



**THE INTRODUCTION  
OF CLASS ACTIONS  
IN BELGIUM**



# **ADR as a better Alternative Means of Redress**

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# EJF

- Founded in 2005 to promote fair and balanced systems for collective redress without the need for class action litigation
- Priority is to support independent legal research into European civil justice systems and redress
- EJF's positions are based on the output of that research



# Why Collective Litigation?

- Courts need a mechanism to handle mass claims
- All Member States have such a mechanism for injunctions and court orders
- Thirteen EU countries have some form of class action for compensatory claims
- EJF does not argue against the need for courts to have such management tools

# Are Class Actions the right means for Redress?

- Collective redress is not the same as collective litigation.
- Litigation is slow, costly and risky
- Class actions are little used in the EU for collective redress: there are better alternatives
- They raise issues of abuse; the need for detailed procedural rules; and safeguards
- Class actions do not work properly if an individual claimant's condition needs to be considered



# Use of Class Actions in EU

- [redacted]: in 11 years only 11 cases brought; only 1 case [redacted] and 10 of the cases were against government [redacted]
- [redacted] all countries have class action laws, but [redacted] men rarely need to use them
- [redacted]: Compensatory class actions prohibited: [redacted] cated ADR mechanisms are used
- [redacted] 1999–2006 some 50 cases, lasting 1–4 years
- [redacted]: since 1995: only six cases, lasting average 5 – 6 [redacted] sputes normally settled by ADR



# Use of Class Actions in EU

- Germany: shareholder actions only: Deutsche Telekom case has already lasted 4 years and by no means completed
- UK: series of Group Legal Actions in 1980s – 2000s: up to 10 years' duration; huge cost: no benefit to claimants
- Poland and Italy: too early to say how much these new laws will be used
- [REDACTED]: Very few of the past Member State cases had a cross border element

# Safeguards needed in Class Action Laws

- Abuse in the US is not due simply to jury trials; absence of loser pays; punitive damages etc
- The main cause is the financial incentive to litigate: contingency fees in the US and TPF in Australia
- In Europe, the loser pays rule is being attacked and there is pressure to allow contingency fees. TPF already exists.
- Careful procedural rules; a ban on contingency fees; control of other sources of finance; and the loser pays rule are essential





# The Opportunity for ADR

- Over 700 ADR mechanisms in the EU: ranging from simple negotiation, to conciliation, to mediation and arbitration
- Industry is heavily engaged in developing ADR as part of its customer relations policy
- ADR is complimented by the EU culture of public authorities to enforcing private rights
- Governments need to develop ADR in this context
- Contrast the US use of class actions plaintiffs as “private attorney generals”

# How to Increase the Use and Effectiveness of ADR?

- Awareness: national registers and advice to potential litigants of ADR alternatives
- Incentives to use ADR where appropriate
- Accreditation and certification of ADR
- Rationalise architecture of ADR to facilitate awareness and certification
- Court to ensure due process and (at the parties' joint request) to endorse the result

# Voluntary Nature of ADR circumvents Problems

- Abuse minimised because parties agree to ADR process
- Cross border disputes handled by agreement: no problem of mutual recognition of tribunals
- Collective disputes are handled by ADR without special procedures
- Many ADR systems operate on-line
- “Rough justice” preferred to court’s cost and delay
- [REDACTED] the right to go to court to determine legal rights and obligations must be respected



# Examples of ADR

- Nordic: Ombudsmen filter out unmerited claims and settle the remainder
- UK Financial Services Ombudsman has similar experience
- Sweden: statutory insurance resolves emotive claims (e.g. medical) by non-confrontational mechanisms
- Portugal: disputes settled by ADR mechanisms
- UK: restorative justice is basis of policy – e.g. Ofcom
- To avoid over-reaction and to ensure proportionality, regulators need to know the cost of compensation before they impose penalties



# The Netherlands

- 49 Business ADR Boards cover most sectors of the economy: separate Board for Financial Services.
- Strong pressure on traders to join and observe outcome of complaints investigation
- Umbrella organisation (Geschillen Commissie) ensures structure and high standards of ADR
- Parties may request court to endorse ADR agreements, making decisions legally enforceable and final: no further dispute over the same problem
- Used in national and cross border EU disputes