

## IV. Country report Finland

### Document Control

<i>Document</i>	<i>Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union – country report Finland</i>
<i>Prepared by</i>	<i>Klaus Viitanen, LL.D., Docent in Commercial Law (Senior Lecturer), University of Helsinki</i>
<i>Edited by</i>	<i>Dr. Frank Alleweldt, Dr. Senda Kara, Rémi Bêteille</i>
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## 1.1 Overview of collective redress mechanisms<sup>1</sup>

In a group action for compensation is it possible to claim monetary compensation for damages which a certain group of person has suffered due to the infringement of their individual rights. Group action for compensation may be non-representative or representative. In a non-representative group action for compensation all persons who have suffered damage, have to be parties of the trial in order to receive compensation. These kinds of non-representative actions have been traditionally possible in the Finnish courts on the basis of joint actions and consolidation of actions. In addition, test and pilot cases are also possible in the Finnish courts, although they are not given any kind of special treatment in the Finnish procedural legislation.

After fifteen years of discussions and hard debates *the Group Action Act (444/2007)* was finally adopted in February 2007 and it entered into force in October 2007. This act, which however is applicable in mass consumer disputes only, provides for the first time a possibility for a representative group action for compensation. According to this act, the Finnish Consumer Ombudsman may in a mass consumer dispute take a legal action in a general court and represent a specified group of consumers without an express permission of group members, and this results in a judgment that is binding both for and against all the members of the group. The main features of the Finnish Group Action Act will be presented in chapter 1.1.1. of this report (*collective redress mechanism 1*).

In Finland, there exists also a system for out-of-court settlement of consumer disputes. At the municipal level consumers may receive legal advice from the municipal consumer advisers. These advisers may also try to mediate between the disputing parties. At the state level the Consumer Dispute Board is settling individual consumer disputes by giving recommendations. Since March 2007 the Finnish Consumer Ombudsman has been entitled to initiate a special group claim in this Board. In case the Board regards the claim as justified, it may recommend that the trader in question should give compensation to all consumers who have suffered similar damages due to the activities of the same trader. The possibility to present a group claim in Finnish Consumer Dispute Board will be dealt in chapter 1.1.2. of this report (*collective redress mechanism 2*).

Until February 2008 there have been no group actions for compensation in courts or group claims in the Board.

Group action for injunction has been possible in Finland since 1978. The Consumer Ombudsman may take legal action against a trader in the Market Court in cases concerning unfair marketing practices or unfair standard contract terms. The purpose of

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<sup>1</sup> This is an update of a previous study commissioned by DG SANCO. See: Centre for Consumer Law of the Katholieke Universiteit Leuven 2007, An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings.

these actions is solely the protection of collective consumer rights. During this procedure it is not possible to claim compensation of damages for individual consumers.<sup>2</sup>

Since 1978 the Finnish Consumer Ombudsman has had also a right to assist individual consumers in ordinary courts. The assistance is given in 2 to 6 cases every year. However, these are not mass consumer disputes, but disputes which have a principal significance, e.g., it is a question of interpretation of consumer contract law. In a recent case, the Finnish Supreme court decided that a credit card company was liable for non-delivery of goods which a consumer had bought by internet from USA. So, it is not a question of a collective redress scheme, but of assisting individual consumers in principally interesting cases in order to create case law which could help to apply consumer law in the future.

### **1.1.1 *Collective redress mechanism 1: Group Action for Compensation in Consumer Disputes***

#### **Summary description**

There exist at this moment two different collective redress mechanisms in Finland. The first one is a group action in general courts (*ryhmäkanne*). It is based on *Ryhmäkannelaki* (444/2007) which was adopted in February 2007 and entered into force in October 2007.

Comparing to the group actions in other Nordic countries (Denmark, Norway and Sweden), the Finnish Group Action Act has two essential restrictions. Firstly, the scope of application has been limited to consumer disputes only. Secondly, only the Finnish Consumer Ombudsman may act as a plaintiff in group actions.

Similar to other Nordic countries, also the Finnish group action is based on an opt-in model and the loser pays cost rule.

#### **Details**

##### **A. LEGAL BASIS**

Government's proposal concerning new legislation on group action was given to the Parliament in September 2006 and the new act was adopted in 13 February 2007.<sup>3</sup> The Finnish Group Action Act (*Ryhmäkannelaki*) (444/2007) entered into force in October 2007.

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<sup>2</sup> For a description see National report for Finland, in: *An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings* by the Centre for Consumer Law of the Katholieke Universiteit Leuven, Belgium. Hereafter referred to as Leuven report.

<sup>3</sup> See *OLJ 4/2006* and *HE 154/2006*.

## **B. COMPETENT AUTHORITY**

Finland has a dual court system. There are the general courts, which deal with civil and criminal law cases, and the administrative courts, which deal with disputes between private persons and public authorities, e.g., disputes on taxes, social security, and protection of the environment.

Only the general courts have competence to hear group actions for compensation. The general courts are divided into three levels: the courts of first instance, the Courts of Appeal and the Supreme Court. However, only six courts of first instance have competence to hear group actions for compensation: Turku, Vaasa, Kuopio, Helsinki, Lahti and Oulu. Among these courts, the competent court is the District Court which is located in the same Court of Appeal jurisdiction as the District Court where the defendant would be liable to respond if a claim covered by the group action would be presented as a separate case.<sup>4</sup>

## **C. WHO CAN INITIATE THE PROCEDURE – RULES OF STANDING**

According to article 4 of the Finnish Group Action Act, the Finnish Consumer Ombudsman has exclusive right to take legal action on behalf of a specified group of consumers. This means that consumer organisations or individual consumers do not have even a secondary right of action in cases where the Consumer Ombudsman have decided not to start a legal proceeding. According to a committee report published in year 2006, in environmental damage issues the environmental organisations would have had a right of action, but only a secondary one.<sup>5</sup> This secondary right of action was naturally dropped when the scope of application of the act was decided to be limited to consumer mass disputes only.

## **D. TYPES OF DISPUTES**

The scope of application is in most Group Actions Acts of Nordic countries general. This means that group action is possible in all kinds of disputes on the condition that they fulfil the general requirements of group actions, e.g., it is question of disputes where the facts are identical or almost identical to each others, and it is sensible to handle these disputes together in one trial.

However, in this respect the Finnish Act differs clearly from the other Nordic countries. According to the committee report published in year 2006, the scope of application was planned to be restricted to two types of disputes: to mass consumer disputes and to environmental damage issues. The government's proposal was even more strict: group action should be possible in mass consumer disputes only.<sup>6</sup> This opinion was also adopted by the Parliament.

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<sup>4</sup> See article 3 of the Group Action Act.

<sup>5</sup> See *HE 154/2006*, p. 20 and *OLJ 4/2006*, pp. 61-67

<sup>6</sup> See *OLJ 4/2006* s. 53-56 and *HE 154/2006*, pp. 16-17.

So, according to the article 1.1 of the Finnish Group Action Act the act applies, within the limits of the competence of the Consumer Ombudsman, to the hearing of a civil case between a consumer and a trader.

#### **E. MAIN PROCEDURAL RULES**

A group action for compensation in Finland starts by an application for summons. It should contain also arguments, why the case should be heard as a group action.<sup>7</sup> Only six courts of first instance have competence to deal with group actions. After receiving the application for summons, the court will study, whether the general requirements - e.g., the claims are based on same or similar circumstances - that the case may be heard as a group action for compensation, have been fulfilled.<sup>8</sup>

If they are fulfilled, the court shall give the parties a notice of the commencement of the group action. The court shall also set a time limit for class accessions. After this, the plaintiff should without delay give the known class members a notice of the filing of the case. The notice may be postal or electronic. If the notice cannot be given in either manner to all class members, an announcement of the class action may be published in one or several newspapers or in some other appropriate manner. The notice should contain, e.g., a brief description of the case and basic information on the class action as a form of procedure.<sup>9</sup>

In group actions judgements have legal effect for all members of the group, although they are not parties to the case. However, there are in principle two alternative ways how the group may be formed. Firstly, all persons who fill certain requirements will become automatically members of the group. In this system those, who do not want to be members of the group have to use their right to *opt out*. The opposite alternative is an *opt in* model. In this alternative only those persons, who have joined the group by registration, will be members of the group and will be covered by the judgement.

In Finland only the *opt in* alternative is available. This is also the case in Sweden and the main rule in Norway and Denmark. However, in these two last-mentioned countries also an *opt out* alternative is possible in mass disputes, where individual court actions are not sensible, e.g., due to the fact that the monetary interest of individual cases is so low. This possibility increases the usefulness of group action, especially in mass consumer disputes. However, in Denmark the *opt out* alternative is available in public actions only.<sup>10</sup>

As already mentioned, the Finnish Group Action is based on *opt in* model only. Members, who have delivered, within the time limit, a written letter of accession belong

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<sup>7</sup> See the *Group Action Act*, art. 4-5.

<sup>8</sup> See *HE 154/2006*, p. 40.

<sup>9</sup> See the *Group Action Act*, art. 6-7.

<sup>10</sup> See the *Norwegian Act on Civil Procedure*, ch. 35, art. 7 and *Bet enkning nr. 1468*, pp. 275-276.

to the class. However, in case a member delivers a letter of accession after the expiry of the time limit, but before the supplemented application for a summons has been submitted to the court, the plaintiff may for a special reason accept him or her as a class member. After receiving the letters of accession, the plaintiff must prepare a supplemented application for a summons, indicating the names and addresses of the class members, the particulars of their claims and, if necessary, supplemented grounds for the claims. The application for a summons must be submitted to the court within one month of the time limit set for class accessions. The court should without delay issue the summons once it has received the supplemented application for a summons.<sup>11</sup>

During the preparation of the case, the plaintiff may expand the action to cover also new class members by amending the definition of the class, if this does not cause significant delay in the hearing of the case or unreasonable inconvenience to the defendant. On the other hand, if the plaintiff withdraws the action in respect of the claims of a given class member before the supplemented application for a summons has been submitted to the court, the court should strike the case from its docket for the respective part. However, in case the plaintiff restricts the action, after the submission of the supplemented application for a summons to the court, so that it no longer covers the claim of a given class member, the court should set a time limit within which the class member may notify the court that he or she wishes to pursue his or her case as a party in separate proceedings. If a class member notifies that he or she wishes to pursue the case as a party, the court should sever his or her claims in order for them to be heard in separate proceedings and decide how the proceedings are to continue.<sup>12</sup>

Before the case is moved on to the main hearing, a class member may resign from the class by notifying the court in writing or in person at the court registry. In this event, the case should be struck from the docket in respect of the resigning class member. However, when the case has already been moved on to the main hearing, a class member may resign from the class only with the consent of the defendant. Also in this event, the case should be struck from the docket in respect of the resigning class member. Once the case rests for a decision, resignation from the class is no longer permitted.<sup>13</sup>

The legal effects of the judgment given in a group action for compensation are regulated in article 16 of the act. According to it, the decision of the court is binding on the class members whom the court has in the decision designated as such.

The parties have the right to appeal against a decision issued on the basis of a group action. The normal rules for appeals, as provided in the Code of Judicial Procedure, shall be applied. A decision dismissing a procedural plea concerning the preconditions

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<sup>11</sup> See *the Group Action Act*, art. 8-10.

<sup>12</sup> See *the Group Action Act*, art. 12-13.

<sup>13</sup> See *the Group Action Act*, art. 15.

for a group action may be separately subject to appeal, unless the court, in order to avoid undue delay or for some other special reason, orders that the decision may be subject to appeal only in conjunction with the judgment or other final order on the main issue. So, only the parties have a right of appeal. However, in case the plaintiff does not appeal a decision issued on the basis of a group action for compensation, a class member shall have the right to appeal in respect of his or her claim within 14 days of the end of the appeal period or the respective counter-appeal period. A class member need not declare an intent to appeal. In other respects, appeal shall be governed by the provisions of the Code of Judicial Procedure.<sup>14</sup>

Otherwise the procedure to be used in these representative group actions for compensation is primarily corresponding to ordinary legal procedure in civil cases. This is mentioned in article 1.3. of the act. According to it, in addition to the provisions of the act, the hearing of a group action shall in other respects be governed by the provisions on civil procedure, in so far as appropriate.

#### **F. REMEDIES THAT CAN BE OBTAINED**

The Finnish Group Action Act contains no regulation on applicable remedies in group actions for compensation. In this respect, all civil law remedies are available as in normal traditional individual civil cases, e.g., compensation of damages, price reduction. In consumer disputes the provisions of the Consumer Protection Act (38/1978) shall be applied. For example, chapter 5 of this act contains rules which define the remedies available in the sale of consumer goods.

#### **G. COSTS INVOLVED FOR THE PARTIES**

In Finland the cost rules were reformed in 1993 at the same time when the civil procedure in courts of first instance was radically reformed. The obligation to pay the legal expenses is regulated in chapter 21 of the Code of Judicial Procedure. According to article 1 in chapter 21 of this code, the main rule in the civil procedure is that *the loser is obliged to pay all necessary and fair legal expenses of the other party*.

The decision, how much the loser has to pay to the winner, is made together with the judgment of the case and includes the exact amount, what the loser has to pay. That is why the parties should present their claims - usually directly based on attorneys' invoices - on legal expenses before the case rests for decision. In practice the courts do not cut very much parties' claims regarding legal expenses. This is one of the main reasons why the legal expenses have risen so much in Finland during the last 15 years. The attorneys present higher and higher invoices after realising that the courts take usually these invoices as a starting point when assessing the reasonable amount of legal expenses. At this moment there do not exist any scales or ceilings for a loser's liability to pay the legal expenses of the winner. This may be regarded as one of the main defects of the contemporary Finnish civil procedure. It means that the system is

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<sup>14</sup> See the Group Action Act, art.18.

not predictable. A person who takes legal action in a court is never able to calculate beforehand what is the maximum amount of legal expenses he or she has to pay if the case will be lost.

The Group Action Act does not contain any rules for a party's liability to pay the other party's legal expenses. That is why, the general costs rules in chapter 21 of the Code of Judicial Procedure will be applied also in group actions for compensation. In individual disputes the legal expenses of both parties may rather easily exceed in practice 15 000 Euro already in the court of first instance. However, in more principal cases, as in mass disputes, the expenses may be several hundred of thousands of Euro. It is most probable that this will also be the reality in group actions for compensation.

In group actions for compensation in Finland - as in Sweden - only the parties of the case are responsible for the costs. Since the members of the group are not parties to the proceedings, they will not be responsible for the costs. On the contrary, in Denmark and Norway the members may become partly responsible of the legal expenses. The ceiling of members' liability is, however, decided by the court already in the beginning of the trial.<sup>15</sup> The key question here is whether the liability is individual or collective. In case the ceiling will be individual, but not collective, this makes it possible for potential members of the group to assess whether it is economically sensible to opt in or not.

#### **H. AVERAGE DURATION OF THE PROCEDURE**

As there is so far no case law concerning group action for compensation, it is not possible to evaluate the average duration of the procedure. In individual cases the average duration of the court procedure is, at this moment, approximately one year per each instance. So, the average duration for cases which have passed all three instances, is approximately three years. However, in more complicated cases the duration of the procedure is in practice often much longer. It is not rare that a hearing of a large and complicated case takes two years or even more in each court instances. That is why, in group actions for compensation the duration of the procedure will most probable vary between 5-8 years in case the permission to appeal has been granted and the cases have been finally solved by the Supreme Court.

### **1.1.2 *Collective redress mechanism 2: Group Claim in the Consumer Disputes Board***

#### **Summary description**

The second collective redress mechanism in Finland is an out-of-court procedure in the Finnish Consumer Disputes Board (*Kuluttajariitalautakunta*). The Board was established already in 1978 to solve disputes between individual consumers and traders. However, since March 2007 the Finnish Consumer Ombudsman has been entitled to submit a special group claim (*ryhmävaatimus*) to the Board in mass

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<sup>15</sup> See the Norwegian Act on Civil Procedure, ch. 35, art. 14 and *Betænkning nr. 1468*, pp. 276-277.

consumer disputes. In case the Board regards the claim as justified, it may recommend that the trader in question should give compensation to all consumers who have suffered damages. The possibility to start a group claim procedure in the Board has been adopted from Sweden, where the similar system has been used since 1991.

### **Details**

#### **A. LEGAL BASIS**

The legal basis of the mechanism is formed by the Consumer Dispute Board Act (8/2007) and by the Consumer Dispute Board Decree (188/2007). The present regulation came into force in March 2007.<sup>16</sup>

#### **B. COMPETENT AUTHORITY**

The competent authority is the Consumer Dispute Board, a neutral and independent expert out-of-court body, whose task is to solve consumer disputes and some other similar kind of disputes. Its activities are fully financed by the State.

Formerly the Board was divided into the General Division and the Housing Division, which both had their own sections – altogether 13 – and an own plenary session. Now there is only one division and one plenary session. However, the composition of the plenary session varies on the basis what kind of disputes it is dealing with. Cases are first handled by different sections according to the product or service involved. Each section has a chairman and four other members. The plenary session deals only cases with more principal importance.<sup>17</sup>

#### **C. WHO CAN INITIATE THE PROCEDURE – RULES OF STANDING**

Normally it is only a consumer who may initiate the procedure in the Board. However, in group claims only the Consumer Ombudsman may submit the claim. He may also act in the case as a party.<sup>18</sup> Contrary to the Swedish system, consumer or labour organisations do not have a secondary right to complain in cases where the Ombudsman is not interested in bringing a group claim to the Board.

The general rules of legal standing apply also to group claims. This means, e.g., that the Board may not deal with a dispute if the same case has already been taken to a court.

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<sup>16</sup> For details of the previous regulation, see the Leuven report.

<sup>17</sup> See art. 10-11 of the Consumer Dispute Board Act, and art. 6 and 9 of the Decree.

<sup>18</sup> See art. 4 of the Consumer Dispute Board Act.

#### **D. TYPES OF DISPUTES**

The Consumer Ombudsman may submit a group claim to the Board in any kind of consumer dispute, falling into the jurisdiction of the Board, in case the following two conditions are fulfilled:<sup>19</sup>

- 1) Several consumers have claims against a same trader,
- 2) Which may be solved by one single decision.

#### **E. MAIN PROCEDURAL RULES**

The essential feature for the procedure in the Board is the fact that there are only few rules concerning how the Board should handle consumer disputes. However, there are some procedural rules which the Board has to follow. Often these rules simply express the fundamental procedural principles, e.g. the adversarial principle. Also when the Board is dealing with group claims, these general procedural rules and principles have to be followed. In addition, there are few rules concerning group claims only.

The Board handles only written claims. So, in order to start procedure in the Board a consumer – or the Consumer Ombudsman in a group claim – has to submit a written application to the Board. In group claims the Consumer Ombudsman has to define the class of consumers, on behalf of whom the group claim has been made.<sup>20</sup> The names of known consumers may be mentioned in the application, but it is not a necessary requirement. The class of consumers may be defined in the application, e.g., to cover all consumers who have bought a defective product or who have joined a defective package travel.<sup>21</sup> So, contrary to the group action in the courts, an opt in system is not used when group claims are dealt with in the Board.

The Board has to hear both parties before it may solve the case. Similar to the Consumer Dispute Boards in other Nordic countries, the Board does not arrange any oral hearings during the procedure.

However, this principle is not applied to expert testimony, and that is why the Board accepts written expert statements sent by the parties. Sometimes the Board orders an expert statement by itself, but in practice this happens quite rarely due to the limited economic resources. Outside experts have to be neutral and impartial. In many cases the Board does not need the help of outside experts because the members of the sections are experts on those commodities which are the subject of a dispute. The Board may also hold an inspection if necessary.<sup>22</sup> Also this form of evidence is in practice quite rarely used.

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<sup>19</sup> See art. 4 of the Consumer Dispute Board Act.

<sup>20</sup> See art. 4 of the Consumer Dispute Board Act.

<sup>21</sup> See Proposal 115/2006, p. 18.

<sup>22</sup> See art. 13 of the Consumer Dispute Board Act.

Contrary to the general courts, the Board does not have an obligation to give a substantial decision in all received claims. This means that the Board may leave unsolved, e.g., cases where oral hearing of witnesses is needed. In group claims relevant in this context is the possibility to abandon an individual claim on the ground that the same case has already been solved or is still a pending case as a group claim.<sup>23</sup> In these cases an individual consumer may naturally benefit from the decision made on the basis of a group claim.

However, the Board may handle also individual cases which in fact fall under the scope of group claim. This means that *some kind of opt out system is possible* in the Board. Opt out may be accepted, e.g., in cases where there is need for more individual treatment due to higher economic damages which a consumer has suffered.

#### **F. REMEDIES THAT CAN BE OBTAINED**

When deciding the case, the Board works as a general court in a similar situation. It considers the facts and evidences of the case and applies the relevant consumer law rules and other civil law rules. The remedies available are, e.g., price reduction, cancellation of a contract and compensation of damages.

However, when compared to the legal effects of decision, a clear and remarkable difference may be found between courts and the Board. The decisions made by the Board are only recommendations. This means that they cannot be enforced. If a trader resists, the consumer has to take a legal action in a court in case he or she still wants redress. However, due to the high costs of litigation, this choice is in practice rather seldom used. So, in case a trader does not comply with decision, the consumer is in practice left without any redress.

The names of those traders who do not comply with the Boards decisions, are published by the Finnish Consumer Association (on their website) and by some magazines. It is difficult to estimate how much publicity these so called black lists do get in practice and what is the real influence of these lists on consumers' behaviour. However, it seems that the possibility for a bad publicity does have effect on the behaviour of bigger companies, e.g., banks, insurance companies and travel agencies, and they normally comply with the decisions.

The number of complied decisions is normally about 70 per cent. However, clear differences may be found between different sections of the Board. In some sectors, e.g. financial services and package travel, more than 80 per cent of the decisions are complied with. A common feature for these sectors is that the markets are dominated by large, well known companies who want to avoid bad publicity. On the other hand, there are several sectors of business where less than 50 per cent of the decisions are complied with. In these sectors there tend to be a lot of small companies, which in practice are not so much afraid of black lists. Often this is the case for real estate agents, car or household repair, etc.

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<sup>23</sup> See art. 14 of the Consumer Dispute Board Act.

The decision of the Board in a group claim is also only a recommendation. Due to the fact that opt in system is not applied in the Board, *it will be in practice rather difficult to check whether the Board decision in a group claim has been complied with or not*. In individual cases both parties receive a copy of the decision, and a request to inform the Board whether the decision has been complied with or not. In practice, the Board receives often misleading announcements from traders, who insist that they have complied with the decision. However, later on the Board may receive an opposite announcement from the consumer. This shows clearly that a system which is based only on traders' announcements would not in practice be reliable. Methods to inform the members of group, when the recommendation has been issued, have to be developed.

#### **G. COSTS INVOLVED FOR THE PARTIES**

The use of attorneys is the main reason why the court procedure is in practice so expensive for the parties. That is why the original purpose was to make the procedure in the Board so simple, that ordinary people could handle their case without the need of an attorney. This aim has been fulfilled in practice very well. Consumers and small and medium sized enterprises use hired lawyers quite rarely. One reason for this is the written procedure, which makes it possible for ordinary people, in every phase of the procedure, to collect information and ask advice before making their statements to the Board.

However, sometimes attorneys are used especially on the trader's side. In this respect, the adoption of the no-cost rule has been very important. According to article 19 of the Consumer Dispute Board Act, the parties themselves have to bear all the costs they might have before the Board. This no-cost rule discourages parties to use attorneys. In case they prefer to use them, they have to pay all the expenses irrespective of what will be the outcome of the case.

In addition, the Board is free for consumers and traders. There are no fees which the parties would have to pay the Board before or during the procedure. The adoption of the no-cost rule, and the free of charge principle means that *lodging a claim to the Board does not cause any expenses to the parties* on the condition that they handle the case without a hired attorney.

In group claim these same rules are applied. The potential claim will be prepared and handled by the lawyers of the Consumer Ombudsman. That is why the procedure will not cause any extra expenses to the Ombudsman. In addition, there is no threat that the Ombudsman would become liable for the legal expenses of the defendant. As in the individual disputes, both parties have to carry their own expenses.

#### **H. AVERAGE DURATION OF THE PROCEDURE**

The average duration of the procedure in individual disputes is at the moment approximately one year. This means that procedure is not faster than the court procedure in the District Courts. The slowness of the procedure in the Board has been criticised from the very beginning of 1980s. No serious efforts have been made in order to make the procedure faster. The effects of increasing the number of personnel have been temporary. The use of different tracks for different types of disputes should be

seriously considered. Now it seems that too many cases pass the normal procedure instead of being solved in an earlier stage, e.g., by mediation.

Due to the fact that there has not yet been any group claim it is difficult to evaluate whether the duration of the procedure will be shorter or longer than the average one year. On the other hand, it is possible, that these cases would face a special treatment, and the Board would try to settle them faster than usually. On the other hand, group claims will certainly be more complex. In practice it is likely that the duration of the procedure in the group claims will not be significantly shorter than the average time of one year.

## 1.2 Overview of relevant literature

In Finland only very few scholars have so far shown interest on the problems connected to mass disputes and different alternatives for their settlement. On the contrary to, e.g., Sweden, the discussion on the benefits and defects of group actions for compensation took in Finland place in newspapers, not in the legal magazines or monographs.

However, few recent articles are worth of mentioning in this context:

- *Max Oker-Blom describes in his article (Behovet av grupptalan – en argumentativ övning, published in JFT 2006, pp. 86-107) the development of the American and Swedish group action –institutes. He tries also to analyse the different argument for and against the adoption of group action in Finland.*
- *Johan Bärlund studied in his article (Reklamation som förutsättning för påföljder vid gruppklagomål och grupptalan, published in JFT 2007, pp. 481-492) the potential implications of group action and group claim on the traditional principles concerning notice of defect. The buyer, whether he or she is a consumer or not, has to notify the seller within a reasonable time, after he/she discovered or ought to have discovered the defect. Otherwise the buyer will lose his or her right to a remedy. According to Bärlund, the adoption of these new procedural forms did not substitute the principle on notice of defect.*
- *Mikko Välimäki criticized in his article (Uusi ryhmäkannelaki – eräs lainsäädäntö-poliittinen seikkailu, published in Lakimies 2008, pp. 3-19), the argumentation used during the law-drafting procedure on the Finnish Group Action Act. According to his opinion, the legislator had neglected to collect and analyse empirical material concerning the potential defects of group action before the very limited scope of application of the new act was chosen. Political argumentation was much more valued than critical, scientific argumentation.*

### 1.3 Difficulties to obtain redress for mass claims

This issue is subject of a complementary study<sup>24</sup> and results from the country studies are integrated therein.

### 1.4 Collective actions filed so far

Due to the fact that both Finnish collective redress schemes, group action for compensation in consumer disputes and group claim in the Consumer Disputes Board are rather new, starting not earlier than in year 2007, there is so far no case law, or even pending cases based on these schemes.

### 1.5 Hypothetical example cases

*The following section contains data concerning the costs of 3 “hypothetical example cases”. A “hypothetical example case” is hereby understood as being an action proceeding which is “invented” on basis of existing cases, and defined through the type of individual damage suffered by a number of consumers, the sector, the category of law, the value of the case, the affected number of consumers, etc. For each case are analysed:*

- a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).*
- b) The effects on consumers who do not bring the collective action.*
- c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).*
- d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer’s fee).*
- e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.*
- f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?*

*In all cases it is assumed that claims are brought at the same court. The consumers are not in a state of poverty and are not eligible for legal aid targeted exclusively at the poor. All cases are decided after appeal.*

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<sup>24</sup> CPEC 2008, Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems, Final Report (study prepared for DG SANCO).

### 1.5.1 **Case 1 - telecommunication**

*Due to a technical defect, the telecommunications services provider T has miscalculated the duration of all telephone calls made by customers as being 2-3 percent longer than they were in reality, resulting in extra profits of 1 million Euro. 100,000 customers suffered damages; with certain differences as to the individual case. The consumer organisation or other intermediary preparing the claim estimates the average damage per consumer to be 1 Euro per month. The service provider claims to have repaired the defect after 10 months. Therefore the average damage per consumer could be estimated at 10 Euro.*

- *If the relevant mechanism is an opt-out system: consumer organisation or other intermediary represents all consumers (combined value of claims 1 million Euro)*
  - *If the relevant mechanism is an opt-in system: consumer organisation or other intermediary could mobilise 1,000 consumers (combined value of claims 10,000 Euro)*
- a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).**

Telecommunication services are clearly regarded as one form of consumer services. That is why the Finnish Consumer Ombudsman may, on behalf of the group members:

- Take a group action for compensation in the competent court of first instance on the basis of the Group Action Act (444/2007);
- Initiate a group claim in the Consumer Dispute Board on the basis of the Consumer Dispute Board Act (8/2007).

Neither individual consumers nor consumer organisations have right of action or right to complain.

**b) The effects on consumers who do not bring the collective action.**

- A Group Action in the Finnish courts

The Finnish group action is based on an opt-in system: the court's decision will have legal effects only on those consumers who have registered themselves as members of the group. This means that a group action is in practice not a sensible way to improve access to justice in cases where the number of group members is huge, but the amount of the monetary interest of each consumer involved is very low. There is no idea to start to collect names in case where the maximum amount of compensation is only 10 Euro per consumer. In Denmark and Norway an opt-out system is possible in cases where monetary interest per individual consumer is very low. The Finnish Group Action Act does not, however, provide this alternative: the opt-in system is the only possibility.

- A Group Claim in the Finnish Consumer Dispute Board

In a group claim in the Board neither opt-in or opt-out system is used. The Board's decision covers automatically all consumers who have bought a defective product or

acquired a defective service from the same trader. There is no need to collect name and address lists. This means that a group claim is in Finland the only sensible alternative in cases where there is no idea to collect names of registered consumers due to the fact that the monetary interest per consumer is very low. However, the Board's decision does not have legal effects, it is simply a recommendation to the trader how to solve the disputes against individual consumers.

**c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).**

□ A Group Action in the Finnish courts

The court fees in civil cases are in practice very modest in the Finnish courts. The value of the claim or the amount of people involved in the case does not have any influence on the size of the court fees. In the District Courts the fee for one case is at this moment only 133-164 Euro depending on whether the case has been decided by one judge only, or by three judges. In the Court of Appeal the fee is 164 Euro, and in the Supreme Court 204 Euro.<sup>25</sup> So, it is rather easy to conclude, that court fees do not form in practice any kind of obstacle for consumer access to justice.

In practice lawyers' fees form 90-95 per cent of the total legal expenses. There has never been any kind of price regulation in Finland concerning lawyers' fees. The Finnish Attorneys Association had adopted by self regulation its own fee scales in the beginning of 1960s. However, they were abolished in 1992 after a strong pressure from the competition authorities. According to these authorities, these fee scales formed an obstacle against free price competition between practicing lawyers.

The self-regulatory scale fees were based on minimum and maximum fees for every measure taken in the case. After the abolishment of this scale, practising lawyers started to use more and more frequently hourly wages. At the moment of finalising this report (March 2008) an average hourly fee including VAT is about 215 Euro. In 2001 the average hourly fee was 160 Euro, and in year 1998 it was 130 Euro including VAT.<sup>26</sup> So, compared to 2001 the average hourly fee has increased by 35 per cent, and compared to 1998 it has increased by 65 per cent.

The Finnish National Research Institute of Legal Policy has studied the amount of total legal expenses in individual civil cases in the District Courts. In 1995 the average amount of legal expenses which the loser was condemned to pay to the winner was 3150 Euro and in year 2004 this amount was on average 6 600 Euro.<sup>27</sup>

If assessed that the loser's own expenses would correspond the amount of the winner's expenses, one could calculate that the total expenses of both parties in individual cases

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<sup>25</sup> See the Court Fees Act, article 3 (as amended by act 1280/2005).

<sup>26</sup> See Asianajajatutkimus 2007, p. 23, Asianajajatutkimus 2002, p. 14 and Kuluttajaviraston oikeudellisten palveluiden hintavertailu 1998.

<sup>27</sup> See Research Report n:o 147, pp. 20-29 and Research Report n:o 217, pp. 62-63.

in the District Courts was in 1995 about 6 300 Euro and in 2004 about 13 000 Euro. So, the average legal expenses had more than doubled in less than ten years. When taking into account the fast growth of the hourly wages, it is more than probable to estimate that in 2008 the average legal expenses of the both parties will be 15 – 17 000 Euro.

In Court of Appeals the legal expenses are usually much lower than in the courts of first instance. The reason for this is the fact that the procedure in Court of Appeals is usually fully written in approximately two third of the cases. In addition, the parties are usually repeating already presented claims, and pleading on evidences they had already collected for the procedure in the District Court. There are no statistics available concerning the average legal expenses in civil cases in the Courts of Appeal. However, it may be estimated that the average expenses in individual cases will stay in 2 000 – 4 000 Euro per party. So, this means that the total legal expenses in the Court of Appeal would be approximately 4 000 – 8 000 Euro.

So, in 2008 one should be ready for total legal expenses between 19 000 – 27 000 Euro in individual civil cases which have been decided after an appeal.

However, it is more than probable that in a group action for compensations or in other civil cases with a more principal significance the legal expenses will be much higher than in purely individual cases due to the fact that both parties will invest in these cases more resources than in other cases. That is why the total legal expenses may in group actions rise easily to 50 – 100 000 Euro.

□ A Group Claim in the Finnish Consumer Dispute Board

The original purpose was to make the procedure in the Board so simple, that ordinary people could handle their case without the need of an attorney. This aim has been reached in practice very well. Consumers and small and medium sized enterprises use hired lawyers quite rarely. One reason for this is the fully written procedure, which makes it possible for ordinary people in every phase of the procedure to collect information and ask advice before making their statements to the Board.

In addition, the Board is free for consumers and traders. There are no fees which the parties would have to pay the Board before or during the procedure.

**d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).**

□ A Group Action in the Finnish courts

As already explained above, so far there exists no case law on group actions, which means that it is not possible to evaluate the average duration of the procedure. In individual cases the average duration of the procedure is approximately one year per each court instance. In more complicated cases the duration of the procedure is in practice much longer. On the basis of the Swedish experience, it is more than probable, that the duration of the procedure in group actions which have passed two court instances will vary between 3-6 years.

□ A Group Claim in the Finnish Consumer Dispute Board

The average duration of the procedure in individual disputes is at this moment approximately one year. Due to the fact, that there has not yet been any group claim, it is difficult to evaluate whether the duration of the procedure will be shorter or longer than the average duration at this moment. On the one hand, it is possible that these cases would face a special treatment, and the Board would try to settle them faster than other cases. On the other hand, group claims will certainly contain often elements which in practice may cause delays. Both parties will probably invest more resources in these cases than usually. So, in practice it is more than likely that the duration of the procedure in the group claims will not in practice be clearly shorter than the average time of one year.

**e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.**

□ A Group Action in the Finnish courts

In Finland there exists public and private (mainly based on legal expense insurances) legal aid systems. Due to the fact that the Finnish group action for compensation has been restricted to public actions (the Consumer Ombudsman as an only potential plaintiff) only, these systems do not play any role in the financing of group actions.

The Consumer Ombudsman will use the lawyers of his own office in the preparation of the cases. They have experience as practicing lawyers, which means that there is no need to hire attorneys. In case the Ombudsman decides to use also outside lawyers, he would probably have to pay hourly wages.

Payment systems similar to the American contingency fees or English conditional fees have in Finland been traditionally accepted, but not used in practice.

□ A Group Claim in the Finnish Consumer Dispute Board

The potential claim will be prepared and handled by the lawyers of the Consumer Ombudsman. That is why the procedure will not cause any extra expenses to the Ombudsman. In addition, there is no threat that the Ombudsman would become liable for the legal expenses. As in the individual disputes, both parties have to carry their own expenses.

**f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?**

□ A Group Action in the Finnish courts

As in other European countries, the Finnish civil procedure has been traditionally based on the so called loser pays principle. However, this principle has been applied different ways in different times. Before 1993, the courts used to cut approximately 50 per cent of the winner’s claim on legal expenses. So, in practice the compensation was only partial.

However, the compensation system concerning legal expenses was reformed in 1993 at the same time when the whole Finnish civil procedure in the courts of first instance was radically reformed. The old compensation system was criticized, because winners did not receive in practice full compensation of their legal expenses. The full compensation of legal expenses was claimed to prevent unnecessary court cases. However, the effects of this reform to the size of legal expenses and to ordinary people's willingness to take legal action in court was not studied at all.

Pursuant to article 1 in chapter 21 of the Code of Judicial Procedure, the loser is obliged to pay all necessary and fair legal expenses of the other party. According to article 8 of the same chapter, recoverable expenses include the fee which the winner has to pay to the attorney. Soon after the 1993 reform, courts started to cut winner's claims on legal expenses much less than earlier. In 1995 the courts of first instance cut only 10 per cent of a winner's claim on legal expenses.<sup>28</sup>

They are no scales or ceiling for a loser's liability to pay the legal expenses of the winner. Courts' decisions on legal expenses are in practice based on invoices presented by the attorneys of disputing parties. As already mentioned before, attorneys are nowadays charging mainly on hourly basis. Their invoices consist of list of measures taken in the case, dates and consumed hours, and the total sum of fee. Due to the lack of any scales or ceilings for loser's liability attorneys are presenting every year higher and higher invoices in hope that the courts would take them as a starting point when assessing the fair amount of legal expenses.

In addition, the court may cut the claim on legal expenses only if the parties regard each others invoices as too high. In most cases the both parties are represented by attorneys. If both of them have presented high invoices, they do not have interest to protest against each others claims on legal expenses. In these cases courts are forceless, because they do not have competence to cut expenses *ex officio*.

The legal expenses in the Finnish courts have risen very strongly during the last fifteen years. All the above mentioned factors (reform of cost rules in 1993, the lack of scales or at least ceilings for loser's liability, courts' passivity to cut expenses, current payment system: hourly wages) may be pointed as causes for this development.

The general costs rules in chapter 21 of the Code of Judicial Procedure will be applied also in the group actions for compensation. This means that the Consumer Ombudsman and the trader will both present claims concerning the compensation of their legal expenses. In case the Consumer Ombudsman will lose his case, it is in practice the Finnish State, which is liable for the legal expenses, as the governmental agencies are not regarded as legal persons. However, in practice the legal expenses paid by the State in a lost case will be probable cut from the next budget of the Consumer Ombudsman. This might make the Consumer Ombudsman rather careful when considering the possibilities of a group action for compensation.

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<sup>28</sup> See Research Report n:o 147, pp. 48-52.

In group actions for compensation in Finland - as in Sweden - only the parties of the case are responsible for the legal expenses. Since the members of the group are not parties to the proceedings, they will not be responsible for the costs.

□ A Group Claim in the Finnish Consumer Dispute Board

Both parties have to bear all the costs they might have before the Board. This no-cost rule discourages parties to use attorneys. In case they prefer to use them, they have to pay all the expenses irrespective of what will be the outcome of the case.

The adoption of the no-cost rule and the free of charge principle mean that lodging a claim to the Board does not cause any expenses to the parties on the condition that they handle the case without a hired attorney.

**Table 1: Estimates regarding hypothetical example case 1 - telecommunications**

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<b>Collective redress: Group Action for Compensation in Consumer Disputes</b>						
<i>For each individual consumer</i>	None	None	None	None	None	
<i>For intermediary filing the action</i>	328 Euro	50 – 100 000 Euro	None	Not relevant	100 working days	Opt-in system increases the work
<b>Individual redress (through ordinary court procedure)</b>						
<i>For each individual consumer</i>	328 Euro per action	19 – 27 000 Euro	None	Legal expense insurance 8 500 Euro	None	
<b>Collective ADR: Group Claim in the Consumer Dispute Board</b>						
<i>For intermediary filing the action</i>	None	None	None	Not relevant	20 working days	

### 1.5.2 **Case 2 – financial services**

*Enterprise E released a third tranche of shares (230 million shares, 60 Euro per share). Following this, the value of the shares decreased rapidly during the next three years (to 10 Euro per share), leading to a loss in shareholder value of 11.5 billion Euro. Shareholders claimed that they had been victims of false information (considerably overestimated property; concealment of the burdensome acquisition of a foreign competitor) contained in the company's prospectus when the shares were put on the market. 15,000 investors bring their claims to the court, with an average value of the claim being 7,000 Euro each. The combined value of the claims is therefore 105 million Euro.*

**a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).**

Investment services, including marketing of shares, have been regarded in Finland as a consumer commodity since 1994, when the scope of application of the Consumer Protection Act was enlarged. So, in principle also disputes which are risen from the misleading marketing of shares are regarded as consumer disputes, and they should fall under the scope of application of the new Group Action Act. However, pursuant to article 1 of the Act, it is not applicable to civil cases concerning the conduct of an issuer of securities or the offering party in a takeover bid or mandatory bid. In the Government's proposal this restriction in the scope of application has been reasoned shortly by claiming that these disputes do not belong to the core area of consumer protection system.<sup>29</sup> This argument looks a little bit artificial in the light of the fact that in these disputes the combined value of the claims can be really high with the consequence that group action would fit extremely well for the settlement of these disputes.

Unfortunately these disputes have been also excluded from the competence of the Consumer Dispute Board.<sup>30</sup> This means that also a group claim is not possible in these disputes.

So, in these disputes only a traditional joint action would be possible. However, the collection of 15 000 proxies would not work in practice, which means that this action would also be more or less only a theoretical alternative.

**b) The effects on consumers who do not bring the collective action.**

Even if group action would be possible in this case, it would be a tremendous task to arrange registration of 15 000 group members. This example shows clearly the limits of an opt-in system. It is not very applicable for disputes where the amount of group members is counted in thousands.

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<sup>29</sup> See Proposal 154/2006, p. 33.

<sup>30</sup> See the Consumer Dispute Board Act, article 3.

**c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).**

See the answer C to the first hypothetical case (case 1). Also in this case the legal expenses would be very high.

In the so called *Kansallisanti* case 84 shareholders took a joint action against the biggest Finnish commercial bank in 1995 in a case concerning the marketing of shares. The plaintiffs lost their case both in the Helsinki District Court in 1997 and in the Helsinki Court of Appeal in 2002. The plaintiffs, most of them ordinary citizens, were condemned to pay in the District Court legal expenses to the bank 275 000 Euro, and in the Court of Appeal 20 000 Euro.<sup>31</sup> So, in this case only the legal expenses, which the losers had to pay the winner, was altogether almost 300 000 Euro. This court case shows clearly how high the legal expenses may rise in cases with collective elements if there exists no ceiling for the losers' liability.

**d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).**

See the answer D to the first hypothetical case (case 1). In the *Kansallisanti* case it took 7 years before it passed two court instances, and the Court of Appeal finally issued its decision.

**e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.**

In Finland there exists public and private (mainly based on legal expense insurances) legal aid systems which in principle are applicable also in joint actions in case the plaintiffs fulfil the requirements. Nowadays, also the middle class citizens might have a possibility to a partial free public legal aid.

Payment systems similar to the American contingency fees or English conditional fees have in Finland been traditionally accepted, but not used in practice. The number of attorneys has always been at a rather reasonable level, and also there is competition between the practicing lawyers, so there has never been any need to use more these more customer-friendly payment systems.

**f) Is there a "loser pays principle"? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?**

See the answer F to the first hypothetical case (case 1).

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<sup>31</sup> See the Helsinki Court of Appeal Judgment n:o 1103, issued in 23.4.2002.

**Table 2: Estimates regarding hypothetical example case 2 – financial services**

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support that is available</b> [national currency]	<b>Estimated time involved</b>	<b>Comments</b>
<b>Collective redress: not available</b>						
<i>For each individual consumer</i>						
<i>For intermediary filing the action</i>						
<b>Individual redress (through ordinary court procedure)</b>						
<i>For each individual consumer</i>	328 Euro per action	19 – 27 000 Euro	None	Legal expense insurance 8500 Euro		
<b>Individual ADR: not available</b>						
<i>For each individual consumer</i>						

### 1.5.3 Case 3 - tourism

*The tour operator T advertised on its website a “last-minute package” called “4-star” in which the consumers were supposed to be offered services in various hotels on various locations (Greece, Tunisia, etc.) in the 4-star category. However, the hotels were in very bad shape and in spite of the request of consumers no other accommodation was provided. The tour operator also categorically rejected all written claims of consumers for compensation. The only argument of the trader for rejection was that last-minute arrangements meant lower quality of services. About 500 travellers are affected, of which 200 claim a refund of 250 Euro each (which is 10% of the total price of the package). The combined value of the claims is therefore 50,000 Euro.*

**a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).**

Tourism services are regarded as consumer services, so both of the following collective redress schemes are available:

- ❑ Group action in a court on the basis of the Group Action Act (444/2007), and
- ❑ Group claim in the Board on the basis the Consumer Dispute Board Act (8/2007)

**b) The effects on consumers who do not bring the collective action.**

- ❑ A Group Action in the Finnish courts

The Finnish group action is based on an opt-in system: the court’s decision will have legal effects only on those consumers who have registered themselves as members of the group.

- ❑ A Group Claim in the Finnish Consumer Dispute Board

In a group claim in the Board neither opt-in nor opt-out system is used. The Board’s decision covers automatically all consumers who have bought a defective product or acquired a defective service from the same trader. There is no need to collect name and address lists.

However, the Board’s decision does not have legal effects, it is simply a recommendation to the trader how to solve the disputes against individual consumers. In this case the tour operator has shown its unwillingness to an amicable settlement. That is why it is probable that tour operator would not comply with the Board’s recommendation. So, the group claim would in practice not be an applicable way to solve this mass dispute.

**c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).**

- ❑ A Group Action in the Finnish courts

See the answer C to the first hypothetical case (case 1).

- A Group Claim in the Finnish Consumer Dispute Board

See the answer C to the first hypothetical case (case 1).

**d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).**

- A Group Action in the Finnish courts

See the answer D to the first hypothetical case (case 1).

- A Group Claim in the Finnish Consumer Dispute Board

See the answer D to the first hypothetical case (case 1).

**e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.**

- A Group Action in the Finnish courts

See the answer E to the first hypothetical case (case 1).

- A Group Claim in the Finnish Consumer Dispute Board

See the answer E to the first hypothetical case (case 1).

**f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?**

- A Group Action in the Finnish courts

See the answer F to the first hypothetical case (case 1).

- A Group Claim in the Finnish Consumer Dispute Board

See the answer F to the first hypothetical case (case 1).

**Table 3: Estimates regarding hypothetical example case 3 – tourism**

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<b>Collective redress: Group Action for Compensation in Consumer Disputes</b>						
<i>For each individual consumer</i>	None	None	None	None	None	
<i>For intermediary filing the action</i>	328 Euro	50 – 100 000 Euro	None	Not relevant	50 working days	Opt-in system increases the work
<b>Individual redress (through ordinary court procedure)</b>						
<i>For each individual consumer</i>	328 Euro per action	19 – 27 000 Euro	None	Legal expense insurance 8500 Euro	None	
<b>Collective ADR: Group Claim in the Consumer Dispute Board</b>						
<i>For intermediary filing the action</i>	None	None	None	Not relevant	10 working days	

## 1.6 Effectiveness and efficiency of collective redress mechanisms

### 1.6.1 Effectiveness of current collective redress mechanisms

#### Objectives

#### **1. Does the collective redress mechanism fulfil the objectives of the national law which introduced it?**

- A Group Action in the Finnish Courts

Due to the fact that the Group Action Act entered into force in October 2007, and there is so far no case law at all, it is too early to answer to the question whether the main aims have been fulfilled.

- A Group Claim in the Finnish Consumer Dispute Board

Due to similar reasons, it is also too early to answer whether the main aims have been fulfilled.

#### **2. Has the mechanism enabled consumers to obtain satisfactory redress in cases which they would not otherwise have been able to adequately pursue on an individual basis?**

See the answer to the question number 1. For the same reasons, it is too early to say whether the mechanisms have enabled consumers to obtain satisfactory redress.

#### Incentives provided

#### **3. a) Does the mechanism ensure a change in the behaviour of the defendant, which results in the reduction of future harm to all consumers?**

See the answer to the question number 1. For the same reasons, it is too early to say whether the mechanisms have ensured a change in the behaviour of the defendants.

#### **3 b) Does the mechanism have a preventive effect and deter potential offenders, for instance by skimming off the profit gained from the incriminated conduct?**

See the answer to the question number 1. For the same reasons, it is too early to say whether the mechanisms have a preventive effect.

#### **3 c) Does the mechanism provide incentives and sufficient opportunity for out-of-court settlement?**

- A Group Action in the Finnish Courts

Pursuant to article 26 in chapter 5 of the Code of Judicial Procedure, the court of first instance has an obligation to promote conciliation during the procedure. If necessary, the court may even present its own proposal concerning the content of the conciliation agreement. However, in practice there are huge differences between the judges, how active they are in their mediation efforts. In principle this article is applicable also in group actions.

❑ A Group Claim in the Finnish Consumer Dispute Board

Pursuant to article 12 of the Consumer Dispute Board Act, the Board has an obligation to promote conciliation during the procedure, and if necessary to present a mediation proposal to the disputing parties. Also in the Board, there are big differences between the sections, how actively the staff tries to mediate in practice.

**4. Does the mechanism discourage the introduction of unmeritorious claims? Is there a “gatekeeper procedure” to certify whether a collective action is admissible to the court or not? If yes, how does it work?**

❑ A Group Action in the Finnish Courts

In the Finnish system the risk of unmeritorious claims has been eliminated by granting the right of action to the Consumer Ombudsman only.

In addition, there is a gatekeeper procedure. One of the first tasks of the court, after it received an application for summons, is to study whether the general requirements that the case may be heard as a group action for compensation have been fulfilled. The decision concerning the preconditions for a group action may be separately subject to appeal, unless the court for special reason orders that the decision may be subject to appeal only in conjunction with the judgment.

❑ A Group Claim in the Finnish Consumer Dispute Board

As in the group action, the risk of unmeritorious claims has been eliminated by granting only to the Consumer Ombudsman the right to submit a group claim.

There are no firm and fast rules concerning the procedure in the Board. This means that formally there does not exist any kind of gatekeeper procedure. In practice the Board may naturally check already in the beginning of the procedure whether a group claims fulfils the general requirements.

**Accessibility**

**5. Is the mechanism easily accessible to consumers?** [Costs, rules of standing, length of proceedings and other factors hindering or facilitating access for consumers to the mechanism should be considered]

❑ A Group Action in the Finnish Courts

Due to fact that the right of action has been limited to Consumer Ombudsman only, the system is not at all accessible to ordinary consumers as plaintiffs. However, becoming a registered member of a group in an already started procedure is rather easy. The registration systems may be arranged to be rather flexible, and there is no risk of legal expenses.

❑ A Group Claim in the Finnish Consumer Dispute Board

As in group actions, ordinary consumers may not officially initiate a group claim. There is no need to be registered, because the system is not based on opt-in.

**6. What are the litigation costs of collective redress for consumers compared to individual redress? What is the risk of the consumer if the case is lost?**

- A Group Action in the Finnish Courts

In the Finnish system only the parties of the case are responsible for the costs. Since the members of the group are not parties to the proceedings, they will not be responsible for the costs if the case is lost. That is why there is a clear difference to individual litigation, where the loser pays principle is applied to all parties of the trial.

- A Group Claim in the Finnish Consumer Dispute Board

In the Board no-cost rule is applied both in individual claims initiated by single consumers and in group claims initiated by the Consumer Ombudsman.

**Financing and distribution of proceeds**

**7. Are actions under the mechanism financed in a way which ensures that consumers are able to obtain effective legal representation? Are there mechanisms of public support for the party that brings forward a collective action (the intermediary<sup>32</sup>), are contingency fees/conditional fees<sup>33</sup> allowed? What is the risk of the intermediary if a case is lost?**

- A Group Action in the Finnish Courts

In Finland there exists public and private (mainly based on legal expense insurances) legal aid systems. Due to the fact that the Finnish group action for compensation has been restricted to public actions (the Consumer Ombudsman as the only potential plaintiff), these systems do not play any role in the financing of group actions.

The Consumer Ombudsman will use the lawyers of his own office in the preparation of the cases. They have experience as practicing lawyers, which means that there is no need to hire attorneys. In case the Ombudsman decides to use also outside lawyers, he would probable have to pay hourly wages.

Payment systems similar to the American contingency fees or English conditional fees have in Finland been traditionally accepted, but not used in practice. The number of attorneys has always been at rather reasonable level, and also there is competition between the practicing lawyers, so there has never been any need to use these more customer-friendly payment systems.

In case the Consumer Ombudsman will lose the case, it is in practice the Finnish State that is liable for the legal expenses, as the governmental agencies are not regarded as

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<sup>32</sup> A collective action is usually brought forward by an intermediary, that organises the action on behalf of consumers. This can be a public intermediary (e.g. an ombudsman), a representative organisation as intermediary (e.g. a consumer organisation) or private intermediaries (e.g. a private law firm/an individual consumer taking the lead in an action). Intermediaries may also engage a private lawyer, who is not considered to be an intermediary in this context, as long as he or she is not responsible for organising the action.

<sup>33</sup> Contingency fees are lawyer's fees that consist of a percentage of the damages awarded. Conditional fees are (possibly additional) fees that are paid in case of success, but not related to the damages awarded.

legal persons. However, in practice the legal expenses paid by the State in a lost case will be probably cut from the next budget of the Consumer Ombudsman. This might make the Consumer Ombudsman rather careful when considering the possibilities of a group action for compensation.

❑ A Group Claim in the Finnish Consumer Dispute Board

The original purpose was to make the procedure in the Board so simple that ordinary people could handle their case without the need of an attorney. This aim has been fulfilled in practice very well. Consumers and small and medium sized enterprises use hired lawyers quite rarely in individual disputes.

Both parties have to bear all the costs they might have before the Board. This no-cost rule discourages parties to use attorneys. In case they prefer to use them, they have to pay all the expenses irrespective of what will be the outcome of the case.

In addition, the Board is free for consumers and traders. There are no fees which the parties would have to pay to the Board before or during the procedure.

The adoption of the no-cost rule and the free of charge principle means that lodging a claim to the Board does not cause any expenses to the parties on the condition that they handle the case without a hired attorney.

**8. Are proceeds of collective redress actions distributed in an appropriate manner amongst plaintiffs and their representatives?**

❑ A Group Action in the Finnish Courts

Yes. The compensation of damages granted by the court will be distributed to the registered members of the group. There is no need to give any part to the Consumer Ombudsman due to the fact that this is a public authority representing the collective interests of consumers, and financed by the State.

❑ A Group Claim in the Finnish Consumer Dispute Board

Yes. Also here the whole compensation of damages recommended by the Board will be distributed to the members of the group. For the above-mentioned reasons this manner may be regarded as appropriate.

**1.6.2 Efficiency of available mechanisms**

**Length of proceedings**

**9. Is the length of the proceedings under the mechanism reasonable for consumers, consumer organisations, public bodies, and the defendants?**

❑ A Group Action in the Finnish Courts

Earlier in this report it was estimated, that the duration of a group action which passes two court instances, will vary between 3-6 years. However, it is rather probable that the Supreme Court will admit permission to appeal in most group actions due to their

principal significance. This means that in practice the parties will likely have to wait for the final outcome between 5-8 years.

It is clear that this length of proceedings could not be considered to be reasonable. Due to the fact that group actions might have influence on hundreds of consumers or more, a possible solution might be to give these cases priority in every court instance. By this way it would be possible to receive final decision in less than 3 years. However, legislation would need to be amended to ensure this type of priority system.

❑ A Group Claim in the Finnish Consumer Dispute Board

Earlier in this report it was estimated that the duration of a group claim in the Board will be approximately not less than one year. This may be regarded as rather reasonable in case the Board's recommendation will be complied with in practice.

**Costs for consumers, consumer organisations and public bodies**

**10. Are the costs related to bringing an action under the mechanism for consumers, consumer organisations and public bodies proportionate to the amount in dispute?**

❑ A Group Action in the Finnish Courts

One of the biggest problem in the current Finnish judiciary system is the continuous growth of legal expenses (see above). This means that a group action is sensible only in cases where the amount of damages is rather high both from the viewpoint of combined value of the damages but also from the viewpoint of individual members of the group. For example, in the hypothetical example cases presented in chapter 1.5 of this report, a group action for compensation would be sensible only in case 2 (but not possible due to the restriction in the scope of application of the Finnish Group Action Act). In other cases the legal expenses would not be in a sensible relation to the potential economic profits for an individual consumer.

❑ A Group Claim in the Finnish Consumer Dispute Board

The best feature of the Consumer Dispute Board is the cheap procedure. The use of attorneys is not needed, and their use has been discouraged by introducing a no-cost rule. The parties themselves have to bear all the costs they might have before the Board. That is why a group claim is even applicable in mass consumer disputes where both the combined amount of damages and the average amount of individual damages are rather low.

**11. Does the mechanism minimise litigation costs for consumers?**

❑ A Group Action in the Finnish Courts

The mechanism minimises litigation costs for consumers, as only the parties of the case are responsible for the costs. Since the members of the group – ordinary consumers – are not parties to the proceedings, they will not be responsible for the costs even if the case is lost.

- A Group Claim in the Finnish Consumer Dispute Board

The mechanism minimises litigation costs for consumers. There is no need to hire outside lawyers on the ground that there are no attorneys' fees which the parties would have to pay.

#### **Costs for businesses**

**12. Information costs: Does the mechanism impose requirements on businesses (in terms of being informed about the existing collective redress mechanisms and providing related information to public authorities) that lead to additional costs? Do these costs weigh in heavily on Small and Medium Enterprises (SMEs)?**

There is no evidence available in this respect.

**13. Litigation costs and related insurance costs: Are costs for businesses for (legal) insurance (for litigation and for damages) and the litigation costs under the existing collective redress mechanisms unreasonable?**

As so far no cases have been brought, it is not possible to provide an assessment at this stage.

**14. Is the economic impact on traders against whom actions have been brought under the mechanism proportionate to the alleged harm caused by the trader's conduct?**

As so far no cases have been brought, it is not possible to provide an assessment at this stage.

**15. Does the mechanism lead to the closing down of businesses?**

As so far no cases have been brought, it is not possible to provide an assessment at this stage.

#### **Competitiveness and investment flows**

**16. Does the mechanism have an impact on the competitive position of EU firms in comparison with their non-EU rivals?**

- A Group Action in the Finnish Courts

As so far no cases have been brought, it is not possible to provide an assessment at this stage. In general terms, however, the following could be stated: The "impact on competitiveness" argument was used in the Finnish political debate at the end of 1990s. It was argued that the adoption of group action for compensation before other Member States do so, would cause serious problems to Finnish enterprises in the internal market. This so called "EU-card" had also been used in the political debate in

Finland before. Thus, in matters concerning product liability it was possible to delay the adoption of strict liability for more than a decade.<sup>34</sup>

However, the argument that more advanced legislation would cause serious problems to domestic enterprises is rather questionable. It seems that it is based on an exaggerated conception of the effects of legal regulation on business activities. In Canada, for example, group action for compensation is possible only in three provinces, British Columbia, Ontario and Quebec. So far there has been no alarming news that group action had caused serious damage to enterprises domiciled in these three provinces.<sup>35</sup>

- A Group Claim in the Finnish Consumer Dispute Board

As so far no cases have been brought, it is not possible to provide an assessment at this stage. For the above-mentioned reasons it is, however, hardly probable that this procedure, which in addition is able to produce recommendations only, would have any effect on the competitive position of firms.

**17. Does the mechanism provoke cross-border investment flows (including relocation of economic activity in Member States which do not have any collective redress mechanisms?)**

- A Group Action in the Finnish Courts

As so far no cases have been brought, it is not possible to provide an assessment at this stage. It seems unlikely that this mechanism would have any effect on the investment decisions of firms.

- A Group Claim in the Finnish Consumer Dispute Board

As so far no cases have been brought, it is not possible to provide an assessment at this stage. It seems hardly probable that this procedure, which in addition is able to produce recommendations only, would have any effect on the investment decisions of firms.

### **1.6.3 Added value of available mechanisms**

**18. What is the added value of the collective redress mechanism(s) compared to individual judicial redress and ADR schemes, i.e. what is achieved by the mechanism(s) that is not achieved by individual redress?**

- A Group Action in the Finnish Courts

The main problem in the Finnish civil procedure at this moment are the high legal expenses. In practice they form quite an effective barrier against individual judicial

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<sup>34</sup> See Viitanen 1994, pp.165-167.

<sup>35</sup> See, e.g., Lindblom 2000, pp. 428-429.

redress. A group action provides for a large group of consumer an opportunity to access to justice without any personal risk of legal expenses.

Compared to a group claim in the Board, the main benefit is the fact that by group action it is possible to produce enforceable decisions.

□ A Group Claim in the Finnish Consumer Dispute Board

The main benefit of a group claim compared to a traditional individual dispute in the Board is the fact that the recommendations cover also passive consumers, those who are not active enough to make an individual complain.

**19. Please estimate, what percentage of consumers who were represented in the collective redress cases would likely have undertaken individual redress through ordinary court procedures if no collective redress system was in place (e.g. none, 10%, 50%)?**

□ A Group Action in the Finnish Courts

So far there is no case law, but it may be estimated that none of the group members would have taken legal action in a court by themselves. The reason of this behaviour is rather obvious, even in consumer disputes the legal expenses have risen to a level which is too high for ordinary citizens.

□ A Group Claim in the Finnish Consumer Dispute Board

So far there is no case law, but it may be estimated that less than 10 per cent of the consumers would have submitted an individual claim. In spite of the fact that there is no threat of legal expenses, knowledge and work is anyway needed. Empirical researches show that only a few per cent of dissatisfied consumers lodge a complaint to any third party dispute settlement body.

## 1.7 Overview of alternative procedures for consumers

### 1.7.1 *Individual court action*

**Is there any data available on the number of consumers seeking individual redress through ordinary court procedures?**

Statistics concerning court cases has been collected for decades. Information is collected on the amount of disputes, type of disputes, average duration of the procedure, etc. That is why, it is possible to say, for example, how many family law cases were dealt with in the courts of first instance in a certain year. Unfortunately, the court cases have never been categorized on the basis of whether the plaintiff or defendant is a consumer or not. That is why, for example, the cases which have been classified as sale of goods cases consist in practice of disputes between enterprises, between private persons, and between traders and consumers.

**Please estimate the threshold for claims (in Euro) under which a rational consumer would refrain from seeking individual redress through ordinary court procedures?**

The average total legal expenses vary at this moment between 19 000 – 27 000 Euro in cases which have been decided after an appeal. There is no idea to start a legal procedure in cases where the economic interest does not clearly exceed the legal expenses. Naturally, in practice there are consumers which start the procedure even in cases where the interest is only a few thousands of Euro, but this is not rational behaviour. In most cases these consumers are simply much too optimistic concerning their possibility to win.

### 1.7.2 *Individual action – ADR scheme(s)*

**Is there an ADR scheme(s) for consumer cases?**

The Consumer Dispute Board. For details, see the chapter 1.1.2 of this report.

**Is there any data or an evaluation report available on the consumer relevant use of the ADR scheme(s)?**

The Consumer Dispute Board is publishing every year its annual report. It contains also the statistics concerning the amount of new and solved disputes, how they were divided into different sections, etc. The report and statistics are only in Finnish.

**Please estimate the threshold for claims (in Euro) under which a rational consumer would refrain from seeking redress through an ADR scheme?**

On the basis of the fact that the procedure in the Board does not necessarily cause any expenses to the parties, there is no threshold for claims under which a rational consumer would refrain from seeking redress through this ADR schemes. In some disputes the economic interest is in practice only 10-20 Euro. However, often these cases have a more principal significance. Consumers do not primary desire personal redress, but a change in trader's behaviour in other similar cases.

**1.8 ANNEX:**

***Annex 1: Country literature on collective redress***

**Preparatory works:**

- ❑ HE 115/2006, Hallituksen esitys eduskunnalle laeiksi kuluttajariitalautakunnasta ja Kuluttajavirastosta annetun lain muuttamisesta.
- ❑ HE 154/2006, Hallituksen esitys eduskunnalle ryhmäkannelaiksi ja laiksi Kuluttaja-virastosta annetun lain muuttamisesta.
- ❑ OLJ 1/1995, Ehdotus ryhmäkannelaiksi. Työryhmän mietintö. Oikeusministeriön lainvalmisteluosaston julkaisu. Helsinki 1995
- ❑ OLJ 3/1997, Ryhmäkannelaki. Työryhmän 1996 mietintö. Oikeusministeriön lainvalmisteluosaston julkaisu. Helsinki 1997.
- ❑ OLJ 1/2006, Kuluttajavalituslautakunnan toimivallan laajentaminen ja ryhmävalitus-menettely. Oikeusministeriön työryhmämietintö 2006:1. Helsinki 2006.
- ❑ OLJ 4/2006, Ehdotus laiksi ryhmäkanteesta. Oikeusministeriön työryhmämietintö 2006:4. Helsinki 2006.

**Literature:**

- ❑ Bärlund, J., Reklamation som förutsättning för påföljder vid gruppklagomål och grupptalan, JFT 2007, pp. 481-492.
- ❑ Oker-Blom, M., Behovet av grupptalan – en argumentativ övning, JFT 2006, pp. 86-107.
- ❑ Viitanen, K., The Scandinavian Public Complaint Boards: the Aims, Present Situation and the Future. Consumer Law Journal 1996, pp. 118-126.
- ❑ Viitanen, K., The Crisis of the Welfare State, Privatisation and Consumers' Access to Justice. In From Dissonance to Sense: Welfare State Expectations, Privatisation and Private Law. Edited by Thomas Wilhelmsson and Samuli Hurri. Aldershot 1999, pp. 549-566.
- ❑ Välimäki, M., Uusi ryhmäkannelaki – eräs lainsäädäntöpoliittinen seikkailu, Lakimies 2008, pp. 3-19.