

PEOPIL

The Pan-European Organisation of Personal Injury Lawyers

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PEOPIL RESPONSE

[Pan-European Organisation of Personal Injury Lawyers](#)

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**TO THE CONSULTATION PAPER FOR DISCUSSION ON
THE FOLLOW UP TO THE GREEN PAPER ON
CONSUMER COLLECTIVE REDRESS**

JULY 09

Preliminary remarks

PEOPIL

The *Pan European Organisation of Personal Injury Lawyers* (PEOPIL) was founded in 1996 and formally established as a charitable entity in 1998 to improve and promote co-operation and communication between European jurisdictions in the field of personal injury law. The development and expansion of PEOPIL is recognition that the issues involved in personal injury litigation frequently extend beyond national boundaries and require an international perspective and knowledge.

Currently PEOPIL has about 550 members from jurisdictions within the European Union, Non-European Union jurisdictions within Europe and 5 jurisdictions outside Europe.

The aims of PEOPIL are:

- To develop co-operation and networking of personal injury lawyers within Europe;
- To promote access to the legal system for consumers suffering personal injury;
- To promote higher standards of care and safety for consumers;
- To promote proper and fair compensation for all personal injury victims;
- To support and encourage the exchange of information and knowledge

PEOPIL is interested in the harmonisation process which is being carried out by the European Commission and European Parliament. In this respect PEOPIL has formulated written submissions in response to matters, including the European Commission's Green Papers on Liability for defective products, Compensation of Victims of Crime, Proposals for a Fifth Directive on Insurance against Civil Liability in respect of the use of motor vehicles, on proposals for reform of Legal Aid, in response to the Commission's staff working paper on the rights of passengers in international bus and coach transport, and in respect of the European Parliament and the European Commissions proposals for "Rome II".

PEOPIL has received grants from the European Commission to fund its continuing work including research in Comparative Law under the Grotius Project and under the Framework

Programme for Judicial Co-operation in Civil Matters

PEOPIL is fully involved in the debate on harmonization perspectives of compensation mechanisms throughout Europe and is much interested in the *Green paper on Consumer Collective Redress* and the future of collective redress systems.

Q1. What are your views on the role of the EU in relation to consumer collective redress?

PEOPIL agrees that within a 'single market' system as EU it is surely desirable to reduce existing divergences between the procedural laws and practices of Member States in the area of consumers' protection and mass claims, and considers that an initiative by EU Institutions would not only be consistent with the history and development of EU consumer law, but also with the EU policy of increasing consumers' rights and access to justice. Therefore, PEOPIL finds that there are considerable grounds for a role of EU in developing collective access to justice for the benefit of consumers.

Q2. Which of the five options set out above do you prefer? Is there an option which you would reject?

PEOPIL is in favour of the introduction of a EU-wide judicial collective redress mechanism including collective ADR (**OPTION 5**, «*An EU-wide judicial collective redress mechanism including collective ADR*»).

In particular, because of (a) the procedural differences between the European redress systems are much greater than the points in common, (b) in most of the Member States there are several proposals pending in relation to the introduction or review of collective redress schemes and future changes should be expected, (c) there are even Member States that have not established yet any collective redress mechanism, a EU intervention introducing a common model for collective redress procedure by establishing minimum binding procedural rules seems the most concrete and efficient way to develop harmonisation in this area of law, preventing the risk of future national developments in considerable different directions.

All other options, by allowing Member States to maintain or even build their own schemes for collective justice without any minimum and detailed harmonised requirements, are likely to prevent in the future the development, by EU legislation, of a common system for consumer collective redress.

In relation to OPTION 5, as detailed by the Green Paper, PEOPIL appreciates that: a) collective ADR shall be intended as a voluntary model, thus not forcing consumers to go through collective ADR procedures; b) also consumers on their own and not only consumer organisations or competent authorities will be in the position to introduce a

collective procedure (this possibility not only permits consumers to promote their rights without the need of subscribing to specific organisations, but it also preserves the role of lawyers who are independent from such entities).

However, PEOPIIL has some reservations in relation to the model suggested by the Consultation Paper for the “*detailed harmonised EU-wide judicial collective redress mechanism*”. In particular, the so called ‘test case procedure’ model should not be conceived as the only way for introducing and managing a collective redress procedure. Instead, PEOPIIL suggests that alternative models should be taken into due consideration under OPTION 5 (for example, the model of class action developed by Canadian law as well as by other jurisdictions). The main reasons for this suggestion are: (a) the ‘test case procedure’ might cause serious and practical obstacles to consumers’ collective access to justice in cases where the possibility of starting such a procedure is available in more Member States; (b) the models developed in other jurisdictions (see Canada) have proved to be efficient in terms of protection of consumers’ rights; (c) such models were developed in countries including different jurisdictions, thus taking into consideration the possible interplay between more class actions against the same defendant for the same kind of tort/contractual breach.

Q3. Are there specific elements of the options with which you agree/disagree?

See above Q2.

Q4. Are there other elements which should form part of your preferred option?

The EU-wide judicial collective redress mechanism should not affect in anyway the consumers’ right to seek individual redress protection.

As to cross-border mass cases:

- it should be made clear that the introduction of a collective ADR or a collective judicial action in one Member State shall not prevent the introduction of such an initiative in another Member State (this is to avoid consumers or consumer organisations to undertake the costs and problems of taking part to cross-border

ADR or judicial proceedings); the difficulties/costs arising from the overlapping/concurring of collective actions in two or more Member States against the same defendant/s for the same tort/contractual breach/damaging event should be solved by providing for a special procedure before the European Court of Justice, enabling this Court to decide the issues common to such actions pending in different Member States (a European register on class actions pending in Member States should be provided);

- applicable law: it should be made clear that the assessment of compensation should be subject to the law where the consumer has his habitual residence.

Furthermore, because there does not exist a sufficiently well-established and common legal background to permit legislative intervention by the European legislature in respect of specific detailed provision for categories of recoverable loss and methods of assessment, there should not be any attempt to harmonise the substantive law relating to compensation: the harmonisation/unification of rules concerning heads of recoverable damages (pecuniary and not pecuniary), and the levels of awards should be confined to the last step of a process which needs to proceed through various different developments and stages which still have to take place.

Moreover, there should not be any binding restriction by the EU to the possibility for national laws to develop punitive/deterrence functions of the compensation for damages. In this respect there is not any evidence that punitive damages or similar heads of damages are a negative factor in terms of protection of consumer. The scary “myth” evolved around the US model of punitive damages should be carefully analysed before concluding for a definitive reject of such a perspective of protection, especially in relation to mass tort cases and whenever there is a gross infringement of fundamental rights.