

Enforcement of consumers' collective interests by regulatory agencies in the Nordic countries

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L'articolo è dedicato all'analisi dei mezzi e strumenti di attuazione (*enforcement*) degli interessi collettivi dei consumatori nei paesi scandinavi.

Nel sistema scandinavo, le questioni attinenti all'attuazione delle leggi di tutela dei consumatori e all'accesso alla giustizia sono state affrontate, in particolare, attraverso speciali autorità pubbliche (*Consumer Ombudsman*, con compiti di controllo del mercato e sull'uso di clausole contrattuali abusive), frequente ricorso ad azioni preventive, Tribunali speciali (*Market Court* ovvero *Market Council*) competenti in materia di interessi collettivi dei consumatori, azioni collettive risarcitorie (*group action for compensation*).

Spesso la protezione degli interessi collettivi dei consumatori mira a prevenire danni economici e alla salute causati da pratiche commerciali sleali, dall'uso di clausole abusive o da prodotti insicuri. Tuttavia, l'attività di controllo e di intervento preventivo si rivela inefficace quando, in conseguenza di comportamenti illeciti, si verificano danni della stessa natura a un ampio gruppo di consumatori. Uno dei mezzi più promettenti per fronteggiare le controversie di massa è l'azione di gruppo risarcitoria.

A seguito di numerose iniziative legislative negli anni recenti, questo tipo di azione è al momento un tema centrale nei paesi scandinavi¹.

Controllo del mercato e delle clausole contrattuali standardizzate

Il compito del *Consumer Ombudsman* è di controllare le pratiche commerciali e i contratti standardizzati, ma anche di promuovere in generale gli interessi dei consumatori.

Nel sistema scandinavo è frequente l'uso di azioni preventive nell'attività di controllo del mercato, che si articola in pareri preventivi, linee guida per le imprese e negoziazioni con le organizzazioni dei professionisti sulle clausole dei contratti standardizzati. Lo scopo è di prevenire le violazioni della legge informando le imprese e negoziando con esse.

I *Consumer Ombudsman* hanno l'obbligo di convincere l'impresa ad abbandonare le pratiche commerciali sleali o l'uso di condizioni contrattuali abusive

¹ Su questo argomento, rinviamo anche a P. Martinello, *La class action, in questa rivista n. 1/2006, p. 90.*

in modo volontario. Tali metodi di intervento si sono mostrati estremamente efficaci nel corso degli anni.

Qualora tali procedure di persuasione dovessero fallire, il *Consumer Ombudsman* può avviare azioni legali contro l'impresa davanti a un'autorità giudiziaria specializzata (*Market Court* o *Council*), che può imporre provvedimenti inibitori (*injunction order*), messaggi correttivi (*corrective advertising*) e sanzioni economiche (*market disruption fee*).

Azioni collettive risarcitorie

Le azioni di gruppo risarcitorie possono essere definite come un'azione giudiziaria nella quale colui che agisce (*plaintiff*), sia esso un membro o meno di un determinato gruppo, introduce una causa a beneficio di un gruppo determinato di soggetti senza l'espressa autorizzazione dei suoi membri e il risultato del giudizio è vincolante sia a favore sia contro tutti i membri del gruppo.

Nella maggior parte dei paesi europei, la possibilità di introdurre azioni di gruppo risarcitorie non esiste ancora, e ciò si è rivelato un problema, in quanto questo tipo di azioni giudiziarie potrebbe rivelarsi estremamente utile nella soluzione di controversie di massa dei consumatori.

Tuttavia, i paesi scandinavi sembrano ora orientati a introdurre nuove forme di tutela dei consumatori, rendendo possibili azioni di gruppo risarcitorie nelle controversie di massa dei consumatori.

In Finlandia e Svezia proposte di legge in merito sono state presentate sin dall'inizio degli anni '90. Il Governo svedese ha presentato una proposta al Parlamento (*Group Action Act*), che è stata adottata nel maggio del 2002. La nuova legge è entrata in vigore il 1° gennaio 2003.

In Finlandia la proposta di legge è stata temporaneamente fermata nel 1999 per ragioni politiche, ma il lavoro preparatorio è continuato nella decade successiva e il Governo ha presentato una proposta sulle azioni di gruppo nel settembre 2006.

In Norvegia, il nuovo codice di procedura civile entrerà in vigore nel 2007 e prevede azioni di gruppo risarcitorie.

In Danimarca, un rapporto è stato pubblicato nel dicembre 2005 e suggerisce che il codice di procedura civile danese sia modificato in modo tale da consentire le azioni di gruppo risarcitorie nel prossimo futuro.

L'ambito di applicazione delle azioni di gruppo nei paesi scandinavi è nella maggior parte dei casi generale, così da rendere queste azioni possibili in presenza delle condizioni previste (fatti simili o identici, opportunità di trattare le controversie in un unico processo). Solo in Finlandia, il modello proposto prevede un'applicazione limitata alle controversie di massa dei consumatori e ai danni ambientali.

Circa i soggetti legittimati a introdurre le azioni di gruppo, i modelli danese, norvegese e svedese prevedono che il *plaintiff* possa essere sia un membro del gruppo, sia un'organizzazione che protegge gli interessi di un gruppo di cittadini, sia un'autorità pubblica, come il *Consumer Ombudsman*. Il modello finlandese, invece, prevede esclusivamente la legittimazione dell'autorità pubblica (*Finnish Consumer Ombudsman*).

Circa la composizione del gruppo, e i conseguenti effetti della decisione sui suoi componenti, in Svezia e Finlandia è prevista solo l'opzione *opt-in* (solo i soggetti che hanno aderito al gruppo attraverso una registrazione saranno coperti dalla sentenza). Questo è anche il principio generale in Norvegia e Danimarca. Tuttavia, in questi ultimi paesi è previsto anche un possibile meccanismo di *opt-out* (in base al quale la decisione sarà vincolante a favore o contro tutti i membri del gruppo, indipendentemente da una loro registrazione) qualora azioni giudiziarie individuali non siano sensate, in particolare a causa dell'interesse economico individuale estremamente limitato. Questa possibilità incrementa l'utilità delle azioni di gruppo, specialmente nelle controversie di massa dei consumatori.

Nelle azioni di gruppo sono consentiti gli stessi rimedi previsti dal Codice Civile: risarcimento dei danni, riduzione del prezzo.

Una questione essenziale nel valutare la portata pratica delle azioni di gruppo risarcitorie è come esse vengono finanziate. Le azioni di gruppo comportano costi molto più alti dei casi individuali e colui che agisce assume un rilevante rischio finanziario. Da questo punto di vista, le leggi o proposte di legge sulle azioni di gruppo nei paesi scandinavi non appaiono per nulla soddisfacenti, in quanto si basano sulla cosiddetta *english rule*: il perdente deve pagare le sue spese e quelle dell'altra parte. Il rischio di elevate spese legali è stata la principale ragione del limitato numero di azioni di gruppo risarcitorie in Svezia (solo 6 dal 2003). Il legislatore può utilizzare differenti metodi per ridurre il costo finanziario nelle azioni di gruppo, quali la *no-cost rule*, ovvero la regola del *contingency fee* o *conditional fee-payment systems* (patto quota lite), diretti a trasferire il rischio finanziario dalle parti ai difensori. Questi sistemi sono consentiti in linea di principio nei paesi scandinavi, ma scarsamente utilizzati in pratica. Un'altra possibilità è quella di far ricorso a differenti sistemi di finanziamento attraverso fondi pubblici o privati, alimentati sia dallo Stato sia da una percentuale dei fondi ricavati da altre azioni di gruppo (un modello di questo tipo è già utilizzato in Canada).

Il sistema scandinavo: un successo?

I punti di forza del sistema scandinavo in materia di *enforcement* degli interessi collettivi dei consumatori sono stati l'attenzione posta alle questioni relative all'accesso alla giustizia per la tutela dei diritti sia collettivi sia individuali dei consumatori, l'esistenza di autorità indipendenti di controllo (*Consumer Ombudsman*) e di tribunali speciali (*Market Court*), l'ampio ricorso ad azioni preventive.

L'intensa attività legislativa in materia di azioni di gruppo risarcitorie sembra che stia lentamente modificando il quadro europeo. I paesi scandinavi sono stati piuttosto attivi in questo ambito.

Tuttavia, il principale ostacolo all'uso delle azioni di gruppo resta il loro costo, problema che non sembra risolto dall'attribuzione della legittimazione ad agire ad autorità pubbliche (*Consumer Ombudsman*), che pure operano con risorse limitate.

Se le azioni di gruppo risarcitorie saranno possibili in alcuni Stati membri, ma non in altri, potranno sorgere problemi di esecuzione delle decisioni nelle azioni di gruppo transfrontaliere.

Introduction

The Nordic countries started to build their national systems of consumer protection from the beginning of 1970s. In spite of the fact, that there are differences between these systems, there are also clear and fundamental similarities, which justify us to speak about the Nordic model of consumer protection.

The most typical features for the Nordic system of consumer protection, in the area of substantive law, are the following ones:

- *regulation of marketing and unfair contract terms by general clauses which have a very wide scope of application;*
- *possibility to adjust unfair contract terms - including the price of the good or service - in already concluded contracts;*
- *quite comprehensive use of mandatory contract law provisions.*

Perhaps the biggest difference between Finland and the other Nordic countries may be found in the field of substantive law. In Finland almost all relevant regulation has been codified into one single act, to the Consumer Protection Act 1978 instead of adapting several separate acts as in other Nordic countries.

In enforcement/access to justice-questions the typical features of the Nordic system are the following ones:

- *special state authorities, Consumer Ombudsman, have been established for the supervision of marketing and unfair contract terms;²*
- *frequent use of preventive actions in the supervision of marketing and standard contract terms;*
- *special courts - often called as the Market Court or Council - are used in cases which concern consumers' collective interests;³*
- *consumer organisations have always had a rather limited role, especially in the enforcement;*
- *public out-of-court bodies for the settlement of individual consumer disputes are widely used instead of private bodies. The protection of consumers' individual rights is in most Nordic countries based on two-stair system of out-of-court procedures for the settlement of individual consumer disputes. In Finland and Sweden there exists consumer advisers in the municipal level and in Norway consumer centres in the district level. Their competence is limited to advice and mediation. Besides that, all four countries have a special centralised body - often called as the Consumer Complaint Board - with a general jurisdiction to settle all kind of consumer-to-business disputes. Their decisions are, however, only recommendations, except in Norway;⁴*

² For more details, see ch. "The Nordic Consumer Ombudsman" of this article.

³ For more details, see ch. "The Nordic Market Courts"

of this article.

⁴ For more details of the Nordic Public Complaint Boards, see Viitanen 1996.

- small claims procedure in ordinary courts. *The new Norwegian Act on Civil Procedure (tvisteloven), which will enter into force in year 2007, establishes a separate small claims procedure for disputes, where the monetary interest do not exceed a certain sum of money. In Denmark, where a major reform of Danish court system and procedural rules was adopted in summer 2006, small claims procedure in minor disputes will be available from the beginning of year 2008. Also in Sweden a separate small claims procedure was available between the years 1973-1987;*⁵
- group action for compensation. *The Swedish Group Action Act entered into force in 2003. In Norway group action for compensation will be possible from the beginning of year 2007. In Denmark and Finland there exists proposals for the adoption of this court action;*⁶
- the minimal role of criminal law in the enforcement. *In spite of the fact, that it is possible to impose criminal sanctions to those persons who have intentionally or by negligence infringed the rules concerning marketing, these sanctions are in practice used very seldom.*

Access to justice-questions are often divided into two main groups: to the protection of consumers' collective interests and to the protection of consumers' individual rights. In the protection of consumers' collective interests, it is question of protecting consumers as a group. The group may be consisted of all consumers, or it may be more limited. Often the aim in the protection of consumers' collective interests is to prevent economic and physical damages caused by unfair marketing practices, unfair standard contract terms, or unsafe or poor-quality products. This prevention takes usually place by supervision which is carried out by state authorities and/or different kinds of trade and consumer organisations. However, supervision often fails on the consequence that illegal activities cause similar kinds of damages to a large group of consumers. In these kind of problems other means are needed in order to protect consumers' collective interests. One of most promising mean to protect consumers interests in mass consumer disputes is group action for compensation.

The purpose of this article is to shortly present, how consumers' collective interests are protected in four Nordic countries: Denmark, Finland, Norway and Sweden. In chapter 2 the Nordic system of supervision of marketing and standard contract terms will be presented. In chapter 3 the focus will be on collective actions for compensation in the Nordic countries, mainly on the group action for compensation. Due to the active law drafting during the recent years in these countries, this action is at this moment a very topical issue in the Nordic countries.

⁵ For more details of small claims procedure in Norway, see Ot.prp.nr. 51, pp. 193-202 and NOU 2001:32, pp. 317-344. For Denmark, see Betænkning nr. 1436, pp.

425-462, and for Sweden, see Demeulenaere, pp. 53-83.

⁶ For more details, see ch. "The question of legal expenses" of this article.

Supervision of Marketing and Standard Contract Terms

The Nordic Consumer Ombudsman

General

The enforcement of consumers' collective interests in the Nordic countries is taken care by a special state authority, called as the Consumer Ombudsman. His task is to supervise marketing practices and the use of standard contract terms, but also to promote consumer interests in general. These authorities were established in all four countries between years 1973-1978. The activities of the Consumer Ombudsman are in the many Nordic countries connected to the activities the National Consumer Agency. In Finland and Sweden the Consumer Ombudsman is the head of the National Consumer Agency.

The most relevant acts which regulate the activities of the Consumer Ombudsman, are the following ones: in Denmark Markedsføringsloven 2005 (hereinafter the Danish Marketing Act), in Finland Kuluttajansuojalaki 1978 (hereinafter the Finnish Consumer Protection Act), in Norway Markedsføringsloven 1972 (hereinafter the Norwegian Marketing Act) and in Sweden Marknadsföringslag 1995 (hereinafter the Swedish Marketing Act). Especially those acts, which have entered into force already in 1970s, have been amended several times later on. The English translations of these acts are available in the home pages of the Nordic national consumer agencies or Ombudsman.⁷

Preventive actions

An extremely typical feature for the Nordic system of consumer protection is the frequent use of preventive actions in the supervision of marketing and standard contract terms: advance opinions, marketing guidelines and negotiations with the trade organisations concerning standard contract terms. The aim is to prevent any infringements of law by informing the traders and by negotiating with them. Often these preventive actions are not based on the law, but have been created in practice during the years.

Advance opinion is an opportunity for an individual advertiser to check beforehand whether a planned marketing campaign is infringing the marketing law or not. The Danish Marketing Act contains a special provision on this topic. On request, the Danish Consumer Ombudsman will give a statement regarding his view of the lawfulness of the planned marketing arrangement. Once the Consumer Ombudsman has shown "green light", he cannot interfere on his own initiative with an arrangement covered by the advance opinion and implemented within a reasonable time of its delivery.⁸ In the other Nordic countries the system is more informal. This means,

⁷ For the Danish National Consumer Agency, see <http://www.forbrug.dk>, for the Finnish National Consumer Agency, see <http://www.kuluttajavirasto.fi>, for the Norwegian Consumer Ombudsman, see [http://www.](http://www.forbrukerombudet.no)

[forbrukerombudet.no](http://www.forbrukerombudet.no) and for the Swedish National Consumer Agency, see <http://www.konsumentverket.se>.
⁸ See the Danish Marketing Act, art. 25.

that in principle an advance opinion do not bind the Consumer Ombudsman. However, in practice this has never been a problem. For example, the Finnish Consumer Ombudsman gave in year 2004 altogether 107 advance opinions.⁹

The Nordic Consumer Ombudsman have issued during the years marketing guidelines in several sectors of marketing. These guidelines are mainly based on the existing case law and their purpose is to inform traders which kind of marketing practices are infringing the law. For example, in year 2004 the Finnish Consumer Ombudsman issued three new guidelines: Marketing error situations; Minors, marketing and purchases and Changes in contract terms. In addition the Finnish National Consumer Agency and the National Board of Education prepared principles concerning marketing and sponsorship in schools.

The third preventive method used by the Nordic Consumer Ombudsman are negotiations with trade organisations concerning standard contract terms in several branches of business.¹⁰ In Finland a good example of these negotiated standard contract terms are the Package Travel Contract Terms, which are used in practice by almost all Finnish travel agencies. The result of these negotiations do not necessarily mean that the Consumer Ombudsman approves all the contract terms used in the negotiated standard contract terms, but he approves most of them.

There are many benefits connected to these negotiations. From traders' point of view the probability that Consumer Ombudsman would take actions against negotiated contract terms is in practice quite minimal. From consumers' point of view one benefit is that consumer law prohibits only the use of unfair contract terms. By these negotiations it is possible to add to the standard contracts new terms which improve consumers' contractual position compared to the earlier used standard contract terms, or even compared to the mandatory consumer contract law provisions. This fact clearly shows the task of the Consumer Ombudsman to promote consumers collective interests, and not only to supervise, whether the legislation in force is violated or not.

Repressive actions

In case infringements of law are observed, the supervisory systems in the Nordic countries are still given priority to the use of soft law-methods. The Consumer Ombudsman have an obligation to persuade the trader in question to abandon unfair marketing practices or the use of unfair contract terms in a voluntarily way.¹¹ The trader is asked to sign a written engagement in which he promises not to continue unfair marketing practice or the use of unfair contract terms.

The use of soft law methods has shown to be extremely effective during the years. The great majority of clear infringements of law are solved by this way without need to use any legal sanctions. Even in more principal cases traders often prefer to choose an amicable settlement instead of letting the Consumer Ombudsman to take the case to the court.

⁹ See Consumer Agency/Ombudsman. Annual report 2004, p. 22.

¹⁰ See, e.g., Wilhelmsson 1994 s. 34.

¹¹ See, e.g., the Finnish Consumer Agency Act (1056/1998), art.5.

In cases where persuasion fails, hard law-sanctions are available. The Consumer Ombudsman may take legal action against the trader in a special court, which in most Nordic countries is called as the Market Court or Council.

However, in clear cases or in cases of minor importance, the Consumer Ombudsman is entitled to impose by himself an injunction order together with conditional fines. In case a trader resists, the systems in the Nordic countries differ from each others. In Denmark, Finland and Sweden, the injunction becomes void if the trader resists in a certain time limit and the Consumer Ombudsman has to take the case to the court. In Norway the decision of the Consumer Ombudsman has a more stronger legal position. In Norway, the trader who is not satisfied with the decision made by the Consumer Ombudsman, has to appeal to a court in case he wants to reverse it.¹² In all four countries the Consumer Ombudsman may impose a temporary injunction order in urgent cases. It is valid until the courts starts to try the case.

The Nordic Market Courts

General

The final decision-making power when assessing whether marketing practice or standard contract terms may be regarded as unfair or not, has in the Nordic countries been given to special courts. In Finland and Sweden these courts are called as the Market Courts. Their jurisdiction is limited to the following areas of law: consumer law (only marketing and standard contract terms), unfair competition and competition law. In Norway the similar court is called as the Market Council. All these three courts were established in 1970s. In Denmark the competent court is, however, the Maritime and Commercial Court of Copenhagen, which was established already in 1862. It is a special court for commercial disputes, including marketing and unfair contract terms-cases. All courts consists of professional judges, and expert members, who in practice may be also representatives of different interests groups. For example, in the main hearing the Finnish Market Court normally consists of three professional judges and from one to three expert members, everybody with an individual right to vote.¹³

Right of action

In consumer matters a court procedure in the Nordic Market Courts is initiated by a petition of the Consumer Ombudsman. In Finland and in Sweden the right of action has been formally restricted to the Consumer Ombudsman only. However, if the Consumer Ombudsman refuses to file a petition with the court for the hearing of cases concerning advertising measures or contract terms, the petition may be filed by a registered association looking after the interests of traders,

¹² See the Norwegian Marketing Act, art. 14.

¹³ See the Finnish Market Court Act (1527/2001), art.9.2.

consumers or employees. In Norway also individual traders or consumers who have been affected by the marketing practice, have a secondary right of action, and may submit the case to the court. The situation is most liberal in Denmark, where anyone with a legal interest, may bring a case to the court.¹⁴

In practice competitors often take legal actions against each others in the Nordic Market Courts, but on the basis of unfair competition law, which provide to them more than only a secondary right of action. However, individual consumers, or even consumer organisations, have not shown interest to use their right of action in the Nordic countries. For example, in Finland in spite of the fact that the secondary right to institute proceeding in the Market Court has been available since year 1978, it has never been used.

The right to take legal action against traders used to be also in the Nordic countries reserved only to the consumer authorities and consumer/trade organisations of the same country where the defendant was domiciled. Due to the directive 98/27/EC on injunctions for the protection of consumers' interests¹⁵, so called injunction directive, the legislation was amended also in the Nordic countries so, that in cross-border matters a case may also be initiated by petition of a foreign authority or organisation. However, at least in Finland, so far there have been no cases in the Finnish Market Court which would have been initiated by foreign organisations or authorities. Neither has the Finnish Consumer Ombudsman used the benefits of the injunction directive 98/27/EY in other Member States. It is more than probable, that the situation is similar in other Nordic countries.

However, it might be worth of mentioning in this context, that for example, the Finnish Market Court solved its first case concerning cross-border marketing already in year 1987. In that case a big multinational company was marketing its products via satellite television from Britain to Finland. The Finnish Consumer Ombudsman took legal action in the Finnish Market Court against the Finnish subsidiary company of the multinational company in question. The court stated, that the Finnish Consumer Protection Act was applicable in the case due to the fact that marketing was intentionally targeted also to the Finnish consumers. Perhaps the most interesting point in this case was the fact, the injunction order with a conditional fine was imposed to the Finnish subsidiary company.¹⁶

Sanctions

In case the Nordic Market Court considers a marketing practice as unfair, the following sanctions are available:

- injunction order. *The purpose of this order is to prohibit the trader to carry on his illegal activities. In most Nordic countries an injunction order is strengthen with a conditional fine. Conditional fine is a fine which the trader has to pay in case he does not comply with the court order. However, in Den-*

¹⁴ See the Danish Marketing Act, art. 27.

¹⁵ See OJ N:o L 166, 11.6.1998. For more details of this

directive, see, e.g., Côté, pp. 18-28.

¹⁶ See the case number 1987:13 of Finnish Market Court.

mark criminal sanctions are used instead of conditional fines. Non-observance of an injunction imposed by the court, or even imposed by the Danish Consumer Ombudsman in clear cases, is punishable by fine or imprisonment of up to four months;¹⁷

- corrective advertising. This means an obligation to correct, normally by a totally new advertisement, the information given in unfair marketing.¹⁸ In practice the significance of corrective advertising has been rather small. The reason for this is the simple fact, that marketing campaigns have in practice ended a long ago before the judgment is given;
- market disruption fee. In Sweden a special sanction, called as market disruption fee, has been available since year 1996. A trader may be ordered to pay a market disruption fee, if he or a person acting on his behalf intentionally or by carelessness violates the substantive rules of the Swedish Market Act. However, it is not possible to impose a fee in case a trader has infringed only the general clause in article 4. The ordered fee has to be at least SEK 5.000 and it may not exceed SEK 5.000.000 (approximately euro 500.000) and ten percent of the trader's annual turnover. Market disruption fee is an alternative sanction to an injunction order with conditional fines, and the intention was, that it would be used only in serious cases. In most cases the court should still impose only an injunction order together with conditional fines.¹⁹

Criminal sanctions

In Sweden the possibility to use criminal sanctions was abolished when the market disruption fee was adopted. However, in other Nordic countries criminal sanctions are still in principle available, but the criminal procedure takes place in general courts, which also impose the sanctions. In practice criminal sanctions have been used very seldom. For example, in Finland the Consumer Ombudsman tried to use criminal sanctions against unscrupulous traders, but the criminal charges were dismissed or the punishments were so low, that there was no sense to bring new criminal cases to the courts.²⁰

Compensation of damages

Neither does the Nordic Market Courts have jurisdiction to order compensation of damages in individual cases. This means that individual consumers, who want to claim compensation for their economic damages caused by unfair marketing practices or the use of unfair standard contract terms, have to take legal action in a general court in case out-of-court procedures turn to be useless. Due to the risk of high costs of litigation, this possibility is at this moment often more theoretical than practical. However, the new Nordic group actions for compensation,

¹⁷ See the Danish Marketing Act, art. 30.1.

¹⁸ See, e.g., the Finnish Consumer Protection Act, ch. 2, art. 9.

¹⁹ See the Swedish Marketing Act, art. 22-25 and SOU 1993:59, pp. 410-424.

²⁰ See, e.g., Wilhelmsson 1996, p. 149.

where the Consumer Ombudsman may act as plaintiffs on behalf of a group of consumers, may change this pattern in the future.

Right to appeal

Right to appeal differs between the Nordic countries. In Sweden the judgment of the Market Court is final. No one has a right to appeal to the Court of Appeal or directly to the Supreme Court. This was also the situation in Finland until the year 2002. However, since year 2002 the parties have had right to appeal to the Supreme Court provided that the Supreme Court grants a leave to appeal.²¹ In Denmark the decisions of the Maritime and Commercial Court may be appealed to the Supreme Court. Also in Norway the parties may appeal to a general court.

In Finland the parties have been quite active to use their new right to appeal. In fact, it has been used in most cases and the Supreme Court has been so far quite liberal when granting its leave to appeal. In its final decisions, the Supreme Court has confirmed the judgement made by the Market Court. The changes have been minor ones.²²

Legal expenses

In consumer law cases the no-cost rule is applied in the Market Court in all Nordic countries. This means that both parties have to carry their own legal expenses in spite of the outcome of the case. In spite of the no-cost rule, the lack of sufficient resources has probably been one reason for the unwillingness of consumer organisations to initiate cases in the Nordic Market Courts.²³

Collective actions for compensation

General

In modern society it is not uncommon that many consumers suffer economic damages due to problems which are more or less similar as other consumers. The reason for this is the increasing mass production of consumer goods and the mass supply of consumer services, e.g., package travels and insurances. However, the dispute settlement systems in most western countries are at present unable to solve these mass consumer disputes. The traditional civil procedure is still only aimed at solving disputes between individual litigants.²⁴ However, the same problem may

²¹ See the Finnish Act on Certain Proceedings before the Market Court (1528/2001), art. 21.

²² See, e.g., Bärnlund, pp. 424-427.

²³ See, e.g., Viitanen 1999, p. 552.

²⁴ See, e.g., Cappelletti 1989, pp. 268-287.

also be seen in most out-of-court procedures which have been created during the last few decades. They are forceless in front of the mass consumer disputes.

In the discussion concerning the settlement of mass consumer disputes most attention over the last few decades has without doubt been paid to group action for compensation. Group action for compensation can be briefly defined as a court action in which a plaintiff - either a member or a non-member of a specified group - brings a suit for the benefit of a specified group without the express permission of the group members, and this results in a judgement that is binding both for and against all the members of the group.²⁵

Based on who the plaintiff is group actions can be divided into three types. Firstly, we may identify a proper class action, where the plaintiff is a member of the group and seeks, e.g., redress also for his own damages which he has suffered. Second possibility is that the plaintiff is not a member of the group, but a public authority responsible for the supervision of collective rights of a certain group. This kind of actions has been called as public action. Thirdly, there are actions where the plaintiff is a private group, e.g., a consumer organisation, which has received legal standing. These actions has been called as actions by organizations.²⁶

The settlement of mass consumer disputes is in principle possible also in the traditional civil procedure. If there are several plaintiffs against the same defendant, the court may join these actions in one proceeding if that contributes to a quicker and proper trial of the case.²⁷ This is called as consolidation of actions. In spite of fact that all these cases are handled in the same trial, it is basically question of several individual claims which for economic reasons have been consolidated. This means also that all the members of the group who wants to have compensation must be involved in the trial as plaintiffs. In case a consumer organisation or another third party is representing the members of a group, it must have a proxy from each of them. In consolidated cases the same principle is applied as in most other countries concerning legal expenses. It is the loser who has to pay his own trial costs and those of the other party.²⁸ This means that all the members of the group who are plaintiffs in the trial have to bear their part of the legal expenses if the case is lost.

The second alternative in the settlement of mass consumer disputes is so called pilot case. This means that only one case is taken to a court and in the other cases parties comply with the court's judgement made in the pilot case. In most pilot cases this happens without any prior agreement between the plaintiff and defendant.

In Finland the Consumer Ombudsman can assist consumers in a court in an individual dispute if a case has significance for consumers' general interests and a preliminary ruling is desired. The Consumer Ombudsman can also decide that the National Consumer Agency will pay for consumer's all legal expenses, including those which he has to pay to the other party if the case is lost.²⁹

²⁵ See, e.g., Lindblom 1989, p. 19.

²⁶ See, e.g., Bourgoignie, pp. v-vi.

²⁷ See, e.g., the Finnish Code of Procedure, ch.18, art. 1-8.

²⁸ In Finland, see the Finnish Code of Procedure, ch. 21, art 1.

²⁹ See the Finnish Consumer Agency Act (1056/1998), art. 9.

In practice the Finnish Consumer Ombudsman makes from 2 to 6 decisions to provide aid of this kind each year. For example, at this moment, the Finnish Consumer Ombudsman is assisting a consumer in the Supreme Court in a case where the consumer had bought consumer goods from USA via internet and paid by using his VISA-credit card. He never received the ordered goods, but got anyway the bill from VISA. He refused to pay on the ground of connected lender liability. Now the Finnish Supreme Court is deciding, whether the connected lender liability, as implemented in the Finnish Consumer Protection Act, ch. 7, sets obligations also to credit card companies such as VISA.

The main problem in the use of pilot cases is that from procedural law viewpoint the court's judgement do not differ in any way from judgements given in normal individual cases. It does not have res judicata-effect in other similar cases. This means that the defendant who has lost his case, do not have any legal obligation to comply with the judgment in other identical disputes. The effects of pilot cases are only based on defendant's fear that a preliminary ruling may encourage other consumers to take legal actions in similar cases. Creating a precedent is only helpful in situations where a company is willing to comply with the ruling in all other cases, too.

In Finland pilot cases have shown to be useful in some situations, but there are also a lot of examples in which traders have been unwilling to comply with decisions made in pilot cases. In the latter cases time limits on claims have caused problems to those consumers who have waited for the results of a pilot case. If a pilot case is under consideration for years, other claims with a similar basis can lapse. Preventing this may require individual measures on the part of each consumer, which conflict with the main idea of a pilot case.

In most European countries the possibility of bringing an group action for compensation do not yet exist. Group action for compensation - like for example small claims courts - has been much more popular in common law countries outside the Europe. The most well-know examples may be found in the United States, Canada and Australia.³⁰ The lack of group action for compensation in Europe has been a problem, because it is expressly this type of court action which could be very useful in the settlement of mass consumer disputes. Group action for compensation is an important weapon when making justice more accessible in mass disputes.

Nordic group actions for compensation

However, now it seems that the Nordic countries may once again show example in the field of consumer protection by adopting new procedural legislation which makes group action for compensation possible in mass consumer disputes.

³⁰ See, e.g., Lindblom 2000, pp. 427-439, com(93) 576, pp. 63-64, Eisenstein, pp. 30-53, L'Heureux; pp. 445-461 and Harland, pp. 126-139.

In Finland and Sweden law drafting procedure for group action for compensation, started in the beginning of 1990s. In Sweden this procedure led to the Government's Proposal to Parliament concerning Group Action Act, which was adopted by the Parliament in May 2002. The new act entered into force January 1, 2003.³¹

In Finland the law drafting stopped in year 1999 for political reasons temporarily, after two committee reports. The preparation work continued in this decade and in March 2006 a new committee report was published. It contained a proposal on group action for compensation, which scope of application was, however, much more restricted when compared to the other Nordic countries. Government's proposal on group action was given to the Parliament in September 2006.³²

However, it is good to remember, that group action for compensation has been a very sensitive political question in Finland since 1995, when the first committee report was published. Several proposals have been made during the years without any further legislative progress. The resistance from the business lobby organisations has been very hard and successful.

In Norway, the new Act on Civil Procedure, its chapter 35, which will enter into force in year 2007, will introduce group action for compensation to the Norwegian procedural system. In Denmark a committee report was published in December 2005. It suggested that the Danish Act on Procedure should be amended in a way which would make group action for compensation possible also in Denmark in the near future.³³

The scope of application would in most Nordic group actions be general. This means that group action will be 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 at least identical to each others, and it is sensible to handle these disputes together in one trial.

However, in this respect the Finnish proposal differs clearly from the other Nordic countries. According to the newest committee report, 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 is even more strict: group action will be possible in mass consumer disputes only.³⁴

There is also a clear difference between other Nordic countries and Finland concerning the question who may act as a plaintiff in a group action for compensation. In other Nordic countries all previous mentioned types of group action are possible. So, in Denmark, Norway and Sweden the plaintiff may be a member of the group (class action), an organisation, who is protecting the interests of a certain group of citizens (action by organisation), or state authority, as the Consumer Ombudsman (public action).³⁵

In Finland only a public action would be possible. The Finnish Consumer Ombudsman would have a right to take legal action on behalf of a specified group

³¹ See Prop. 2001/02:107 and the Group Action Act (sfs 2002:599).

³² See ouj 4/2006 and HE 154/2006.

³³ See Betænking nr. 1468.

³⁴ See ouj 4/2006 s. 53-56 and HE 154/2006, pp. 16-17.

³⁵ See, e.g., the Norwegian Act on Civil Procedure, ch. 35, art.3.

of consumers. This means that consumer organisations or individual consumers would not have even a secondary right of action in cases where the Consumer Ombudsman have decided not to start legal proceedings. According to the latest committee report, in environmental damage issues the environmental organisations would have had a right of action, but only a secondary one.³⁶

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 opposite ways how the group may be formed. Firstly, all persons who fill certain requirements will become automatically members of the group. Those, who do not want to be members of the group have to use their right to opt out. The opposite alternative is the 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 Sweden and Finland only opt in-alternative is available. This is also the main rule in Norway and Denmark. However, in these two last-mentioned countries also 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 usefulness of group action, especially in mass consumer disputes. However, in Denmark the opt out -alternative would be available in public actions only.³⁷

Otherwise the procedure to be used would primarily correspond to ordinary legal procedure in civil cases in all four countries. Also the same civil law remedies are available than in normal traditional individual cases, e.g, compensation of damages, price reduction.

In all Nordic countries the main rule in the civil procedure is that the loser is obliged to pay the legal expenses of his own and those of the other party. This cost rule is also applied in the Nordic group actions for compensation. In Finland and Sweden only the parties in 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 will, however, be decided by the court already in the beginning of the trial.³⁸ In case the ceiling is individual, but not collective, this makes it possible for the potential members of the group to assess, whether it is economically sensible to opt in or not.

The question of legal expenses

The most essential question when evaluating the practical significance of group action for compensation is, how the actions will be financed. Group actions entail much higher costs than individual cases in a normal civil procedure, albeit

³⁶ See HE 154/2006, p. 20 and OJ 4/2006, pp. 61-67.

³⁷ See the Norwegian Act on Civil Procedure, ch. 35, art. 7 and Betænkning nr. 1468, pp. 275-276.

³⁸ See the Norwegian Act on Civil Procedure, ch. 35, art. 14 and Betænkning nr. 1468, pp. 276-277.

that in individual cases too the costs of litigation are the biggest obstacle to the use of courts in consumer disputes.³⁹ In group actions the plaintiff takes a great financial risk, which in practice is too big for individual consumers or small and medium-size consumer organisations. So, if group action is wanted to serve as a serious alternative in the settlement of mass consumer disputes, which would also work in practice, the problem of high litigation costs, has to be solved first.

When assessing the Nordic group actions - acts or proposals - from this viewpoint, one has to admit, that the situation is far from satisfactory. All Nordic group actions are based on the so called English rule: the loser has to pay the expenses of his own and those of the other party. Besides in Denmark and Norway the courts have a right to decide that also the members of the group have to pay a certain amount of the expenses. These kinds of rules create barriers for access to justice. Who is willing and able to start a group action for compensation, or join the group as a member, if he has to pay the expenses from his own pocket? The Finnish proposal, which limits the right of action to public authorities only, do not solve the financial problem, because also public authorities, including the Consumer Ombudsman, have to work with limited economic resources.

In Sweden group action for compensation, with a general scope of application, has been possible since year 2003. So far the number of actions in Sweden has been only six. One of them have been started by the Swedish Consumer Ombudsman.⁴⁰ It is obvious that the risk of high legal expenses has been the main reason for the small number of group action for compensation in Sweden.

However, the legislator may use different methods to lower the economic threshold in group actions, in case there is enough political to use them. Firstly, by using the no-cost rule and contingency fee or conditional fee -payment systems it would be possible to transfer the financial risk from the parties to the law offices. In this system both parties would cover only their own expenses and attorneys would be paid only in the event of a successful outcome. Law offices may accept this kind of payment system, because if they win the case, they are able to charge much higher fees than in normal cases and they will also receive good publicity, which will increase goodwill towards the office and bring new clients to the firm in the future. This system has been very popular way to finance class actions in the United States.

However, this system does not fit very well to the Nordic legal system and would probably be strange in many other European countries, too. As mentioned before, in the Nordic countries the main rule is that the loser has an obligation to pay winner's all legal expenses. No-cost rule in group action for compensation would mean a clear exception from this main rule. Contingency fee and conditional fee-payment systems are in principle possible, but are not used in the Nordic countries in practice. The amount of attorneys in these countries is still quite reasonable, which means that there is no need to attract new customers by using payment systems where the risk would be transferred to law firms. Attorneys prefer to work on hourly wages, which mean that their income do not

³⁹ See, e.g., Cappelletti 1993, p. 285.

⁴⁰ See, e.g., Lindblom 2005, pp. 152-161.

depend on the outcome of the case at all. That is why, it is also probable that the use of conditional fees would not become popular in Sweden, in spite of the fact that this possibility is expressly mentioned in the Swedish Group Action Act.⁴¹

Secondly, it is possible to use different kinds of funding systems. A public or private fund could financially support the plaintiff who brings a group action. These funds could receive state subsidies, but also a certain percentage of the money won by group actions could be channelled into these funds to be used as capital for future cases. These kinds of funding systems are already used at least in Canada.⁴²

The first Finnish committee, which published its report in year 1995, also drew special attention to the financing of potential group actions. It proposed the establishment of a special State Group Action Board. This board would have received its funding mainly from the state budget. Potential plaintiffs could apply for economic support which would also have covered the legal expenses which the plaintiff would have had to pay to the other party in cases which were lost. Naturally, the Board would have had to consider whether there were good enough grounds to bring a group action or not.⁴³ In practice, this Board would have decided in which cases group action is brought and in which not.

However, the second Finnish committee, which published its report in June 1997, abandoned this idea. The willingness to public savings was the main reason. According to the instructions which were given to the committee when it started its work, the new legislation should not cause any extra expenses to the state.⁴⁴

Unfortunately, the second committee did not propose any alternative models how the problem of financing could be solved. As mentioned above, it would be possible to establish a special fund which could finance group actions without continuous state aid. A certain percentage of the money received by successful group actions could be channelled into this fund. Instead of using public resources the fund would collect its capital mainly from private sources. In this system only the basic capital would normally be needed from the state.

Group complaints in the Public Consumer Complaint Board

The traditional court procedure in most countries has been criticised because it is not applicable to the settlement of mass disputes, including consumer mass disputes. The same criticism - the inability to solve mass disputes - may also be directed against the Nordic Public Complaint Boards. However, concerning this matter an interesting experiment started in the Swedish board already in year 1991. It is now a permanent system based on the law.

The Swedish Consumer Ombudsman is entitled to bring to the Swedish Consumer Complaint Board a special group complaint against an individual trader. The Board may - if it considers the complaint justified - recommend that the trader should give the recommended remedy to all consumers who have similar

⁴¹ See the Swedish Group Action Act, art. 38-41.

⁴² See L'Heureux, pp. 456-457 and Lindblom 2000, pp. 429.

⁴³ See OJ 1/1995, pp. 21-23, 60-65, 103-105 and 115-117.

⁴⁴ See OJ 3/1997, pp. 2, 97-98 and 131-133.

demands against the same trader, but who have not personally complained to the Board. If the Ombudsman is not interested in bringing a group complaint, consumer and labour organisations are entitled to do so. For some reason, the right to complain has not been given to individual consumers. So, a procedure comparable with a class action is not possible in the Board.

The Swedish Consumer Ombudsman has brought approximately one or two group complaints to the board every year. Most of the Board's decisions given in these cases are said to be complied with.⁴⁵ However, it is unclear how the compliance has been controlled in these cases when most of the consumers involved are not known by the consumer officials. Opt in-system is not applied in group complaints.

In Finland a committee, which published its report in January 2006, proposed that a similar system should be adopted also in Finland. According to this proposal, the Finnish Consumer Ombudsman could bring a group complaint to the Finnish Consumer Complaint Board in consumer disputes, where several consumers have similar kinds of claims against the same trader, and it would be possible to solve all of them by a single decision. In the Finnish proposal right to complain, not even a secondary one, would not be given to single consumers or consumer organisations. The decisions of the Board in group complaints would be recommendations just like in other issues handled by the Board. The Government's Proposal on group complaints was left to the Parliament in September 2006.⁴⁶

The Nordic enforcement system: a success story or something else?

Supervision of marketing and contract terms

May the Nordic enforcement system be called as a success story or something else? It is clear, that the Nordic system contains many positive elements from the viewpoint of consumer protection.

First of all, it is tremendous important that from the very beginning of the establishment of the system for consumer protection, serious attention was paid, not only to the content of the substantive consumer law, but also to the access to justice-questions: enforcement of consumers' collective interests and individual rights.

Secondly, a special, independent supervisory body, called as the Consumer Ombudsman, was established in each of these four countries. It is also essential to notice in this context, that enforcement of consumer protection was the sole task of these Ombudsman. Supervisory tasks were not given to some already existing authority, for example, to the competition authorities. This has meant that

⁴⁵ See ECLG 2005, pp. 5-6, Ljungqvist, pp. 20-21 and TemaNord 1998:572, pp. 56-65.

⁴⁶ See OJ 1/2006, pp. 9-10, 15 and HE 115/2006.

the Consumer Ombudsman have been able to focus all their available resources to the supervision of marketing and standard contract terms without a fear that the fulfilment of other tasks, for example, enforcement of competition law, would have started to dominate their activities.

One example from Finland may illustrate this risk. In year 2002 the Finnish Market Court's jurisdiction was enlarged also the competition law issued, which soon started to dominate the activities of the Court. Nowadays, more than 95 percent of the all cases dealt by the Court concerns public procurement. The growing amount of competition law cases have caused delays also to the duration of consumer law cases.

Thirdly, it was extremely important to establish special courts as decision-making bodies instead of channeling consumers' collective interests-cases to already existing general courts. As mentioned before, in the Nordic countries criminal sanctions may, even in consumer cases, be imposed by general courts only. However, the use of criminal sanctions in consumer law-cases has in practice been very rare in the Nordic countries. The main reasons have been the dismissive attitudes of public prosecutors and judges in general courts concerning the importance of the protection of consumers' collective interests. That is why, it is more than probable that the leading marketing law principles, which were created by the case law of the Nordic Market Courts since 1970s, would be rather different than what they are now if the Consumer Ombudsman would have had to take legal actions in general courts instead of these special courts.

Fourthly, one clear benefit in the Nordic system has been the wide use of preventive actions. The Nordic Consumer Ombudsman use significant part of their resources in trying to prevent beforehand any violation of law. They give advance opinions on request, draw marketing guidelines and negotiate with trade organisations concerning standard contract terms in several branches of business. It is interesting to notice that these preventive actions are mainly not based on any law. On the contrary, they have been created in practice during the years when the Nordic Consumer Ombudsman have carried out their supervisory duties.

Also in cases, where infringements of law have been observed, persuasion effort instead of sanctions has been normally the first reaction of the supervisory authorities. These preventive and persuasive methods have turned out to be very successful due to the fact that most traders are in practice more than willing to co-operate. The main reason for this willingness is the possibility to use hard law-sanctions in case persuasion fails. That is why, it is important to remember the close connection between soft law-methods and hard law-sanctions. Without the possibility to use hard law-sanctions if necessary, the persuasive methods would not be so successful as they have been now in practice.

However, there are also clear defects in the Nordic enforcement system. Perhaps the biggest problem is, that the traditional sanction system does not pay enough attention to the unscrupulous traders who intentionally and repeatedly violate the law in order to increase their sale numbers and profits. Against these traders, sanction systems where the hardest sanction is an injunction order is in practice rather toothless. These traders are not worried about the potential bad publicity

connected to these cases, because they anyway have to change their trade name once an year in order to get rid of dissatisfied and complaining consumers. Because criminal law sanctions enforced by public prosecutors and general courts have turned out to be in practice very rare, more attention has to be paid to the development of the market law sanctions. In Sweden it has been possible to impose market disruption fee since year 1995. The ceiling for this sanction is ten percent of the trader's annual turnover or euro 500.000. It is obvious, that also the other Nordic countries have to adopt more or less similar financial sanctions in the future.

Group action for compensation

Also in the Nordic countries one great problem has been the lack of access to justice in mass consumer disputes. In many of these cases the damages are caused by the use of unfair standard contract or unfair marketing which have tempted consumers to buy something they would not otherwise have bought. Traditionally the court system in the European countries has been inapplicable for the settlement of mass consumer disputes. In the discussion concerning the settlement of mass consumer disputes most attention over the last few decades has without doubt been paid to group action for compensation.

Group action for injunction in consumer matters is nowadays possible in all EC Member States. Group action for compensation is, however, still quite rare outside common law countries. The EC is not at this moment preparing any directive on group action for compensation. The directive on injunctions for the protection of consumers' interests (98/27/EC) entitles supervisory bodies to take legal action in other Member States only in order to impose an injunction order.

The passivity of the EC concerning group action for compensation was, for example, used in the Finnish legal 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 "EC-card" has also been used in the legal 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.⁴⁷

However, the argument that more advanced legislation would cause serious problems to domestic enterprises is 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 Ontario. So far there has been no alarming news that group action has caused serious damage to enterprises in these provinces.⁴⁸

Due to the active law drafting during the recent years, it seems that situation is slowly changing in Europe. Especially the Nordic countries has been quite active. Group action for compensation has been possible in Sweden since the year 2003.

⁴⁷ See Viitanen 1994, pp.165-167.

⁴⁸ See, e.g., Lindblom 2000, pp. 428-429.

The Norwegian legislation on group action will enter into force in year 2007. In Denmark there exists a recent committee report and in Finland already a government's proposal. They both propose the adoption of group action for compensation to these countries. It is obvious, that in a near future group action for compensation belongs to the typical features of Nordic consumer protection.

However, it is probable, that in consumer disputes group action for compensation will be used quite rarely in practice. The major obstacle to the use of group action is the cost of litigation. In all four Nordic countries public action, where plaintiff is a public authority, is or will be possible. This means that in mass consumer disputes the Nordic Consumer Ombudsman may bring group actions for compensation on behalf of group of consumers. However, the use of the Consumer Ombudsman as plaintiffs instead of single consumer or consumer organisations do not solve the problem of financing. Also the state authorities have to work with limited yearly resources.

For example, the yearly budget which the Finnish National Consumer Agency may use for its own expenses is approximately euro 6.000.000. The great majority of these monetary resources are, however, aim to certain purposes: salaries for the permanent employees, rents, etc. This means that without extra resources the Finnish Consumer Ombudsman have to consider extremely carefully in which cases he starts a group action for compensation. As mentioned before, so far the Swedish Consumer Ombudsman have started only one group action in three and a half year. So, one of the most important questions concerning the practical functioning of group action for compensation would without doubt be the financing of these actions. Who will have afford to group actions for compensation?

In case these financial problems are solved, group action for compensation may become an important instrument when making justice more accessible in mass consumer disputes. Group action for compensation can, by its mere existence among other legal procedures, promote the opportunities to reach an agreement with the trader in question in mass consumer disputes, without needing to bring a suit to court.

One argument which is often used on behalf of group action for compensation is that it brings savings both to the disputing parties and to the court system because several individual disputes may be settled in one single court case. However, this argument is based on the assumption that there really would be several individual court cases if the group action for compensation were not recognised by procedural law. This is probable in cases in which the economic interest exceeds the costs of litigation and it also makes an individual court case feasible. However, in other cases - including most consumer disputes - only the possibility of collecting individual interests together makes it sensible to take legal action. Thus, in practice, in most cases group action for compensation actually increases expenses incurred by the court system, because it makes legal actions possible which would not otherwise be raised as individual actions. But at the same time it makes justice more accessible in mass disputes where access to justice is still a great problem today.

If group action for compensation will be possible in some Member States, but not in the others, it would be interesting to see how the enforcement problems will be solved in cross-border group actions. The Brussels Regulation is applica-

ble in individual cross-border consumer disputes, but group actions for compensation have also clear collective elements. That is why, it is not clear, whether judgments will be in practice enforceable also in those Members States which have not adopted this type of court action in their procedural law.

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