



Delivering Access to Justice - Solutions of the Future

Collective Actions, Regulatory Redress,
and Consumer Ombudsmen

Prof. dr. Christopher Hodges
Oxford University

Prof. dr. Stefaan Voet
University of Leuven

Helsinki, 30 January 2018

1. Collective Actions
2. Alternatives (Regulatory Redress, Consumer Dispute Resolution, *Partie Civile* & Administrative Injury Schemes)
3. Empirical Evidence
4. Conclusions for Policy
5. Q&A

CIVIL JUSTICE SYSTEMS

Delivering Collective Redress

New Technologies

Christopher Hodges
Stefan Voigt

Hart • CH Beck • Nomos



UNIVERSITY OF
OXFORD

KU LEUVEN

Market Objectives

1. Identification of individual and systemic problems
2. Cessation of illegality
3. Decision on whether behaviour is illegal, unfair or acceptable
4. Identification of the root cause of why the problem occurs
5. Identification of what actions are needed to prevent the reoccurrence of the problematic behaviour, or reduction of the risk
6. Application of the actions (a) by identified actors (b) by other actors
7. Dissemination of information to all (a) firms (b) consumers (c) other markets
8. Redress
9. Sanctions
10. Ongoing monitoring, oversight, amendment

Which mechanisms deliver these objectives? And do it best?

Performance Indicators

- 1. Advice.** To what extent does the mechanism enable consumers to access advice before or during the processing of their complaint? To what extent also does the system provide advice to traders, especially small traders who may not be familiar with the law or dispute resolution options or processes, so as to achieve swift, cost-effective and fair resolutions?
- 2. Identification of infringement and harm.** How is it that a problem involving breach of law and/or damage has occurred is identified?
- 3. Identification of people harmed and due redress.** Must individuals come forward, or can they be identified without coming forward?
- 4. Access.** To what extent is the mechanism user-friendly for consumers or claimants to access?
- 5. Cost to access.** What cost must a person who claims to have suffered harm pay, and fund, in order to access the process? Or is access free?
- 6. Triage.** To what extent does the mechanism act as a triage to prevent unmeritorious cases or unnecessary cases proceeding further? This may include, at one extreme, preventing fraudulent claims being advanced and, at the other extreme, to swiftly resolving cases that should be resolved one way or the other?
- 7. Duration.** How long does the mechanism take from start to conclusion? How long does it take to resolve issues, from when they first arose (i.e. when damage occurred, before a claim was made) to final resolution?
- 8. Costs.** How much are the gross transactional costs of a collective procedure, and the standing costs of a process? Who bears the costs, both initially, and finally?
- 9. Outcomes.** What is achieved? Are the outcomes the ones desired by the parties, the law, or society?
- 10. Compensation for loss: making whole.** Is a person who has suffered harm fully recompensed? How much of an award is lost in transactional costs, e.g. of intermediaries? Are extra emotional or other costs incurred and recompensed?
- 11. Changes in Behaviour.** Does the mechanism directly produce changes in systemic behaviour that reduces the incidence or future risk of non-compliance with the law? To what extent does the mechanism, therefore, act as a regulatory mechanism?

1. Collective Actions

2. Alternatives (Regulatory Redress, Consumer Dispute Resolution, *Partie Civile* & Administrative Injury Schemes)

3. Empirical Evidence

4. Conclusions for Policy

5. Q&A



Robert H. Klonoff, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729 (2013)

Brian T. Fitzpatrick, *The End of Class Actions?*, 57 ARIZ. L. REV. 161 (2015)

Linda S. Mullenix, *Ending Class Actions As We Know Them: Rethinking the American Class Action*, 64 EMORY L.J. 399 (2014)

Richard Marcus, *Bending in the Breeze: American Class Actions in the Twenty-First Century*, 65 DEPAUL L. REV. 497 (2016)

John C Coffee Jr, *Entrepreneurial Litigation: Its Rise, Fall, and Future* (Harvard University Press, 2015)

Christopher Hodges, *US Class Actions: Theory and Reality* EUI Florence working paper 2015/36 (ERC ERPL 14) <http://hdl.handle.net/1814/36536>



“It is clear that resolving mass cases must be prioritized, and that possible obstacles in the law must be cleared out, even when they have their foundation in important principles. It is clear that there is dynamism in this part of the law.”

(Ton Hartlief, 2007)

- 2006 Leuven Report on Alternative Means of Consumer Redress
- EU Consumer Policy Strategy 2007-2013
- 2008 Green Paper on Consumer Collective Redress
- 2009 Consultation Paper for Discussion on the Follow-Up to the Green Paper
- 2010 Joint Information Note
- 2011 Public Consultation
- 2012 European Parliament Resolution Towards a Coherent European Approach to Collective Redress

No Action	ADR In Its Broadest Sense					Ordinary Court Action
	Direct	Indirect (Third Party)				
	Consensual Decision Process		Adjudicative Decision Process			
	Voluntary Proceedings			Involuntary Proceedings		
	Individual Action			Collective Action		
	Conciliation Pursued		Damages Pursued		Injunctive Relief	
	Direct Negotiation	Mediation / Arbitration		Small Claims Procedure	Collective Actions for Damages	

Recommendation 2013/396 of the European
Commission of 11 June 2013 on Common Principles
for Injunctive and Compensatory Collective Redress
Mechanisms in the Member States Concerning
Violations of Rights granted under Union Law
(2013 OJ (L 206) 60 (EU))

(evaluation in 2017/18)

Art 3 (a) Recommendation:

‘collective redress’ means:

- (i) a legal mechanism that ensures a possibility to claim cessation of illegal behaviour collectively by two or more natural or legal persons or by an entity entitled to bring a representative action (injunctive collective redress)
- (ii) a legal mechanism that ensures a possibility to claim compensation collectively by two or more natural or legal persons claiming to have been harmed in a mass harm situation or by an entity entitled to bring a representative action (compensatory collective redress)

- (European) transsubstantive (consumer protection, competition, environment protection, protection of personal data, financial services legislation and investor protection)
- injunctive and compensatory redress
- standing to associational or organizational plaintiffs or public bodies
- certification phase
- loser pays rule
- default: opt-in, but also opt-out (if duly justified by reasons of sound administration of justice (?))
- no contingency fees (unless regulated)
- no punitive damages
- TPLF (but regulated)

Safeguards in Collective Actions

<ul style="list-style-type: none"> • Stand-alone instead of follow-on • Opt-in instead of opt-out • Restriction of standing to certified personnel • Independent governance 	<ul style="list-style-type: none"> • Certification by Court • Certification criteria • Notice to class members • Judge not jury 	<ul style="list-style-type: none"> • Identify common issue(s) • Adequacy of representation • Superiority of the collective procedure • Prioritisation of other pathways • Evaluation of merits 	<ul style="list-style-type: none"> • Loser pays • No contingency fees or third party litigation funding • Identical damages • No punitive damages 	<ul style="list-style-type: none"> • Court approval of settlement • Court approval of lawyers' fees
---	---	---	---	---

R. Money-Kyrle and C. Hodges, 'Safeguards in Collective Actions' (2012) 19.4 *Maastricht Journal of International and Comparative Law* 477-504

- Recommendation: “in [all] areas where Union law grants rights to citizens and companies: consumer protection, competition, environment protection, protection of personal data, financial services legislation and investor protection”
- antitrust: 2014 Directive on Antitrust Damages Actions
- data protection: 2016 General Data Protection Regulation and Directive
- future?
 - 2009 Injunctions Directive: “injunction plus” (?)

Class actions:

Belgium, Bulgaria, Denmark, England and Wales, Finland, France, Israel, Italy, Lithuania, Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden

Group proceedings:

Austria, England and Wales, Germany, Switzerland

Each national model is different!

Role local legal culture!

“It is a core task of public enforcement to prevent and punish the violations of rights granted under Union law. The possibility for private persons to pursue claims based on violations of such rights supplements public enforcement.” (recital n° 6 EC Recommendation on collective redress)

“Compliance with the EU competition rules is thus ensured through the strong public enforcement of these rules by the Commission and the NCAs, in combination with private enforcement by national courts.” (Proposal for a Directive on Competition Damages, p. 2)

Dutch Collective Settlements Act: settlement-only class actions
Belgian consumer class action: mandatory negotiation phase

“The Member States should ensure that the parties to a dispute in a mass harm situation are encouraged to settle the dispute about compensation consensually or out-of-court, both at the pre-trial stage and during civil trial.” (Article 25 EC Recommendation on collective redress)

STANDING

“ideological plaintiff”:

- consumer associations, minority shareholder associations
- SPF (Netherlands)

public authorities:

- Denmark (Consumer Ombudsman)
- Consumer Mediation Service (Belgium), but only to negotiate a settlement

OPT IN – OPT OUT

opt in as default:

- EC Recommendation on collective redress
- Germany and France

but also opt out:

- if duly justified by reasons or sound administration of justice (EC Recommendation on collective redress)
- Belgium
- Netherlands (Dexia case)
- UK competition damages

FUNDING & FINANCING

- full financial disclosure
- loser pays principle
- in principle, no contingency fees, but exceptions possible if regulated
- TPLF (softly regulated by EC Recommendation on collective redress)

1. Collective Actions
2. Alternatives (Regulatory Redress, Consumer Dispute Resolution, *Partie Civile* & Administrative Injury Schemes)
3. Empirical Evidence
4. Conclusions for Policy
5. Q&A

Regulatory Redress

Background

- public vs private enforcement
- traditional private law has become public law, and public law has been privatized
- “multilayered framework of regulation, lawmaking and law application”

Regulatory Redress

Technique

- regulatory redress: redress ordered or brought about by the intervention of public enforcers
- one integrated process
- power to effect redress amongst the enforcement toolbox
- regulators viewing redress as a key objective
- in practice: negotiated solutions
- safeguards to protect the independence of the public enforcement agencies

CIVIL JUSTICE SYSTEMS

Law and Corporate Behaviour

Integrating Theories of Regulation, Enforcement, Compliance and Ethics

Christopher Hodges

Hart · CH Beck · Nomos



Department
for Business
Innovation & Skills

Better
Regulation
Delivery Office

Ethical Business Regulation: Understanding the Evidence

Christopher Hodges
Professor of Justice Systems, and Fellow of Wolfson College,
University of Oxford

February 2016

CIVIL JUSTICE SYSTEMS

ETHICAL BUSINESS PRACTICE AND REGULATION

A Behavioural and Values-Based Approach
to Compliance and Enforcement

Christopher Hodges & Ruth Steinholtz



Hart · CH Beck · Nomos



UNIVERSITY OF
OXFORD

KU LEUVEN

CDR / Ombudsmen

Background

- ADR: alternative dispute resolution
- mediation
- arbitration
- conciliation
- court-connected and not court-connected
- ODR: online dispute resolution

CDR / Ombudsmen

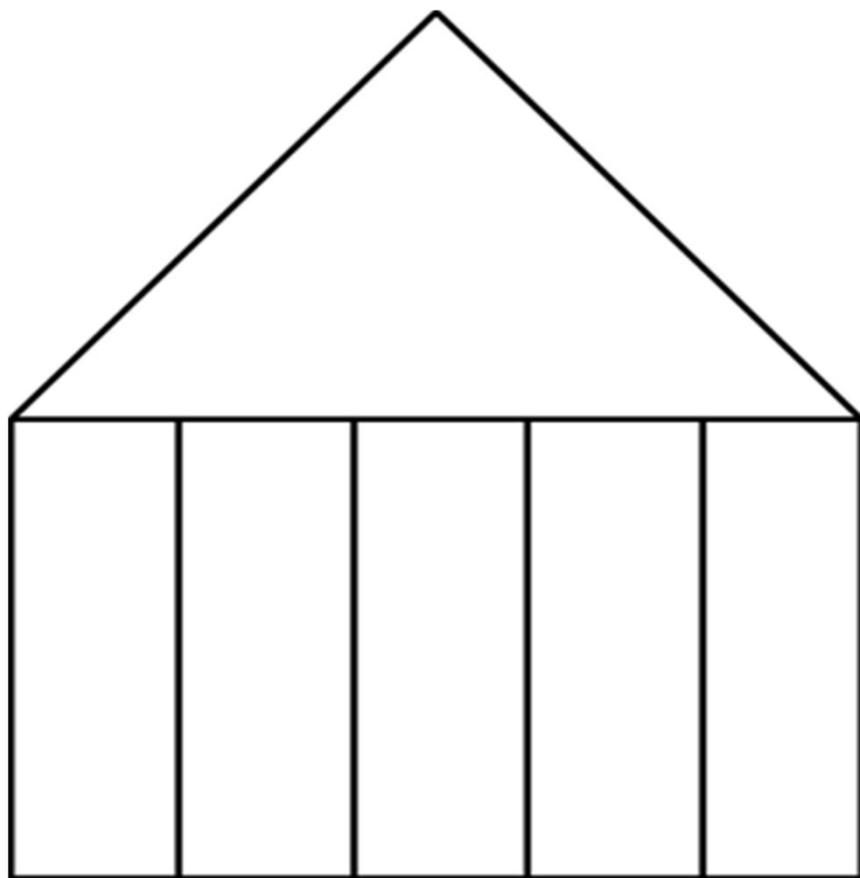
Technique

- CDR: consumer dispute resolution
- CDR \neq ADR – CDR uses the traditional ADR techniques but within the context of a dispute resolution structure that is entirely separate from the courts
- broader panoply: arbitration, complaint functions within public regulatory authorities, private sector ombudsmen, statutory ombudsmen, etc
- European legislation: 2013 ADR Directive and ODR Regulation
- (single) consumer ombudsmen scheme

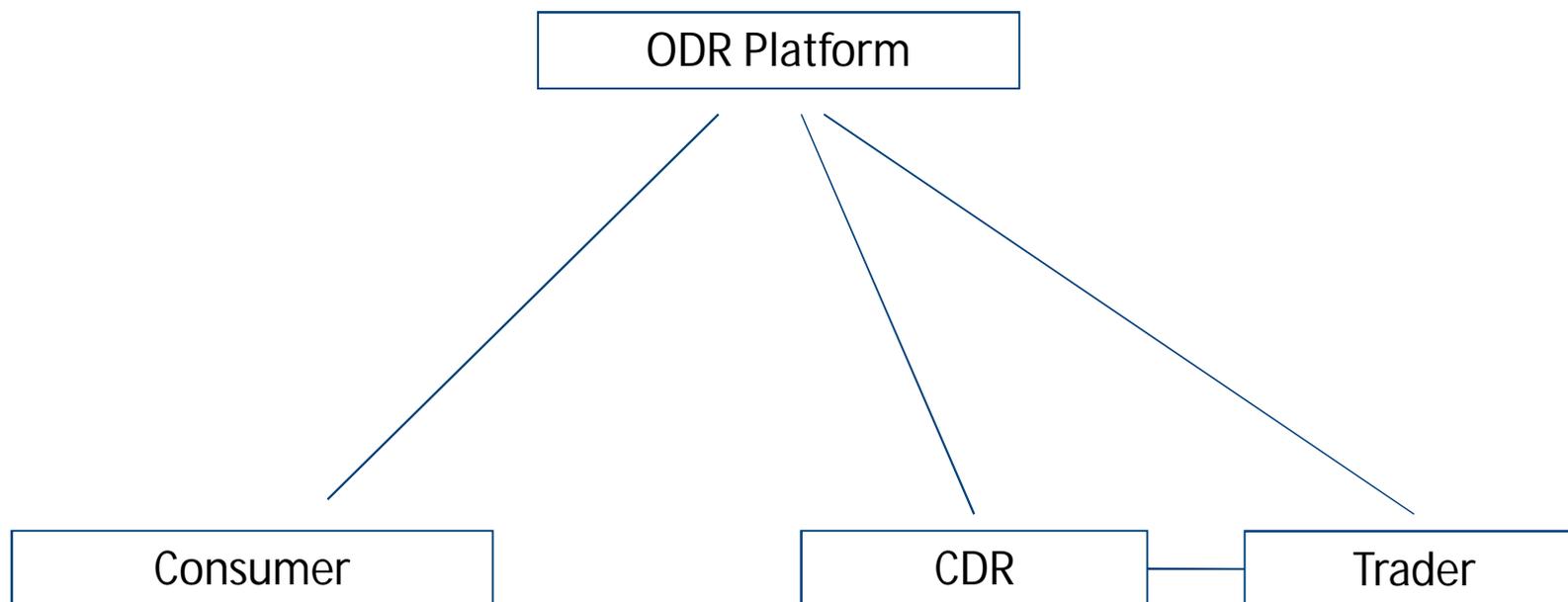
CDR / Ombudsmen

Typology

- consumer information and advice/triage
- dispute resolution: individual and collective
- capture and aggregation of data
- feedback of information
 - identification of issues and trends
 - publication
- pressure on market behaviour (Art 17 ADR Directive)



Architecture of Cross-Border Intra-EU Consumer ADR



CIVIL JUSTICE SYSTEMS

Consumer ADR in Europe

Civil Justice Systems

Christopher Hodges
Iris Benöhr and
Naomi Creutzfeldt-Banda

C.H. Beck - Hart - Nomos



UNIVERSITY OF
OXFORD

KU LEUVEN

Collaboration between Ombudsmen and Regulator

1. Ombudsman identifies a number of similar claims – a trend;
applies a consistent approach to resolution
2. Ombudsman publishes information on complaints activity
3. Reactions:
 1. Traders: ability to correct
 2. Consumers: buying choices, switching
 3. Competitors: market response
 4. Media/market comment: reputation
 5. Regulators: appropriate scrutiny and action
4. Regulator discussion with companies:
 1. Power to make trader review records and pay redress, with claims over to the ombudsman
 2. Power to impose redress scheme
 3. Oversight of voluntary/scheme redress: enforced
 4. Consumers may go spontaneously to ombudsman

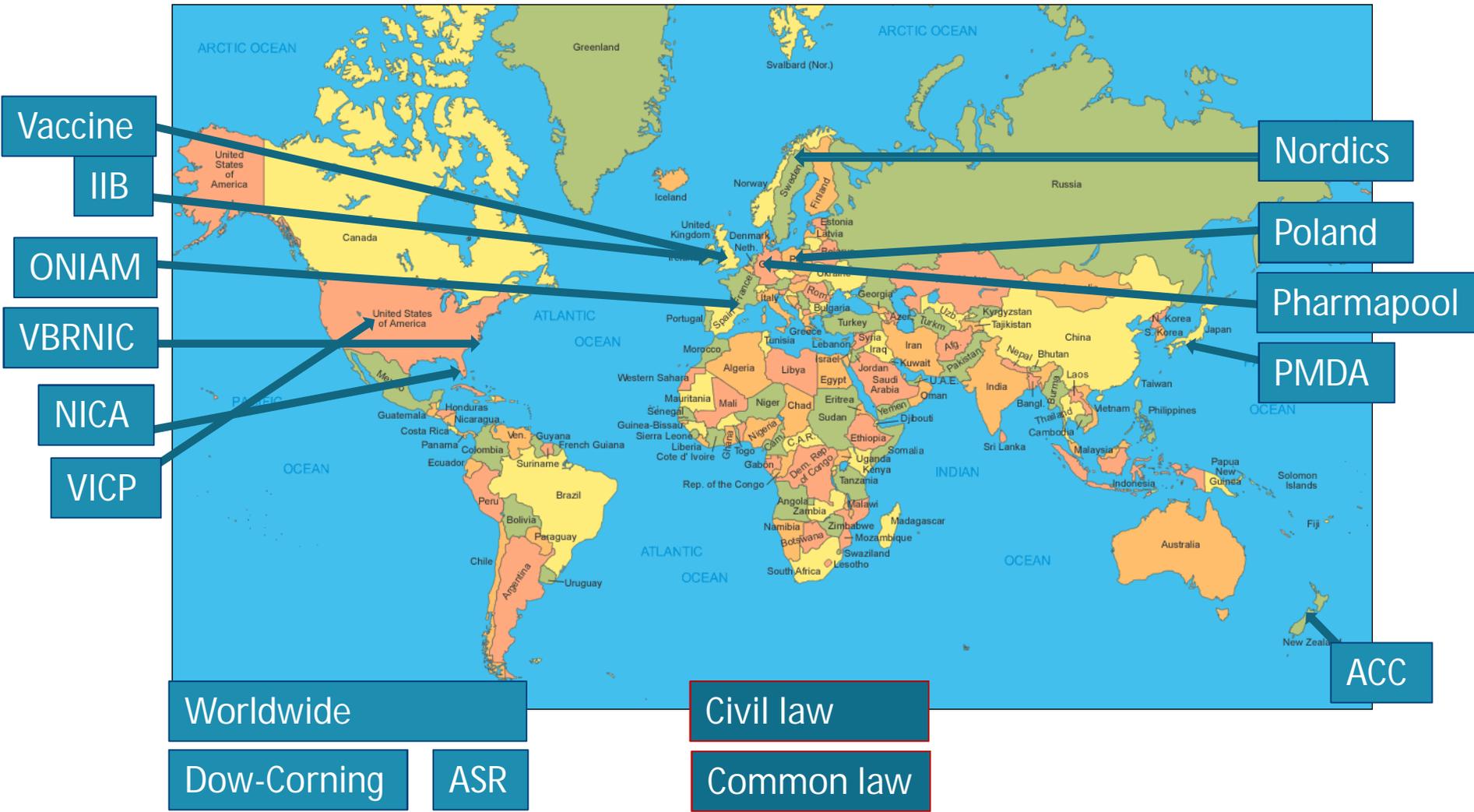
- public enforcement, criminal trial initiated by Public Prosecutor
- victim who wants redress / damages:
 - no formal party to the criminal proceedings (only a witness) (eg, in the US)
 - party to the criminal proceedings if allowed by judge (eg, Germany & the Netherlands)
 - in Belgium & France: formal party to the criminal proceedings
- initiating civil claim before criminal judge
- piggybacking on the (evidence brought forward by the) Public Prosecutor



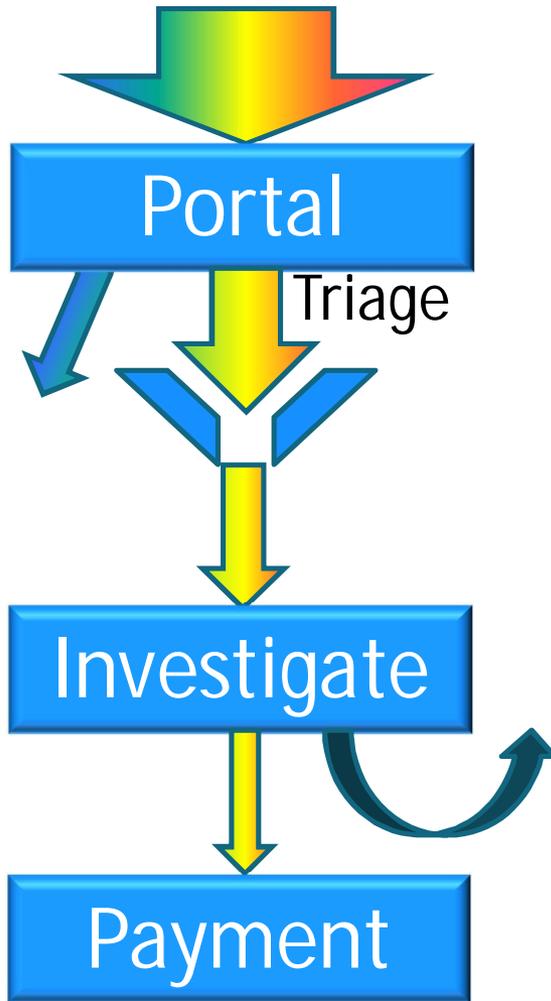
Personal Injury Compensation Schemes

- New Zealand Accident Compensation Scheme
- Swedish Road Traffic Injuries Commission
- Swedish Patient Compensation
- Swedish Drug Insurance
- Danish Industrial Injuries Board
- Danish Road Traffic Injuries Commission
- Danish Patient Compensation
- Danish Drug Compensation
- Finnish Workers Compensation
- Finnish Motor Vehicle Insurance Commission
- Finnish Patient Insurance
- Finnish Drug Insurance
- Norwegian Patient & Drug Compensation
- Norwegian Workplace Insurance
- *L' Office National d'Indemnisation des Accidents Médicaux, des affections iatrogènes et des infections nosocomiaux (ONIAM)*
- Polish No-Fault Medical Liability Scheme
- German Pharmapool
- German medical Schlichtungsstellen
- Irish Personal Injuries Assessment Board
- Japanese Pharmaceutical Injury Compensation Scheme
- U.S. no fault motor vehicle injuries schemes: Florida, North Dakota, Colorado
- Vaccine Injury Compensation Schemes: eg UK, USA, Ebola,
- The Industrial Injuries Disablement Benefit (IIDB)
- The Armed Forces and Reserve Forces Compensation Scheme
- The Criminal Injuries Compensation Scheme
- The Mesothelioma Compulsory Insurance Fund and Compensation Scheme
- The Coal Workers Pneumoconiosis Scheme 1974
- The Coal Health Compensation Schemes
- The Thalidomide Trust
- The Skipton Fund for Hepatitis C and HIV
- The vCJD Trusts
- *The ABPI Guidelines for Compensation in Clinical Trials and Healthy Volunteers*
- The ABHI Clinical Investigation Compensation Guidelines
- The General Dental Council's dental Complaints Service
- The NHS Injury Costs Recovery (ICR) scheme
- NHS Complaints
- The Parliamentary and Health Service Ombudsman
- NHS Redress Act 2006
- ICI Eraldin
- Dow Corning breast implant scheme
- Trilucent breast implant scheme
- J&J ASR hip reimbursement programme

Where – Worldwide Schemes



How do schemes work?



- Front End – portal for complainants to make claims (can include triage & advisory function)
- Gating – to determine claim eligibility
- Investigation – to determine the validity of potentially eligible claims
- (Feedback element)
- Back End – financial provision for paying the claims

CIVIL JUSTICE SYSTEMS

Redress Schemes for Personal Injuries

Sonia Macleod
Christopher Hodges

CH Beck - Hart - Nomo



UNIVERSITY OF
OXFORD

KU LEUVEN

1. Collective Actions
2. Alternatives (Regulatory Redress, Consumer Dispute Resolution, *Partie Civile* & Administrative Injury Schemes)
3. Empirical Evidence
4. Conclusions for Policy
5. Q&A

Jurisdiction	Year of introduction	Act	Number of cases
Portugal	1995	Law 83/95 of August 31, 1995 on the right to take part in administrative proceedings and the right of popular action	179 filed (2007 – 2015) 29 pending in 2015
Lithuania	2002	2015 Amendments to the Code of Civil Procedure (introduction of group legal actions)	- 3 dismissed - 2 pending (January 2015 – August 2017)
Sweden	2003	2003 Group Proceedings Act	30-50 (2003 – 2017)
the Netherlands	2005	2005 Dutch Collective Settlement Act	9 (2005 – November 2017)
Finland	2007	2007 Class Action Act	0
Denmark	2008	Chapter 23a (§254a-254k) Administration of Justice Act	- 66 decided cases before the district courts - 3 decided cases before the courts of appeal (2008 – 2016)
Italy	2010	2009 Law no. 99 – Article 140bis Italian Consumer Code	50-100 (January 2010 – November 2016)
Poland	2010	Class Actions Act of 17 December 2009	227+7 (2010 – 2017)

Jurisdiction	Year of introduction	Act	Number of cases
Belgium	2014	2014 Act Introducing a Consumer Collective Redress Action in the Code of Economic Law	<ul style="list-style-type: none"> - 1 settled - 1 withdrawn - 3 pending (September 2014 – November 2017)
France	2014	Articles L.623-1 et seq. and R.623-1 et seq. of the French Consumer Code (Code de la Consommation) and the similar procedures in health, discrimination, environment, privacy and data protection law	<ul style="list-style-type: none"> - 2 settled - 9 pending - 1 pending in appeal (October 2014 – November 2017)
England & Wales	2015	2015 Consumer Rights Act (Competition Class Action)	<ul style="list-style-type: none"> - 1 dismissed - 1 withdrawn (2015 – August 2017)

Defendant	Nature	Number of class members	Opt-in or opt-out	Status
Thomas Cook Airlines Belgium	Delayed airplane	183	Test-Achats asked for opt-out; the court imposed opt-in	Finished (certification decision on April 4, 2016 and final judgment (settlement) in July 2017)
Proximus (telecom company)	Misleading information about digital decoders (for watching digital TV)	<u>±</u> 30.000 potential class members	Test-Achats asked for opt-out; the court imposed opt-out	Pending (certification decision on April 4, 2017; Proximus appealed)
Volkswagen & d'leteren (Belgian Volkswagen distributor)	Emissions-cheating software	<u>±</u> 11.000 people registered, but <u>±</u> 400.000 cars are involved	Test-Achats asks for opt-out	Pending (certification hearing on October 30-31, 2017)
Various websites reselling concert tickets	Illegal reselling of concert tickets	2.650 people registered	Test-Achats asks for opt-out	Pending (introductory hearing on September 4, 2017)
Belgian Rail	Compensation for delayed trains (during strikes)	44.000 people registered		Case was withdrawn (most passengers were compensated and there was an agreement between Test-Achats and Belgian Rail allowing Test-Achats to help improve the existing compensation system)

Case	Year	Nature	Number of class members	Funding	Settlement	Fee for association
Des	2006 2014	Product liability	N/A (17.000 registered)	Subsidies & donations	€ 38 mil	N/A
Dexia	2007	Financial product	300.000 (25.000 opt-outs)	€ 45 Contribution per class member	€ 1 bil	N/A paid by Dexia
Vie d'Or	2009	Financial product	11.000	Funding by regulator	€ 45 mil	€ 8,5 mil (max) paid by regulator
Shell	2009	Securities	500.000	Funding by Shell	\$ 448 mil	\$ 12 mil (association) \$ 47 mil (U.S. lawyers)
Vedior	2009	Securities	2.000	Contributions	€ 4 mil	€ 212.000 (maximum)
Converium	2012	Securities	12.000	Funding by defendants	\$ 58 mil	€ 1,6 mil \$ 11,6 mil (U.S. lawyers)
DSB Bank	2014	Financial product	345.000 (300 opt-outs)	Funding by DSB Bank	€ 500 mil maximum	N/A paid by DSB Bank



Case	Year	Nature	Number of class members	Funding	Settlement	Fee for association
Des	2006 2014	Product liability	N/A (17.000 registered)	Subsidies & donations	€ 38 mil	N/A
Dexia	2007	Financial product	300.000 (25.000 opt-outs)	€ 45 Contribution per class member	€ 1 bil	N/A paid by Dexia
Vie d'Or	2009	Financial product	11.000	Funding by regulator	€ 45 mil	€ 8,5 mil (max) paid by regulator
Shell	2009	Securities	500.000	Funding by Shell	\$ 448 mil	\$ 12 mil (association) \$ 47 mil (U.S. lawyers)
Vedior	2009	Securities	2.000	Contributions	€ 4 mil	€ 212.000 (maximum)
Converium	2012	Securities	12.000	Funding by defendants	\$ 58 mil	€ 1,0 mil \$ 11,6 mil (U.S. lawyers)
DSB Bank	2014	Financial product	345.000 (300 opt-outs)	Funding by DSB Bank	€ 500 mil maximum	N/A paid by DSB Bank

- procedural design flaws (not an effective/efficient instrument, but a “(political) compromise”); eg.:
 - certification hurdles
 - appeal procedures / long duration
 - irrevocable opt-in or opt-out
 - distribution of damages
- safeguards – catch 22-situation
- lack of appropriate funding and financing
- good outcomes? is redress being offered?

Regulatory Redress

Denmark

- Consumer Ombudsman: unique opt-out class action since 2008 and antitrust 2010; no action yet brought, but the power constantly influences discussions and resolution of cases

UK

- Macrory, *Regulatory Justice: Making Sanctions Effective* (HM Treasury, 2006)
→ Enforcement and Sanctions Act 2008
- Redress powers:
 - Financial Services and Markets Act 2000, s404 [consumer redress scheme] and s404F(7) [single firm scheme]
 - Energy Act 2013
 - Competition: CRA 2015: CMA power to approve a scheme
- Redress through licence conditions: water, gambling...
- Consumer: Consumer Rights Act 2015: *Enhanced Consumer Measures*

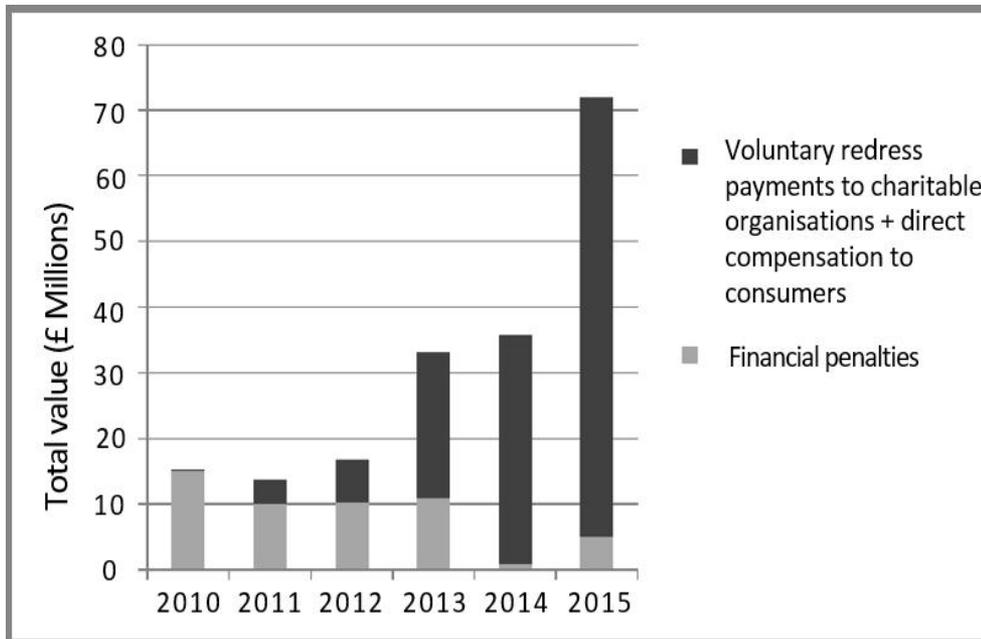
EU

- DG COMP in Deutsche Bahn case
- Financial services: cases by Central Banks in Ireland, Italy
- Energy: cases by Italian regulator
- EU harmonisation of consumer enforcement policy and powers: 2017 revision of CPC Regulation

NB Change in enforcement policy from deterrence to achieving outcomes through support:
Better Regulation



BANCA D'ITALIA



(Ofgem)

(UK Office of Gas and Electricity Markets)

Consumer Protection Enforcement Policy

Consumer Rights Act 2015

Civil Enhanced Consumer Measures available to enforcers:

- Enforcement Orders; Undertakings
- Toolbox approach with traditional criminal measures

Objectives

- Deliver redress
- Improve compliance
- Increased information to consumers to enable exercise choice

Flexibility but Requirements:

- Measures must be just, reasonable and proportionate

Enforcers: Competition and Markets Authority, Trading Standards Services in Great Britain, Department for Enterprise, Trade and Investment in Northern Ireland, Civil Aviation Authority, the Northern Ireland Authority for Utility Regulation, Ofcom, Ofwat, Ofgem, Phonepay Plus, The Information Commissioner, Office of Rail Regulation, the Financial Conduct Authority, community enforcers under the Injunctions Directive, Secretary of State for Health, Department of Health, Social Services and Public Safety in Northern Ireland.

C Hodges, 'Mass Collective Redress: Consumer ADR and Regulatory Redress' [2015] 23(5) *European Review of Private Law* 829; See *Enhanced Consumer Measures. Guidance for enforcers of consumer law* (Department for Business Innovation & Skills, 2015)

OFGEM secures £1.7 million for consumers following E.ON error

BT must pay nearly £100m to rivals after overcharging

BT FACES
£94M IN
REPAYMENTS
FOR
OVERCHARGING

OFFICE OF THE GAS AND ELECTRICITY
MARKETS (OFGEM) RESTORATIVE JUSTICE
POWERS IN ACTION—SECURING PAYBACK
OF AROUND £1.4 MILLION GBP FROM E.ON

**Barclays refunds
300,000**

customers after blunder

*Npower pays £3.5m
Ofgem penalty out to customers*

**E.ON forced to hand back
£1.7m after overcharging**

BT forced to refund
rivals £100m for
overcharging

total number of treated cases	7.105
total number of cases for which the Consumer Mediation Service was competent	4.342
total number of cases for which the Consumer Mediation Service was not competent	2.763
total number of cases that were referred to another competent entity	2.374
total number of cases that could not be transferred to another competent entity (eg, for non C2C cases)	389

settlement	1.307 (50%)
complaint stopped	342 (13%)
recommendation	956 (37%)

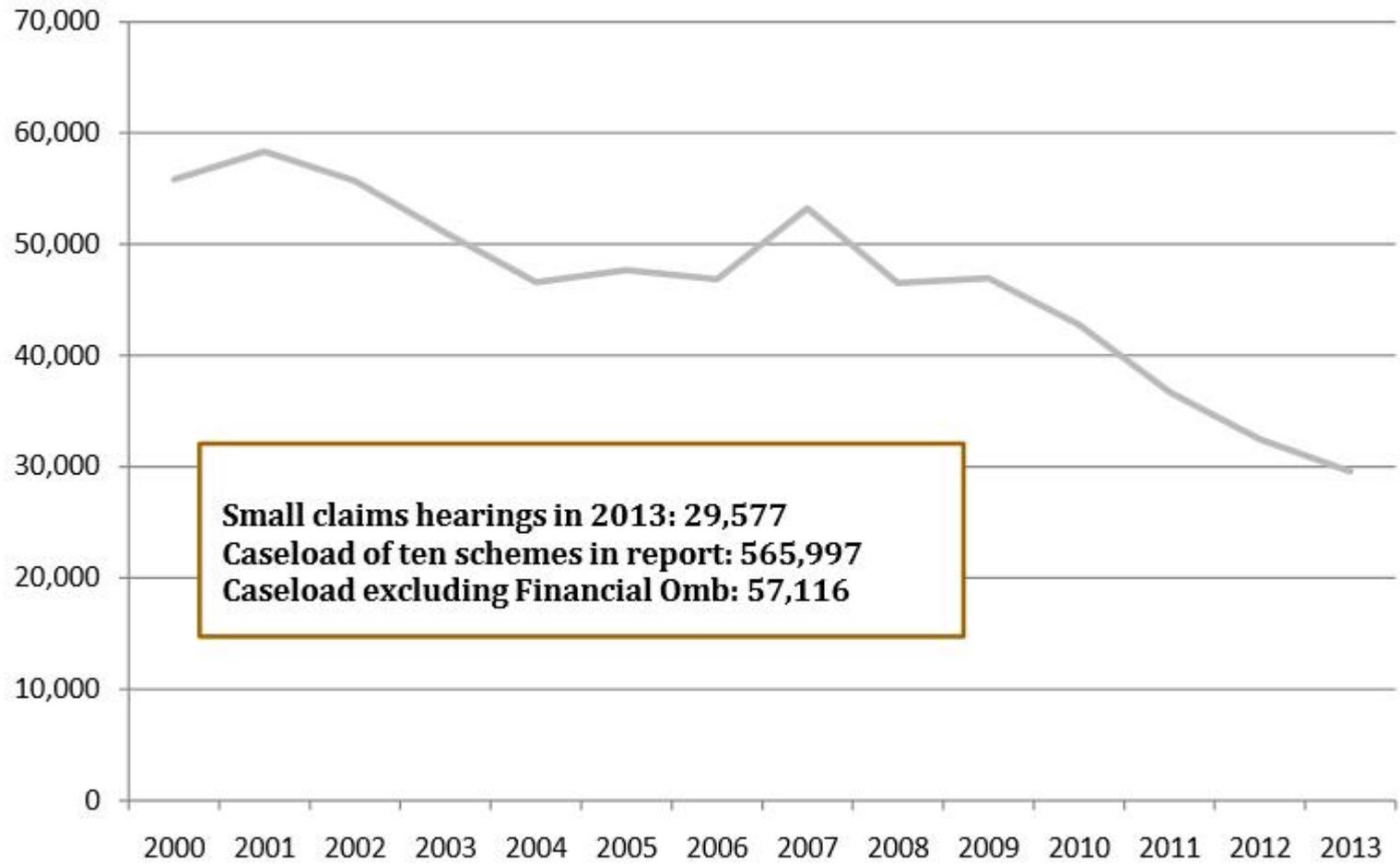
Recommendation followed	Recommendation partially followed	Recommendation not followed	No answer
14,4%	3,6%	20,2%	61,8%
138	34	193	591

Financial Ombudsman Service

	Initial enquiries & complaints	New cases	Cases resolved informally by adjudicators	Cases resolved by ombudsmen
2015/16	1,631,955	340,899	398,930	39,872
2014/15	1,786,973	329,509	405,202	43,185
2013/14	2,357,374	512,167	487,749	31,029
2012/13	2,161,439	508,881	198,897	24,332
2011/12	1,268,798	264,375	201,793	20,540
2010/11	1,012,371	206,121	147,434	17,465
2009/10	925,095	163,012	155,591	10,730
2008/09	789,877	127,471	105,275	8,674
2007/08	794,648	123,089	91,739	7,960
2006/07	627,814	94,392	104,831	6,842
2005/06	672,973			
2005	614,148			
2004	562,340			
2003	562,340			



Small claims hearings, 2000-2013



1. Collective Actions
2. Alternatives (Regulatory Redress, Consumer Dispute Resolution, *Partie Civile* & Administrative Injury Schemes)
3. Empirical Evidence
4. Conclusions for Policy
5. Q&A

Market Objectives

1. Identification of individual and systemic problems
2. Cessation of illegality
3. Decision on whether behaviour is illegal, unfair or acceptable
4. Identification of the root cause of why the problem occurs
5. Identification of what actions are needed to prevent the reoccurrence of the problematic behaviour, or reduction of the risk
6. Application of the actions (a) by identified actors (b) by other actors
7. Dissemination of information to all (a) firms (b) consumers (c) other markets
8. Redress
9. Sanctions
10. Ongoing monitoring, oversight, amendment

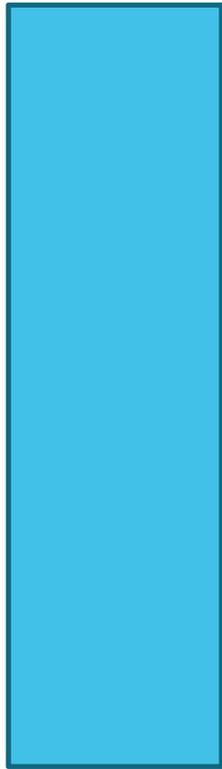
Which mechanisms deliver these objectives? And do it best?

Performance Indicators

- 1. Advice.** To what extent does the mechanism enable consumers to access advice before or during the processing of their complaint? To what extent also does the system provide advice to traders, especially small traders who may not be familiar with the law or dispute resolution options or processes, so as to achieve swift, cost-effective and fair resolutions?
- 2. Identification of infringement and harm.** How is it that a problem involving breach of law and/or damage has occurred is identified?
- 3. Identification of people harmed and due redress.** Must individuals come forward, or can they be identified without coming forward?
- 4. Access.** To what extent is the mechanism user-friendly for consumers or claimants to access?
- 5. Cost to access.** What cost must a person who claims to have suffered harm pay, and fund, in order to access the process? Or is access free?
- 6. Triage.** To what extent does the mechanism act as a triage to prevent unmeritorious cases or unnecessary cases proceeding further? This may include, at one extreme, preventing fraudulent claims being advanced and, at the other extreme, to swiftly resolving cases that should be resolved one way or the other?
- 7. Duration.** How long does the mechanism take from start to conclusion? How long does it take to resolve issues, from when they first arose (i.e. when damage occurred, before a claim was made) to final resolution?
- 8. Costs.** How much are the gross transactional costs of a collective procedure, and the standing costs of a process? Who bears the costs, both initially, and finally?
- 9. Outcomes.** What is achieved? Are the outcomes the ones desired by the parties, the law, or society?
- 10. Compensation for loss: making whole.** Is a person who has suffered harm fully recompensed? How much of an award is lost in transactional costs, e.g. of intermediaries? Are extra emotional or other costs incurred and recompensed?
- 11. Changes in Behaviour.** Does the mechanism directly produce changes in systemic behaviour that reduces the incidence or future risk of non-compliance with the law? To what extent does the mechanism, therefore, act as a regulatory mechanism?

Mechanism	Collective Action	Piggy-back	Regulatory Redress	Simple ADR	Consumer Ombudsman
1. Advice	2	1	1	0	3
2. Identification of infringement	0	0	1	0	3
3. Identification of people harmed	2	0	2	0	2
4. Access	2	3	3	2	3
5. Cost to access	1	3	3	2	3
6. Triage	1	0	0	0	3
7. Duration	1	2	3	-	3
8. Costs	1	2	3	-	2
9. Outcomes	3	3	3	-	3
10. Compensation	2	3	3	-	3
11. Behaviour change	1	1	3	0	3
Total	16	18	25	4	31

Evolution in Pillars of Enforcement



Public
Regulation



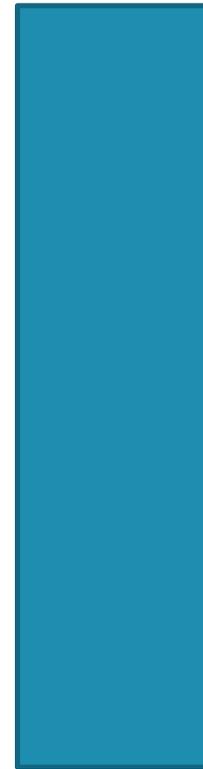
Co-
regulation



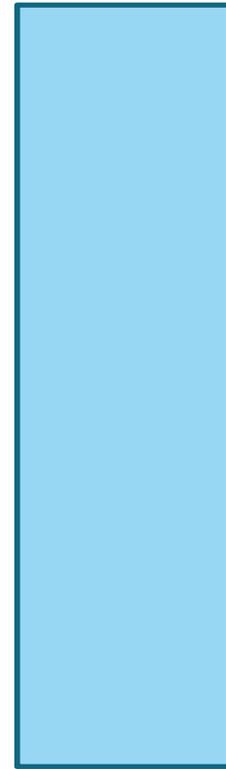
Self-
regulation



Consumer
Ombudsmen



ADR



Private
Litigation

1. Collective Actions
2. Alternatives (Regulatory Redress, Consumer Dispute Resolution, *Partie Civile* & Administrative Injury Schemes)
3. Empirical Evidence
4. Conclusions for Policy
5. Q&A