konsumentów
193. Myszków, woj. Śląskie Powiatowy Rzecznik Konsumentów
194. Nakło n. Notecią, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
195. Namysłów, woj. Opolskie Powiatowy Rzecznik Konsumentów
196. Nidzica, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
197. Nisko, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
198. Nowa Sól, woj. Lubuskie Powiatowy Rzecznik Konsumentów
199. Nowe Miasto Lubawskie, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
200. Nowy Dwór Gdański, woj. Pomorskie Powiatowy Rzecznik Konsumentów
201. Nowy Dwór Mazowiecki, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
202. Nowy Sącz, woj. Małopolskie Klub Federacji Konsumentów
203. Nowy Sącz, woj. Małopolskie Miejski Rzecznik Konsumentów
204. Nowy Sącz, woj. Małopolskie Powiatowy Rzecznik Konsumentów
205. Nowy Targ, woj. Małopolskie Powiatowy Rzecznik Konsumentów
206. Nowy Tomyśl, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
207. Nysa, woj. Opolskie Powiatowy Rzecznik Konsumentów

- 208. Oborniki, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 209. Oława, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 210. Olecko , woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
- 211. Oleśnica, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 212. Olesno, woj. Opolskie Powiatowy Rzecznik Konsumentów
- 213. Olkusz, woj. Małopolskie Powiatowy Rzecznik Konsumentów
- 214. Olsztyn, woj. Warmińsko-mazurskie Miejski Rzecznik Konsumentów
- 215. Olsztyn, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
- 216. Opatów, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
- 217. Opoczno, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 218. Opole Lubelskie, woj. Lubelskie Powiatowy Rzecznik Konsumentów
- 219. Opole, woj. Opolskie Miejski Rzecznik Konsumentów
- 220. Opole, woj. Opolskie Powiatowy Rzecznik Konsumentów
- 221. Ostróda, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
- 222. Ostrołęka, woj. Mazowieckie Miejski Rzecznik Konsumentów
- 223. Ostrołęka, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 224. Ostrow Mazowiecka, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 225. Ostrow Wielkopolski, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 226. Ostrowiec Świętokrzyski, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
- 227. Ostrzeszów, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 228. Oświęcim, woj. Małopolskie Powiatowy Rzecznik Konsumentów
- 229. Otwock, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 230. Ożarów Mazowiecki, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 231. Pabianice, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 232. Pajęczno, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 233. Parczew, woj. Lubelskie Powiatowy Rzecznik Konsumentów

- 234. Piaseczno, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 235. Piekary Śląskie, woj. Śląskie Miejski Rzecznik Konsumentów
- 236. Piła, woj. Wielkopolskie Biuro Porad Prawnych i Informacji Obywatelskiej
- 237. Piła, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 238. Pińczów, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
- 239. Piotrków Trybunalski, woj. Łódzkie Miejski Rzecznik Konsumentów
- 240. Piotrków Trybunalski, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 241. Pisz, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
- 242. Pleszew, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 243. Płock, woj. Mazowieckie Miejski Rzecznik Konsumentów
- 244. Płock, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 245. Płońsk, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 246. Poddębice, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 247. Police, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
- 248. Polkowice, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 249. Poznań, woj. Wielkopolskie Biuro Porad Prawnych i Informacji Obywatelskiej
- 250. Poznań, woj. Wielkopolskie Miejski Rzecznik Konsumentów
- 251. Poznań, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 252. Proszowice, woj. Małopolskie Powiatowy Rzecznik Konsumentów
- 253. Prudnik, woj. Opolskie Powiatowy Rzecznik Konsumentów
- 254. Pruszcz Gdański, woj. Pomorskie Powiatowy Rzecznik Konsumentów
- 255. Pruszków, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 256. Przasnysz, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 257. Przemyśl, woj. Podkarpackie Miejski Rzecznik Konsumentów
- 258. Przemyśl, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
- 259. Przeworsk, woj. Podkarpackie Powiatowy Rzecznik Konsumentów

- 260. Przysucha, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 261. Pszczyna, woj. Śląskie Powiatowy Rzecznik Konsumentów
- 262. Puck, woj. Pomorskie Powiatowy Rzecznik Konsumentów
- 263. Puławy, woj. Lubelskie Powiatowy Rzecznik Konsumentów
- 264. Pułtusk, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 265. Pyrzyce, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
- 266. Racibórz, woj. Śląskie Powiatowy Rzecznik Konsumentów
- 267. Radom, woj. Mazowieckie Klub Federacji Konsumentów
- 268. Radom, woj. Mazowieckie Miejski Rzecznik Konsumentów
- 269. Radom, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 270. Radomsko, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 271. Radziejów, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
- 272. Radzyń Podlaski, woj. Lubelskie Powiatowy Rzecznik Konsumentów
- 273. Rawa Mazowiecka, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 274. Rawicz, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 275. Ropczyce, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
- 276. Ruda Śląska, woj. Śląskie Miejski Rzecznik Konsumentów
- 277. Rybnik, woj. Śląskie Powiatowy Rzecznik Konsumentów
- 278. Ryki, woj. Lubelskie Powiatowy Rzecznik Konsumentów
- 279. Rypin, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
- 280. Rzeszów, woj. Podkarpackie Klub Federacji Konsumentów
- 281. Rzeszów, woj. Podkarpackie Miejski Rzecznik Konsumentów
- 282. Sandomierz, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
- 283. Sanok, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
- 284. Sejny, woj. Podlaskie Powiatowy Rzecznik Konsumentów
- 285. Sępólno Krajeńskie, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów

- 286. Siedlce, woj. Mazowieckie Miejski Rzecznik Konsumentów
- 287. Siedlce, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 288. Siemianowice Śląskie, woj. Śląskie Miejski Rzecznik Konsumentów
- 289. Siemiatycze, woj. Podlaskie Powiatowy Rzecznik Konsumentów
- 290. Sieradz, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 291. Sierpc, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 292. Skarżysko-Kamienna, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
- 293. Skierniewice, woj. Łódzkie Miejski Rzecznik Konsumentów
- 294. Skierniewice, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 295. Sławno, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
- 296. Słubice, woj. Lubuskie Powiatowy Rzecznik Konsumentów
- 297. Słupca , woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 298. Słupsk, woj. Pomorskie Klub Federacji Konsumentów
- 299. Słupsk, woj. Pomorskie Miejski Rzecznik Konsumentów
- 300. Słupsk, woj. Pomorskie Powiatowy Rzecznik Konsumentów
- 301. Sochaczew, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 302. Sokółka, woj. Podlaskie Powiatowy Rzecznik Konsumentów
- 303. Sokołów Podlaski, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 304. Sopot, woj. Pomorskie Miejski Rzecznik Konsumentów
- 305. Sosnowiec, woj. Śląskie Miejski Rzecznik Konsumentów
- 306. Śrem, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 307. Środa Śląska, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 308. Środa Wlkp., woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 309. Stalowa Wola, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
- 310. Starachowice, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
- 311. Stargard Szczeciński, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów

- 312. Starogard Gdański , woj. Pomorskie Powiatowy Rzecznik Konsumentów
- 313. Staszów, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
- 314. Strzelce Krajeńskie, woj. Lubuskie Powiatowy Rzecznik Konsumentów
- 315. Strzelce Opolskie, woj. Opolskie Powiatowy Rzecznik Konsumentów
- 316. Strzelin, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 317. Strzyżów, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
- 318. Sucha Beskidzka, woj. Małopolskie Powiatowy Rzecznik Konsumentów
- 319. Sulęcín, woj. Lubuskie Powiatowy i Miejski Rzecznik Konsumentów
- 320. Suwałki, woj. Podlaskie Klub Federacji Konsumentów
- 321. Suwałki, woj. Podlaskie Miejski Rzecznik Konsumentów
- 322. Świdnica, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 323. Świdnik, woj. Lubelskie Powiatowy Rzecznik Konsumentów
- 324. Świdwin, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
- 325. Świebodzin, woj. Lubuskie Powiatowy Rzecznik Konsumentów
- 326. Świecie, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
- 327. Świętochłowice, woj. Śląskie Miejski Rzecznik Konsumentów
- 328. Świnoujście, woj. Zachodniopomorskie Miejski Rzecznik Konsumentów
- 329. Szamotuły, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 330. Szczecin, woj. Zachodniopomorskie Klub Federacji Konsumentów
- 331. Szczecin, woj. Zachodniopomorskie Miejski Rzecznik Konsumentów
- 332. Szczecinek, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
- 333. Szczytno, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
- 334. Sztum , woj. Pomorskie Powiatowy Rzecznik Konsumentów
- 335. Szydłowiec, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 336. Tarnobrzeg, woj. Podkarpackie Miejski Rzecznik Konsumentów
- 337. Tarnobrzeg, woj. Podkarpackie Powiatowy Rzecznik Konsumentów

- 338. Tarnów, woj. Małopolskie Miejski Rzecznik Konsumentów
- 339. Tarnów, woj. Małopolskie Powiatowy Rzecznik Konsumentów
- 340. Tarnowskie Góry , woj. Śląskie Powiatowy Rzecznik Konsumentów
- 341. Tczew, woj. Pomorskie Powiatowy Rzecznik Konsumentów
- 342. Tomaszów Lubelski, woj. Lubelskie Powiatowy Rzecznik Konsumentów
- 343. Tomaszów Mazowiecki, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 344. Toruń, woj. kujawsko-pomorskie Miejski Rzecznik Konsumentów
- 345. Toruń, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
- 346. Trzcianka, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 347. Trzebnica, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 348. Tuchola, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
- 349. Turek, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 350. Tychy, woj. Śląskie Miejski Rzecznik Konsumentów
- 351. Ustrzyki Dolne, woj. Podkarpackie Powiatowy Rzecznik Konsumentów
- 352. Wąbrzeźno, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
- 353. Wadowice, woj. Małopolskie Powiatowy Rzecznik Konsumentów
- 354. Wągrowiec, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 355. Wałbrzych, woj. Dolnośląskie Klub Federacji Konsumentów
- 356. Wałbrzych, woj. Dolnośląskie Miejski Rzecznik Konsumentów
- 357. Wałbrzych, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 358. Wałcz, woj. Zachodniopomorskie Powiatowy Rzecznik Konsumentów
- 359. Warszawa, woj. Mazowieckie Klub Federacji Konsumentów
- 360. Warszawa, woj. Mazowieckie Miejski Rzecznik Konsumentów
- 361. Węgorzewo, woj. Warmińsko-mazurskie Powiatowy Rzecznik Konsumentów
- 362. Węgrów, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 363. Wejherowo, woj. Pomorskie Powiatowy Rzecznik Konsumentów

- 364. Wieliczka, woj. Małopolskie Powiatowy Rzecznik Konsumentów
- 365. Wieluń, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 366. Wieruszów, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 367. Włocławek, woj. Kujawsko-pomorskie Miejski Rzecznik Konsumentów
- 368. Włocławek, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
- 369. Włodawa, woj. Lubelskie Powiatowy Rzecznik Konsumentów
- 370. Włoszczowa, woj. Świętokrzyskie Powiatowy Rzecznik Konsumentów
- 371. Wodzisław Śląski, woj. Śląskie Powiatowy Rzecznik Konsumentów
- 372. Wołomin, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 373. Wołów, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 374. Wolsztyn, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 375. Wrocław, woj. Dolnośląskie Klub Federacji Konsumentów
- 376. Wrocław, woj. Dolnośląskie Miejski Rzecznik Konsumentów
- 377. Wrocław, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 378. Września, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 379. Wschowa, woj. Lubuskie Powiatowy Rzecznik Konsumentów
- 380. Wysokie Maz. , woj. Podlaskie Powiatowy Rzecznik Konsumentów
- 381. Wyszaków, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 382. Ząbkowice Śląskie, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 383. Zabrze, woj. Śląskie Miejski Rzecznik Konsumentów
- 384. Żagań, woj. Lubuskie Powiatowy Rzecznik Konsumentów
- 385. Zakopane, woj. Małopolskie Powiatowy Rzecznik Konsumentów
- 386. Zambrów, woj. Podlaskie Powiatowy Rzecznik Konsumentów
- 387. Zamość, woj. Lubelskie Miejski Rzecznik Konsumentów
- 388. Zamość, woj. Lubelskie Powiatowy Rzecznik Konsumentów
- 389. Żary, woj. Lubuskie Powiatowy Rzecznik Konsumentów

- 390. Zawiercie, woj. Śląskie Powiatowy Rzecznik Konsumentów
- 391. Zduńska Wola, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 392. Zgierz, woj. Łódzkie Powiatowy Rzecznik Konsumentów
- 393. Zgorzelec, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 394. Zielona Góra, woj. Lubuskie Klub Federacji Konsumentów
- 395. Zielona Góra, woj. Lubuskie Miejski Rzecznik Konsumentów
- 396. Zielona Góra, woj. Lubuskie Powiatowy Rzecznik Konsumentów
- 397. Złotoryja, woj. Dolnośląskie Powiatowy Rzecznik Konsumentów
- 398. Złotów, woj. Wielkopolskie Powiatowy Rzecznik Konsumentów
- 399. Żnin, woj. Kujawsko-pomorskie Powiatowy Rzecznik Konsumentów
- 400. Żory, woj. Śląskie Miejski Rzecznik Konsumentów
- 401. Żuromin, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 402. Żyrardów, woj. Mazowieckie Powiatowy Rzecznik Konsumentów
- 403. Żywiec, woj. Śląskie Powiatowy Rzecznik Konsumentów

ANNEX VI: LIST OF ORGANISATIONS – SWEDEN

1. Konsument Europa
2. Centrum för rättvisa
3. Telekområdgivarna
4. Konsumenternas Energimarknadsbyrå
5. Konsumenternas
6. Fastighetsmäklarinspektionen
7. Fairtrade Sverige och Föreningen för Fairtrade
8. Överviktigas Riksförbund
9. Konsument-Forum
10. Föreningen Centrum för Ekologisk Teknik
11. Frihet till Hälsa
12. Framtiden i Våra Händer
13. Föreningen Kärngårdar
14. Riksförbundet Hälsofrämjandet
15. Stockholmsföreningen för Ekologisk Teknik
16. Svenska Vegetariska Föreningen
17. Förbundet Sveriges Småbrukare
18. Nordiska Sparlån
19. Sveriges Konsumenter
20. Arbetarnas Bildningsförbund
21. Djurskyddet Sverige
22. Fritidsodlingens Riksorganisation
23. Riksförbundet Goodgame
24. Handikappförbundens Samarbetsorgan
25. Riksförbundet Hem och Samhälle

26. Riksförbundet Hem och Skola
27. Konsumentföreningen Medvetna Matval
28. KonsumentGruppen i Nyköping
29. Konsumentvägledarnas förening
30. Landsorganisationen LO
31. Medveten Konsumtion
32. PRO Pensionärernas Riksorganisation
33. Resenärsforum
34. Reumatikerförbundet
35. SIOS - Samarbetsorgan för etniska organisationer i Sverige
36. Svenska Celiakiungdomsförbundet
37. Svenska Djurskyddsföreningen
38. Svenska Kommunal Pensionärernas Förbund
39. Sveriges Pensionärsförbund
40. Unga Örnar
41. Vi Konsumenter
42. Äkta Vara
43. Kooperativa Förbundet
44. Konsumentombudsmannen

ANNEX VII: LIST OF ORGANISATIONS – THE UNITED KINGDOM

1. advice UK
2. Age UK
3. Bar Pro Bono Unit
4. Bethnal Green Legal Advice Clinic
5. Birmingham Central Library Legal Advice Clinic (BLAC)
6. British Standards Institution Consumer and Public Interest Unit
7. Brunel Legal Advice Centre
8. Bury Law Centre Legal Guidance Pro Bono Clinic
9. CAMRA
10. Central and East Northamptonshire CAB Pro Bono Clinic
11. Centre 70 Pro Bono Clinic
12. Citizen's Advice
13. CommuniCare Legal Advice Clinic
14. Communications Consumer Panel
15. Consumer Affairs
16. Consumer Council for Water
17. Consumer Futures
18. Consumers International
19. Trans Atlantic Consumer Dialogue
20. Enfield CAB General Legal Advice Clinic
21. Ethical Consumer
22. European Consumer Organisation
23. Financial Services Consumer Panel
24. Fylde Law Legal Advice Clinic
25. Hackney Community Law Centre Dalston Pop-up Advice Shop

26. Harlow Citizens Advice Law Clinic
27. HKC Law Clinic
28. Holiday Travel Watch
29. ICRT
30. ISEAL Alliance
31. Islington Law Centre Evening Advice
32. John Fisher Free Legal Advice Clinic
33. Kingston University Community Legal Advice Clinic
34. Law Clinic at York Law School
35. LawWorks - Solicitors Pro Bono Group
36. Liberty
37. Manchester Free Legal Help
38. Manchester Settlement Legal Advice Clinic
39. Money Advice Service
40. National Consumer Federation
41. Northumbria University Student Law Office
42. Nottingham Law School (NLS) Legal Advice Clinic
43. Nucleus Pro Bono Service
44. Passenger Focus
45. PopLaw Legal Advice Clinic
46. Public Interest Lawyers Limited
47. Queen Mary Legal Advice Centre General Advice Service
48. Richmond Legal Advice Centre
49. South West London Law Centres Croydon Legal Advice Clinic
50. St Hilda's East Community Centre Legal Advice Service, at Sonali Gardens
51. Suffolk Law Advice Centre

52. Sunderland Student Law Clinic
53. TATOC Consumer Helpline
54. Teesside Law Clinic
55. The Free Legal Advice & Action Group
56. The National Pro Bono Centre
57. Toynbee Hall Legal Advice Clinic
58. Transport Focus
59. UCLan Mediation Clinic
60. UK European Consumer Centre
61. University of Bedfordshire Law Clinic
62. University of Bristol Law Clinic
63. University of Central Lancashire (UCLAN) Law Clinic
64. University of East London Legal Advice Clinic
65. University of Huddersfield Legal Advice Clinic
66. University of Hull Legal Advice Centre
67. University of Kent Law Clinic
68. University of Liverpool Law Clinic
69. University of Manchester School of Law Legal Advice Centre
70. University of Sheffield FreeLaw
71. University of South Wales Legal and Financial Advice Clinic
72. University of Wolverhampton Legal Advice Centre
73. Which?