

Class Action in the European Union

UNDP/EU Consumer Society and Citizen Networks

Background and Disclaimer

The present report has been commissioned by the UNDP/EU – Consumer Society and Citizen Networks’ Project in October/November 2007. The Report covers the current situation with class action in EU with special emphasis on recent developments in EU Member States and on the pan European level in general. Two countries have been studied in detail – the Netherlands and Sweden – primarily because changes recently have taken place in these countries and that class action has had a relatively large impact on consumer protection in these two countries. The report also includes recommendations for Ukraine. The recommendations were developed by an international consultant – Per Larsson – and a Ukrainian consultant - Maksim Oleksandrovich Frolov. The international consultant is responsible for all other parts of the report. Class action should be understood in the context of this report as collective actions in general and not only as the legal institute in common law countries.

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Recommendations for Ukraine

Impact evaluation of the Ukrainian consumer law

The law on consumer rights protection from 1991 introduced representative actions for injunctions in Ukraine. According to Article 25 paragraph 9, consumer associations have the right to represent a non-defined group of individuals to stop an unlawful action. A court judgment from such a representative action is to be considered as binding for any court that later considers other civil claims pertaining to the same issue. The statute leaves a wide room for court interpretation on the procedural rules of so-called claims for a non-defined group of individuals. Especially questions on how the group is determined.

There is some case law pertaining to Article 25. In one case from the Supreme Court, the court rejected a claim because the plaintiff – a consumer association - could not present powers of attorney from the group members which were to be represented. This court decision indicates that the interpretation of Article 25 is that group members have to opt-in to be part of the action.

Still there is no comprehensive study of how Article 25 has been interpreted by Ukrainian courts. It is recommended that such a study will be carried out in Ukraine. The study could include a list and summaries of cases from all levels of the judiciary as well as interviews with parties and a summary of their experiences.

Knowledge building on EU-developments / study tour to EU Member State(s)

As evident from this report, half of the EU Member States have introduced some form of class action for damages. And more countries are in the process of developing legislation. All Member States have introduced representative actions for injunctions along the Injunctions Directive and the European Commission is proposing to introduce collective redress for cross-border claims. There is high profile case law from several Member States where mass tort class action claims have resulted in judgements or settlements awarding injured consumers with million euro damages.

These developments are highly relevant for Ukraine and knowledge about the developments should be built in Ukraine; especially in light of the EU-integration and WTO-membership aspirations of Ukraine. It is recommended that a nuclear of knowledgeable Ukrainian experts are identified and trained. These experts could be invited to one or several study visits to EU Member States and also take part in class action related meetings in EU. Especially since the European Commission currently discusses collective redress (see for example the Leuven brainstorming meeting in June 2007 and the Portuguese Presidency's conference on collective redress in November 2007). More meetings are expected on collective redress in EU. The present report and other knowledge material should also be distributed to a wider circle of stakeholders.

Training of consumer associations and lawyers

As mentioned above there are legal provisions already in Ukraine that allow consumer associations to bring class action like claims to court. But there is little available knowledge and guidelines for consumer associations on procedural questions. It is therefore

recommended that trainings are provided to consumer associations and consumer rights lawyers on class action and other mechanisms to protect collective consumer interests.

The trainings could include the basics of class action litigation from experience in EU and the US, a presentation of the legal situation in EU and Ukraine and guidelines for class action litigation in Ukraine and also case studies.

Alternative means to protect collective interests

Class action is not always the best litigation form to protect collective consumer rights. Alternative forms of litigation are test cases, declaratory judgement and joinders.¹ The plaintiff, and later the court, should always carefully study the claims from the perspective of numerosity, commonality, typicality and representation and select the most suitable litigation form.

Ukraine already has some alternative forms to protect collective interests. First of all claims can be joined according to Article 146 of the Civil Procedure Code. The institute of joinders could be further promoted to protect collective consumer interests. Also, Ukraine has inherited the Soviet procuratura-institution where the prosecutor protects the “public interest”. Of course the public interest in the Soviet times coincided with the state or the party’s interest and did not always reflect the interest of the citizenry. A question is thus how – if at all - can the legal institute of the prosecutors representing the public interest be used to protect consumers’ collective interests.

It is recommended that alternative means to protect collective interests also are studied and presented to consumer associations and lawyers.

Creation of working group and green paper

The legislative basis for class action in Ukraine is weak. At the same time, EU Member States, and also the Russia Federation, are developing the institute. Several important aspects of class action in Ukraine needs to be further elaborated; as for example the scope of applicability, legal standing, composition of the class, procedural rules, appeal, distribution of legal costs etc.

It is recommended that a working group is considered to be formed. The working group’s purpose could be to draft a green paper on class action in Ukraine. The participants could be government officials, court officials, legal scholars and consumer association representatives.

Guidelines and knowledge for courts and judges

¹ In case law, a test case is a legal action whose purpose is to set a precedent. An example of a test case might be a legal entity that files a lawsuit in order to see if the court considers a certain law or a certain legal precedent applicable in specific circumstances. This is useful, for example, in order to later file similar lawsuits in similar circumstances.

A declaratory judgement is a judgment of a court which determines the rights of parties without ordering anything be done or awarding damages. Examples: a party to a contract may seek the legal interpretation of a contract to determine the parties' rights, or a corporation may ask a court to decide whether a new tax is truly applicable to that business before it pays it.

A joinder is the joining together of several lawsuits or several parties all in one lawsuit, provided that the legal issues and the factual situation are the same for all plaintiffs and defendants.

In the wait of new and more elaborative legislation on class action there should be knowledge building and guidelines for courts. These guidelines should present applicable law, case law and best practices from other countries with more developed class action procedures. Judges could also be invited to trainings on representative actions.

Wider study of public interest litigation / strategic litigation

Outside the scope of this report is public interest litigation and strategic litigation in a wider perspective. “Public interest litigation refers to the practice of lawyers [...] seeking to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws, and articulate public norms.”²

There are practices of strategic litigation in human rights and environmental issues in Ukraine. The field could be further explored by UNDP outside the scope of this project as it has proven in the Eastern European region to be an effective means to bridge the gap between “law on the books” and “law in practice”, extend public participation, encourage grassroots empowerment, foster government accountability and enforce human rights.³

University/students

To foster more representative action in Ukraine, students at law faculties in Ukraine could be encouraged to write dissertations or other academic papers on class action. The international consultant who drafted this report gave a lecture at the National University in October 2007 and the interest was relatively large. Several students declared afterwards that they would like to write dissertations/papers on class action. Lectures on class action could further be given at various Ukrainian universities by participants in the UNDP / EC – Consumer Society and Citizen Networks’ Project more regularly.

² Definition of Professor Abram Chayes, Harvard Law School. Public interest litigation emerged in the US with the ruling *Brown v. Board of Education* in 1954, in which the US Supreme Court declared unconstitutional a state’s segregation of public school students by race. Features of interest litigation is that claimants comprise of several individuals (class action), the relief sought is perspective; seeking to reform future action, the issue at stake concerns a large number of individuals.

³ Examples of human rights related strategic litigation cases from Ukraine can be found on the following links: <http://www.helsinki.org.ua/index.php?id=1161619044>, <http://hrlawyers.khpg.org.ua/index.php?r=a1b5>, <http://www.khpg.org/index.php?id=1116940532>

Class Action; a threat or an opportunity for European consumers and businesses?

Class action is a form of civil litigation where a plaintiff represents a group of individuals who are bound by a judgement, or settlement, but are not parties in the legal process. The very idea that individuals can be bound by a judgement without being parties in the process has challenged many legal traditions. Historically, civil litigation has been marked by the principle of duality. A plaintiff brings a claim against a defendant and the parties agree on the scope of the claim in summons along with regulations that are stipulated in procedural law.

The unorthodox characteristics of class action have sparked many critics in Europe to describe class action as somewhat a Frankenstein's monster. A legal mechanism, which deny individuals their right to court. And even more, class action has been perceived as the very trademark of US-style litigation. A form of litigation which is driven by rent-seeking law firms that capitalize from other's misery and ruin businesses with frivolous lawsuits.

Others have praised class action, saying that the traditional forms of litigation are simply not suitable for our post-modern world. Today, we live in the time of massification. We mass-produce, mass-distribute, mass-consume and mass-pollute. And faulty products will affect large groups of consumers and polluting industries will affect large groups of citizen. And thus class action advocates argue that it is unavoidable that there needs to be litigation forms addressing mass-injuries.

Let us portray a modern consumer/business dispute to highlight the dilemma of consumer protection and small injuries affecting a large group of people. Imagine a person, somewhere in Europe, who buys a new mobile phone. The phone is locked with a certain telephone operator with whom the customer signs up with when buying the mobile phone. The operator offers customers a 24-month fixed price agreement allowing the customers to call domestically for up to 10 hours monthly for a monthly fee of 20 € Additional time is costing the customer additional. Our customer plans to use the phone moderately and foresees that he will not have to pay more than the fixed monthly fee. But when receiving the first monthly bill, the customer is surprised when noticing that he is charged 25 € An additional "service fee" of 5 € has been added. Our customer consults the contract but sees no mentioning of a service fee.

What can our customer do? He could probably contact the domestic consumer protection authority, but he has no guarantee that they will act. After all, the injury for the individual customer is marginal. Our customer decides to turn to a local consumer association. The association explains that there is no point in suing the phone operator, not even in a small claim procedure, since the costs for the procedure would exceed the possible award. There are no punitive damages in Europe so the award could only cover the customer's injury costs amounting to 5 € times 24 month. Or 120 € Even though our customer would not, in a small claim procedure, risk having to pay the other party's litigation costs, the costs would still exceed 120 €

But let us for a moment take a look at the economy of our customer's claim from another perspective. Envisage that the telephone operator has 1 million clients. And that all of them have been charged with the service fee. No court in the world could manage to process 1

million similar claims in individual processes, let alone 100,000 claims. Courts would probably either have to reject the claims or have to join them into larger proceedings. Such proceedings would put serious constraints on the court since all plaintiffs would have to be considered as parties and would have to be represented in the proceedings. Just imagine the kind of localities needed.

Our customer and all the clients of the telephone operator could be helped by a class action-mechanism. In such a case, all clients could be contacted and asked either to join the legal suit or leave it (depending on whether the jurisdiction has an opt-in or opt-out mechanism). The consumer organisation could then represent all the clients who wish to be represented. The clients would of course not have to turn up in court, as they would strictly speaking not be parties. Damages would be distributed to all class members and the telephone operator could be prohibited from adding the fee through a court ordered injunction.

The benefits that are reflected in this example are typically highlighted when describing the benefits of class action. There is a balancing effect between litigation costs and award. There is conformity of outcome. Corporate responsibility is encouraged and costs for parallel proceedings are avoided.

It is probably an understatement to say that European consumers have been more favourable of the introduction of class action in Europe than businesses. The European business lobby has pointed a warning finger at the developments since class action procedures were introduced in the US legal system in 1960th. They argue that the American legal system became cluttered with enormous, and enormously frivolous, cases designed to do nothing more than drain the vitality out of private enterprises that employ millions of taxpayers. Such cases have had a chilling effect on new enterprise and on foreign investment, as well as wasted court time and tax money. Even the American business lobby has come out to warn European legislators to make the mistakes of the US. Thomas Donohue, president of the United States Chamber of Commerce, has said that the original motivation to “make the law more affordable for the little guy” has been lost along the way. When it comes to more class action lawsuits in Europe, Mr. Donohue warns Europe - “be careful what you wish for. You are liable to get it.”

The wind is now however blowing in the direction of more class action in Europe. For example, Mr. Sarkozy has called for the introduction of "class action à la Française." In the Netherlands, while investors cannot sue as a group, they can settle like one under a 2005 law that allowed Royal Dutch Shell Plc to reach a \$353 million resolution of non-American securities claims in a case over misstated oil reserves.

What do European consumers think of class action? In the 2006 Euro Barometer, consumers were asked if they would be more likely to bring an injury claim to court if they could do so collectively with other consumers. 74% of the respondents answered that they would be more likely to seek redress if they could do so collectively.

The trend in Europe is despite the critics moving rapidly towards more representative actions. But forms of class action that have been modified to better suit the European legal tradition and without many of the adverse features of the US-system. The trend in Europe is to have class action, but European style. That is without punitive damage, contingency fees, aggressive lawyer advertisements as in the US and more involvement of consumer organizations, consumer authorities and consumer ombudspersons.

So far no EU Member State has seen a proliferation of frivolous lawsuits. Most Member States have seen a few cases a year, however large cases.

It should be said in this context that the evolvement of class action in the US has to a great extent been driven by the lack of state enforcement of consumer protection. In Europe, the situation is quite different. There is a tradition of state enforced consumer protection and public involvement in consumer/business relationships.

Another important observation from Europe is that class action has been utilized foremost of all to deter larger corporations from taking advantage of the relative weakness of individual consumers. In fact, class action has not proven to be a fast and efficient means to achieve compensation. But it has proven to be a means of fostering punitive prosecution in order to have enterprises disgorge profits unduly made. As such, class action in Europe could be perceived more as prospective intervention in the public interest than a reparative intervention to benefit individuals.

New EU Initiatives

The EU has followed the developments during the last decade in the Member States in the area of class action for protection of consumer interests. In the Consumer Policy Strategy for 2007-2013, the Commission underlines the importance of effective mechanisms for seeking redress and announced that it would consider action on collective redress mechanisms for consumers.

On the 29 June 2007, the European Commissioner for Consumer Protection Maglena Kuneva announced at a brainstorming meeting organized at the Belgian University of Leuven that collective redress⁴, both judicial and non judicial, could be an effective means to address the problem of weak enforcement of consumer protection in Europe. At the same date, a reflection process was announced. Progress will be presented at the Portuguese Council Presidency's conference on collective redress, which will be held in Lisbon on 9 and 10 November. It is expected that the Commissioner will propose some form of collective redress for consumers. Especially in the light of recent developments in Member States. 11 out of the 25 Member States already have introduced some form of class action for damages and more are preparing class action legislation.

Another important development when discussing class action in EU is representative action for injunctions. The EU is currently in the process of evaluating whether the European Directive on Injunctions has in fact been used effectively to protect the collective interests of consumers, and whether it has delivered the expected results. The evaluation was sparked by an opinion of the European Economic and Social Committee (EESC) to move from prevention to remedies. The EESC recommends extending the Directive's scope, as regards injunctions, in order to allow for genuine class actions intended to promote the making whole of damages. For more information about the directive as it stands today, see below.

Also relevant in this context is small claim procedures and Alternative Dispute Resolution. In 2009, the EU will introduce a Regulation establishing a European Small Claims Procedure for

⁴ Collective redress is to be considered as class action for damages and as a complement to collective actions for injunctions that are already regulated through the Injunctions Directive 98/27/EC.

cross-border disputes. The Regulation is intended to simplify, speed up and reduce the costs of litigation for claims not exceeding €2,000.

In order to facilitate the resolution of consumer complaints, the EU has encouraged, through two Recommendations, the development of Alternative Dispute Resolution (ADR) schemes and has established the European Consumer Centres Network (ECC-Net).

Alternative Dispute Resolution is also the preferred mechanism provided by ECC-Net. The network provides information and advice to consumers on problems with shopping across borders and helps consumers to resolve their cross-border disputes.

Impact of European Union Directives

Cross-Border Injunctions Directive 98/27/EC

Under this Directive European Member States can permit “qualified entities,” such as consumer associations or public authorities, to bring injunctive actions to stop violations of national laws. Thus, the procedural enforcement is arguably the most significant attribute of this Directive, as it opens the door to representative actions. For example, consumer associations can seek to enjoin violations regarding misleading advertising, consumer credit practices, television broadcasting, package holidays, advertising of medicines and unfair terms in consumer contracts. However, organizations cannot seek damages under the Injunctions Directive.

The definition of an injunction is “an order requiring the cessation or prohibition of any infringement”. Apart from injunctions, the Directive also allows for two other forms of remedies. The first is the publication of the decision, where appropriate, and/or the publication of a corrective statement with a view to eliminate the continuing effect of the infringement. The second remedy is insofar as the legal system of the Member State concerned so permits, an order against the losing defendant for payments into the public purse or to any beneficiary designated in or under national legislation, in the event of failure to comply with the decision within a time-limit specified by the courts or administrative authorities, of a fixed amount for each day’s delay or any other amount provided for in national legislation, with a view to ensuring compliance with the decisions.

All Member States have as of the fall of 2007 transposed the Injunctions Directive into national legislation. The main reason to adopt the Injunctions Directive was to enforce other parts of the *acquis communautaire* that were not properly protecting the collective interest of consumers because of weak enforcement. In fact, the Directive is directly limited to the scope of an enlisted number of consumer directives such as the distance selling directive, unfair contract terms directive, misleading advertisement directive and more. But if a Member State has gone further than the minimum requirements of the Directive, the additional scope is also considered to be covered if the applicable directive has a minimum protection effect. The Member States have regulations that defer from one another. As for example all Member States allow specified consumer organisations to be able to bring action for injunctive relief. Most of the Member States also allow designated public authorities to have standing while only a few Member States allow individual consumers to bring action for injunctions. Most Member States oblige the loser of the procedure to pay procedural costs. Exceptions are Finland, Poland and Latvia where each party bears its own costs. In Greece, the plaintiff always pays while in Hungary consumer organisations are exempted from covering litigation

costs.

An important feature of the Injunctions Directive is that qualified entities can seek an injunction in another Member State. This means that all Member States have to recognize entities from other Member States that have been designated and give that entity standing in a legal procedure in case an infringement has a cross-border dimension. This principle is called mutual recognition and means that a Member State can set up criteria for their own qualified entities but has to respect the criteria of other Member States.

The European Commission holds a list of qualified entities which is updated every six months. Only these entities on the list are considered to have legal standing in injunctive cross-border actions. In addition to the requirement of being on the list an entity must have a legitimate justification for taking action. This means that the entity must have the consumer interest in view when taking actions and not purely its own economic or other interest.

There are no limits in the Directive on the periods for bringing an action. Typically, a Member State designates a certain national court or a branch of the court system to handle cross-border injunctive cases. The Directive allows Member States to require consultations with the defendant before an action is commenced. Such a consultation can however not delay a court introduction more than two weeks. Four Member States provide for a full-fledged two-stage procedure where the first stage is a non-judicial procedure. The aim of this first stage is by negotiations reach an agreement with the defendant. If no agreement is reached, a normal court procedure is commenced as a second stage.

The Directive sets out to protect the collective interest of consumers. This does however not mean that individual harmed consumers have to be identified. The notion of a collective interest refers to a broader consumer interest which has been harmed by market failures. That is the reason why in some Member States individual consumers have standing in injunctive procedures for the collective interest of consumers. The major difference between class action for damages and collective actions for injunctions is that the first type of action is mainly reparative while the second is prospective. This means that "class" members do not have to be identified, notified etc., and thus no need to have any opting mechanism.

The Directive imposes several important restrictions on the power to bring injunctive actions. First, the Member States individually determine whether an entity has standing by designating the qualifications which organizations must meet to bring injunctive actions. In addition, Member States can require the organizations to consult with the relevant regulatory authority before filing an injunctive action. They can also require the organization to consult with the prospective defendant. A significant issue in litigation under the Injunctions Directive is whether and to what extent other consumers may benefit from a determination that a term in a consumer contract is unfair.

The effect of a judgement obtained in an injunctive procedure is generally only binding for the plaintiff and the defendant. Third parties are typically not bound. There are some national regulated exceptions to this rule.

In December 2004, the United Kingdom's Office of Fair Trading (OFT) won the first European cross-border court action. The OFT claimed that D Duchesne SA, a Belgian company operating in the UK as TV Direct Distribution and Just 4 You, was sending misleading unsolicited mail order catalogues to UK residents. The court granted an injunction

pursuant to the Injunctions Directive 98/27, which will allow OFT enforcing the judgment in Belgium.

The European Commission is reviewing the Injunctions Directive currently as the Directive has shown some shortcomings. Some of them are:

- That the Directive results in injunctions that are national and that does not stop a business from repeating the infringement in another Member State;
- Injunctions can only be targeted at businesses and not individuals, as for example directors or CEOs;
- The Directive is implemented very differently and unevenly in the EU. This makes it difficult for designated entities to orient them-selves between the jurisdictions;
- There are no damages in the Directive;
- Companies who have been prohibited from acting in an infringement manner can easily change the manner outside the scope of the injunction and continue to infringe consumers interest;
- Consumer organisations stand the risk in most Member States to cover all the procedural costs if they lose.

An introduction to class action in EU-Member States

Most EU Member States have no limitations as to the possible types of claims that can be commenced as a class action. A legislator is of course free to limit the scope of application to certain types of claims, for example consumer claims or environmental claims. Finland is a Member State that has chosen to limit its class action mechanism to consumer claims only.

More common is that there are limitations as to the purpose of the claims, i.e. if class action could be used to achieve injunctive relief in the form of a prohibition or court ordered instruction or if class action could be used to reward injured parties with damages. The EC Directive 98/27 on injunctions, which is discussed above, is an example of a piece of community policy that empowers consumer organisations to represent a class and on behalf of the class request a court order (injunction) against a legal entity in another Member State.

It is noticeable that, in opposite to the US, only one EU Member State awards punitive damage, the UK. Punitive damages (termed exemplary damages in the United Kingdom) are damages not awarded in order to compensate the plaintiff, but in order to reform or deter the defendant and similar persons from pursuing a course of action such as that which damaged the plaintiff.

Individuals, non-governmental organisations or public authorities can have standing in class action procedures. Usually in EU Member States, there is a preference for having some form of governmental or court control over who can commence a class action. This is typically motivated by the will of having fair and adequate representation of the class and counteract the introduction of frivolous claims. In Finland the legislator has allowed only the Consumer Ombudsperson to have standing and "thereby ensuring that an action cannot be brought for malicious purposes". In other Member States, the legislator has given consumer organizations the powers to represent a class. Often there are different requirements set on the organizations. For example that they have a certain number of members or that they have statutes mentioning that they have been set up to protect consumers' interest in legal proceedings.

Usually, the plaintiff and the defendant can request a class action procedure. In some jurisdictions a court also has the powers to propose several cases to be introduced in one class action. Class action cases are usually referred to certain courts where judges have been trained in managing class procedures. As to formal requirements, it is more difficult to find commonalities between the EU Member States other than it should be a written request that includes summons and identified class members or a description of class members.

The class has to be identified and notified in order to give individuals the choice of opting in or opting out of the action. It is not uncommon that there is no contact information available and that mass-media has to be used to contact all members of the class.

The actions of the defendant have to affect so many people that it is more practical for a few representative plaintiffs to address the claims than for all the individual plaintiffs to join together in a regular lawsuit. If twenty people are swindled in a business venture, they can file their own lawsuits. But if hundreds or thousands have been harmed, a class action allows a few to represent the multitude.

Class Action is a legal institute that originates from the US and has for several decades been available in other common law countries like Canada and Australia. In the EU Member States, collective actions have been introduced much more recently. So how does class action in Europe and the US differ from each other.

First of all, class action in the US is based on an opt-out mechanism which means that all who belong to the “class” are bound by the judgement or the settlement unless they within a certain time limit opt-out of the action. To date, all Member States with the possibility of collective actions have chosen an opt-in mechanism except the Netherlands and Portugal. An opt-in mechanism means that only members of the “group” or “class” who opt-in within a certain time limit are bound by the judgement or the settlement.

Member States have been generally reluctant at introducing a US-style opt-out mechanism as there is a widespread fear of a US-litigation culture spreading in Europe with a flood of frivolous cases driven by law firms and with questionable support from the class. Also, it has been argued that an opt-out mechanism is not constitutional and against the European Convention on Human Rights. Article 6 of the Convention stipulates everyone’s right to court and critics in the EU has argued that an opt-out mechanism would deny class members an ensured right to court.

Another feature of US class action and the type of collective actions that have been introduced in EU Member States is the financing of the action and attorneys’ fees. In the US, it is common that third-part private financing is used for class actions. In the EU, up to date, collective actions have mainly been financed by group members contributions, NGOs and legal aid. Attorneys in the US often apply so-called contingent fees. Contingent fees are only paid to the attorney in a favourable outcome of the litigation and often as a percentage of the awarded damage or the settlement. Contingent fees have been blamed for propelling a lucrative litigation culture with law firms getting unreasonable fees.

The general rule in Europe is “the loser pays;” that is, the losing party in the case must pay the actual costs incurred by the winner, including attorney fees. The enforcement of this rule has varied from very strict in the UK to relatively relax elsewhere. Several countries have

revisited the loser pays rule in collective litigation. Currently common costs of GLOs⁵ in England and Wales are shared equally among the claimants who register. However, the Civil Justice Council (“CJC”) has recently suggested that the cost sharing provisions and costs/benefit ratio have caused cases to be dropped before being tried and has proposed at least partial removal of the loser pays rule. The Scottish Consumer Council has expressed concerns about disproportionate costs in low-value cases. In November 2005, the Council’s working party produced a report, “The civil justice system in Scotland -- a case for review,” recommending a more formal review of the judicial system due to costs.

Under the Swedish class action act, the plaintiff bringing the class action is responsible for legal costs. However, if the action is successful and the defendant fails to pay plaintiffs’ costs under the usual Swedish “loser pays” rule, the plaintiff is not responsible for his costs. Class members can be held responsible for costs if they intervene as parties in the proceedings or if they are negligent or careless during the proceedings. The loser pays the winner’s legal costs in Italy. However, Italian courts soften the impact of this rule in two ways. First, they can allocate the legal costs among the parties when the issues are complex or success is not clear cut. Second, they typically award only a portion of the full fees spent by the winning party.

Under the German Capital Markets Model Case Act, the losing party must bear the costs. However, according to the German Ministry of Justice, “[p]laintiffs . . . benefit from sharing the costs of the model case ruling” and from “being relieved of prepaying costs for the model case proceeding.” Some commentators on the German Act see the retention of the “loser pays” principle as a way of addressing concerns about the reported abuses of American class actions.

Historically, many countries in Europe has prohibited contingency fees. Where such fees were permitted, they were used infrequently. A number of countries are now exploring whether contingency fees should be permitted in the context of collective litigation: In the U.K., legal aid, which funded group actions in the 1990s, has been almost completely replaced by conditional fee agreements (CFAs) and after-the event insurance policies. Lawyers representing the GLO do not share in the proceeds of a claim. Under the conditional fee arrangement, the lawyers are entitled to a “success fee,” which is limited to a maximum of double their normal fees. In its 2005 report, the Civil Justice Council believes that some type of contingency fee is necessary to fund multi-claimant litigation. “Risk Agreements” are permitted under the Swedish Class Action Act³⁵ to the extent to which the action is successful. The court must approve the risk agreement if it is to be asserted against class members and will only approve the agreement if it is “reasonable.” If legal fees are based solely on the value of the dispute, the agreement is not considered “reasonable.”

Italian law historically has prohibited contingent fees. However, in July 2006, the Government implemented a Law Decree, with immediate effect, which abolishes the prohibition on contingency fees and allows lawyer advertising.

Yet another important difference between the US and EU is on regulation of advertisement. In the US, lawyers are allowed to advertise their services in an extensive way. This has led to infamous features as “ambulance chasing” lawyers trying to find injured clients to represent. The legislators in the EU has therefore been trying to limit the possibilities of law firms to advertise their services or create classes that would not otherwise needed to be created.

⁵ Group Litigation Orders. More below.

Other differences between the US and EU Member States are regulation on evidence, formalism, notification, standing, certification, role of the judge ect. In short, EU Member States have taken inspiration of the US class action mechanism but not copied it as EU Member States are with the exception of Great Britain civil law countries and have different litigation cultures than the US. Nevertheless, today’s mass consumption patterns, and global environmental issues, create larger groups of injured individuals with similar claims. Their claims can hardly cost-effectively and efficiently be handled by traditional dual litigation as traditional litigation is not designed for these mass claims.

Apart from the benefit of awarding injured individuals, collective actions also have a public utility aspect. Both the European Commission and the Member States have argued that enforcement of consumer protection needs both a bottom-up as a bottom-down approach. Collective action is an acknowledged approach for empowering individuals to enforce consumer protection and protect their rights and interests simulations. The Commissioner for Consumer Protection Meglena Kuneva as repeatedly argued that enforcement of consumer protection needs stronger national mechanisms for redress.

Overview of Multi-Party Litigation Among All Member States

Availability of class action for damages:

Jurisdiction	No collective procedure for damages available	Group or representative actions	Test case procedures
Austria		X	X
Belgium	X		
Cyprus	X		
The Czech Republic	X		
Denmark	X	X from 1 January 2008	
Estonia		X	
Finland		X	
France		X	
Germany		X	X
Greece	X		
Hungary	X		
Ireland	X		

Italy	X	
Latvia	X	
Lithuania		X
Luxembourg	X	
Malta	X	
The Netherlands		X
Poland	X	
Portugal		X
Slovakia	X	
Slovenia	X	
Spain		X
Sweden		X
UK		X

Standing:

Jurisdiction	Individuals	Consumer organizations	Public authorities
Austria		X	
Denmark		X from 1 January 2008	X from 1 January 2008
Finland			X
France		X	
Germany			
Sammel and Musterklage		X	X
Investor's rights protection scheme	X		
The Netherlands		X	
Portugal	X	X	X

Spain	X	X	X
Sweden	X	X	X
UK			X

Opt in or opt out:

Jurisdiction	Opt-in	Opt-out
Austria	X	
Denmark	X from 1 January 2008	X from 1 January 2008
Finland	X	
France	X	
Germany	X	
The Netherlands		X
Portugal		X
Spain	X	
Sweden	X	
UK	X	

Cost liability:

Jurisdiction	Losing Party Pays	Each Party Pays Its Own Costs
Austria	X	
Denmark	X	
Finland	X	
France	X	
Germany	X	
The Netherlands		X
Portugal		X
Spain	X	

Sweden	X
UK	X

The Netherlands

There are two sets of rules in the Netherlands that govern the resolution of mass disputes. The first came into force on July 1 1994. Those rules cover what are called public interest and group interest collective actions. The second set of rules came into force on August 1 2005. These cover the court approval of an (opt-out) collective settlement. If the parties agree to settle their dispute out of court, they can apply to the court to declare the settlement fair and binding even on non-parties to the agreement, on an opt out-basis.

The availability of collective actions for mass damages have developed rapidly in Dutch procedural and civil law and has become increasingly popular with the general public. The developments have been boosted by a number of high-level cases where there was a concrete need for mechanisms to provide compensation to a large number of injured parties. In 2005, the legislator introduced – as a direct response to the challenges of the DES-case⁶ - an act on Collective Settlement of Mass Damages (Wet collectieve afwikkeling massaschade, further WCAM). This mechanism allows larger groups of consumers, shareholders, or other groups, to seek redress in a simplified way via a settlement agreement. The mechanism has been applied two times since the adoption of the legislative act and has recently attracted attention for being utilized in the Royal Dutch Shell settlement where damage worth 353 MUSD were awarded through a collective claim.

In addition to the WCAM, there is since 1994 a competence for certain legal persons to bring injunctive or protective collective actions (in other words not for individual damages). This type of collective action is regulated by Article 3:305a – 305c in the Dutch Civil Code (Burgerlijk Wetboek).

Scope

Collective settlement agreements for mass damages can be entered in practically all civil law claims including consumer claims (both contractual and extra-contractual). But to restrain a possible flood of cases the legislator has introduced a principle whereby the WCAM is only applicable to settlements already agreed. This constraint leaves plaintiffs without the possibility of threatening the defendant with a lawsuit which could result in a judgement against the defendant.

Collective actions for injunctive relief can be used for any action except actions for damages. This includes contractual claims such as performance, termination and rescission. The only condition imposed by article 3:305a and 305b is that the interests concerned can be joined. It is required that the claim serves to protect the “comparable interests” of other persons, not necessarily the complete class. Collective actions for an injunction usually concern a ruling for one single performance in which all persons represented have a shared interest.

⁶ The DES-case is explained more in detail below.

Standing

Collective actions for mass damage can only be initiated by associations or foundations that have stated in their statutes that they represent the interests of the injured parties. Thus, a consumer organization with general competence will not qualify. Under Dutch law, eligible foundations and associations may not operate for commercial gain. Individuals cannot demand negotiation nor approach the court to make the contract binding.

In consumer cases, a public authority also has the powers to request the Amsterdam Court of Appeal to declare a settlement agreement binding under the WCAM. The authority is the Authority for Consumer Protection, a department of the Ministry of Economic Affairs (Ministerie van Economische Zaken). However, the legislator intended that this Authority should exercise its power with restraint because it considers the settlement of mass claims to be a matter for private rather than public organisations. The circumstances in which this Authority may submit a request for court approval of a settlement agreement are likely to be restricted to exceptional ones where there is a particular public interest in the claim. Actions that may be brought by the Authority include the protection of consumers against faulty goods or services.

Composition of the group

As mentioned above, the Netherlands is currently one of only two Member States with an opt-out approach. But in contrast to the US opt-out mechanism, group members can only opt out after the court has declared the settlement agreement binding. Usually the court is giving a three months period for members to notify the court that they do not wish to be bound by the settlement. After the opting-out period, one of the parties can still withdraw if the number of victims seeking compensation becomes insignificant. A clause to that effect has to be inserted in the settlement.

Individuals can also opt out in Article 3:305 proceedings. Thus for instance a buyer may resist the consequences of a legal claim brought by an interest organization for the substitution of the goods delivered by goods, which do meet the sales agreement. After all, it is quite possible that the buyer would rather keep the initially delivered goods.

Introduction of the Action

Before a court initiates collective Article 3:305 proceedings, the plaintiff must have attempted to resolve the claim with the defendant out of court. The court will then, based on the specific circumstances, decide whether the attempts have been serious enough. In WCAM-proceedings, the court will declare the contract binding on all victims unless:

- the contract does not contain all mandatory data;
- the compensation is not reasonable, given the importance of the damage and the advantages of the procedure ('simple and time-saving');
- the compensating party (or parties) cannot provide sufficient securities;
- the victims' interests are insufficiently guaranteed;
- the association does not have a sufficiently representative character; or

- the group's size is too small to justify a settlement.

Procedural Rules

Judges have limited powers to influence proceedings in collective claims in the Netherlands. The judge can however call on an expert to clarify issues important to the case. For example in the Dexia case, the court asked an expert to on behalf of the court assess the value of the damage as the court has to ensure that the damage in the settlement agreement is reasonable. Parties were given time to remark on selection of expert and the questions given to the expert. The court then dealt with the remarks, appointed the expert and composed the final version of the questions for the expert.

Outcome

WCAM only covers damage that has occurred before the settlement agreement entered into force. As mentioned, all injured parties to a group settlement are bound by the agreement but remain the right to take an individual claim to court. However, it is expected that most injured parties will be discouraged from commencing individual actions if they can easily and without cost accept the settlement.

The WCAM, combined with collective actions for declaratory relief (if necessary), is likely to become a popular method of resolving mass claims in the Netherlands, in light of recent cases. However, the ability to opt out is causing issues where these claimants bring new proceedings to claim more compensation than they would have been entitled to under the settlement agreement, and it will be up to the Dutch courts to decide whether to allow this or not.

Appeal

The declarative judgement of the Amsterdam Court of Appeal cannot be appealed. It makes the Netherlands the only Member State without a mechanism for appeal of collective actions. Nevertheless, an appeal could be made to the Supreme Court of the procedure but not of the settlement *per se*. The rationale behind the absence of an appeal mechanism is that the settlement is a contract and according to the legal principle *pacta sunt servanda*, contracts obligations should be honoured and thus it would be contra productive if a party could appeal an entered agreement. It should be mentioned in this context that individual victims has the right to opt-out within three month and start individual proceedings against the other party. As mentioned, the court is expected to be restrictive in allowing such dissidents, but in principle there is an option for victims who are unhappy with the collective settlement.

Costs

Funding for group actions in the Netherlands is mainly attracted from associations and foundations, but also from legal aid, which can be provided to poor and needy litigants. There are yet few signs of private capital financing of group claims in the way that US class action and mass tort claims are being funded. Under Dutch law, foundations and associations may not operate for commercial gain. This seemingly excludes commercial private funding of litigation but considerably empowers claimants, as such an association is relatively easy to create. As these organisations cannot operate for commercial gain, they normally ask for a

small amount of money to cover the expenses involved in representing the injured parties in court.

Netherlands does not have a strict 'loser pays' rule but rather a Dutch judge has a wide quasi-discretionary power to order one of the parties to bear the other party's legal costs (including experts' costs). Legal costs are in principle calculated on the basis of liquidated costs in accordance with a fixed schedule, which does not, by quite a long way, equal the actual costs incurred. It is only in exceptional circumstances (such as a case of clear abuse) that the losing party may have to pay the actual costs of the other. Generally, the losing party will bear the liquidated costs or costs are shared between the parties. This reduces one of the risks associated with mass claimant litigation (potential liability for the other side's costs).

Case Law

Example of a Collective Settlement: Royal Dutch Shell

The settlement was reached between Royal Dutch Shell and investors who were claiming damages for loss suffered as a result of the overstatement of the company's oil and natural gas reserves between 1997 and 2003. The settlement, which marks Europe's first ever class settlement of securities fraud claims, was reached with investors across Europe, although Royal Dutch Shell insisted that this is not in any way an admission of guilt on its part. The settlement is a direct result of the opt-out lawsuit filed in the US in January 2006 by Dutch pension funds. The parties lodged an application with the Amsterdam Court of Appeal under the WCAM requesting that the settlement, together with the compensation destined for past and present shareholders, be declared binding upon all parties.

Example of a Collective Settlement: DES

Before Royal Dutch Shell, there have been only two cases so far in which a settlement agreement has been declared binding by the court. The DES case was the famous Dutch product liability case that triggered the discussion about the efficiency of the Dutch legal system to handle mass damages claims. It involved the prescription of a synthetic female hormone (DES), which was later found to result in severe side effects. Around 15,000 people have been registered as victims of DES. Victims successfully initiated tort proceedings against several pharmaceutical companies obtaining compensation for damages. Successful negotiations between the foundation representing the other injured parties who had not sued and these companies led to a settlement agreement. The question that then arose was whether it would be possible to declare this agreement binding upon all injured parties. This was impossible under the applicable law at the time. However, the enormous effect of the case on the Dutch community prompted the Dutch legislator to enact the WCAM. The Amsterdam Court of Appeal declared the settlement binding in 2006.

Example of a Collective Settlement: Dexia

A few months after the entry into force of the WCAM, the Amsterdam Court of Appeal was

requested to approve and declare binding a second settlement agreement in a case of mass claims. The case concerned financial lease products sold by the Dexia bank (Dexia) in the Netherlands, which resulted in more than 400,000 (potentially) injured parties and a total amount claimed of more than €1bn. Four foundations representing the rights of the aggrieved individuals came to a settlement agreement with Dexia providing for partial compensation for various categories of the injured parties. This settlement agreement is commonly known as the Duisenberg settlement, as the negotiations were facilitated by the former European Central Bank President. On 25 January 2007, the Amsterdam Court of Appeal declared this settlement agreement binding on all injured parties, giving individuals six months to opt out of the agreement. However, on 1 March 2007, the same Amsterdam Court of Appeal rendered an appeal judgment awarding a former Dexia client (who had opted out of the settlement) full damage compensation from Dexia, exceeding the partial compensation awarded under the settlement agreement to the category to which this particular Dexia client belonged. This outcome obviously questions the effectiveness of the Duisenberg settlement.

Following the (anticipated) success in the Dexia case, legal proceedings have been commenced against other banks. Associations representing injured parties' rights have been established in other cases of mass damages, such as in equity-linked insurance and investment based mortgages (so-called woekerpolissen, usurious policies). According to financial analysts, insurers will probably be liable for damages to an amount of €1bn if it is found that the risks associated with these products were unacceptably high. These cases are a direct product of the introduction of the WCAM and more claims can be expected.

Sweden

Class action has no long history in the Swedish legal system; which is true in all continental European countries. The procedural concept has though been introduced with a relative far-reaching legal act, which includes some of the features of the US "Federal Rule 23 (FR23-1938) on Class Actions". For instance a court can approve a risk agreement between the group members and their legal representation. The risk agreement regulates the lawyer fees depending on the outcome of the litigation; in that sense resembling the US contingency fees.

The law drafters of the Swedish Group Proceedings Act (further SPA) was though more inspired by the Canadian rules on class action than the US rules. The Canadian class action approach was found by the Swedish drafters to be more suitable as inspiration. Especially as it lacks some of the infamous features of the US system. The initiative to group actions was introduced in the early 1970th by the Swedish Consumer Ombudsman who was returning from a study visit to the USA. Not until 2002 though, a legal act was introduced on group actions.

Part of the reason for the late introduction of the act was a strong opinion against the US-inspired legal concept, especially from the business community. Arguments of the opposition – which are mostly similar to the arguments used by the class action opposition in other continental European countries – falls into four categories: (i) Group action will introduce a system where rent-seeking lawyers' will initiate needless and frivolous litigation at the expense of businesses. Businesses will have to protect their good image and reputation and will therefore be likely to reach settlements with the plaintiffs even if the businesses know that they would have won a trial. (ii) The judiciary will be under an increasing pressure as group actions are resource and time demanding. This in combination with an increase of

frivolous litigation will drastically increase public expenditure on the judiciary. (iii) Group actions are not inline with Article 6 of the European Convention on Human Rights, which stipulates the right to a fair trial. Critics argue that group members could be potentially harmed by the action without being aware of the proceedings and being able to take legal action. This makes group action unconstitutional. (iv) Other critics have argued that Sweden should await a common EU-approach on group actions.

Despite this criticism, group action was introduced in 2002 with the support of all political parties except the conservative party (Moderaterna). The majority of the Riksdag (parliament) argued that group actions were needed, especially to provide consumers with better remedies in cases when the value of the claim is small and there are a large number of plaintiffs with the same or similar claims. In 2007, the Swedish Government commissioned an evaluation of the SPA. At the time of this report, the evaluation has not yet been finalized. It is clear though that much of the criticism has proven ungrounded. The prophesied flood of needless litigation has not come true. Only nine group actions in nearly five years have been initiated. Many of them have become quite famous to the Swedish people and will most likely have a serious impact consumer rights.

Scope

There is no limitation to what kind of civil law claims that can be brought to court as a group action. The SPA was developed though with a special emphasis on consumer, environmental and equal opportunities claims. Claims should be brought to the system of courts of general jurisdiction (fifty-five district courts, six courts of appeal, and the Supreme Court). The government decides which district courts that should have jurisdiction.

Legal Standing

The SPA stipulates that three types of legal persons can commence a group action; private, organizational and public actions. Sweden has in fact quite a far-reaching policy on standing in collective trials and being the only EU Member State offering legal standing to all interested parties.

1. Private actions can be initiated by a member of the group (whether a natural or legal person) whose legal interests are affected by the claim.
2. Organizational actions can foremost of all be commenced by voluntary organizations that according to their statutes are working to protect consumer interests in litigation between consumers and a business. There is also a possibility for non-consumer actions to be commenced in this form. Foremost of all actions of environmental organizations. From a procedural point of view, organizational and public actions differ from the normal rules on standing; because the organization or the public authority does not necessary have to be affected by the claim. As case law has come to show, most organizations commencing group actions are formed on an *ad hoc* basis for the sole purpose of legally representing the members of the group.
3. Public actions are brought to court by a public authority. The government decides what authorities can have standing. One example is the Consumer Ombudsman who has initiated several group actions on behalf of consumer groups.

Composition of the group

Sweden has chosen an opt-in approach. The procedure is that the court sets a time limit within which group members have to, in written form, notify the court that they wish to stay in the group. Only those who fit the plaintiff's description of the group are informed by the court. This could be done by leaflets or information through mass-media. The group members who have opted in are not parties in the litigation but become so if they intervene in the process. In case of intervention, the group member is also liable for litigation costs. The ruling takes legal force (*res judicata*) both for and against the group members who have opted in.

There are no requirements in terms of number of group members as long as there is more than one member. There are examples of groups in Sweden of several thousands. There are though groups that are too broad in definition and not practical.

Introduction of the Action

There are two ways of introducing a group action. The typical way is that the plaintiff addresses the court with an application to commence an action in accordance with the Code of Judicial Procedure. The court will then consider if a group action is the most suitable form of action considering the coherence of the group members' claim and taking cost-efficiency aspects into consideration (superiority). This type of introduction of the action is in practice from the point of view of the plaintiff and defendant similar to any introduction of civil law actions.

The other way of introduction is initiated by the court after the plaintiff has applied for an ordinary suit will be enlarged to a group action.

There are no special judicial application or summons forms for group actions. All group members name and addresses must be mentioned in the application. There is no certification procedure.

Procedural Rules

As already mentioned, it is the court who has the responsibility to notify the group members of the action. Thus, the court has to select the best way of notification. As in some other European countries, the Swedish courts are not restricted in means to notify the group. Thus, the court can use to make notification through leaflets or in newspapers or TV. During the procedure, the plaintiff is obliged to provide information about the important developments of the procedure if a group members so requests.

Outcome

Case law shows that it is common that the parties settle before the court reaches a decision. This is especially true in the US-system with its developed discovery system, but also in Sweden parties have been willing to settle. If there is a settlement, all group members must have the opportunity to intervene. Therefore, the court must approve the settlement and ensure that the settlement is not discriminatory to some subgroup members.

Once a court decision is reached, the judgement is legally binding, both for and against, for all group members. All group members have to be notified by the court about the judgement.

All normal civil law remedies are available in group actions, e.i. monetary and injunctive remedies. The normal procedures apply of causation and calculating and awarding damages in tort law.

Appeal

Every group member has the right to appeal a judgement on behalf of the group or on behalf of her-self. A group member who is not a party to the trial has one week after the judgement to express discontent.

Costs

In Sweden, the loser pay rule applies in civil law judicial procedures. The only exception is small claims where each party only bears its own costs. But to reduce cost risks in group proceedings, a new possibility has been introduced, namely risk agreements. Risk agreements can be entered by the group with its attorney. The attorney will be paid depending on the outcome of the trial but not as in the US as a percentage of the awarded damage. Instead it is calculated as a multiplier of the customary fee. As an example, if the claim is awarded by the court the attorney is paid twice the customary fee but if the case is lost the attorney is paid half – or nothing at all. To avoid unreasonable conditions in the risk agreements, the court has to approve a risk agreement. Thus, the main difference from the (un)famous US contingency fees is that risk agreements cannot be formulated so that the attorney's compensation is based solely on the value of the case and that the agreement with the attorney has to be approved by the court. The risk agreements are not binding on the defendant who only has to pay customary fees if the defendant loses.

A group member who is not a party in the trial does not have to pay any litigation costs, unless the defendant is unable to pay or in the case that the group member has been reckless.

Case Law

Example of a Group Action Case: The Group Action against Skandia (a Swedish insurance company)

The group action was initiated in October 2003, with the aim of claiming compensation for some 1.2 million life insurance customers of Skandia.

The claim included damage worth approximately 340 M€ caused by the sale of a to Skandia subordinated capital management company. The capital management company administered large pension funds. The group of insurance customers argued that the surplus of the sale should have been kept in the insurance company Skandia and not distributed to the shareholders of the company.

The group action was represented by one plaintiff – a consumer organization specially formed for the case – the organization “group action against Skandia”. The organization included more than 15,000 people. Each paid membership dues of about €15 and the organization rapidly amassed capital of about €200,000. The suit against Skandia has been dropped after a settlement was reached in arbitration where a capital return to the selling

company was agreed.⁷

Example of a Group Action Case: Air Olympic

The action was initiated by about 500 air travellers who had been left stranded at airports around Europe because of an airline company's bankruptcy. The claimants' group action was dismissed by a district court and later filed to a court of appeal when the parties agreed on a settlement worth about 70 000 €

Example of a Group Action Case: Kraftkommission

The group action was taken to court by the Swedish Consumer Ombudsman in December 2004 and is yet to be finally resolved. The claim is on behalf of about 7 000 consumers who were customers to a Swedish electricity provider who failed to provide electricity as agreed in a fixed price contract. When the electricity was halted the customers were automatically referred to another power supplier but to a higher price than agreed in the contract with Kraftkommission. The customers thus claimed compensation for the price difference. The total amount of compensation ranged between 2 and 2,5 M€ The claim was dismissed by the district and court of appeal and still awaits a decision in the Supreme Court if the court will hear the case or not (as of October 2007).

Short about other Member States

Austria

As other EU Member States, Austria has legislation which allows for collective actions to prohibit certain business practises, i.e injunctions. Austria also allows the Austrian Association for Consumer Information to initiate test cases and join several claims together in one case. The latter form is called "Sammelklage nach österreichischem Recht" (class action according to Austrian law). A Sammelklage should not be considered as a true class action but as a joinder of individual claims. Every claimant is considered as a plaintiff in legal terms.

Denmark

Denmark will introduce a class action mechanism from the first of January 2008. The Danish rules on class action will be based on an "opt-in" principle, meaning that individual claimants must actively choose to be part of the class action in order for the judgment to have effect. At the court's discretion, it can decide to apply an opt-out model (for example, in cases where the claims are very small). However, for the opt-out model only public authorities can be class representatives. The claims must be of a similar character (typically based on the same factual circumstances and governed by the same rules). A class action must be the optimum way to process the claims. There must be jurisdiction for all of the claims to be adjudicated in Denmark. The class representative must be approved by the court and the court may order the

⁷ See www.grupptalan.com.

class representative to provide security for legal costs which the class representative may be ordered to pay to the other party. Although there are no limitations on the nature of the claims that are suitable for class action, it is expected that in the beginning it will first and foremost be consumer claims organised by the Consumer Ombudsman that will use this new method of processing a claim. Possible claims could e.g. involve illegal fees or defective goods.

England

Group proceedings in England have a history starting at end of the 17th century through the so-called equity-system. Case law has however developed sparsely and before the year 2000 group proceedings only had a marginal impact on consumers and other interest groups. In 2000, new rules were introduced through the Civil Procedure Rules Part 19. The new rules introduce so-called Group Litigation Orders (GLO) which parties can apply for before or during proceedings. Only individuals who choose to opt-in are bound by a judgement. If the court approves the GLO, a Managing Judge is appointed and a Group Register is established which includes the necessary administrative information, such as the date for opting in. In managing the GLO, the court may designate one or more cases to proceed as test cases, appoint a lead solicitor and establish a cut off date for claims to be added to the Group Register. So far, over fifty GLOs have been registered.

Estonia

Estonia has collective actions for injunctions. In addition, the Consumer Protection Board can commence a class action under Article 37 of the Consumer Protection Act. It is though unclear if any class action claims have been filed with support of the Act.

Finland

Finland introduced class action procedures effective from the October 2007. Participation in a class action requires registration as a member of the class (opt-in). The Consumer Ombudsman will bring the class action and act as the representative of the class, thereby ensuring that an action cannot be brought for malicious purposes. Registration in the class can be made, for instance, by filling out a form. A member can withdraw from a class action before the beginning of the main hearing. After the case has been left to the decision of the court, withdrawal will no longer be allowed. No limits to the size of the class will be set. The Consumer Ombudsman will, however, be unlikely to bring a class action unless there are several people involved. Class actions can be used in Finland both for compensation and injunctions. The class members will not be liable for the litigation costs; they will be paid either by the plaintiff, i.e., the Consumer Ombudsman or the defendant.

France

France has been the stage of an intensive debate about whether to introduce class action procedures or not. In April 2005, the French government formed the Inter-Ministerial Working Group (“IMWG”) to consider legislative changes to allow consumer groups and associations to initiate collective or group actions. The same year the President declared in his New Year’s address that introducing group actions was a priority for the government.

The IMWG saw the need to address mass injuries with cost effective means but also foresaw that “regardless of the form of the group action, it would bring about a proliferation of litigation in economic life in general and in relations between consumers and professionals in particular”. To balance the concern of excessive litigation and the need to remedy small-scale mass injuries, the IMWG proposed two possible group action models. The first model was an US/Québecan inspired model and the other a declaratory judgement model. After the final

report from the IMWG, the French group action debate lost momentum.

Until April 2006, when a number of French consumer organizations jointly submitted a letter to all Members of Parliament and the government. The letter demanded that class action should be introduced immediately and that it should be available for all consumer claims. Moreover, they argued that any approved association, as well as possibly any group of consumers, should have the right to initiate a class action, not just approved consumer associations. They also argued that the French class-action system should be an opt-out system, that is, it should exclude only those who expressly refuse to join. Finally, they endorsed the U.S./Québecan Model. This initiative has moved the French class action debate back to centre stage.

Germany

Germany has chosen not to introduce group actions *per se* but have introduced a group action-like mechanism through the Capital Markets Model Case Act of 2005. The Act addresses mass security litigation. The Act was largely the result of the challenges of processing the giant Deutsche Telekom case. The case involved more than 2,000 claims filed by some 754 law firms on behalf of thousands of investors. The Act allows courts on a request from either the plaintiff or defendant to commence a test case or a model procedure. Individuals have to actively opt-in to be bound by a judgement. If claimants in at least ten cases involving the same issues move for a model proceeding within four months, the High Regional Court will conduct a model proceeding. The court appoints a lead plaintiff, considering the amount of the claim and any agreement among the plaintiffs. Claimants who have filed an action can file briefs and participate in hearings. The judgment is not binding on any individuals who have not filed an action. Settlement requires the consent of claimants who filed an action. The Capital Markets Act will be monitored for five years, when it no longer will be in effect under a sunset clause unless it is renewed by the Parliament. The procedure will then be evaluated to determine whether it should be renewed and if model proceedings should be available in any civil litigation.

Ireland

Currently, there is no codified mechanism for U.S.-style class actions in Ireland, but the system does allow for test cases and representative actions. The Law Reform Commission (LRC), which is an independent statutory body that reviews the law and makes proposals for change, recommended adopting a class action procedure in its September 2005 Report on Multi-Party Litigation. Under the LRC proposal, the court would have to certify that the multi-party action is an appropriate, fair and efficient procedure in the circumstances. Other proposed requirements include a single representative for the management of the action and a cut-off date beyond which court approval would be necessary to join the action. The proposal would also require that the terms for potential settlement be determined at the opt-in stage and that the costs of the action be shared equally among the class members. It is unclear whether damages would be permitted. The Minister for Justice has so far expressed his personal opposition to the proposal.

Italy

At the moment, Italy permits representative actions for injunctive relief. Under Law no. of 30 July 1998 implementing EC Directive 98/27, consumer organizations registered with the Italian Ministry of Industry can bring suit to enjoin “acts and conduct that damage the interests of consumers and of users.” A single lawyer can act on behalf of numerous plaintiffs in what is often called a “group action,” but each individual plaintiff must grant the power of

attorney. Two draft bills aimed at permitting consumer and investor associations to bring suits for damages arising out of contracts were introduced in 2004, but neither of these proposals were enacted.

Portugal

Portuguese law provides for two collective actions designed specifically to provide redress to consumers. First, pursuant to the law concerning the protection of consumers' rights, cases may be initiated by consumers, consumers' associations, and the Ministerio Publico and Instituto do Consumidor in relation to collective cases, cases concerning collective interests, or those concerning intangible interests. Such consumers will have a right to reparation. It should be noted that this power of the Ministerio Publico and Instituto do Consumidor is unused, with the Institute preferring to refer matters to the Arbitration Centres. Second, the Instituto do Consumidor has the right to take an action of an injunctive nature pursuant to the law concerning the protection of consumers' rights. The Instituto do Consumidor may, on its own initiative or following a matter having been brought to its attention by a consumer, cause the cessation, suspension or interruption of the provision of goods and services.

Spain

Spain introduced group action procedures in 2001. Both individuals and consumer organizations can commence an action. In addition, certain entities that have been set up to protect the interests of consumers are allowed to introduce an action. It is noticeable that the scope of Spanish group actions is limited to consumer damages only. Thus, group action procedures cannot be utilised in trying environmental claims or other non-consumer claims.

In Spain, a consumer organization has to be determined by a court to be suitable to represent injured consumers. Injured individuals have to be notified by appropriate means and opt-in to be considered bound by the outcome of the proceedings. The court must indicate in a judgement each individual entitled to receive damages. For individuals who cannot be identified, the judgment must describe the characteristics of the beneficiaries and set out the criteria to identify them. Group members have five years to seek enforcement of the judgment.

Terminology

Common law - Common law is the system of laws originated and developed in England and based on court decisions, on the doctrines implicit in those decisions, and on customs and usages rather than on codified written laws. Most Anglo-Saxon countries have common law systems.

Civil law - Civil law or Continental law or Romano-Germanic law is the predominant system of law in the world. Civil law as a legal system is often compared with common law. The main difference that is usually drawn between the two systems is that common law draws abstract rules from specific cases, whereas civil law starts with abstract rules, which judges must then apply to the various cases before them.

Certification - The process a court goes through in deciding whether a case will be permitted to proceed as a class action.

Commonality - Some common material fact or question of law that is common to all potential class members.

Contingency fees - A fee, as for an attorney's services, that is payable only in the event of a successful or satisfactory outcome.

Class action - Class action is a lawsuit brought by one or more plaintiffs on behalf of a large group of others who have a common interest. Class action is typically used for collective actions in common law countries and is characterised by a number of features like: contingency fees, opt-out procedures, generous discovery rules and extensive lawyer advertisements.

Defendant - The person being sued in a lawsuit.

Group action - In a group action, an exactly defined category of persons brings an action to enforce their individual claims together, in one procedure, in accordance with special rules designed for such purpose. Group action, multi-party action or collective action is the terminology commonly used in continental European countries as well as by the European Union.

Injunction - An injunction is an equitable remedy in the form of a court order, whereby a party is required to do, or to refrain from doing, certain acts. The party that fails to adhere to the injunction faces civil or criminal penalties and may have to pay damages or accept sanctions for failing to follow the court's order. In some cases, breaches of injunctions are considered serious criminal offences that merit arrest and possible prison sentences.

Joint proceedings - Joint actions is when several individual plaintiffs bring an individual action before the same court and when these actions are joint by the court into one procedure.

Losing party pays principle - The "losing party pays principle" means that the losing party in a trial pays the winning party's litigation costs.

Opt-in and opt-out - A group action can automatically include all individuals who fit the plaintiff's description of the group, unless someone in the group decline to be part of the action (opt-out). The opt-out approach is applicable in most common law countries. The opt-in approach means that members of the group have to be notified about the claim and given a chance to within a certain time limit join the action (in other words opt-in).

Plaintiff - A plaintiff , also known as a claimant or complainant, is the party who initiates a lawsuit (also known as an action) before a court. By doing so, the plaintiff seeks a legal remedy, and if successful, the court will issue judgment in favor of the plaintiff and make the appropriate court order (eg. an order for damages).

Test cases - In case law, a Test Case is a legal action whose purpose is to set a precedent. An example of a test case might be a legal entity who files a lawsuit in order to see if the court considers a certain law or a certain legal precedent applicable in specific circumstances. This is useful, for example, in order to later file similar lawsuits in similar circumstances.

Annex 1 Swedish Group Proceedings Act, issued on 30 May 2002

Swedish Code of Statutes

SFS 2002:599

issued by the printers in June 2002

Group Proceedings Act

issued on 30 May 2002.

The following is enacted in accordance with a decision 1 by the Swedish Riksdag.

Introductory provisions

Group action

Section 1 In this Act, group action means an action that a plaintiff brings as the representative of several persons with legal effects for them, although they are not parties to the case. A group action may be instituted as a private group action, an organisation action or a public group action.

Group means the persons for whom the plaintiff brings the action.

Group proceedings

Section 2 Proceedings where a group action is brought are referred to as group proceedings. Group proceedings can relate to claims that can be dealt with by a general court in accordance with the rules contained in the Code of Judicial Procedure on civil cases.

The provisions of the Code of Judicial Procedure on civil cases apply to group proceedings, except for Chapter 1, Section 3 d, unless otherwise stated in this Act.

Group proceedings may also be brought in accordance with special provisions contained in the Environmental Code.

How a group action is instituted, etc.

Competent courts

Section 3 The district courts designated by the Government shall be competent to process cases under this Act. There shall be at least one competent district court in each county.

Right to bring an action

Section 4 A private group action may be instituted by a natural person who, or legal entity that, himself, herself or itself has a claim that is subject to the action.

Section 5 An organisation action may be instituted by a not-for-profit association that, in accordance with its rules, protects consumer or wage-earner interests in disputes between consumers and a business operator regarding any goods, services or other utility that the business operator offers to consumers.

In the first paragraph

consumers: means natural persons who acted primarily for purposes outside business operations,

business operator: a natural person or legal entity that acted for purposes that are connected with their own business operation.

An organisation action referred to in the first paragraph may also include a dispute of another kind, provided there are significant advantages with the disputes being jointly adjudicated taking into consideration the investigation and other circumstances.

Section 6 A public group action may be instituted by an authority that, taking into consideration the subject of dispute, is suitable to represent the members of the group. The Government decides which authorities are allowed to institute public group actions.

Section 7 The right to represent the group does not end if there is a change to the circumstances on which the right to institute the action in accordance with Sections 4-6 has been founded.

Special preconditions for proceedings

Section 8 A group action may only be considered if

1. the action is founded on circumstances that are common or of a similar nature for the claims of the members of the group,
2. group proceedings do not appear to be inappropriate owing to some claims of the members of the group, as regards grounds, differing substantially from other claims,
3. the larger part of the claims to which the action relates cannot equally well be pursued by personal actions by the members of the group,
4. the group, taking into consideration its size, ambit and otherwise is appropriately defined, and
5. the plaintiff, taking into consideration the plaintiff's interest in the substantive matter, the plaintiff's financial capacity to bring a group action and the circumstances generally, is appropriate to represent the members of the group in the case.

Content of the application

Section 9 An application for a summons shall, in addition to the provisions of Chapter 42, Section 2 of the Code of Judicial Procedure, contain details concerning

1. the group to which the action relates,
2. the circumstances that are common or similar for the claims of the members of the group,
3. the circumstances known to the plaintiff that are important for the consideration of only some of the claims of the members of the group, and
4. other circumstances that are important for the issue of whether the claims should be processed as group proceedings.

The plaintiff shall state in the application the names and addresses of all members of the group. Such details may be omitted if they are not necessary for processing the case. The plaintiff shall also provide details of circumstances that are otherwise important for notifications to the members of the group.

Change of form of action

Section 10 A person who is the plaintiff in proceedings can, by written application to the district court, request that the case should be transformed into group proceedings. In that event, the provisions of Section 9 and Chapter 42, Sections 2-4 of the Code of Judicial Procedure shall apply. An application may only be granted if the defendant consents to this or if it is manifest that the advantages with group proceedings outweigh the inconvenience that such proceedings may be deemed to entail for the defendant.

The application shall be served on the defendant for views. If the application is unfounded, the court may dismiss it immediately.

If the district court where a case is pending is not competent to deal with the group action, the application shall be transferred to a competent court. If the application is manifestly unfounded, the court may immediately reject the application instead of transferring it.

Attorneys

Section 11 A private group action and an organisation action shall be brought through an attorney who is an advocate. If there are special reasons, the court may allow the action to be brought without an attorney or through an attorney who is not an advocate.

Section 12 A power of attorney that relates to proceedings generally does not empower the attorney to institute a group action or to receive a summons in group proceedings.

Notifications to the members that group proceedings have been instituted

Section 13 If the plaintiff's application to commence group proceedings is not dismissed, the members of the group shall be notified of the proceedings.

The notification shall, to the extent considered appropriate by the court, contain

1. a brief description of the application
2. information about
 - a) group proceedings as a form for processing,
 - b) the opportunity for the members to personally participate in the proceedings,
 - c) the legal effect of a judgment in group proceedings, and
 - d) the rules applicable to litigation costs,
3. details of the names and addresses of the plaintiff and attorney,
4. notice of the date determined by the court for notices in accordance with Section 14, and
5. information about other circumstances that are important for the rights of the members of the group.

Definition of the group

Section 14 A member of the group who does not give notice to the court in writing, within the period determined by the court, that he or she wishes to be included in the group action shall be deemed to have withdrawn from the group.

Status of the member of the group

Section 15 A member of the group shall be equated with a party when applying the rules of the Code of Judicial Procedure on disqualification situations, pending proceedings, joinder of cases, examination during the proceedings and other issues relating to evidence.

Disqualification

Section 16 A member of the group who is not a party may, even if he or she has not entered into the proceedings as an intervenor, present an objection regarding disqualification of a judge within two weeks from the date when he or she became aware that the judge is participating in the processing of the case. If the circumstance on which the disqualification is founded was not then known to the member, the objection may be presented within two weeks from the date when the member became aware of the circumstance.

Subsequent processing

Obligations of the plaintiff

Section 17 When conducting the action, the plaintiff shall protect the interests of the members of the group.

On important issues, the plaintiff shall afford the members of the group an opportunity to express their views, if this can be done without great inconvenience. If a member of the group so requests, the plaintiff shall provide such information as is of importance for the rights of the member.

Extension of action

Section 18 The court may allow the plaintiff to extend a group action to comprise other claims on the part of the members of the group or new members of the group, provided this can be done without it causing any significant delay to the determination of the case and without other substantial inconvenience for the defendant. An application for an extension of an action shall be given in writing and contain such details as are referred to in Section 9.

Transfer of the subject to which the dispute relates

Section 19 If the plaintiff or a member of the group transfers the subject to which the dispute relates to someone else, the provisions of Chapter 13, Section 7 of the Code of Judicial Procedure shall apply as regard the right and obligation of such person to enter as a member of the group.

Sub-groups

Section 20 The court may assign someone, besides the plaintiff or instead of the plaintiff, to conduct the action on a particular issue or a part of the substantive matter that only applies to the rights of particular members of the group, if this promotes an appropriate processing. Such an assignment may be given to a member of the group or, if this is not possible, someone else.

The parties and members of the group affected shall be given an opportunity to express their views before the court makes a decision, provided this is not manifestly unnecessary. The court shall specify in the decision what part of the group and the issue or part of the substantive matter that the appointment relates to.

The provisions of this Act concerning plaintiffs also apply in relevant respects to a person that has been appointed to conduct an action in accordance with the first paragraph.

Substitution of plaintiff

Section 21 If the plaintiff is no longer considered to be appropriate to represent the members of the group in the case, the court shall appoint someone else who is entitled to bring action in accordance with Sections 4-6 to conduct the group's action as plaintiff.

If no new plaintiff can be appointed in accordance with the first paragraph, the group action shall be dismissed. If the plaintiff is the appellant's counterparty in a superior court, the court may appoint someone else who is considered appropriate to conduct the group's action as plaintiff.

Section 22 In cases other than those referred to in Section 21, another person may only take over the plaintiff's action if the plaintiff has transferred their part of the subject of dispute or if there are other special reasons.

Discontinuation of group proceedings or part of them

Section 23 If the plaintiff withdraws the group action within the time period for notice, in accordance with Section 14, the case shall be written off in its entirety. If the plaintiff, within the period, withdraws the case regarding a part that refers to a claim of a particular member of the group, that claim shall be written off.

Should, at the expiry of the period for notice, an issue arise concerning the writing off of the case in its entirety or dismissal of the group action, the court shall afford the parties and the members of the group an opportunity to express their views, unless this is manifestly unnecessary.

The second paragraph also applies if an issue arises concerning the writing off of the case or dismissal of an action in a part referable to a particular claim of a member of the group.

Section 24 The court may decide a period within which a member of the group shall give notice to the court in writing that they, if the group proceedings as regards their claim are discontinued, wishes to enter as a party and bring the action concerning their rights.

If a notice concerning entry is made in accordance with the first paragraph, the court shall separate the plaintiff's case to which the notice applies and decide on the future processing.

The court may, subject to the preconditions referred to in Chapter 1, Section 3 d of the Code of Judicial Procedure, decide that the case should be dealt with applying that section.

The court can transfer a separated case to another competent court, if this is best taking into consideration the investigation and the other circumstances.

Section 25 If an appeal is withdrawn or shall be dismissed for reasons other than it having been delivered too late, the provisions contained in Section 23, second and third paragraphs and Section 24, first and second paragraphs shall apply.

If an appeal has lapsed owing to the plaintiff failing to attend a session for a main hearing, the case shall be reinstated in accordance with Chapter 50, Section 22 of the Code of Judicial Procedure upon the application of a member of the group, even if the plaintiff does not have legal excuse for their absence. The application of the member of the group may be limited to a particular claim.

Settlement

Section 26 A settlement that the plaintiff concludes on behalf of a group is valid, provided the court confirms it by judgment. The settlement shall at the request of the parties be confirmed, provided it is not discriminatory against particular members of the group or in another way manifestly unfair.

Postponement of consideration of a particular issue

Section 27 If it is appropriate taking into consideration the investigation and it can be done without significant inconvenience for the defendant, the court may issue a judgment that for particular members of the group constitutes a final determination of the substantive matter and which for other members of the group involves the postponement of the consideration of a particular issue.

The court shall order each member of the group for whom the case has not finally been determined to request, within a particular period, that the remaining issue is considered. On issues concerning the members of the group who have submitted such a request, the court shall decide in accordance with Section 24, second and third paragraphs, on separation and concerning the future processing. If a member of the group does not submit a request for consideration of the remaining issue, the action of the member shall be rejected, unless the defendant has consented to the request or it is manifest that the action is founded.

Content of the determination

Section 28 The court shall specify in a judgment the members of the group to which the judgment refers. This also applies to a decision, if this is necessary having regard to the nature of the issue.

Legal force

Section 29 The determination of the court in group proceedings has legal force in relation to all members of the group who are subject to the determination.

Special rules on litigation costs, etc.

Right to compensation and liability for costs

Section 30 A person who has been appointed in accordance with Section 21, second paragraph, to conduct the action of a group as plaintiff, is entitled to compensation from public funds corresponding to the costs for the preparation of the proceedings and the conduct of the action and also fees for attorney or counsel, provided the costs were reasonably incurred to protect the rights of the members of the group. Compensation shall also be paid for the plaintiff's own work and time consumed owing to the proceedings. A hearing for the presentation of an issue in a dispute that is directly relevant to the action brought shall be deemed to be a measure for the preparation of the proceedings.

The court may decide on advance payment of compensation with a reasonable amount if this is reasonable considering the amount of the costs or the work that the assignment has involved, the time that the proceedings can be estimated to continue and the other circumstances.

Section 31 A person who has been appointed in accordance with Section 21, second paragraph, to conduct the action of a group as plaintiff is not liable to pay compensation for the other party's litigation costs in cases other than those referred to in Chapter 18, Section 6 of the Code of Judicial

Procedure. Instead, the person who was previously the plaintiff in the case shall, as a party, be liable for these litigation costs. He or she shall also compensate the State for that which has been paid from public funds in accordance with Section 30, to the extent the appellant or someone else is not liable to pay such compensation.

If someone has in connection with an appeal or thereafter taken over the plaintiff's action in cases other than those referred to in the first paragraph, he or she is liable as a party only for litigation costs that have arisen in the superior court. For litigation costs in the lower court, the person who was previously the plaintiff in the case shall instead be liable.

Section 32 The provisions contained in the Code of Judicial Procedure concerning liability for litigation costs shall also be applied on issues concerning compensation from public funds that are paid to a plaintiff in accordance with Section 30. Compensation for such costs shall

be paid for by the State. The court shall consider the issue of compensation without being requested to do so.

Liability for costs of a member of the group

Section 33 A member of the group who is not a party to the proceedings is only liable for the litigation costs regarding such cases as referred to in Sections 34 and 35.

Section 34 If the defendant has been ordered to compensate the plaintiff for litigation costs or pay such costs to the State as referred to in Section 32 and if the defendant cannot pay, the members of the group affected are liable to pay these costs. The same applies to additional costs in connection with risk agreements that the defendant has, in accordance with Section 41, not been ordered to pay. Each member of the group is liable for their share of the costs and is not liable to pay more than he or she has gained through the proceedings.

Section 35 A member of the group who is not a party to the proceedings should indemnify the costs that the member has caused by any measure referred to in Chapter 18, Section 3, first paragraph of the Code of Judicial Procedure or by such carelessness or oversight as referred to in Section 6 of the same chapter.

Section 36 If a member has entered as a party in the group proceedings in conjunction with an appeal or thereafter, the member is only liable as a party for the costs that have arisen in the superior court.

Separation of plaintiff's case

Section 37 If a plaintiff's case has been separated in accordance with Section 24, the plaintiff and the member of the group are jointly liable for the litigation costs that have arisen prior to the separation.

The member of the group is solely liable for costs that have arisen thereafter.

If the plaintiff or the member of the group has caused the litigation costs by carelessness or oversight, he or she shall be solely liable for the costs.

Risk agreement

Section 38 If the plaintiff has concluded an agreement with an attorney that the fees for the attorney shall be determined having regard to the extent to which the claims of the members of the group is successful (risk agreement), the agreement may only be asserted against the members of the group if it has been approved by a court.

Section 39 A risk agreement may only be approved if the agreement is reasonable having regard to the nature of the substantive matter. The agreement shall be concluded in writing. The agreement shall indicate the way in which it is intended that the fees will deviate from normal fees if the claims of the members of the group were to be granted or rejected completely. The agreement may not be approved if the fees are based solely on the value of the subject of dispute.

Section 40 The issue of the approval of a risk agreement shall be considered in pending group proceedings by the court upon the application of the plaintiff. If the legal matter covered by the risk agreement has not been instituted at court, the person who wishes to bring the group action shall request that the issue of the approval is considered by a court that is competent to consider the dispute.

If it is not possible to determine which court is competent, the issue of approval shall be considered by Stockholm City Court.

An approval in accordance with the first paragraph ceases to apply, if group proceedings have not been commenced within six months from the approval. If there are reasons to do so, the court may extend this period.

Section 41 When considering what litigation costs are indemnifiable according to Chapter 18, Section 8 of the Code of Judicial Procedure, regard shall not be taken to such additional costs that have arisen owing to a risk agreement.

Appeals

Section 42 When consideration of a particular issue has been postponed in accordance with Section 27, the court shall decide if the judgment may be appealed against separately regarding the part where the determination is not final. However, such part of the judgment may in every case be appealed against separately if an appeal, for or against a group, is made regarding the part of the judgment that is final.

If a judgment is appealed against separately in accordance with the first paragraph, the court may order a stay of proceedings pending the judgment entering into final legal force.

Section 43 The decision of the district court as a result of the withdrawal of the action may not be appealed against, if the withdrawal has been made within the period for notices in accordance with Section 14. However, a decision on issues concerning litigation costs that has been issued in conjunction with the writing off may be appealed against.

Section 44 A decision by a district court to appoint a new plaintiff may be appealed against by the former plaintiff and by a member of the group who has proposed another plaintiff. A decision by a district court to reject a request for the exchange of plaintiff may be appealed against by a member of the group who has proposed such a change. The provisions contained in Chapter 49, Sections 4 and 11, first paragraph of the Code of Judicial Procedure shall apply to issues of appeal.

Section 45 A decision by a district court during the proceedings may, in addition to the provisions of the Code of Judicial Procedure and Section 44, be appealed against separately, if the district court has in the decision

1. rejected the plaintiff's request to be allowed to bring a private group action or organisation action without an attorney or through an attorney who is not an advocate,
2. considered an issue in accordance with Section 19 concerning entry as a member of the group, or
3. considered an issue of approval of a risk agreement in accordance with Section 39.

A person who wishes to appeal against a decision referred to in the first paragraph shall first give notice of dissatisfaction. The notice shall be given immediately, if the decision has been issued at a session and otherwise within one week of the date when the appellant received the decision. A person who fails to do so is no longer entitled to appeal against the decision. If someone gives notice of dissatisfaction, the court may declare a stay of the proceedings pending consideration of the appeal, if there are special reasons.

Section 46 The provisions contained in Sections 44 and 45 also apply in connection with appeals against the decision of a court of appeal that is not final on issues referred to in those sections and which arose in the court of appeal or which have been appealed against to the court of appeal.

Section 47 A member of the group may appeal against a judgment or final decision on behalf of a group and also a decision on approval of a risk agreement in accordance with Section 39. A member of the group is also competent to appeal, on their own behalf, against a judgment or a decision that concerns their rights.

Section 48 A notice of dissatisfaction by a member of the group who is not a party to the proceedings may be made within one week of the date for the decision provided the decision has been pronounced at a session to which the member has not been summoned nor has attended nevertheless. The same applies if the decision has not been pronounced at a session and not served on the member.

Notifications to the members of the group

Section 49 The court shall, in addition to what is prescribed by other provisions, notify a member of the group affected of a judgment or a final decision and also of a settlement that is subject to a request for confirmation in accordance with Section 26.

If it is necessary taking into consideration the importance the information may be deemed to have for the rights of the member, the court shall also notify a member of the group affected if

1. the plaintiff has been substituted with a new plaintiff,
2. the plaintiff has appointed a new attorney,
3. the plaintiff has waived the action,
4. that an issue has arisen concerning the approval of a risk agreement,
5. that a judgment or decision has been appealed against, and
6. other decisions, measures and overall situation.

Section 50 Notifications to members of the group in accordance with this Act shall be made in the manner considered appropriate by the court and observing the provisions contained in Chapter 33, Section 2, first paragraph of the Code of Judicial Procedure.

The court may order a party to attend to a notification, provided this has significant advantages for the processing. The party is in such a case entitled to compensation from public funds for expenses.

The provisions contained in the second paragraph also apply when notification is given by service.

This Act enters into force on 1 January 2003.