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Erin Brockovich turns European : is there an interest for class actions?

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Katriina Kuusiniemi

Roschier, Attorneys Ltd.
Keskuskatu 7 A
FI-00100 Helsinki, Finland
+358 20 506 6000
katriina.kuusniemi@roschier.com

General Reporters

<p>Jean-Philippe Arroyo J.P. Karsenty & Associés 30, rue d'Astorg 75008 – Paris – France + 33(0)1.47.63.74.75. jpharroyo@jpkarsenty.com</p>	<p>Joost Fanoy BarentsKrans N.V. Lange Voorhout 3 Postbus 30457 2500 GL Den Haag – The Netherlands +31 (0)70 376 07 50 joost.fanoy@barentskrans.nl</p>
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INTRODUCTION

Class actions are often related and associated to the American legal culture, as it is illustrated by several movies including the famous “Erin Brockovich” picture.

However, the class actions or collective redress actions exist also in other jurisdictions, notably in Europe.

Precisely, the European Commission has recently given an accurate definition of collective redress and of its aim in its communication named “Towards a European Horizontal Framework for Collective Redress”¹, accompanying its “Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law”²:

“Collective redress is a procedural mechanism that allows, for reasons of procedural economy and/or efficiency of enforcement, many similar legal claims to be bundled into a single court action. Collective redress facilitates access to justice in particular in cases where the individual damage is so low that potential claimants would not think it worth pursuing an individual claim. It also strengthens the negotiating power of potential claimants and contributes to the efficient administration of justice, by avoiding numerous proceedings concerning claims resulting from the same infringement of law.”

Although collective redress and class actions exist in several jurisdictions in the world, there are some differences arising from different legal and procedural cultures, notably between the Common Law and the Civil Law legal systems.

Thus, the purpose of this questionnaire is to identify such differences as well as the common points between the collective redress and class actions in various jurisdictions.

There is also a particular focus on class actions in the anti-trust field, which is one of the main areas for such actions, as shown by the recent proposal for an EU “Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union”³.

¹ COM(2013) 401/2

² C(2013) 3539/3

³ COM(2013) 404 final

1. Existence and scope of class actions/collective redress actions

1.1 In your jurisdiction, is there any specific legislation dealing with class actions/collective redress actions, and is there a specific definition of such actions?

In Finland, there is a specific act governing class actions. Since 1 October 2007 it has been possible to file a class action in relation to a dispute between a consumer and a business in accordance with the Act on Class Actions⁴ (hereafter the “ACA”). No cases have, however, been filed in the Finnish courts under the ACA as of yet.

Section 1 of the ACA provides a specific definition of class action for the purposes of the Act. A class action is defined as an action brought by the claimant on the behalf of the class defined in the action, with the objective that the judgment to be delivered in the case becomes binding also on the class members.

1.2 Are class actions/collective redress actions applicable to any legal action, irrespective of the legal ground and the area of law, or do they have a scope limited to some fields of law (such as consumer law, competition law, environmental law...)?

The scope of application of the ACA is substantially limited. The Act applies within the limits of the competence of the Consumer Ombudsman as only the Consumer Ombudsman can act as a claimant in class actions. Therefore, the Act only applies to the hearing of civil cases between consumers and a business. By way of derogation, the ACA does not apply to a civil case concerning the conduct of an issuer of securities or the offeror in a takeover bid or mandatory bid, as referred to in the Securities Markets Act.⁵

The main competence of the Consumer Ombudsman in supervisory matters lies in the field of consumer law. In the area of consumer law, general provisions are provided in the Consumer Protection Act⁶ (hereafter the “CPA”) but there are special statutes regarding consumer relationship as well.⁷ As a whole, the common features for the acts in question are that they govern the field of

⁴ Ryhmäkannelaki (444/2007).

⁵ Arvopaperimarkkinalaki (746/2012).

⁶ Kuluttajansuojalaki (38/1978).

⁷ E.g. Debt Collection Act (513/1999; *laki saatavien perinnästä*), Act on Guaranties and Third-Party Pledges (361/1999; *laki takauksesta ja vierasvelkapanttauksesta*), Housing Transactions Act (843/1994; *asuntokauppalaki*), Act on Provision of Information Society Services (458/2002; *laki tietoyhteiskunnan palvelujen tarjoamisesta*), Electricity Market Act (588/2013; *sähkömarkkinalaki*).

consumer law, and the ground for a class action can only be in the field of consumer law.

- 1.3 Is there any interplay between several statutes, for instance between competition law and consumer law statutes? Is it allowed to bring a class action / collective redress action on the ground of several statutes, or is it mandatory to ground it on either set of statutes?

There can be interplay between several statutes, and a class action can be brought before a court on the ground of several statutes. However, the matter at hand has to be in the competence of the Consumer Ombudsman, and therefore interplay between statutes is limited only to statutes in the field of consumer law. The Consumer Ombudsman may decide on which ground the class action shall be brought before a court.

- 1.4 Is it allowed to initiate summary/emergency proceedings in class actions / collective redress actions?

The ACA is a special statute which is enacted to provide only special provisions regarding class actions. However, as stated in the ACA, in addition to the provisions of said act, the hearing of a class action shall in other respects be governed by the provisions on civil procedure, in so far as it is appropriate. Therefore, the general act in the field of procedural law, the Code of Judicial Procedure⁸ (hereafter the “CJP”), applies to legal proceedings if not otherwise provided. It is possible to initiate summary proceedings in class action cases, but they are subject to the conditions of general procedural law.

Due to the fact that the ACA does not provide provisions regarding summary proceedings, provisions of the CJP are applicable. Under the CJP, a case can be heard in a summary procedure if certain provisions are met. However, these provisions relate to matters that are not under dispute or which are clearly unfounded. As these provisions are exceptions to a normal procedure, they are unlikely to be applied in a class action as it most likely involves disputed issues.

- 1.5 Through class actions/collective redress actions, is it possible to claim cessation of unlawful practices/behaviors (“injunctive relief actions”) and/or to claim compensation for damage suffered (“compensatory relief actions”)?

It is possible to claim injunctive relief actions and compensatory relief actions through class actions even though the ACA does not provide special provisions

⁸ Oikeudenkäymiskaari (4/1734).

regarding them. However, under the CJP it is possible to claim injunctive relief actions and compensatory relief actions under certain conditions.

An injunctive relief action (*actio negatoria*) may be used if a violation of law has already begun or is imminent in the future. The aim of an injunctive relief action is a judgment which is enforceable by execution against the defendant.

It is possible for members of a class action to claim compensatory relief if they have suffered damage due to a defendant's actions. Possible compensatory actions are for example reduction of price or damages. A cancellation of a contract is possible if there is a material error in the contract.

1.6 If it is possible to claim compensation, can every type of damage suffered by the victims can be compensated, or only some types of harms (material damages/bodily injuries, death)?

The type of damage which can be compensated depends firstly on the violated act at hand. Because the ACA does not provide compensation provisions, the applied provision depends on the nature of the case. Different compensation provisions can be applied depending on the case at hand.

However, typically when a case deals with consumer relationships the compensation rules of the CPA apply. Under the CPA, a business always has to compensate direct damage to a consumer if the CPA has been violated. Direct damage comprises of bodily injury, material damage, and damage to property. For indirect damage there is higher burden of proof for the consumer and the negligence of the business must have been more severe.

Additionally, general tort law provisions i.e. the Tort Liability Act⁹ (hereafter the "TLA") are applicable in the field where the Consumer Ombudsman is competent to act. However, depending on the type of damage, there are different preconditions to fulfill. The TLA allows for roughly the following types of damage to be compensated; bodily injury, material damage, and compensation for economic loss that is not connected to personal injury or damage to property. Moreover, if certain preconditions are fulfilled, intangible damage can also be compensated.

1.7 Can the compensation awarded to the victims exceed the compensation that would have been awarded if the claim had been pursued by means of individual

⁹ Vahingonkorvauslaki (412/1974).

actions? More particularly, are punitive damages, leading to overcompensation in favor of the claimant party of the damage suffered, allowed and applied in class actions / collective redress actions?

Because the ACA does not provide special provisions regarding damages in a class action case, the amount of compensation in a class action is considered the same as in an individual action. Therefore, compensation awarded to victims cannot exceed the amount which would have been awarded in an individual case. (At the same time, the compensation should not be less than what would have been awarded in an individual case.) In Finland, the principle of non-enrichment prevails in the field of Tort Law. Therefore overcompensating or punitive damages are not allowed.

1.8 More particularly in the anti-trust field, how does the ‘passing on’ defence (demonstrating that the claimant passed on the whole or part of the overcharge resulting from the infringement) play a role in your country and have such a defence been successful?

The Finnish class action scheme does not apply to private enforcement of competition law. In individual damages claims in the anti-trust field, the “passing on” defence is however allowed and has been invoked. Several damages claims of this type are currently pending and it remains to be seen what effect such a defence will have.

2. Standing and admissibility to bring class actions/collective redress actions

2.1 In your jurisdiction, may the class actions / collective redress actions be brought by any group of individuals or legal persons claiming to have been harmed by the same alleged infringement (“collective actions”), and/or can they be brought by an authorized representative entity/ ad hoc certified entity/ public authority on behalf and in the name of two or more individuals or legal persons claiming to be victims of the relevant practice (“representative actions”)?

Finnish legislation regulates class actions through representative actions. The ACA states that the Consumer Ombudsman has exclusive standing. The Consumer Ombudsman, as the claimant, shall have exclusive standing to bring a class action and to exercise the right of a party to the case to be heard in court.¹⁰ The Consumer Ombudsman shall exercise the right of a party on behalf of several persons who have

¹⁰ Section 4 of the ACA.

claims against the same defendant, based on the same or similar circumstances. Neither other entities nor individual consumers have a right to bring a class action.

2.2 Are there any criteria/rules defining the cases where one or another kind of actions referred to in 2.1 could apply?

The ACA applies, within the limits of the competence of the Consumer Ombudsman, to the hearing of a civil case between a consumer and a business as a class action. This means that the competence of the Consumer Ombudsman defines the scope of application of class actions¹¹. The task of the Ombudsman is to oversee the enforcement of the CPA and other Acts enacted to protect consumers.

According to the Act, the case may be heard as a class action, if

- (a) several persons have claims against the same defendant, based on the same or similar circumstances;
- (b) the hearing of the case as a class action is expedient in the view of the size of the class, the subject-matter of the claims presented in it and the proof offered in it; and
- (c) the class has been defined with adequate precision

2.3 In case of representative actions, are there rules defining the requirements for representative entities (for instance: a non-profit character; a relationship between the main objectives of the entity and the rights that are claimed to have been violated; financial/human resources/legal expertise requirements...), and can the representative entities be sanctioned if they do not comply with such requirements?

The only possible representative entity is the Consumer Ombudsman. The Consumer Ombudsman is a state official and can only act when he has the competence to act. Under the Act on Competition and Consumer Authority¹², the supervision tasks are to be organized so that the Authority's and the Consumer Ombudsman's independence and impartiality are guaranteed.

2.4 Is the admissibility of a class action / collective redress action examined by the courts at an early stage of the proceedings, or is it ruled together with the merits of the case?

¹¹ Frände D., Havansi E., et al. *Prosessioikeus*, (2012).

¹² Laki kilpailu- ja kuluttajavirastosta (661/2012).

The procedural requirements for application for summons are examined after the application for a summons is delivered to a court. According to the CJP¹³ the court shall at once dismiss the case without considering the merits if the claimant fails to supplement the application for summons and if the application for summons is so incomplete that it is not fit to be the basis for proceedings, or if the court for another reason cannot accept the case for consideration. This section applies also to class actions. A court shall refrain from issuing a summons and at once dismiss the action on the merits by a judgment if the claim of the claimant is manifestly without a basis. However, taking into account the fact that it is the Consumer Ombudsman that acts as the claimant, it is not likely that a manifestly baseless claim would be brought. Any other claims regarding admissibility are, as a general rule, decided on in connection with the merits.

2.5 Is it possible for third parties to bring actions? If so, are indirect purchasers able to bring actions with respect to antitrust infringements?

The Finnish Act on Class Actions does not allow third parties to bring class actions.

2.6 How may claims be aggregated? For example, is it possible for multiple claimants to file a complaint jointly?

Different actions with different claimants can be aggregated. The ACA does not provide provision regarding aggregation of claims. However, the CJP¹⁴ provides general rules for aggregating / cumulating claims. Actions brought at the same time by several claimants against one defendant shall be heard in the same proceedings, if they are based on essentially the same grounds.

In order to file an action with multiple claimants certain preconditions between the claimants have to be met. Firstly, the legal relationship which is the subject of the dispute has to be indivisible in a way that only the claimants together can be entitled or obligated, i.e. there is a compulsory joinder between co-parties. They all have to act as a claimant because a court can only give one judgment with the same content for the all co-parties. An example of this is co-ownership.

2.7 More generally, what procedural defenses are available for defendants short of trial and therefore before the national court decides on the merits of a collective action?

The ACA does not provide for any procedural pre-trial defenses.

¹³ Chapter 5, Section 6 of the CJP.

¹⁴ Chapter 18, section 2 of the CJP.

3. “Opt-in” vs “Opt-out” systems and information on the class action/collective redress action

3.1 In your jurisdiction, is the claimant party/group formed on the basis of express content of the natural or legal persons claiming to have been harmed (“opt-in” principle), or is it composed of all individual belonging to the defined group and claiming to have been harmed by the same of similar practice unless they actively opt out of the group (“opt-out” principle)?

Finland has adopted the opt-in system.¹⁵ Participation in the collective redress action requires express accession to the group.¹⁶ Pursuant to Section 8 of the ACA a natural or legal person willing to participate in the class action must deliver within a time limit a written signed letter of accession to the class.¹⁷

3.2 What are the effects of the judgment on the victims in the “opt-in” or “opt-out” system chosen in your jurisdiction?

In the current opt-in system adopted by Finland, the decision of the court shall be binding on the class members whom the court has designated in its decision. This means that the decisions must identify those members of the group whom the decision concerns and what is ruled in someone’s favor or detriment.¹⁸

3.3 May a member of the claimant party be free to leave the claimant party at any time before the final judgment is rendered or the case is otherwise settled, and if he/she/it may, on which conditions?

According to the ACA resignation from the class is possible under certain conditions. Before the case goes to main hearing, a class member may resign from the class by notifying the court of the same by writing or in person at the court registry. In this event the case shall be struck from the docket in respect of the resigning class member. Once the case is in the main hearing, a class member may resign from the class as described above only with the consent of the defendant. Also in this event, subject to the consent of the defendant, the case shall be struck from the docket in respect of the resigning class member. Once the case has been heard and is under deliberation by the court, resignation from the class shall no longer be permitted.¹⁹

¹⁵ http://ec.europa.eu/consumers/redress_cons/docs/MS_fiches_finland_fi.pdf.

¹⁶ Government Bill HE 154/2006.

¹⁷ Act on Class Action, Section 8.

¹⁸ Section 16 of the ACA.

¹⁹ Section 15 of the ACA.

3.4 May a natural or legal person claiming to have been harmed in the same mass harm situation be able to join the claimant party at any time before the judgment is rendered or the case is otherwise settled?

A class member as defined, who has delivered, within the time limit, a written and signed letter of accession to the class shall belong to the class. If a class 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 claimant (the Consumer Ombudsman) may for a special reason accept him or her as a class member.²⁰ As a general rule it is not possible to join the claimant party after the claimant has submitted the supplemented application for summons.²¹

3.5 Is the defendant informed about the composition of the claimant party, and in which conditions?

After the class action has been filed the claimant shall give a notice of the commencement of a class action to the defendant. The notice shall contain a description of the class on behalf of which the action has been brought.²²

3.6 Are there any provisions regulating the way the victims of the practice are informed about a possible or actual class action / collective redress action? More particularly, are there safeguards regarding the protection of the reputation or the company value of the defendant before (and after) its responsibility for the alleged infringement is established by the final judgment?

After the class action has been filed the claimant shall 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 as defined, an announcement of the class action may be published in one or several newspapers or in some other appropriate manner. The notice must contain a brief description of the case and the claims to be presented, a description of the class and information about how to accede to the class and the time limit for class accession. Furthermore it has been expressly stated in the government bill that the claimant should try to find out the possible class members before filing the class action.

As for the possible safeguarding of the defendant's reputation or company value, there are no provisions in the ACA protecting the company and its reputation. The possible negative impacts on a company's reputation were acknowledged in the preparatory phase of the ACA, but on the other hand the objectivity of the authority responsible

²⁰ Section 8 of the ACA.

²¹ Government Bill 154/2006.

²² Sections 5-7 of the ACA.

for the class action (the Consumer Ombudsman) has been considered to ensure that the actions are not intentionally detrimental in nature.²³

3.7 Is there any registry of class actions / collective redress actions in your jurisdiction? If there is such a registry, how is it possible to access it?

Not applicable.

4. Interplay of class actions / collective redress actions and public enforcement

4.1 In your jurisdiction, do class actions / collective redress actions have to follow on from infringement decisions adopted by public authorities in regulated policy areas like competition law (“follow-on actions”) or is it possible to start a stand-alone action (ie, without a prior finding of infringement of any applicable antitrust laws by a national court or competent authority)?

In Finland there is no class action scheme for competition law, since damages for breaches of competition law were explicitly excluded from the scope of the ACA.

As for representative follow-on actions in competition infringement matters, the Helsinki District Court, in an interim judgment on 4 July 2013, ruled that such an action is admissible and can be brought under Finnish law. It should be noted, however, that this finding is still challengeable upon appeal of the final ruling, which is expected towards the end of 2014.

4.2 Are such stand-alone and/or follow-on actions available for both bilateral antitrust infringements (eg, a cartel) as well as unilateral antitrust infringements (eg, an abuse of a position of dominance)?

Since breaches of competition law were explicitly excluded from the scope of the ACA, stand-alone and/or follow-on class actions for bilateral and/or unilateral antitrust infringements are not as such available in Finland.

In other than class action cases regarding competition infringement, both stand-alone and follow-on actions are available for both bilateral antitrust infringements and unilateral antitrust infringements. The Competition Act²⁴ provides that an undertaking or an association of undertakings, who either

²³ Government Bill HE 154/2006.

²⁴ Kilpailulaki (948/2011).

intentionally or negligently, violate the prohibition prescribed in Section 5 (Prohibited restraints on competition between undertakings) or 7 (Abuse of dominant position), or Article 101 or 102 of TFEU, is obliged to compensate the damage caused by the restraint on competition.

- 4.3 In such cases, are there rules regulating access by claimants to documents obtained or produced by the public authority in the course of the investigation? What kind of devices to obtain evidence are available for claimants? Is, for example, discovery possible in your country?

The general rules regulating access to documents obtained or produced by the public authority are contained in the Act on the Openness of Government Activities.²⁵ The Act contains provisions relating to the right of access to official documents in the public domain, officials' duty of non-disclosure, document secrecy and any other restrictions of access that are necessary for the protection of public or private interests. According to the Act, official documents shall be in the public domain, unless specifically otherwise provided in the Act in question or another Act. In principle, everyone shall have the right to access an official document in the public domain. The Act also provides for the confidentiality of documents submitted to a public authority that form the basis of an inspection or contain information on other enforcement-related circumstances, if the disclosure of such information would compromise the inspection or the achievement of its objectives. In practice for example the FCCA has sought to conceal the identity of a leniency-applicant during the investigative period (i.e. until the FCCA has issued its decision).

In addition, the Competition Act contains a provision regulating the use of information submitted to the FCCA under a national leniency programme. According to the Competition Act, the information and evidence submitted to the FCCA for obtaining immunity or reduction of a fine cannot be used for any other purpose than the order to terminate a restraint on competition or the order to deliver a product, the commitment decision, the withdrawal of a Block Exemption, or the review of a penalty payment proposal at the FCCA, the Market Court or the Supreme Administrative Court. Also the FCCA's Guidelines on the Immunity and Leniency procedure in cartel cases contain a similar provision on subsequent use of the information and evidence submitted to the FCCA. Thus, in Finland, information provided by an immunity or leniency applicant in a leniency application cannot be used in a related private damage action.

²⁵ Laki viranomaisten toiminnan julkisuudesta (621/1999).

In Finland there are no extensive discovery rules like in the US and there is for example no pre-trial discovery. However, in principle, anyone who has a document needed as evidence is obliged to deliver it to the court. The obligation to present a document in a civil procedure is governed in the CJP. According to Section 12 of the CJP, when it can be assumed that a document is of significance as evidence in a case, the person in possession of the document shall present it in court. In Finland disclosure of evidence may occur only during the trial and the court orders the appropriate party to deliver the document. The courts can only request the disclosure of relevant and reasonably identified documents. Thus, it is not possible to request the disclosure of entire classes of documents without clear identification. There are also certain documents that are protected from disclosure and for example corporate statements given as part of a leniency program cannot be disclosed. Also some other documents determined by law or by the judge are protected from disclosure.

4.4 Are there rules on limitation periods allowing potential claimants to wait with class actions until the public authority takes its decision as regards the infringement?

Class actions are not available for antitrust infringements in Finland.

4.5 Does a decision of the national competition authority or national court create a rebuttable presumption of proof? For EU jurisdictions, how does the judgment of the Court of Justice EU in *Masterfoods* (20 September 2001, C-344/98) play a role in your country with respect to actions based on cartel damages?

In Finland the infringement decision adopted by the FCCA is not binding for the national courts. The FCCA's decision is just an element that the judge can take into account.

However, if the follow-on action is based on a final decision on a competition law infringement, the conclusion that an infringement in fact has occurred is in practice binding. In other words, also in these cases a claimant would still have to prove the harm suffered and the existence of a causal link between this harm and the infringement, but it would not have to provide evidence that the infringement took place.

5. Funding of the class actions / collective redress actions, attorney's fees

5.1 In your jurisdiction, is it possible to have class actions financed by third parties who are not parties to the proceedings?

As class actions can only be brought by the Consumer Ombudsman, financing comes from the budget of the FCCA.²⁶ Additional financial contributions from third parties might be against the impartiality requirement set out in Section 4 of the Act on the FCCA or against other laws.

In 2013, a Finnish district court ruled that it was possible for a separate company to buy cartel damages claims from other companies and bring an action in its own name. The ruling was given in an interim judgment. However, the case is still pending.²⁷

5.2 Is the claimant required to declare to the court, notably at the outset of the proceedings, the origin of the funds that it is going to use to support the legal action?

Not applicable as the Consumer Ombudsman is the claimant in class action cases.

5.3 Can the court stay the proceedings for any reason relating to the funding of the action (for instance: conflict of interest between the financing third party and the claimant and/or its members; the third party has insufficient resources in order to meet its financial commitments to the claimant party; the claimant party has insufficient resources to meet any adverse costs should the collective procedure fail; the fund provider is a competitor of the defendant)?

Not applicable as the Consumer Ombudsman is the claimant in class action cases.

5.4 Do public funds providing financial support for potential claimants in collective redress/ class actions exist in your jurisdiction?

The Consumer Ombudsman represents the consumers for free, and the financing comes from the budget of FCCA even if the Consumer Ombudsman decides to hire an external attorney to handle the class action.²⁸

²⁶ Government bill 154/2006 p. 26.

²⁷ CDC press release 17.7.2013: "CDC achieves court victory in Hydrogen Peroxide Cartel litigation in Finland." http://www.carteldamageclaims.com/Presse/130717_PR_HP_Cartel_04_July2013.pdf. Osservatorio Permanente sull'Applicazione delle Regole di Concorrenza newsletter n. 27/13 (16.7.2013): "Il Tribunale Regionale di Helsinki si pronuncia sulle misure cautelari richieste in un'azione di danno *follow-on*." <http://www.osservatorioantitrust.eu/it/newsletter/newsletter-n-2713-del-16-luglio-2013/> (including a link to the interim judgment in Finnish).

²⁸ Government bill 154/2006 pp. 23 and 26.

5.5 Are contingency or success fees for legal services that cover not only representation, but also preparatory action, gathering evidence and general case management allowed in your jurisdiction?

Generally, contingency fees (*pactum de quota litis*) and success fees (*pactum de palmario*) are allowed by the Finnish Bar Association²⁹, subject to the requirement of “particular grounds”.³⁰ However, they are rarely used.³¹ It is noteworthy that according to section 3.3.1. of the Code of Conduct for European Lawyers, contingency fees (*pactum de quota litis*) are not allowed.

5.6 Does the losing party of a class action / collective redress action have to reimburse necessary legal costs borne by the winning party (“loser pays principle”), and in which proportion?

In general, the losing party has to reimburse all reasonable legal costs incurred by the necessary measures of the winning party.³² The parties to a class action are the Consumer Ombudsman and the defendant, not the consumers. Therefore, if the defendant wins, the FCCA will reimburse the defendant’s legal costs. The consumers represented by the Consumer Ombudsman are liable only for the costs caused by their own misconduct.³³

5.7 More generally, are there any rules and/or safeguards aimed at avoiding incentives to abuse the collective redress systems?

Only the Consumer Ombudsman can bring a class action. The purpose of this limitation is to prevent groundless actions and to ensure the reimbursement of the legal costs of a winning defendant.³⁴

5.8 Are the parties to an action able to insure against the cost risks?

Some insurance providers in Finland sell insurances that cover even a part of the winner’s legal costs if the insured is the losing party.³⁵ However, there is no

³⁰ See e.g. Fee Guidelines (15.1.2009) (unofficial translation) para. 1.5. Finnish Bar Association / March 2009. [http://www.asianajaliitto.fi/files/720/B_03_Fee_Guideline_\(15.1.2009\).pdf](http://www.asianajaliitto.fi/files/720/B_03_Fee_Guideline_(15.1.2009).pdf).

³¹ See e.g. “The Finnish Bar Association” (p. 304). Scandinavian Studies in Law vol. 46 (2004), pp. 299–306 Stockholm Institute for Scandinavian Law. <http://www.scandinavianlaw.se/pdf/46-15.pdf>.

³² See also “Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union – country report Finland” (pp. 19–21). Prepared by Klaus Viitanen, edited by Frank Alleweldt et al. (7.3.2008). http://ec.europa.eu/consumers/redress_cons/fi-country-report-final.pdf.

³³ Section 17 of the ACA (444/2007); Chapter 21, Sections 1 and 5 of the CJP.

³⁴ Government bill 154/2006 p. 20.

³⁵ Jyrinjärvi, Timo et al.: Oikeusturvavakuutuksen rooli oikeudenkäyntikulujen kattajana (p. 705). Defensor Legis 4/2006 pp. 688–711.

cost risk for the consumers in a class action brought by the Consumer Ombudsman (excluding misconduct).

5.9 Is a defendant able to apply for an order for security of costs? If so, what are the difficulties to obtain such an order?

In Finland, parties to legal proceedings are not able to apply for an order for security of future legal costs.³⁶

5.10 Are there (other) ethical or Bar rules in your country relevant with respect to class actions?

The rules and regulations of the Finnish Bar Association do not include special provisions in relation to class actions.

6. Cross-border cases

6.1 In your jurisdiction, are there specific international private law rules (conflict of law and of jurisdiction rules) applicable to class actions / collective redress actions, or do the general international private law rules apply to such actions?

In terms of cross-border cases, international conventions and EU legislation determine the competent jurisdiction e.g. the provisions of Brussels I Regulation³⁷ shall apply when a case falls within the scope of the Regulation.

It should be noted that a precondition for a class action is that claims are based on the same or similar circumstances which means that the same act or acts with the same contents shall be applied to the claims.³⁸ Furthermore, the international competence of a court is restricted by the competence of the Consumer Ombudsman.

6.2 Are there rules prohibiting a single collective action to take place in a single forum?

In the ACA there is no specific prohibition regarding forum shopping. However it is expressly provided in section 3 that the only competent courts are the district courts of Turku, Vaasa, Kuopio, Lahti and Oulu.

6.3 Can a representative entity designated by a foreign country have legal standing to bring representative actions in your jurisdiction?

³⁶ Government bill 179/1990 p. 13.

³⁷ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

³⁸ Section 2 of the ACA.

This is not possible, as only the Consumer Ombudsman is entitled to bring a class action for compensation benefiting specific individuals.

Some other entities may be able to bring injunctive actions benefiting future consumers:

A foreign authority or association with a relevant purpose can bring an injunctive action based on consumer rights if it is included in the list of qualified entities published in the Official Journal of the European Union.³⁹

A non-EEA public authority cannot bring an injunctive action in Finland. It is unclear whether a non-EEA consumer rights association could bring an injunctive action under the provisions that concern Finnish proceedings.⁴⁰

6.4 What are the rules where there are several actions regarding the same facts and practices brought in different jurisdictions? Is it for example possible to bring an action against a company and/or individual domiciled outside of the jurisdiction (e.g., against a parent company domiciled outside of the jurisdiction which has a subsidiary within the jurisdiction)?

The ACA does not include provisions in regards to actions against companies domiciled outside of the Finnish jurisdiction. Further, any sort of “piercing the corporate veil” or parent company liability is possible only in very exceptional circumstances.

7. Alternative dispute resolution

7.1 In your jurisdiction, is there any specific mechanism of collective alternative dispute resolution allowing the settlement of class actions / collective redress actions? If so, are the parties required to engage in alternative dispute resolution prior to trial and are the implications for refusing?

The Finnish legal system does not have provisions relating to the settlement of class actions.

7.2 Are the parties encouraged to settle the dispute out of court in any way, and is it a usual practice in your jurisdiction?

According to general procedural law⁴¹, in a case amenable to settlement the court shall endeavor to promote settlement and allow the parties to settle the

³⁹ Section 2 of the Finnish Cross-Border Injunction Proceedings Act (1189/2000).

⁴⁰ Government bill 179/2000 p. 7. See also Chapter 5, Section 3 of the Finnish Market Court Procedure Act (100/2013).

⁴¹ Chapter 5, Article 26 of the CJP.

case. This is of course voluntary for the parties, but courts are encouraged to at least attempt to promote a settlement between the parties.

7.3 Are limitation periods applicable to the claims suspended during the period when the parties try and negotiate a settlement through collective alternative dispute resolution mechanisms or any other means?

There is no collective alternative dispute resolution scheme in place in Finland. Settlement discussions, mediation or other forms of ADR do not suspend limitation periods in individual cases according to Finnish procedural law.

7.4 Can a seller of a good or any contracting party insulate himself/herself/itself from a class action by including, in the terms of use or in a purchase agreement, a mandatory arbitration clause, thus prohibiting the consumer from bringing a class action in court?

In general, the CPA forbids arbitration clauses in consumer contracts. An arbitration clause concluded before a dispute has arisen is not binding upon the consumer in any situation; hence this is not a possibility in class actions.

8. Enforcement of the court decision

8.1 Are there any provisions regulating the way the victims of the practice are informed about decision rendered in a class action / collective redress action concerning them? If there are such provisions, who is in charge of such information (the court/ an independent entity/ the claimant/the defendant)?

The ACA is a special statute which is enacted to provide only special provisions regarding a class action. Otherwise the CJP applies to the legal proceeding. In the ACA, no regulation is provided for how the victims are informed about the decision. According to the CJP⁴² the parties shall be issued with copies of the judgment in the form of a court instrument and the copy shall be available to the party in the court registry within two weeks, if an intent to appeal has been registered in the case; and within thirty days, if possible, in other events. Furthermore, the Court of Appeal shall send copies of its decision to all parties who have exercised their right to be heard in the Court of Appeal⁴³.

8.2 Are there any provision regulating the way the court order is enforced and the possible compensation paid by the defendant? If there are such provisions, who

⁴² Chapter 24, Section 13 of the CJP.

⁴³ Chapter 24, Section 18 of the CJP.

is in charge of the enforcement, notably of the payment of the damages (a public authority/ an independent entity/ the claimant/the defendant)?

The Enforcement Code⁴⁴ (hereafter the “EC”) regulates the enforcement of court judgments in civil matters.

It is up to the claimant to initiate the enforcement proceedings. The enforcement is pursued by a written application delivered to the bailiff or another enforcement authority.⁴⁵

8.3 In relation to injunctive orders, are there rules ensuring their effective compliance by the losing defendant (for instance: payment of a fixed amount for each day’s delay or any other amount provided)?

The EC applies to the enforcement of injunctive orders.⁴⁶

Threat of a fine

A threat of a fine shall be imposed either as a fixed amount or as determined by the lapse of time.

A threat of a fine imposed by the bailiff in accordance with the EC shall be imposed either as a fixed amount or as determined by the lapse of time (threat of an accruing fine)⁴⁷. A threat of an accruing fine shall be imposed as a fixed base amount plus an added amount for each period of time (accrual period) laid down in the decision when the ground for enforcement or the decision of the bailiff has not been complied with. If a threat of an accruing fine is imposed to prevent the breach of a prohibition, the added amount may be linked to each instance of a breach instead of to the lapse of time.

Before the imposition of the threat of a fine, the bailiff shall hear the party to be compelled, unless this will considerably hamper enforcement.⁴⁸

The document concerning the imposition of a threat of a fine on someone shall be served on him or her as provided in section 38 or sections 40 and 41. If service cannot be effected in this manner, the document may be sent to another address that is known or served on an attorney, if the addressee has been represented by an attorney in the matter. Nevertheless, the threat of a fine shall not be ordered to be enforced in so far as there is doubt as to whether the addressee has received service of the document in person.

⁴⁴ Ulosottokaari (705/2007).

⁴⁵ Chapter 3, Section 1 of the EC.

⁴⁶ Chapter 1, Section 1 of the EC.

⁴⁷ Chapter 3, Section 74, Paragraph 1 of the EC.

⁴⁸ Chapter 3, Section 75 of the EC.

Enforcement of injunctive orders

Enforcement is carried out by an exhortation to comply with the obligation to desist and by the bailiff or claimant applying for enforcement of the fine if the obligation has been breached. In addition, the bailiff can prevent further breaches of the obligation with suitable measures such as locking the facilities of the respondent, sealing or shutting off the electricity if the if the obligation is breached.

A ground for enforcement entailing an obligation under threat of fine to desist from a given measure or to permit measures taken by someone else⁴⁹, shall be enforced by the bailiff applying for enforcement of the fine⁵⁰ if the obligation has been breached and, where necessary, imposing a new threat of a fine⁵¹. If the ground for enforcement does not entail the threat of a fine, the bailiff shall first impose one.

By the exhortation to comply with the obligation to desist, the respondent shall be exhorted to comply at once with the obligation imposed in the ground for enforcement.

If the bailiff can prevent further breaches of the obligation with suitable measures, such measures shall be taken if the obligation is breached.⁵² Before this, the respondent shall be reserved an opportunity to be heard, unless that this would significantly hamper enforcement.

The respondent shall be notified of the measures taken under paragraph 1.

Suitable measures mentioned in Chapter 7, Section 17 of the EC, include e.g. locking the facilities of the respondent, sealing or shutting off the electricity.

Provisions on above mentioned sections 16 and 17 do not prevent the claimant from applying for enforcement of the fine.

⁴⁹ Chapter 7, Section 16 of the EC.

⁵⁰ EC Chapter 3, Section 78 – Upon application by the bailiff, the District Court referred to in chapter 11, section 2, of this Act shall issue the order on the enforcement of a threat of a fine imposed by the bailiff. If the threat of a fine has been imposed as a part of the relevant ground for enforcement, the bailiff may apply for an order for enforcement also from the court that imposed the threat of a fine. Before filing the application referred to in paragraph 1, the bailiff shall hear the compelled party, if necessary. The bailiff shall notify the compelled party of his or her decision to file an application.

⁵¹ EC Chapter 3, Section 76 – The bailiff may impose a new threat of a fine even if a threat of a fine imposed earlier has not been ordered to be enforced. However, the threat of a fine imposed earlier shall lapse, unless the bailiff in the notice on the imposition of the new threat of a fine states that he or she has decided to apply to the District Court for an order on the enforcement of the earlier threat.

⁵² Chapter 7, Section 17 of the EC.