Europe Braces for Class and Group Actions

The United States is known for exporting things that other countries may not want, but cannot keep out. Now another American institution may be landing on European shores, to the alarm of many European and U.S. multinational companies: the class-action lawsuit.

Across Europe, the possibility of a system of collective redress is growing, both in individual countries and as part of a European Union movement. Meanwhile, some U.S. plaintiffs’ firms are setting up shop in Europe.

“Traditionally, continental Europe has never had class or group actions,” says Michael Molitoris, an attorney with Nörr Stiefenhofer Lutz, Lex Mundi’s member firm for Germany. “Change has started in Europe, and it’s something European companies have feared.”

The issue gained particular urgency this year after Meglena Kuneva, the European Union commissioner responsible for consumer policy, announced plans to explore an EU-wide strategy for collective redress and enforcement.

Change has started in Europe, and it’s something European companies have feared.

In a speech last May in London, Kuneva addressed the “sensitivities” around the very notion of collective redress. “We are certainly not thinking about bringing a U.S.-style system of class action to Europe,” she said. “What I’m looking for is to ensure that consumers have all the necessary possibilities to seek redress when things go wrong.”

Despite such reassurances, Michael Reardon, senior assistant general counsel for litigation for Altria Corporate Services International Inc. in Lausanne, Switzerland, cautions about unintended consequences of wholesale changes in a legal system. “There is a big difference between what is proposed at the beginning of a debate and what comes out in the ensuing debate,” he says. “You shouldn’t take the declaration that those in Europe do not want to replicate the U.S. system at face value. I’m sure that’s the intention, but changes can take things very far from their original intent.”

Molitoris notes it is not even clear if the EU can institute a form of collective redress across the entire union. The EU can institute reforms to improve consumer protection, but there are serious jurisdictional questions about whether the EU can dictate civil litigation terms to its member states, he says.

Both Reardon and Molitoris urge U.S. companies, particularly those with business in Europe, to become involved in the discussion before changes are finalized.

Reardon says that, for example, companies may be able to help steer any new system towards one where claimants must opt in, rather than opt out. This is one distinction that could have a huge effect on the number of class members involved in any given piece of litigation, he says.

“It’s important for U.S. in-house counsel to know what’s going on and to engage in the debate,” says Reardon.

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**Current State of Class/Group Actions**

Class or group actions have not been admissible under Austrian law. Only in specific fields, such as consumer protection, unfair competition or labor law, did certain institutions have the right to bring actions to protect collective interests.

However, in summer 2007, the Federal Minister of Justice presented a Draft Act amending the Civil Procedure Act with the intent of introducing the possibility of bringing group actions. As of press time, this Draft Act has not been submitted to Parliament.

Under the Draft Act, group actions would be available for at least three people and at least 50 claims against the same person(s) concerning the same legal and factual questions. After submission of such an action, the court must make public that the action has been filed. Any person may then apply to join the group action within six months of the date of its publication. The court will decide upon the admissibility of any such applications. The parties to the group must designate a group representative responsible for liaising with official authorities and taking procedural actions during the proceedings. The judgment in such proceedings will be binding for all group parties.

**Overview of Firm's Dispute Resolution Practice**

CHSH is proud of its strong, powerful dispute resolution department, which focuses on the full range of commercial litigation and international arbitration. Based on a solid understanding of complex legal issues and the client’s needs, about one-third of the firm’s lawyers are active in this field, working together in experienced teams.

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**Current State of Class/Group Actions**

Class actions, as known in the U.S., do not exist under Belgian law. A U.S. class action judgment would probably not be recognized in Belgium, particularly if it awards the plaintiffs non-compensatory damages. A plaintiff must have a personal interest in the claim. However, in certain cases, the law allows some form of representative action, where consumer or professional organizations may seek injunctive relief against practices that harm the interests of consumers or the members of the organization. These organizations cannot recover damages for their members. But they may seek damages to the extent the practice in question harms their personal interest.

**Overview of Firm’s Dispute Resolution Practice**

Liedekerke Wolters Waelbroeck Kirkpatrick is the leading independent business firm in Belgium. The Dispute Resolution department focuses on litigation and arbitration in an international context. Thorough knowledge of international instruments, treaties and practices, real advocacy skills and permanent cooperation with lawyers from other departments of the firm are key to the growth and success of the department. The Dispute Resolution department assists foreign parties in obtaining evidence in Belgium, carrying witness depositions, enforcing or resisting judgments or organizing multi-country litigation. The partners in this department have lived and worked in the U.S. or England and not only are fluent in English, but also understand the U.S./UK legal systems.

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**Current State of Class/Group Actions**

A class action or representative action is a procedural device used in litigation proceedings to determine the rights and remedies for large numbers of people, whose cases involve common questions of law and/or fact, and who can be joined as plaintiffs in the same action. In the Republic of Cyprus, a class action is governed by order 9 of the Cyprus Civil Procedure Rules.

According to order 9.9(1) where there are numerous persons having the same interest in one cause or matter, one or more such persons may be authorized by the court or a Judge to sue or defend in such cause or matter on behalf of, or for the benefit of all persons so interested. Before any such order is made, a power of attorney, signed by all parties to be represented and certified by the Registrar or certifying officer empowering the persons who are to sue on their behalf, is a necessary prerequisite of such proceedings.

Few cases are reported in Cyprus, which deal with issues in relation to class or group actions.

**Overview of Firm’s Dispute Resolution Practice**

Dr. K. Chrysostomides & Co. has extensive experience in the field of Dispute Resolution. The firm has represented various parties and organized bodies before governmental committees, the Chamber of Commerce and Industry, and has also represented individual clients in pre-trial Dispute Resolution and mediation proceedings. It has also acted for local construction companies to resolve issues with third parties, which arose during the construction of various projects.

Dispute Resolution is led by Mr. George Mountis, who is a member of the Chartered Institute of Arbitrators.

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**Current State of Class/Group Actions**

New Danish rules on class actions will enter into force on January 1, 2008, as part of the Danish Administration of Justice Act (Retspåloven).

Danish legislation has not allowed for class actions, although it has been possible for a third party with a similar claim to one already being processed to be implicated in the ongoing trial.

The new rules provide the possibility for a group of people with similar claims to have their cases combined into one trial.

Certain requirements must be met before class actions become relevant. The most fundamental requirement is that the claims be of a similar character, which typically means that the claims should be based on the same factual circumstances and governed by the same rules. Furthermore, a class action must be the optimum way to process the claims. The court decides which methods of processing the claims are most suitable.

Also, there has to be jurisdiction for all the claims in Denmark. Although there are no limitations on the nature of the claims that are suitable for class action, it is expected that in the beginning it will first and foremost be consumer claims organized by the Consumer Ombudsman that will use this new method. Possible claims could involve, for example, illegal fees or defective goods.

**Overview of Firm’s Dispute Resolution Practice**

Jens Rostock Jensen is the partner in charge of Class Actions at Kromann Reumert. As the Danish rules on class actions will not take effect until January 1, 2008, he has during the fall spent time teaching clients about the new rules.

www.kromannreumert.com
According to this Commission, which was new French president, Nicolas Sarkozy, released by a Commission created by the National Assembly but the Minister of Economy, at the time, declared that this issue of introducing class actions was submitted to the French Consumer Protection Association. Current State of Class/Group Actions

Estonian law does not establish the general right to file group actions. In certain cases, it is possible for several persons to file a joint action; for example, when the object of the action is a joint right of several persons. However, even in such cases, each plaintiff participates in the proceedings independently with regard to the opposite party. Therefore, as a rule the acts of one plaintiff do not bear legal consequences for other (co-)plaintiffs.

As for court costs, the loser-pays principle applies. Unless the court rules otherwise, co-plaintiffs pay the costs equally under this principle. Contingency fees for lawyers are allowed. Additionally, certain institutions may turn to the court to protect collective rights. For example, consumer associations are entitled to submit actions in cases related to application of standard terms, and collective representation organizations of copyright are entitled to seek protection of authors' rights. However, such collective representation does not constitute a civil group action within the meaning of the U.S.-style class action lawsuit.

Overview of Firm’s Dispute Resolution Practice

The dispute resolution team of Lepik & Luhaäär LAWIN offers high-quality legal services in a variety of areas but is best known for its expertise in real estate, tax, and construction law. The lawyers have long-term experience in advising and representation in Estonia as well as abroad, including international arbitration courts in London, Stockholm and Helsinki.

In November 2006, a draft bill on consumer protection associations should be entitled to launch group actions. Moreover, opt-in systems should be envisaged by which only consumers who join the action would be entitled to claim damages. In any event, the right to punitive damages is excluded from current discussions.

Overview of Firm’s Dispute Resolution Practice

Gide Loyrette Nouel has been offering quality legal advice and assistance to companies, public and private institutions worldwide for over 80 years. In accordance with a tradition of excellence in advising and defending its clients, the dispute resolution practice group combines some of the most respected specialists in their area of practice with the diversity of experiences and breadth of intervention to offer integrated, personalized quality services to its clients.

Current State of Class/Group Actions

In Germany, there are no class action regimes. It is possible to bring a claim on behalf of more than one plaintiff, even for a large group of persons, but each must individually sign a power of attorney to instruct the lawyer and bear the costs of the litigation. Court costs are relatively high; the loser-pays role applies. Punitive damages don’t exist. For lawyers, contingency fees are forbidden. Both with German courts as well as in German/English literature, there is severe scepticism against the U.S. system of class actions.

There are signs of change. In 2005, Germany introduced the “Kapitalanleger mustergesetz,” which in cases of claims by investors allows the court to pick one of the pending cases as a precedent case which is actively litigated to a decision while the other cases are brought to a rest. The precedent decision then becomes binding for all the other cases. Also relevant is the recent German Constitutional Court decision declaring the regulation which forbids contingency fees for lawyers to be unconstitutional. Finally, Germany will probably not, by itself, introduce a class action regime but may be forced to do so by a European directive on consumer protection issues.

Overview of Firm’s Dispute Resolution Practice

The dispute resolution practice group at Nörr Stiefenhofer Lutz consolidates the know-how of the firm in a manner which transcends departmental and geographical borders, while linking procedural and legal expertise of each individual matter at issue. Every lawyer active in the field of dispute resolution is, therefore, also specialized in other fields of law. This is enhanced by specific know-how in a branch of industry. All cases are handled by individually selected teams.
Current State of Class/Group Actions

Class actions as such are not allowed in the Netherlands. However, Dutch law does provide for actions by entities representing the common interest of a group of individuals. In such actions, only declaratory judgments can be obtained; monetary damages or compensation only can be obtained on an individual basis.

In 2005, the Act on Collective Settlements was introduced in the Netherlands in order to improve settlements in mass-claim cases. Settlements may be reached with representatives of groups of individuals, after which the Court can be requested to approve the agreement. Settlement agreements approved by the Court are binding on the entire class of claimant, although individuals always retain the right to opt out within a timeframe decided by the court.

In the recent Shell case, relating to the alleged misrepresentation of its oil reserves, Shell reached a collective settlement with its European shareholders. By requesting court approval for the settlement, Shell not only aimed to settle with all its European shareholders, but also attempted to exclude European shareholders from being part of class actions in the U.S.

Overview of Firm’s Dispute Resolution Practice

Houthoff Buruma is widely recognized as being a leader in the field of dispute resolution in the Netherlands. In the past year, the team consolidated its reputation not only in international commercial litigation such as the recent Shell case, but also in high-profile corporate litigation, such as the ABN AMRO case with respect to the sale of LaSalle Bank to Bank of America in which the team successfully defended ABN AMRO’s interests before the Dutch Supreme Court.

www.houthoff.com

Overview of Firm’s Dispute Resolution Practice

The Romanian legal system regulates class actions through Article 47 of the Code of Procedure. This legal provision says that persons can band together in a class action if the object of the suit is a common right or a common obligation or the right and the obligations have the same cause. In accordance with the Romanian code of procedure, more persons can be named as defendants, also, if the above-mentioned conditions are fulfilled.

In accordance with a provision of Article 48, the procedural acts fulfilled by one plaintiff do not prejudice or profit the other plaintiffs in any way. This provision establishes the independence principle among the plaintiffs. The proofs administered by one plaintiff, in accordance with the class action regime, profit the cause.

www.nnkp.com

Current State of Class/Group Actions

In regards to the UK, group actions have been brought in England and Wales for many years, in cases ranging from personal injury litigation to complex tax claims. Claimants have even used them to pursue UK-based multinational corporations in respect of the actions of their subsidiaries abroad.

Several options are available to manage multi-party litigation. A Group Litigation Order (GLO) can be sought, although parties can also pursue the other options that are available, namely representative actions, consolidation of claims, joinder or a test case. To qualify for a GLO, the claims must give rise to "common or related issues of law."

In England and Wales, the general rule is that the loser pays the winner’s costs. However, given the increased costs that a GLO entails, a defendant may often request that the court impose a "costs cap" on what the claimants may recover by way of costs if successful. In Scotland, the position is less formalized but test cases are well recognized, as is the joining together of similar interdependent claims.

Overview of Firm’s Dispute Resolution Practice

Our Litigation and Advocacy Department provides a UK-wide service, with offices in London, Edinburgh, Glasgow and Aberdeen. The department deals with all aspects of dispute resolution under both English and Scottish law, and has particular strength in contract disputes, property litigation, arbitration, mediation, judicial review, regulatory law, fraud and professional negligence work.

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Current State of Class/Group Actions

Spanish rules on class actions are set forth in the Spanish Civil Procedure Act (CPA) of 2000. No provision is made for proceedings similar to Federal Rule no. 23 that seek to determine whether traditional prerequisites for a class action are fulfilled (i.e., commonality, numerosity, typicality, and adequacy of representation).

The CPA limits procedural standing to start a class action to consumers’ associations, so class actions in Spain are actually representative actions. Group actions (i.e., actions started by individuals as representatives of a group of affected individuals) are only acknowledged in cases in which all the represented members of the group are perfectly identified at the time of filing. The decision issued in a class action is binding on all members of the class regardless of whether the claim is upheld or rejected (i.e., the decision has res judicata effects ultra partes and not only in ulterioribus).

Overview of Firm’s Dispute Resolution Practice

The Administrative Law, Litigation and Arbitration Area has 17 partners, nine senior associates and 66 associates. The Area is represented in each of Uría Menéndez’s offices in the Iberian Peninsula: Madrid, Barcelona, Bilbao, Valencia, Lisbon and Porto. The Administrative Law, Litigation and Arbitration Area has participated in some of the most important judicial and arbitration proceedings in recent years, both in Spain and abroad, and has defended industry in several collective claims and class actions.

www.uria.com