



**British Institute of
International and
Comparative Law**

COLLECTIVE REDRESS LATVIA



With financial support from the Civil Justice Programme of the European Union



Updated in collaboration with Aston University





**British Institute of
International and
Comparative Law**

Mission Statement

The British Institute of International and Comparative Law exists to advance the understanding of international and comparative law, and to promote the rule of law in international affairs.

Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

Table of Contents

I.	Sectoral Collective Redress Mechanism	4
1.	Scope	4
a.	Sectoral	5
b.	Injunctive or compensatory or both	6
2.	Procedural Framework	8
a.	Competent Court	8
b.	Standing	9
c.	Availability of Cross Border collective redress	9
d.	Opt In/ Opt Out	9
e.	Main procedural rules	9
3.	Available Remedies	13
a.	Type of damages	13
b.	Availability of punitive or extra-compensatory damages and their conditions	14
c.	Skimming-off/ restitution of profits	14
d.	Possibility to seek an injunction and compensation within one single action	14
e.	Possibility to rely in an injunction in separate follow-on individual or collective damages actions	14
f.	Limitation periods	14
4.	Costs	15
5.	Lawyers' Fees	15
6.	Funding	15
7.	Enforcement of collective actions/settlements	16
8.	Efficient enforcement of compensatory/ injunctive order	16
9.	Number and types of cases brought/pending	17
10.	Impact of the Recommendation/Problems and Critiques	17
a.	Consequences where no collective redress mechanism is available	17
b.	Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders	18
c.	Incompatibilities with the Recommendation's principles	18
d.	Problems relating to access of justice/fairness of proceedings including	19
II.	Information on Collective Redress	21
III.	Case summaries	22

I. Sectoral Collective Redress Mechanism

1. Scope

In answering to the European Commission's public consultation "Towards a Coherent European Approach to Collective Redress"¹ Latvia explicitly stated that taking into consideration the economic situation and courts' capacity, the country expresses doubts regarding the EU initiative on introduction of the collective redress in the courts because it will require fundamental changes in the civil procedure thus Latvia favours the use of out-of-court mechanisms in resolving the disputes.²

There has been no major change in Latvia's opinion since 2011 and this is also reflected in the current legislation. Namely, there is no judicial collective redress introduced but ordinary civil procedure rules do not fit for the collective proceedings thus also in practice no compensatory relief is sought *via* courts.

Supervision of the collective interests of the consumers is performed by the Consumer Rights Protection Centre, state institution. Supervision of the collective interests of consumers is included in the following legal acts: 1) Consumer Rights Protection Law providing for the supervision of the contracts between traders and consumers and for the requirements to inform the consumers;³ 2) Unfair Commercial Practice Prohibition Law,⁴ 3) Advertising Law⁵ and indirectly 4) Law on the Safety of Goods and Services.⁶ Also 5) Law on Extrajudicial Recovery of Debt provides for the competence of the Centre to supervise this licensed area of market.⁷

Use of ordinary civil procedure in the court for collective redress. The Consumer Rights Protection Law provides that if the dispute cannot be resolved between the consumer and the trader, the consumer has the right to settle the dispute in offered out-of-court proceedings or in the court (Article 26¹(4)). Moreover, it also explicitly states that claims of consumers for compensations for losses and recovery of penalty shall be settled in the court in accordance with the Civil Procedure Law, taking into account that the consumer does not have specific knowledge regarding the characteristics and description of the goods purchased or the services provided (Article 32).

The Unfair Commercial Practice Prohibition Law states that a person who has suffered damage as a result of unfair commercial practices is entitled to bring a claim to a court in accordance with general rules of civil procedure (Article 4¹). Thus in this part of the research we examined the hypothetical case scenario if the group of consumer intends to use the ordinary civil procedure to submit the collective redress. Hypothetically, there can be made collective redress in the court in accordance with the ordinary civil procedure rules but it would be rather complicated and expensive.

¹ Commission Staff Working Document. Public Consultation: Towards a Coherent European Approach to Collective Redress. European Commission, SEC(2011) 173 final, 4.02.2011. Available: http://ec.europa.eu/justice/news/consulting_public/0054/ConsultationpaperCollectiveredress4February2011.pdf.

² Latvijas viedoklis attiecībā uz Eiropas Komisijas paziņojumu "Ceļā uz visa Eiropas Savienībā vienotu pieeju kolektīvo prasījumu jautājumos" [Latvia's opinion regarding the European Commission's public consultation "Towards a Coherent European Approach to Collective Redress"], p. 2, 4. Available in Latvian: http://ec.europa.eu/competition/consultations/2011_collective_redress/latvian_authorities_lv.pdf.

³ Patērētāju tiesību aizsardzības likums [Consumer Rights Protection Law]. Latvian Law adopted 18 March 1999. Available in English at http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Consumer_Rights_Protection_Law.pdf.

⁴ Negodīgas komercprakses aizlieguma likums [Unfair Commercial Practice Prohibition Law]. Latvian Law adopted 22 November 2007. Available in English at http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Unfair_Commercial_Practice_Prohibition_Law.doc.

⁵ Reklāmas likums [Advertising Law]. Latvian Law adopted 20 December 1999. Available in English: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Advertising_Law.pdf.

⁶ Preču un pakalpojumu drošuma likums [Law on the Safety of Goods and Services]. Latvian Law adopted 07 April 2004. Available in English: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Law_on_the_Safety_of_Goods_and_Services.pdf.

⁷ Parādu ārpusstiesas atgūšanas likums [Law On Extrajudicial Recovery of Debt]. Latvian Law adopted 08 November 2012. Available in English at http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Law_On_Extrajudicial_Recovery_of_Debt.doc.

It is suggested that if theoretically Article 88 of the Civil Procedure Law allows the public opt-in redress then neither legislation, nor the case law or legal literature do not support it.⁸ Namely, Article 88(1) of the Civil Procedure Law provides that in cases provided for in law, international agreements binding on the Republic of Latvia or legal acts of the European Union, state or local government institutions and persons may submit an application to the court in order to protect the rights and lawful interests of other persons. Supposedly, it could also be entity as referred in the part III(4) of the Commission's Recommendations. However, there is opinion that the part of this Article refers to "an application", not "a statement of claim",⁹ but in our view this norm cannot be interpreted so narrowly. I.e., Article 76(1) of the Civil Procedure Law provides that a person in whose interests a case has been initiated pursuant to the application of a public prosecutor, or of a State or local government institution or person to whom has been conferred the right to defend rights and interests protected by law, of other persons in court, shall participate in the case as a plaintiff. Namely, the Article 25(6) of the Consumer Rights Protection Law allows for the Consumer Rights Protection Centre to bring statement of claims when defending consumer rights and lawful interests. In this case the Centre shall not pay court fee (Article 43(5) of the Civil Procedure Law).

In contrast, even though the non-governmental associations for the consumer rights protection have the rights *inter alia* to submit statements of claim to a court regarding the protection of consumers' rights and interests, and to represent the interest of consumers in court (Article 23 of the Consumer Rights Protection Law); the associations will not be exempted from the court fees. Moreover, there are only few consumer associations in Latvia and it is questionable whether those entities would have capacity in terms of financial resources, human resources, and legal expertise, to represent multiple claimants acting in their best interest as suggested by the part III(4) of the Recommendation of the Commission.

Albeit the Centre or associations would like to risk and submit the collective redress in accordance with the ordinary procedure, there would be further procedural obstacles. For instance by submitting the statement of claim in the court, the claimants shall be identified (Article 128 of the Civil Procedure Law) thus the statement of claim without the particular and identified claimant would not be admissible. The law also does not prescribe further collective procedure, e.g., how opt-in would work and what happens if one of the collective redress party does not want to appeal the judgment or want opt-out from the proceedings.

Although the Recommendation does not contain any requirement for groups of claimants which would wish to bring collective proceedings, still, in Latvia, there are also procedural obstacles precluding group of consumers to defend jointly their rights in the court. The Civil Procedure Law allows co-claimants in the case;¹⁰ however, it is not designed for the collective redress.

Moreover, there are the same court fees for the group of consumers as for other litigants in civil procedure. There are no separate fees for the consumer collective claims, i.e., the consumers, consumer groups or associations have no special or reduced state fees in the court. Overall, the system of costs prevents the consumers, consumer groups and association to litigate the consumer matters as the litigation can be costly and time consuming.

Obviously, as the ordinary civil procedure is not favourable either for individual or for the collective redress, there are no cases reported when both Centre and any association would have tried to submit the collective redress in accordance with the ordinary civil procedure.

a. Sectoral

Article 25 of the Consumer Rights Protection Law provides for the general rules of the injunction proceedings in case the Consumer Rights Protection Centre determines a violation of the consumer rights which affects group consumer interests. This law is the umbrella law for the protection of consumers and their collective interests in cases of agreements between the traders and consumers.

⁸ Paupe E. Kolektīvās prasības un to problemātika Eiropas tiesību sistēmā: starptautisko privāttiesību aspekti [Collective Actions and Problematic Issues in European Law System: Aspects of Private International Law]. University of Latvia, Faculty of Law, Master Thesis, 2013, p. 62.

⁹ Civilprocesa likuma komentāri. I daļa (1.-28. nodaļa) [Commentaries of the Civil Procedure Law. Part I (chapters 1-28)]. Ed. Prof. Torgāns K., TNA, 2012, p. 246.

¹⁰ See: Article 75 and 134(2) of the Civil Procedure Law

Special rules, also concerning injunctive and compensatory relief, are included in the Unfair Commercial Practice Prohibition Law. I.e., Article 15 of the Unfair Commercial Practice Prohibition Law states that the Consumer Rights Protection Centre shall supervise commercial practices, assessing the impact of the potential violation on the collective interests of consumers, as well as ensuring balanced supervision of activities of persons implementing commercial practices. Also Advertising Law contains both injunctive and compensatory relief provisions (Article 15). Law On Extrajudicial Recovery of Debt also provides for the competence of the Centre to adopt the decision in the case when the non-compliance with this law has caused or could cause harm to the interests of consumer groups. The law further refers to the Consumer Rights Protection Law and the Unfair Commercial Practice Prohibition Law.

Competition Law does not provide for any special collective redress, except that if the person has suffered the damages due to violation of the competition law, she/he shall have the right to claim damages and legal interests (Article 21).¹¹ No further explanations whether this concerns individual or group claims.

b. Injunctive or compensatory or both

Injunctive procedure is provided in the Consumer Rights Protection Law, the Unfair Commercial Practice Prohibition Law, the Advertising Law and Law On Extrajudicial Recovery of Debt. Compensatory redress explicitly is provided in the Unfair Commercial Practice Prohibition Law and the Advertising Law; however, as explained below, it is only available if upon proposal of the Consumer Rights Protection Centre the trader acknowledges in writing the violation of consumer rights affecting group interests and the trader undertakes to compensate the damages to the consumers.

Hereby, we give short overview on application of both reliefs.

Injunctive redress. Latvia implemented Directive No. 2009/22/EC and the new rules, as Directive, do not enable those who claim to have suffered detriment as a result of an illicit practice to obtain compensation. Therefore, according to Article 25(8) of the Consumer Rights Protection Law if a violation of the consumer rights has been determined, which affects group consumer interests (collective interests of consumers) and it may cause losses or harm to consumers, as well as to a particular consumer, the Consumer Rights Protection Centre, having evaluated the nature and essence of the violation, as well as other aspects, is entitled to carry out one or several following activities: 1) to propose that the manufacturer, trader or service provider makes a commitment in writing to rectify the violation within the specified time period (this can include the compensatory relief); 2) to take a decision, by which the manufacturer, trader or service provider is required to cease the violation, and to perform specific activities in order to rectify the impact thereof and which determine the time period for the implementation of such activities; 3) to publish the decision taken either fully or partially on the home page of the Consumer Rights Protection Centre and in the official Gazette of the Government of Latvia (the costs associated with the publication shall be covered by the manufacturer, trader or service provider).

The Consumer Rights Protection Centre shall perform the explained activities upon 1) its own initiative, 2) on the basis of a submission of the Association for Consumer Rights Protection, 3) on the basis of the information provided by such institution within the competence of which is the supervision and control of the relevant sector and on the basis of a submission of such institution of the European Union Member State which is included in the list referred to in Article 4(3) of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (Article 25(8¹) of the Consumer Rights Protection Law).

Basically, the Centre has an exclusive right to initiate injunctive relief. Even more, the Consumer Rights Protection Law provides that if the person submits the claim to the Centre regarding unfair contract provisions or the infringement of other laws, the Centre evaluates whether this infringement has caused or could have caused significant harm to collective interests of consumers. If there is no infringement in the opinion of the Centre, the administrative matter is not initiated (Article 25(8⁴)). Thus application of injunctive redress solely depends on Centre's capacity, financial resources, priorities and competence.

¹¹ Konkurences likums [Competition Law]. Latvian Law adopted in 4 October 2001. Available in English at <http://vvc.gov.lv/image/catalog/dokumenti/Competition%20Law.docx>.

Also the Unfair Commercial Practices Prohibition Law provides for the injunctive relief. The provisions are very similar to those of the Consumer Rights Protection Law. However, this Law does not provide that the Centre can initiate cases upon request on the Consumer Rights Protection Association. The Unfair Commercial Practices Prohibition Law also lists decisions that can be taken by Centre, including the decision to terminate the unfair commercial practice and/or to apply administrative sanctions (Article 15(8)). In addition if for the longer period of time the trader does not 1) submit requested information, 2) terminate the unfair commercial practice and there is impact on the interests of the consumer group, the Centre has the right to suspend the business of the trader (Article 17). Initially, the trader is informed about the Centre's intent to terminate the business and if the unfair commercial practice is continued then within 3 days after taking the decision the Centre affixes a seal at the place of business of the trader.

Pursuant to the Advertising law if the advertising does not conform to the requirements of laws and regulations, the supervisory institution is entitled either to propose the written commitment or takes the decision in the case (Article 15) - the Consumer Rights Protection Centre as supervisory authority can take the decision by which dissemination of the advertising is prohibited or to impose a fine.

Law on Extrajudicial Recovery of Debts states that if the Consumer Rights Protection Centre establishes that the non-compliance with this Law has caused or could cause harm to the interests of consumer groups (collective interests of consumers), it is entitled to take a decision, by which it assigns the creditor or provider of debt recovery services to terminate the violation of this Law or to rectify the violation allowed and determine the deadline for the performance of the necessary activities (Article 4(3)). The procedures by which the Consumer Rights Protection Centre shall take decisions and the procedures for appealing these decisions shall be determined by the Law On the Protection of Consumer Rights and the Unfair Commercial Practice Prohibition Law (Article 4(3)).

None of the laws provide for the competence of the Centre, to decide on payment of the damages to consumers in case one of the decisions is taken.

Compensatory redress is directly associated with injunctive redress. Namely, if the trader agrees to sign the written acknowledgment admitting its guilt in the determined infringement, then also the trader can undertake to compensate the damages to the consumers. This is explicitly provided both in the Unfair Commercial Practices Prohibition Law and the Advertisement Law. Article 15.¹ of the Unfair Commercial Practices Prohibition Law states that the written commitment may include the commitment of the performer of commercial activities not to perform specific activities and/or to reimburse the losses cause to consumers. Article 15(3²) of the Advertising Law states practically the same. The Consumer Rights Protection Centre indicates that not in all administrative cases the Centre proposes the trader to voluntarily acknowledge the violation of the consumers' group interests; it is the right, not the obligation of the Centre.¹² The Centre takes into account the relevant facts of the case and then decides what remedy to use.

The problematic aspect is in the fact that the written commitment is only most effective legal ground for the consumers to protect their interests and claim compensation. Still, the consumers have a little impact on this process as the Centre decides whether to propose the trader to sign the written commitment or not.

This shortcoming is very well illustrated by the recent cases. The Consumer Rights Protection Centre initiated 12 cases against non-bank creditors about the calculation of the total sum of the credits. The non-bank creditors and their association had a long history of discussion regarding this calculation and both sides had a different view. However, the Centre used its powers in accordance with the Consumer Rights Protection Law and the Unfair Commercial Practice Prohibition Law and initially proposed the non-bank creditors to sign the written commitment; however, eight creditors refused voluntarily acknowledge the violation thus the Centre proceeded with administrative case on unfair commercial practice in the consumers' collective interest violations and made decisions against each particular non-bank creditor.¹³ Some of the non-bank creditors have appealed the decisions in the court (still pending) arguing that the Centre penalized the companies for not signing the written

¹² The Consumer Rights Protection Centres decision in consumers' collective violation case No. 8-pk, 21 February 2017, para 4.1.

¹³ The Consumer Rights Protection Centres decision in consumers' collective violation case No. 8-pk, 21 February 2017; The Consumer Rights Protection Centres decision in consumers' collective violation case No. 11-pk, 21 February 2017 etc.

commitment. It was also claimed that by signing the written commitment and acknowledging the violation, the traders lose their rights to submit the case for adjudication in the court.

Also important fact is that the Centre in its decisions imposed significant penalties, in total approximately 211'000 EUR. Total damages to the consumers were approximately amounting 5,23 millions.¹⁴ For example, in one case the Centre decided that because the company has concluded the crediting agreements that are not corresponding to the law, the damages to the consumers are approximately 2'430'268,68 EUR thus in accordance with Article 15² the Unfair Commercial Practice Prohibition Law the Centre may impose fine up to 10% from the last financial year's net turnover but not more than 100'000 EUR thus the penalty in particular case was set in amount of 80'000 EUR.¹⁵ The penalty shall be paid to the state budget. In these cases the consumers are not receiving the overpaid monies. Of course, they can use unfavourable civil procedure to claim the compensations.

In contrary, in four other cases the non-bank creditors have signed the written commitments acknowledging the violation and undertaking to change the commercial practice as well as upon application of the consumers to compensate the overpaid monies.¹⁶ In the written commitments the traders also undertake to place all relevant information regarding the compensations at the consumers' reception centres. Interesting that there is no undertaking to place this information at web-site of the trader or sent it to the consumers directly. It is questionable how many consumers would ever know about their rights to get the compensation and clearly those traders signing the written commitments have escaped from the penalties.

Bearing in mind these cases, one can conclude that for some of the traders the payment of penalty is more favourable, less expensive and less problematic; however, one of the main purposes of the Recommendation is to enable injured parties to obtain compensation but in Latvia the payment of the compensation much depends on cooperation between trader and the Centre. Moreover, it is very important to indicate that appeal of the decision in the Administrative Court does not suspend fulfilment of the Centre's decision, except as concerns the penalty. The trader shall stop the unfair commercial practice but the payment of the penalty is "frozen" until the dispute is resolved by the court. The dispute resolution of the court may take years thus it is doubtful whether that is effective system and that the consumers benefit from such procedure.

2. Procedural Framework

a. Competent Court

As explained above there is no special mechanism for the collective redress in the civil procedure law, the action can be submitted in accordance with the ordinary civil procedure in the first instance court having the jurisdiction.¹⁷ For example, Article 18¹ of the Advertisement Law explicitly provides that person who has been caused harm by advertising is entitled to bring a claim to a court in accordance with the procedures laid down in law.

The Consumer Rights Protection Centre has competence to grant the injunction and set the penalty in cases where a violation of the consumer rights affects group consumer interests (collective interests of consumers). The decisions of the Centre are appealable in the Administrative court.

The Centre shall propose the trader to sign the written commitment acknowledging the violation of consumer group interests whereby the trader also can undertake to pay damages to the consumers. This is voluntarily act of the trader.

¹⁴ Ātro kredītu kompānijām ir jāatlīdzina zaudējumi [Fast credit companies shall pay damages] 1 March 2017 at http://www.pateretajs.lv/index.php?option=com_content&view=article&id=134%3Aatro-kredtu-kompnijim-ir-jatldzina-zaudjumi&lang=lv.

¹⁵ The Consumer Rights Protection Centres decision in consumers' collective violation case No. 10-pk, 21 February 2017.

¹⁶ See: Written commitment No. 4/10 by SIA "E-LATS" dated 27 October 2016.

¹⁷ Civilprocesa likums [Civil Procedure Law], Article 23. Latvian Law adopted 14 October 1998. Available in English at http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Civil_Procedure_Law.pdf

- b. Standing
- c. Availability of Cross Border collective redress

There are no special rules regarding cross-border collective redress and no cases reported.

- d. Opt In/ Opt Out

Principal availability of either/or/both options? /Conditions for either type (prescribed by law or discretion of the judge?)

Laws are not explicit as concerns opt-in or opt-out mechanisms; however, in accordance with the practice if the trader signs the written acknowledgment of committed violation and it also provides for reimbursement of the losses caused to the consumer, the trader shall invite the consumers to submit the requests for payment of the compensation thus it implicitly provides for opt-in mechanism.¹⁸ How effectively it works in practice, it is questionable.

Opt-out restricted to in-jurisdiction claimants?

N/A

If opt-out, is it justified by the sound administration of justice?

N/A

Specific measures related to the fact that affected persons are not identifiable

Currently, the Law does not prescribe order how to identify the affected persons but according to the written acknowledgments, it can be concluded that either the traders themselves shall identify and contact the affected consumers or they are publishing or placing the information regarding the compensation and then the consumers shall be active by requesting compensation.

- e. Main procedural rules

Admissibility and certification criteria

As there is no procedure for collective redress in the courts, we would like briefly explain, how, the Consumer Rights Protection Centre decides on admissibility and initiation of the cases.

The Consumer Rights Protection Centre supervises the market and ensures the effective protection of consumer rights and interests. In examining a person's submission regarding infringements of consumer rights, which apply to or could be applied to collective interests of consumers, the Centre shall perform supervision measures in order of priority, taking into consideration 1) the supervision priorities specified in the working plan for the current year; 2) the utmost efficient use of financial resources granted for the institution; 3) the number of submissions received regarding a particular trader and violation; 4) the possible harm or harm committed to the collective interests of consumers; 5) the nature and duration of the violation; 6) the particular market sector. For example, in 2017 the Centre's priorities in supervising the collective interests of the consumers are the evaluation of the creditworthiness of the consumers in out-of-bank crediting, agreements regarding the use of sports' clubs, out-of-court debt collectors' services etc.¹⁹

As indicated the Centre plays the central and exclusive role in collective redress in Latvia thus the consumers' collective rights much depend on the capacity, financial resources, priorities and competence of the Centre. We are convinced that the Centre is very competent; however, there are doubts whether the Centre can detect all violations.

¹⁸ Written acknowledgment by SIA "IPF Digital" dated 27.03.2017. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/izraksts_rakstveida_apnemsanas.pdf.

¹⁹ See: in Latvian on the priorities: <http://www.ptac.gov.lv/lv/content/ptac-prioritates>.

This particular example demonstrates that the traders can perform unfair commercial practices for longer period of time and the Centre either is not informed about such practice or is not in capacity to detect the violation in timely manner. Namely, the municipal waste management company overcalculated the charge for its services starting from 1 August 2014 until 30 September 2016, thus in the written commitment the company undertook to repay back the difference – the monies overcharged. However, the company indicated that the sums will be paid to the balance of each apartment house because repayment to the particular client may be impossible as many owners or tenants have changed during this period.²⁰ This example also indicates that not always the particular person that suffered harm will be compensated.

Single or Multi-stage process

If the trader signs a written commitment, the trader has acknowledged his or her fault in the determined infringement. That can be considered as single stage process as it cannot be challenged or appealed. The commitment is published in the web site of the Centre as well as in official gazette.

If the commitment is not fulfilled, the Centre shall take a decision. Also decision can be taken if the trader refuses to sign the written commitment or Centre considers that the violations are too significant. Centre's decisions can be appealed in the Administrative court. Thus this is multi stage process.

Case-management and deadlines

The “umbrella” law – the Consumers Rights Protection Law does not explicitly provide for the specific deadlines. However, the Unfair Commercial Practice Prohibition Law states that the supervisory authority shall take the decision on the unfair commercial practice within 6 months from the day of its initiation, but, if due to objective circumstances the case cannot be reviewed, this term can be prolonged but not more than for one year (Article 15(12)).

The same law also states that the written commitment shall be deemed received (enter into effect) from the moment when the Supervisory Authority has approved its acceptance, certifying in writing to the performer of commercial activities that the relevant measures are sufficient for elimination of the violation and its impact. The time period for elimination of the violation shall not exceed the time period necessary for the performer of commercial practices to take the intended measures and to ensure the conformity with the interests of consumers, and usually may not be longer than three months, except cases when the nature of the intended measures justifies a longer time period (Article 15¹(2)). The same clause is included in Article 15(10) of the Advertisement Law.

As the procedure in the state institution, i.e., the Consumer Rights Protection Centre, is administrative procedure then also general rules may apply. For example, according to the Administrative Procedure Law²¹ if an administrative matter is initiated on the basis of a submission, an institution shall take a decision regarding the issue of an administrative act or termination of the matter within a month from the day the submission is submitted but if due to objective reasons it is not possible to comply with the one month time period, the institution may extend it for a period not exceeding four months from the day the submission is submitted (Article 64).

Expediency (particularly in injunctive cases)

See also above.

According to the reviewed cases due to the complexity, the number of similar cases, time consuming exchange of the information between the Consumer Rights Protection Centre and the traders, six months may not be sufficient time to take the decision in consumers' collective interest violation cases. For example, the Centre initiated the case regarding possible unfair commercial practice on 16 June 2016 but took the decision in 21 February 2017. In between the Centre also proposed to sign the written commitment, set the meetings, asked

²⁰ Written acknowledgment No. 177 by SIA “Āne EP” dated 17 October 2016. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/apnemsanas_ane_ep.pdf.

²¹ Administratīvā procesa likums [Administrative Procedure Law]. Latvian law adopted 25.10.2001. Available in English: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc.

documents and explanations from the trader and for each action there was established specific time periods. During the process the trader requested to prolong the set terms at least five times. The decision was appealed one month later; however, on the date of writing this report (19 May 2017) the court even has not set the hearing date.²² During the procedure in the Centre the trader has rectify its commercial practice and it complied with the law; however, from this example we see that from one side the Centre has limited capacity to review the case in expedient way but from other side we also can conclude that the traders try to abuse and prolong the process. Moreover, if the Centre's decision is appealed in the Administrative court, the dispute can continue for 2-5 years.

Evidence/discovery rules

The Unfair Commercial Practice Prohibition Law, Law on Extrajudicial Recovery of Debt and the Advertisement Law contain special rules for the Consumer Rights Protection Centre to request the relevant materials from the traders.

Article 15(1) of the Advertisement Law states that in evaluating the conformity of advertising with the requirements of laws and regulations, the Supervisory Institution is entitled to request and receive any information, documents and other evidence from an advertiser, producer of advertising, disseminator of advertising and other natural and legal persons necessary for clarification of the essence of the matter, as well as oral explanations regarding the veracity, accuracy or conformity with the requirements of laws and regulations of an announcement (assertion) provided in advertising, as well as to determine the time period for submitting the information, documents and evidence and the type of provision of information. If the evidence requested is not submitted within the specified time period or it is submitted incompletely, the Supervisory Institution is entitled to view the announcement (assertion) offered in the advertising as imprecise or inaccurate. Article 14(4) of the Unfair Commercial Protection Law provides very similar rights for the Centre in cases of conformity of commercial practice. Also there is following presumption: if the performer of commercial practices does not provide the requested information or if it is incomplete, the Supervisory Authority is entitled to consider that the information used in the commercial practices is imprecise or false (Article 14(3) of the Consumer Rights Protection Law).

Moreover, the officials of the Consumer Rights Protection Centre, in performing market and consumer rights supervision, are entitled at any time (also without prior notification) to arrive at the manufacturer, trader or service provider (Article 25(6¹)).

Also the general rules of administrative process can apply. In acquiring information, an institution may use all legal methods, and obtain information from participants in the administrative proceeding and from other authorities, as well as by means of the assistance of witnesses, experts, inspections, documents or other type of evidence. If the information needed by an institution is not at the disposal of participants in the administrative proceeding but is at the disposal of another authority, the institution shall acquire the information itself rather than requiring it from participants in the administrative proceeding (Article 59(2) Administrative Procedure Law). The participants of the procedure have obligation to submit evidences that are at disposal of such party as well as inform about the facts known to them and that can be of importance in the case at hand (Article 59(4) Administrative Procedure Law).

In one consumers' collective interest violation case the Centre concluded that trader has performed unfair commercial practice by providing fictitious information in food supplements' advertisements and requested from the trader written evidence where, when and in what amount the advertisements were showed pursuant to Article 15(2) of the Unfair Commercial Practice prohibition Law. The Centre also reminded the trader that in accordance with the Article 59(1), 61 and 62(1) of the Administrative Procedure Law, the trader has the right to express its opinion and arguments in administrative procedure. However, in this case at hand the trader replied that the advertisements are corrected and attached the corrected ads. As the trader did not provided the Centre with requested information the Centre itself acquired information regarding placed advertisements. Taking into consideration the fact that information was not provided and other circumstances of the case the Centre decided that the violation was fundamental and prohibited the trader to perform the unfair commercial practice

²² The Consumer Rights Protection Centres decision in consumers' collective violation case No. 10-pk, 21 February 2017.

as well as imposed the penalty to be paid in the state budget.²³ This case illustrates that the traders are not always cooperative and the Centre shall use its resources to collect information and evidences.

Interim measures

If the Consumer Rights Protection Centre has a reason to believe that a violation of consumer rights has been or may be committed and it may cause immediate and significant harm to the economic interests of the particular consumer group, it is entitled to take as interim measure one or several decisions, by which: 1) an obligation to terminate the violation immediately is imposed upon the manufacturer, trader or service provider; 2) prohibits the action of the manufacturer, trader or service provider, which may cause the violation, if it has not been committed yet but is likely to be committed. The decision regarding interim measure shall be valid from the time of notification thereof until the time when it is cancelled or amended by the decision of the Consumer Rights Protection Centre or when the final decision of the Consumer Rights Protection Centre comes into effect. The decision of the Consumer Rights Protection Centre regarding the interim measure may be appealed by the manufacturer, trader or service provider, in respect of which the interim measure has been issued, to a district administrative court within 10 days after the day of entering into effect thereof. The appeal of the decision shall not suspend the operation. The court shall adjudicate by written procedure the application regarding the decision of the Consumer Rights Protection Centre regarding the interim measure within 14 days. The decision of the court cannot be appealed and shall come into effect upon the adoption (Article 25.¹ of the Consumer Rights Protection Law).

Also Article 18 of the Unfair Commercial Practice Prohibition Law provides for the interim measure if the violation may cause immediate and significant harm to the economic interests of the particular consumer group, i.e., the Centre can take to immediate decisions: 1) the performer of commercial practices has to fulfil the duty to terminate the unfair commercial practice or 2) the unfair commercial practice is prohibited, if it has not been commenced yet, but is expected. The decision on interim measures are in force from the moment of its announcement and is in force until the centre's decision is annulled, changed or the final decision enters into force.

Article 17¹(1) of the Advertisement Law provides for the similar "temporary regulations" in form of the decisions by which 1) the advertiser is instructed to provide through advertising or goods labelling, or in another manner, additional information that is essential from the point of view of protection of persons or the performer of economic activities, or the lawful rights of the performer of professional activities; 2) articular elements (information, visual representations, audio or other special effects) are requested to be deleted from the advertising; 3) dissemination of the advertising is prohibited. Such decision can be appealed within 10 days in the Administrative Court but it does not suspend the operation of the decision.

In one recent case the Centre took the decision "temporary regulation" terminating the unfair commercial practice pursuant *inter alia* Article 4(3) of the Law on Extrajudicial Recovery of Debt. Namely, the Centre both on its own initiative and upon the applications of 35 consumers determined that the out-of-court debt collector has started the debt collection from consumers by sending them notices on payable debts. However, the notices were not in accordance with the Law on Extrajudicial Recovery of Debt because they lack relevant information. Thus the Centre decided that the trader has performed commercial practice that does not conform to professional diligence and that fundamentally influences consumers' economical behaviour. The Centre also indicated that the consumer can reasonably expect that the company as professional participant of the market, that has received the special licence for out-of-court debt collection, would guarantee provision of truthful and full information.²⁴ Moreover, the trader with its activities created notion to the consumers that the best for them is to pay the requested debt than try to solve the dispute in the court as in the latter case most probably the consumers will lose the trial. By giving such notices the trader already collected 23'272,60 EUR from 216 consumers but still the collection was on-going therefore the Centre took the decision with which the performer of commercial practice had to fulfil the duty to terminate the unfair commercial practice (Article 15(8) of the

²³ The Consumer Rights Protection Centres decision in consumers' collective violation case No. 12-pk, 29 February 2016.

²⁴ Out-of-debt collection is licensed sphere of business in Latvia.

Unfair Commercial Practice Prohibition Law) thus protecting legal and economic rights of the consumers.²⁵ There is no yet information whether the decision is appealed in the Administrative Court. If indeed the collection of the debts was unlawful, only remedy for the consumers to get the money back is to use inefficient ordinary civil procedure law mechanism as the trader is not signing the written commitment undertaking to compensate the consumers. If we presume that the average paid sum of each of 216 consumers is around 107,- EUR the state fee to initiate individual claim in the court would cost 71,14 EUR (Article 34 of the Civil Procedure Law). If all 216 claims are consolidated then the state fee for litigation would be approximately 1'036,37 EUR plus all other costs.

It shall be added that if the licensed out-of-court debt collector does not provide the relevant information to the Centre, the Centre has right to terminate the license up to 6 months.

Court directed settlement option during procedure

General rules apply if the judicial collective redress is reviewed in accordance with ordinary civil procedure law. The court shall strive to reconcile the parties during the court procedure (Article 151(3) of Civil Procedure Law); however, the settlement shall be entered by the parties and shall be submitted to the court for approval (Article 227(1) of Civil Procedure Law).

In case of out of court settlements: judicial control

According to the general rules, public person, for example, Consumer Rights Protection Centre and private company can conclude administrative contracts in order to terminate a legal dispute or if the legal norms that are to be applied grant freedom of action to the institution with respect to the issuance of administrative instruments, their contents or with respect to actual actions.²⁶ For the institution to conclude such administrative contract the consent of the higher institution is needed (Article 80 and 82 of State Administration Structure Law). If a contracting party does not properly perform the administrative contract or has doubts as to the validity of such contract, the other contracting party may request the performance of the contract by judicial proceedings (Article 85 of State Administration Structure Law). No such cases publicly reported.

3. Available Remedies

a. Type of damages

As mentioned above, both the Advertising Law and the Unfair Commercial Practice Prohibition Law provides that the trader, by signing the written commitment, may be obliged to undertake to reimburse the losses caused to consumers. There are no other explanations or references thus, most likely, the general rules of civil law on damages apply.

According to the Civil Law, a loss shall be understood to mean any deprivation which can be assessed financially (Article 1770) and everyone has a duty to compensate for losses they have caused through their acts or failure to act (Article 1779).²⁷

From a few cases where the traders have undertaken to pay compensation to the consumers, it is evident that the traders compensate real and direct damages. Namely, where the violation has been indicated, the traders pay back exact amount of monies that were overpaid by the consumers. For example, in one case the non-bank creditor breached the Unfair Commercial Practice Prohibition Law because in the invoices to consumers with active debts there were included such expenses as "unpaid creditors' damages". Those expenses were higher than it is fixed in the Regulations Regarding the Permissible Amount of Expenses for Recovery of a Debt and the Non-reimbursable Expenses, i.e., the creditor charged more than 17 EUR.²⁸ Upon the Consumer Rights

²⁵ The Consumer Rights Protection Centres decision in consumers' collective violation case No. 3.3.-7/2294/F-24, 04 April 2017.

²⁶ Valsts pārvaldes iekārtas likums [State Administration Structure Law]. Latvian Law adopted 06 June 2002. Available in English: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/State_Administration_Structure_Law.doc.

²⁷ Civillikums [Civil Law] Latvian Law adopted 28 January 1937. Available in English: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/The_Civil_Law.doc.

²⁸ Noteikumi par parāda atgūšanas izdevumu pieļaujamo apmēru un izdevumiem, kuri nav atlīdzināmi [Regulations Regarding the Permissible Amount of Expenses for Recovery of a Debt and the Non-reimbursable Expenses] Regulations of

Protection Centre's initiative the non-bank creditor undertook to repay the consumers amounts paid that were higher than 17,- EUR if the consumers submit relevant applications to the trader within one year. The creditor also promised to inform in writing the consumers to whom this written commitment can be related to. It is also indicated in the written commitment that the trader shall reserve the rights to sue the debtors in the court of general jurisdiction and to collect the damages arising out of debt collection in full.²⁹ Interesting, that if the written acknowledgment is published in the Centre's webpage, than in the web page of the creditor it is not.

In other case, in the written commitment the trader undertook to pay back to the consumers monies for the unfulfilled services and informed the Consumer Rights Protection Centre about the fulfilment of the commitment.³⁰ Indeed, Article 15¹(3) of the Unfair Commercial Practice Prohibition Law provides that the performer of commercial practices shall, without delay but not later than within three working days after the end of the time period set by the Centre, inform the Supervisory Authority regarding fulfilment of the written commitment, adding proof.

For general public, information about the total number of the consumers affected by the unfair commercial practice, the amounts unfairly collected, then paid back to the consumers and about the fulfilment of the written commitments, is not available.

If the trader does not fulfil the written commitment then the Centre can take one of the indicated decisions, including decision on administrative penalty. In that case the consumers are no receiving monies they would be entitled to. In that case general rules apply - a person who has suffered damage as a result of unfair commercial practices is entitled to bring a claim to a court in accordance with the procedures laid down in law (Article 4¹ of Unfair Commercial Practice Prohibition Law) what can be rather difficult as explained above.

b. Availability of punitive or extra-compensatory damages and their conditions

No special provisions.

c. Skimming-off/ restitution of profits

No special provisions.

d. Possibility to seek an injunction and compensation within one single action

As explained above, the written commitment of the trader can provide the obligation to pay the damages to the consumers.

e. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

No special provisions.

f. Limitation periods

Consumers Rights Protections Law provides that a consumer is entitled to submit a claim to the trader or service provider in respect of the non-conformity of goods or service with the provisions of a contract within two years of the day of purchase of the goods or receipt of the services.

However, it is important to note one aspect in this regard. The general limitation period is 10 years as provided by Article 1895 of the Civil Law; however, the Commercial Law³¹ as special law provides that the claims arising from a commercial transaction are subjected to a limitation period of three years, unless other limitation period is specified by the law. The problematic feature of these different limitation periods are demonstrated by the following recent case. The trader required a number of consumers to pay the debts for the land lease as from year 2008. Considering that this is unfair commercial practice the Centre took decision on "provisional

the Cabinet of Ministers No. 61 adopted 29 January 2013. Available in English: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/MK_Noteikumi/Cab_Reg_No_61_Regarding_the_Permissible_Amount_of_Expenses_for_Recovery.doc.

²⁹ Written commitment by SIA "IPF Digital Latvia" dated 27 March 2017.

³⁰ Written commitment No.2 by SIA "Baltic Able Traders" dated 9 November 2016.

³¹ Komerclikums [Commercial Law] Latvian law adopted 13 April 2000. Available in English: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/The_Commercial_Law.doc.

measures” and terminated the unfair commercial practice.³² In its webpage the Centre placed information inviting the consumers affected by this unfair commercial practice to check since when the debt has calculated. For example, if the payment for the lease had been calculated from 1 January to 1 September 2008 thus 8 years have passed and because it is considered as commercial transaction then the limitations period most likely is three years as provided by the Commercial law. Moreover, the Centre adds that in case of litigation the consumers are advised to turn the courts’ attention that the special limitation period applies.³³

Firstly, it can be seen that the land lease agreement between a trader and a consumer is considered as commercial transaction in the light of special norms regarding limitation periods included in the Commercial Law. Most likely it is so, because the Consumer Rights Protection Law provides only for the limitation period regarding the claims of consumers against traders, not *vice versa*. Secondly, the Centre had a right to stop this unfair commercial practice but it can only inform the consumers, not to offer remedy to pay back the sums illegally received by the trader.

There is special time period set for the Supervisory Authority to initiate the administrative case. Article 15(12) of the Unfair Commercial Practice Prohibition Law states that the Consumer Rights Protection centre shall take the decision on unfair commercial practice within 6 months from the initiation of the case. If due to objective reasons the Centre cannot observe this term, it can be extended but not longer than for 2 years. The same clause can be found in the Article 15(10) of the Advertisement Law.

4. Costs

There are no costs if the injunction procedure is conducted in the Consumer Rights Protection Centre, i.e., the process in the institution is free; however, it does not guarantee that the procedure is not expensive.³⁴

5. Lawyers’ Fees

In the procedure conducted in the Consumer Rights Protection Centre, the trader bears its legal costs.

6. Funding

The law does not regulate the issue of the funding. So, even if the Consumer Rights Protection Associations want to submit the statements of claim to a court regarding the protection of consumer rights and interests in accordance with Article 23 of the Consumer Rights Protection Law then they do not have either their or other funding available.

In answering to the European Commission’s public consultation “Towards a Coherent European Approach to Collective Redress”, Latvia indicated that it is too early to discuss about the funding of collective redress but it is suggested that the procedure shall be financed by the organisation designated by the state. Today it means that the Centre shall finance (from state budget) any collective redress activities if it decides so.

However, in opposite, the traders are more organized and active in this regard. Recently there was initiative within the members of the Alternative Financial Services Association of Latvia. Namely, the Consumer Rights Protection Centre took many decisions on unfair commercial practice against non-bank creditor companies and applied penalties in the total amount more than 200’000 EUR. The Association suggested to the members who were penalized by the Centre to appeal the decisions in the court and offered to members united legal assistance in appeal procedure and compensation of the expenses of the hired law office from the budget of Association. In case of the positive court’s decision and reduced or suspended penalty, the members shall repay the legal costs of association. The cases are still pending and no further information is publicly available.

³² The Consumer Rights Protection Centres decision in consumers’ collective violation case No. 3.3.-7/2294/F-24, 04 April 2017.

³³ See in Latvian <http://www.ptac.gov.lv/lv/news/informacija-pateretajiem-par-sia-vienotais-norekinu-centrs-un-pilsetas-zemes-dienests-darbibu>.

³⁴ B. Vītoliņa, Patērētāju tiesību aizsardzības pamati. [Basics of Protection of Consumer Rights]. Rīga, Zvaigzne ABC, 2015, p.91.

7. Enforcement of collective actions/settlements

Framework for enforcement

In case if the trader has agreed to sign the written commitment acknowledging the violation, the specific time period within which it shall be performed is indicated in the commitment (Article 25(8) of the Consumer Rights Protection Law). The Unfair Commercial Practice Prohibition Law is more specific providing that the time period for elimination of the violation shall not exceed the time period necessary for the performer of commercial practices to take the intended measures and to ensure the conformity with the interests of consumers, and usually may not be longer than three months, except cases when the nature of the intended measures justifies a longer time period (Article 15¹). The same clause is included also in Article 15(3³) of the Advertisement Law.

In one recent case the trader undertook to pay damages to the consumers within one year, however, from this written commitment it cannot be seen why the term is one year, not three months.³⁵ It can be guessed that it is because consumers shall apply themselves to the trader with the requests for compensations. In other case where the trader did not paid back money for non-provided services, the term to pay back to the consumers was set one month.³⁶

The Consumers Rights Protection Centre's decision by which the manufacturer, trader or service provider is required to cease the violation, and to perform specific activities in order to rectify the impact thereof and which determine the time period for the implementation of such activities shall be in effect on the day when the addressee becomes aware of it. The imposed penalties shall be paid within one month from the moment when decision is taken (Article 15(3) of the Unfair Commercial Practice Prohibition Law).

The decision can be appealed by the trader but the appeal of the decision shall not suspend the operation thereof, except for the imposed penalties (Article 25(9) of Consumer Rights Protection Law and Article 19 of the Unfair Commercial Practice Prohibition Law).

In practice it is admitted that the penalties imposed to the traders, for example, for unfair commercial practices do not prevent or motivate the trader from the continuation of the unfair practice because in some cases the profits are significantly larger than the administrative penalty.³⁷

8. Efficient enforcement of compensatory/ injunctive order

The general rule is set in Article 25(10) of Consumer Rights Protection Law stating that a trader shall inform the Centre on implementation of the specified activities done according to the decision rendered by the Centre and in case such information is not received by the Centre or the trader has not implemented the activities, Centre applies administrative penalty.

However, as regards the written commitments, the Unfair Commercial Practice Law is more specific providing that the performer of commercial practice shall inform the Centre regarding the performance of the relevant activity immediately but not later than within three working days after the end of time period laid down in the written commitment and shall attach evidences (Article 15(7)). Very similar norm is provided in the Article 15(3⁵) of Advertisement Law. If the written commitment is not fulfilled the Centre can take one or more decisions as provided by all three Laws.

Next case illustrates how non-efficient system can be. On 9 November 2016 the trader by written commitment undertook to pay until 8 December 2016 the amounts received by the consumers for unfulfilled orders.³⁸ However, as it is evident from the publicly available information, the trader did not fulfil the written commitment and did not submit to the Centre information about fulfilment of it. Moreover, the trader continued unfair commercial practice, i.e., the Centre made a "control" purchase on the website of the trader, paid the price, however, the goods were not received. The Centre also continued to receive the consumer complains (around 139 in total). The trader closed the website and did not respond to the Centre's written requests. The Centre

³⁵ Written commitment by SIA "IPF Digital Latvia" dated 27 March 2017.

³⁶ Written commitment No.2 by SIA "Baltic Able Traders" dated 9 November 2016.

³⁷ B. Vītoļiņa, Patērētāju tiesību aizsardzības pamati. [Basics of Protection of Consumer Rights]. Rīga, Zvaigzne ABC, 2015, p.354.

³⁸ Written commitment by SIA "Baltic Able Traders" dated 9 November 2016.

adopted the decision on 24 March 2017 stating that by unfair commercial practice the trader has originated fundamental losses for the consumers therefore the penalty in amount of 20'000 EUR is imposed in order to motivate the company to stop this practice and stop to continue it.³⁹ By our own investigation we found that the company has been excluded from the tax payers register for unpaid taxes and the court has announced the company insolvent. In this case all activities were not efficient and the consumers are not benefiting. Such trader can ease close one company and open another. This schema does not work so easily in the licensed sectors such as, the out-of-court debt collection or consumer crediting.

9. Number and types of cases brought/pending

There is one written commitment submitted in the Centre in 2017 but 13 – in 2016.⁴⁰ In accordance with the official website of the Consumer Rights Protection Centre there were 26 in 2016 and already now 15 cases in 2017 where the decisions regard the collective interests of the consumers were taken.⁴¹

10. Impact of the Recommendation/Problems and Critiques

a. Consequences where no collective redress mechanism is available

In answer to the European Commission's public consultation "Towards a Coherent European Approach to Collective Redress" Latvia clearly communicated its view that the introduction of the judicial collective redress demand fundamental changes in the civil procedure and it will overload the court system. Firstly, an increase in the workload of the court of general jurisdiction cannot be used to justify the lack of the judicial redress mechanism. Secondly, it is acknowledged that there are fundamental shortages of the dispute resolution *via* the Consumer Rights Protection Centre *inter alia*:

- The procedure is lengthy and non-effective, especially in the cases when the trader is not cooperative. The decision of the Centre is appealable in the Administrative Court thus the final judgment can be received within 2-5 years.⁴² Moreover, until the final court's decision the trader is suspended from paying imposed penalty. It is evident from the case law that sometimes the payment of penalty is cheaper for the trader comparing with the damages caused.
- The return of the monies to the consumers, is possible only if the trader signs the written acknowledgment of the violation thus if the trader is not cooperating the consumers are not receiving any compensation. In practice even if the written commitment is signed by the trader usually the consumers can receive the really paid monies for the particular services or goods; however, other kind of damages is not awarded. The Unfair Commercial Practice Prohibition Law explicitly states that a person who suffered damage as a result of unfair commercial practices is entitled to bring a claim to a court but most likely in practice it is expensive, time consuming to bring such claims.

In addition, the written commitment acknowledging violation can be signed only by the request of the Consumer Rights Protection Centre, i.e., the trader cannot do it upon request of consumers or on its own initiative. Therefore the Centre always shall be in control of all spheres of the market and shall have a capacity to supervise the market; however, in reality as it was indicated, the Centre performs its activities by choosing the priorities thus not all violations can and will be detected.

Furthermore, the written commitment is not offered by the Centre to the trader if violation of the consumers' rights is fundamental thus, basically, if the trader by its actions has affected great number of the consumers the Centre will not offer to sign the written commitment and the consumers will not receive compensation. This raises the question whether that is proportional to the interests of the consumers.

Another issue is fulfilment of the written commitments. Indeed, the law provides that if the commitment is not fulfilled the Centre shall take the decision and impose the penalties. The trader can fulfil the commitment formally. For example, in the most reviewed cases the traders themselves indicate and inform the affected

³⁹ The Consumer Rights Protection Centres decision in consumers' collective violation case No. 14-pk, 24 march 2017.

⁴⁰ See in Latvian: <http://www.ptac.gov.lv/lv/table/rakstveida-apnemsanas>.

⁴¹ See in Latvian : <http://www.ptac.gov.lv/lv/table/ptac-l-mumi>.

⁴² B. Vītoliņa, Patērētāju tiesību aizsardzības pamati. [Basics of Protection of Consumer Rights]. Rīga, Zvaigzne ABC, 2015, p. 92.

consumers, however, there are no publicly available data how effective was informative campaign and how many consumers refers to the traders etc. Also there are cases where the traders are not fulfilling the written commitments and “vanish” from the market thus also not fulfilling the Centre’s decision to pay penalties or stop the illegal practice. The trader can easily manipulate with this system.

European Consumer Centre Latvia has expressly provided that there is an increasing need for special consumer protection in the light of new forms of aggressive advertising, unfair practices etc. and the collective redress would enhance the protection of consumers’ rights. They also state that the existing ADR mechanisms are often ineffective and there is need to introduce the appropriate mechanism of compensatory redress so that the amount of the individual damages would not anymore be significant.⁴³ In our view, the lack of judicial collective redress and semi-efficient compensatory system does not facilitate access to justice for consumers.

b. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders

There is no big discussion regarding the collective redress in Latvia but definitely, lack of the judicial collective mechanisms is used by the traders as in many cases they do not sign the written commitment because they disagree with the decision of the Consumers Rights Protection Centre thus there is no compensations paid to the consumers. In case the Centre takes the administrative decision, the penalties are paid to the state budget. Moreover, in many cases the Centre’s decisions are appealed in the Administrative Court thus prolonging the review of the case and the traders are suspended to pay the penalties until the court takes a final decision.

In general, consumers are not so much informed about their rights, for example, the survey indicated that 53% of the stakeholders are weakly informed about their consumer rights and 59% are pessimistic about reaching acceptable solution in the dispute with the trader.⁴⁴ Thus one can conclude that if the consumers are not informed about their basic consumer rights, most likely they will not be active in protecting their rights collectively.

In addition, it shall be mentioned that in case of a fundamental violation of the consumer rights which affects group consumer interests and may cause losses or harm to consumers, the Centre shall adopt the administrative decision *inter alia* imposing the fine. For example, Article 15² of the Unfair Commercial Practice Prohibition Law provides that the centre can impose the penalty for unfair commercial practice in amount of 10% from the net turnover of the trader’s last year but not more than 100’000 EUR (Article 15²). In one case the centre established that the non-bank creditor originated not less than (!) 2’430 268,68 EUR damage to consumers as from 1 January to 26 October 2016 and imposed the penalty in amount of 80’000,- EUR – 0,24% from the net turnover of 2015 (in amount of 33’469’678 EUR) (appeal is pending in the Administrative court).⁴⁵ Ironically, the consumers are not getting any cent and we also can discuss whether this is proportional fine comparing with the caused damage. Moreover, the case was appealed thus the penalty is not paid until the final judgment is taken.

c. Incompatibilities with the Recommendation’s principles

Latvia does not actually follow the recommendation. Only publicly available document expressing the Latvia’s opinion regarding the collective redress is the answer to European Commission’s public consultation: “Towards a Coherent European Approach to Collective Redress”.⁴⁶ In this answer Latvia is very reserved stating that due to the capacity of the courts and economic situation, it facilitates the development of the out-of-court mechanisms. However, firstly, we cannot really state that there is successful mechanism of out-of-court compensatory collective redress in Latvia. Secondly, there is no judicial collective redress available. It is also stated in the Latvia’s opinion that even though there is no special norms on collective redress provided in Civil

⁴³ Ruprecht-Karls-Universität Heidelberg Study JUST/2010/JCIV/CT/0027/A4 „Evaluation of contributions to the public consultation and hearing: Towards a Coherent European Approach to Collective Redress, 2011, p. 372. Available at http://ec.europa.eu/competition/consultations/2011_collective_redress/study_heidelberg_contributions_en.pdf.

⁴⁴ Latvijas iedzīvotāju zināšanas par savām patērētāja tiesībām un pieredze ar nekvalitatīvu vai nedrošu preču/pakalpojumu iegādi [Knowledge of the Latvian citizens on their consumer rights and experience with non-conforming goods/services]. Consumer Rights Protection Centre and SKDS, 2016, p.12. Available in Latvian http://www.ptac.gov.lv/sites/default/files/1.ataskaite_ptac_2016_003.pdf.

⁴⁵ The Consumer Rights Protection Centres decision in consumers’ collective violation case No. 10-pk, 21 February 2017.

⁴⁶ Latvijas viedoklis attiecībā uz Eiropas Komisijas paziņojumu “Ceļā uz visa Eiropas Savienībā vienotu pieeju kolektīvo prasījumu jautājumos”. Available: http://ec.europa.eu/competition/consultations/2011_collective_redress/latvian_authorities_lv.pdf

Procedure Law, still it is possible in Latvia to merge the claims or submit one claim against number of persons.⁴⁷ This is criticized as the general norms of the civil procedure are not favourable for the collective redress.⁴⁸ Both in individual and collective claims consumers are deter from going to court. Also the “courts’ capacity” excuse is not grounded. Thus the purpose of the recommendation – to facilitate access to justice and to obtain compensation in mass harm situations – is not foreseen in Latvia.

If Latvia more or less effectively introduced the legal mechanisms to stop illegal practices then the mechanism for the inured persons to obtain compensation and damages in mass harm situations is still not developed.

Recommendation indicates certain requirements as to the designated non-governmental representative entity; however, Latvia has not followed the Recommendation. According to the law, theoretically, the Consumer Rights Protection Associations has the right to submit the statement of claims to the court for protecting the interests and rights of consumers; however, practically, there are no special procedural mechanisms or support for the association to litigate. Furthermore, the Consumers Right Protection Centre is the central institution for the collective redress. It is state institution and the Centre has the right to offer the trader to sign the written commitment acknowledging the violation of the consumers’ rights or to initiate injunction procedure. Moreover, the Centre indicates the priority areas of supervision (included in the current year’s plan or taking into consideration the financial resources etc.) thus it might not indicate all violations of the collective interests. According to the law, the consumer associations and consumers can submit the application to the Centre to investigate the collective interest violation; however, the Centre has exclusive right to decide whether initiate the case or not. In addition, even, despite the unsuitable civil procedure, if the association would like to submit the statement of claim in the name of the consumers, according to the current law, the association shall acquire power of attorney from each of the members of the group but this is essential obstacle for effective collective redress.⁴⁹ By adopting such strict approach, Latvia has limited the initiative of the consumer groups and associations and they very much depend on the Centre.⁵⁰

There is no regulation regarding cross border cases, opt-in or opt-out, funding, fees thus in this regard the Recommendation is not addressed in the national legislation.

It is reported that the Consumer Rights Protection Centre and the Competition Council was in favour to introduce the opt-out collective redress in the courts, however the Ministry of Justice has denied this proposal.⁵¹ In this regard, it shall be mentioned that the Consumer Rights Protection Centre is under supervision of the Ministry of Economics, not the Ministry of Justice, may be therefore the consumer right protection is not the priority of the latter.

The Recommendations indicate that the member states should ensure that the collective redress procedures are fair, equitable, timely and no prohibitively expensive. This is not the case in Latvia.

d. Problems relating to access of justice/fairness of proceedings including

Lack of the collective redress procedure in the court directly affects the fairness of proceedings as the individual litigations are more time consuming and puts burden for the consumer.⁵² Now, to litigate the consumer disputes is very expensive thus there is limited number (or even none) of disputes where the statement of claim is submitted by the consumer against the trader in the courts of Latvia.

In its answer, Latvia also expressed the view that the right to represent the consumers in the collective redress shall be granted to the particular subject that has relevant competences and has no personal interest in the

⁴⁷ Ibid. p.5.

⁴⁸ Paupe E.Kolektīvās prasības un to problemātika Eiropas tiesību sistēmā: starptautisko privāttiesību aspekti [Collective actions and Problematic Issues in European law system: aspects of Private international law]. University of Latvia, Faculty of Law, Master Thesis, 2013, p.63.

⁴⁹ Paupe E.Kolektīvās prasības un to problemātika Eiropas tiesību sistēmā: starptautisko privāttiesību aspekti [Collective actions and Problematic Issues in European law system: aspects of Private international law]. University of Latvia, Faculty of Law, Master Thesis, 2013, p.13

⁵⁰ Ibid.p.65.

⁵¹ Ibid.p.64.

⁵² Ibid.

case, without the goal to gain popularity, new clients and the profits.⁵³ Basically, it is suggested that such redress hypothetically could be submitted by the publicly authorized organization; however, it is also criticized as such model would not facilitated the individual initiative of the consumer but instead the group of consumers will depend on the institution or organization.⁵⁴ In our view, the Consumer Rights Protection Centre has the relevant competences and also according with the current Law the Centre shall have the right to submit a statement of claim to a court (Article 25(6) of Consumer Rights Protection Law); however, there are no supporting rules in civil procedure law. Moreover, it is questionable whether the organizational and financial capacity of the Consumer Rights Protection Centre or the consumer associations allows litigation of collective claims.

- Restrictions on access to justice negatively affecting collective redress
- Time and burden of collective actions on courts and parties compared to non-collective litigation
- Risks of and examples for abusive litigation
- Effective right to obtain compensation
- See above.

⁵³ Latvijas viedoklis attiecībā uz Eiropas Komisijas paziņojumu “Ceļā uz visa Eiropas Savienībā vienotu pieeju kolektīvo prasījumu jautājumos”, p. 9. Available: http://ec.europa.eu/competition/consultations/2011_collective_redress/latvian_authorities_lv.pdf

⁵⁴ Paupe E. Kolektīvās prasības un to problemātika Eiropas tiesību sistēmā: starptautisko privāttiesību aspekti [Collective actions and Problematic Issues in European law system: aspects of Private international law]. University of Latvia, Faculty of Law, Master Thesis, 2013, p.65.

II. Information on Collective Redress

National Registry

Web page of the Consumer Rights Protection Centre – decisions in administrative cases and the data base of written commitments (www.ptac.gov.lv).

III. Case summaries

<p>Case name Written acknowledgment by SIA „IPF Digital Latvia“ dated 27.03.2017</p> <p>Reference</p> <p>Subject area Consumer crediting</p>	<p>Keywords Consumer crediting, limitation in damages, crediting agreement</p> <p>Summary of claims The non-bank creditor has charged the consumers „unpaid creditor’s damages“ and added those costs when the particular consumer case has been forwarded for the out-of-court debt collection.</p> <p>Findings The creditor acknowledged that such damages exceed the amounts that could be charged in accordance of the law.</p> <p>Outcomes The company shall pay to the consumers illegally charged amounts if the consumer requests so.</p>
<p>Dispute resolution method Written acknowledgment</p> <p>Court or tribunal Consumer Rights Protection Centre</p>	
<p>Cross-border character/ implications, if any</p>	
<p>Opt-in/out Opt-in</p>	
<p>Type of funding none</p>	
<p>Costs yes</p>	
<p>Abusive litigation no</p>	

<p>Case name CRPC decision in the SIA „VIA SMS“ case of consumers’ collective interest violation dated 21.02.2017</p> <p>Reference No. 8-pk</p> <p>Subject area consumer</p>	<p>Keywords Non-bank consumer crediting</p> <p>Summary of claims Unfair commercial practice as there was violation of law in calculation of the total costs of the credit. The non-bank creditor refused to sign the written commitment and disagree with CRPC’s interpretation of the law.</p> <p>Findings</p>
<p>Dispute resolution method Administrative case</p>	

Court or tribunal Appealed in Administrative court	<p>Total amount of the damages for the company's clients – appr.128'307,27 EUR</p> <p>Outcomes</p> <p>Administrative penalty in amount of 9'000,- EUR to be paid to state budget. No compensations for the consumers.</p>
Cross-border character/ implications, if any no	
Opt-in/out no	
Type of funding none	
Costs no	
Abusive litigation no	

<p>Case name CRPC decision in the SIA „Soho Group“ case of consumers' collective interest violation dated 21.02.2017</p> <p>Reference No. 11-pk</p> <p>Subject area consumer</p>	<p>Keywords Non-bank consumer crediting</p> <p>Summary of claims Unfair commercial practice as there was violation of law in calculation of the total costs of the credit. The non-bank creditor refused to sign the written commitment and disagree with CRPC's interpretation of the law.</p> <p>Findings</p> <p>Total amount of the damages for the company's clients – appr.370'591,73 EUR</p> <p>Outcomes</p> <p>Administrative penalty in amount of 25'000,- EUR to be paid to state budget. No compensations for the consumers.</p>
Dispute resolution method Administrative case	
Court or tribunal Appealed in Administrative court	
Cross-border character/ implications, if any no	
Opt-in/out no	
Type of funding none	
Costs no	
Abusive litigation no	

<p>Case name</p> <p>CRPC decision in the AS „4finance“ case of consumers' collective interest violation dated 21.02.2017</p> <p>Reference</p> <p>No. 10-pk</p> <p>Subject area</p> <p>consumer</p>	<p>Keywords</p> <p>Non-bank consumer crediting</p> <p>Summary of claims</p> <p>Unfair commercial practice as there was violation of law in calculation of the total costs of the credit. The non-bank creditor refused to sign the written commitment and disagree with CRPC's interpretation of the law.</p>
<p>Dispute resolution method</p> <p>Administrative case</p> <p>Court or tribunal</p> <p>Appealed in Administrative court</p>	<p>Findings</p> <p>Total amount of the damages for the company's clients – appr. 2'430'268,68 EUR</p>
<p>Cross-border character/ implications, if any</p> <p>no</p>	<p>Outcomes</p> <p>Administrative penalty in amount of 80'000,- EUR to be paid to state budget. No compensations for the consumers.</p>
<p>Opt-in/out</p> <p>no</p>	
<p>Type of funding</p> <p>none</p>	
<p>Costs</p> <p>no</p>	
<p>Abusive litigation</p> <p>no</p>	

<p>Case name</p> <p>Written commitment by SIA „E-Lats“ dated 27.10.2016</p> <p>Reference</p> <p>No.4/10</p> <p>Subject area</p> <p>consumer</p>	<p>Keywords</p> <p>Consumer crediting</p> <p>Summary of claims</p> <p>The company acknowledges that have charged its consumers higher costs for prolonging the repayment of the credits than provided in the law and undertakes to compensate the consumers upon their request.</p>
<p>Dispute resolution method</p> <p>Written commitment</p> <p>Court or tribunal</p>	<p>Findings</p>
<p>Cross-border character/ implications, if any</p>	<p>Outcomes</p> <p>Company undertake to change the charges as well as upon application of the consumers to compensate sums overpaid by the consumer.</p>

no	
Opt-in/out Kind of opt in	
Type of funding [none][third party funding?]	
Costs no	
Abusive litigation no	

<p>Case name CRPC decision in the SIA „MEDICOM ALLIANCE case of consumers’ collective interest violation dated 29.04.2016</p> <p>Reference No. 12-pk</p> <p>Subject area Unfair commercial practice Misleading advertising</p>	<p>Keywords Unfair commercial practice, misleading advertising</p> <p>Summary of claims Unfair commercial practice as there was violation of law in advertising food supplements</p> <p>Findings The Centre itself found that the trader has distributed around 20000 copies of misleading advertising thus the violation is fundamental.</p> <p>Outcomes Administrative penlaty in amount of 2617,- EUR (1,5% of the turnover of the company in 2014) to be paid to state budget. No compensations for the consumers.</p>
<p>Dispute resolution method Administrative case</p> <p>Court or tribunal</p>	
<p>Cross-border character/implications, if any no</p>	
<p>Opt-in/out no</p>	
<p>Type of funding none</p>	
<p>Costs no</p>	
<p>Abusive litigation no</p>	

Case name	Keywords
------------------	-----------------

<p>CRPC decision in the SIA „Vienotais norēķinu centrs“ case on temporary provisions regarding unfair commercial practice dated 04.04.2017</p> <p>Reference</p> <p>No. 3.3-7/2294/F-24</p> <p>Subject area</p> <p>Out-of-court debt collection</p>	<p>Out-of court debt collection</p> <p>Unfair commercial practice</p> <p>Summary of claims</p> <p>Findings</p> <p>The licensed out-of-court debt collector distributed information what is not in conjunction with the Out-of-court debt collection law and is considered as unfair commercial practice.</p>
<p>Dispute resolution method</p> <p>Court or tribunal</p>	<p>Outcomes</p> <p>Remedy: interim measure to stop the practice.</p>
<p>Cross-border character/ implications, if any</p>	
<p>Opt-in/out</p>	
<p>Type of funding</p> <p>no</p>	
<p>Costs</p> <p>no</p>	
<p>Abusive litigation</p> <p>no</p>	

Charles Clore House
17 Russell Square
London WC1B 5JP

T 020 7862 5151
F 020 7862 5152
E info@biicl.org

www.biicl.org

A company limited by guarantee
Registered in England No. 615025
Registered Charity No. 209425



**British Institute of
International and
Comparative Law**