

DG Sanco's "Leuven Event" on June 29th, 2007

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Our study on alternative means of consumer redress other than ordinary court procedures that we have submitted to DG Sanco on January of this year has shown a wide variety of forms of dispute resolution on behalf of consumers.

The scope of our comparative study, based on national reports by experts of the then 25 Member States, Australia, Canada and the U.S. was very large and encompassed direct negotiation, mediation, arbitration, other forms of ADR, small claims procedures, injunctions and, collective actions for damages.

The different means of consumer redress can be seen as a continuum.

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

CHAPTER II	CHAPTER III	CHAPTER IV	CHAPTER V	CHAPTER VI
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One of the most important findings of our study - apart from the great variety of systems and the great differences in application and effectiveness - is the lack of coherence and coordination within the various legal systems. There is an important knowledge deficit. Consumers do not know their rights. We believe that the creation of a single contact point per Member State would improve consumer knowledge and awareness of their rights to redress as well as the exercise thereof.

With regard to collective claims for damages it is striking that US type of class actions encounter serious opposition in all the Member States.

The disadvantages of class actions that are most commonly mentioned can be summarized as follows:

- ✓ The pursuit of non collective interests

- ✓ Risk of unfounded claims
- ✓ Specific criticism of US class actions:
 - ✓ Discovery
 - ✓ Contingency fees
 - ✓ “Opt out” allegedly violating art. 6 ECHR

At the time when our study was conducted (mid 2006) only the recent Dutch law on collective settlement of mass damage is based on an opt out, but the court judgment is based on an out of court settlement.

Collective actions for damages in Europe generally take one of the following forms

- ✓ Joint actions: grouped individual actions
- ✓ Group actions: one action on behalf of a defined group of persons
- ✓ Representative action: a state body, private organisation (or individual) acts on behalf of several individuals)
- ✓ Test cases (“Musterklagen”)
 - Examples: KapMuG (D 2005); § 1(3)8° RBerG “Musterprozess” (D 2006)

We have also observed a fundamental divide between public/private enforcement between Member States

In Europe actions for injunctive relief are widespread but collective actions for damages are in a state of infancy.

What are the central questions regarding collective actions for damages?

- Who is organising the bundling of claims: a private or a public actor?
- How can individual actions best be bundled? An adequate system of notifying potential claimants (whether in an opt out or in an opt in system) is crucial?
- How can the costs of procedure be limited and the action be financed?
- How can businesses best be protected against costly multiple procedures?
- What is the role of the judge?
- What scope is there for out of court settlement?
- Which legal binding force has the judgment? (especially in an international context)
- What form should compensation take?
- How will the proceeds of the procedure be distributed amongst plaintiffs and others?

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