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

Litigation/Antitrust/Distribution law Commissions

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National Report of Spain

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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?

The Spanish Code of Civil Procedure (*Ley de Enjuiciamiento Civil*, hereinafter “LEC”) recognizes the right to be a party in civil proceedings to the following (Arts. 6.1.7° and 8°):

- To consumer or user groups affected by a harmful event, when individuals who compose those groups are determined or easily determinable. To stand in court, the group will need to be formed by the majority of the affected.
- To entities qualified under EU law to exercise injunctive relief actions (cessation of practices/behaviours) in defense of collective interests and diffuse interests of consumers and users.

Furthermore, Art. 11 LEC establishes that:

- Notwithstanding the individual standing of the injured, legally constituted associations of consumers and users are entitled to defend in court the rights and interests of its members and those of the association, and also the general interests of consumers and users.
- When the injured by a harmful event are a group of consumers or users whose components are clearly identified and are readily determinable, standing to claim defense of these collective interests corresponds to the associations of consumers and users, to the legally constituted entities for the defense or protection of such interested and to the affected groups themselves.
- When the injured by a harmful event are an indeterminate or difficult to ascertain plurality of consumers or users, standing to sue in court to defend these diffuse

interests shall lie exclusively with the associations of consumers and users which, under the Law, shall be deemed to be sufficiently representative.

- Also, the Public Prosecutor and qualified entities under Art. 6.1.8° LEC shall be empowered to claim the injunction for the defense of the collective and diffuse interests of consumers and users.

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...)?

Class/collective actions have a scope limited to some fields of law, namely consumer law (including unfair terms in consumer contracts) and unfair competition (including unfair advertising).

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?

It would theoretically be possible to bring a class action/collective redress action on the grounds of several statutes, although it may sometimes be difficult, considering the specific scope of each area of law where class actions/collective redress actions are allowed.

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

Summary/emergency proceedings are not specifically foreseen under Spanish law for class actions (or individual actions for that matter). It is allowed, however, to initiate interim/provisional measures.

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”)?

When the action is started by the group of persons directly affected by a harmful event or by the Public Prosecutor, it is possible to claim cessation and compensation for the damage suffered.

When the action is started by entities qualified to defend collective and diffuse interests, only the claim of cessation is generally possible.

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)?

Yes, all kind of material and moral damages may 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 actions? More particularly, are punitive damages, leading to overcompensation in favour of the claimant party of the damage suffered, allowed and applied in class actions / collective redress actions?

The compensation may never exceed the compensation that each victim would have received in an individual action. Overcompensation is generally forbidden under Spanish law.

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?

In does not play a significant role and it has been analysed by scholars with skepticism. We are not aware of relevant Spanish case law of that defence.

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”)?

Both, see answer to 1.1.

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

Collective and representative actions are complementary to one another, to the extent that Art. 15 LEC establishes that either the individuals or the representative entity must inform each other of the filing of their respective actions, in order for the non-claiming party to intervene in the procedure.

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?

Except for public entities, representative actions may only be started by entities with a relationship between its main objectives and the rights they claim to have been violated.

In a class action, no sanction is generally foreseen in case the representative entity does not comply with such requirement. However, its action will most likely be rejected, which will generally result in the obligation to pay all legal costs.

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?

The right to stand in Court may be examined at the beginning of the proceeding, for example by reference to the list of entities qualified by the EU to defend collective interests, published in the Official Journal of the European Union.

However, the admissibility of the class action with regards to its relationship with the objectives of the acting entity will generally be ruled together with the merits of the case.

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?

Third parties may not bring actions under Spanish law. However, EU, national and regional public entities competent on antitrust law may be heard in proceedings related to antitrust infringements (Art. 15 bis LEC).

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

Yes, multiple plaintiffs may file a complain jointly.

In addition, in all actions initiated by qualified entities or consumer groups, individual harmed consumers shall also be called to participate in the proceedings in order to defend their individual rights (namely, their right to a compensation).

This call shall be made through the media in the place where the harm derived from the

wrongful conduct may have manifested.

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

Procedural defences may refer to the right to stand in Court of the group or entity, but not to their relationship to the merits of the case.

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)?

We have an opt-in system (see answer to 1.1).

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

Victims not participating in the class action may benefit from a declarative judgement and use it in a later individual/collective claim for compensation.

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?

No, a member of the claimant party is not free to leave the claimant party.

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?

Yes, see answer to 2.6.

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

Yes, the defendant is informed fully at the beginning of the procedure.

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?

See answer to 2.6. As for the second question, there are no safeguards on this regard.

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?

No, there is no such registry.

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)?

It is possible to start a stand-alone action.

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)?

Yes, they are available for both unilateral and bilateral antitrust infringements.

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 plaintiffs? Is, for example, discovery possible in your country?

Discovery is not possible in Spain.

However, civil procedures allow broad access to documents in possession of the other party or of third parties.

Access to documents in the hands of a public authority would generally be accessible in an antitrust case, except where other rights would need to be protected (personal data, privacy, etc.).

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?

No.

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?

EU case-law, including *Masterfoods*, is binding over Spanish Courts.

Therefore, Spanish courts may not rule in a manner inconsistent with Decisions already taken by the European Commission. When deciding on agreements or practices which may be the subject of a pending Commission Decision to be adopted, Spanish Courts are required to avoid ruling in a manner inconsistent with the decision that the Commission intends to take.

To this end, Spanish Courts may resort to consultation and cooperation mechanisms or request a preliminary ruling to the ECJ.

On the other hand, there is no rule under Spanish law conditioning the exercise of judicial actions to a prior administrative decision of the European Commission or the Spanish Tribunal for the Defence of Competition.

In fact, in the judgments delivered in the cases *DISA* of 02.06.2000, *Mercedes Benz* of 02.03.2001 and *Petronor* of 15.03.2001, the Spanish Supreme Court has applied the first paragraph of Art. 81 TEC without a prior declaration of infringement by the European Commission or the Spanish Tribunal for the Defence of Competition. One might even question whether such a requirement would be inconsistent, by itself, with the direct effect recognized to Arts. 81.1 and 82 TEC.

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?

There is only Art. 27. RDLeg 1/2007, TRLGDCU⁴, containing a prohibition for consumers' and users' Associations to "receive economic or financial benefits from companies or groups of companies supplying goods or services to consumers or users."

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?

In Spain the judge does not examine the origin of the funds that are going to be used to support the legal action at the outset of the proceedings. The matters being analyzed by the judge in order to admit an action are all procedural matters: legal and procedural capacity and procedural requirements to the proceedings.

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)?

In Spanish regulations there is no possibility of staying proceedings for any reason relating to the funding of the action. Thought it could be case that defendant will start proceedings against a third party on the grounds of unfair competition, should it be the case.

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

For consumers and users being legally registered in the State Register for Consumers' and Users' Associations, it is established under RD 1/2007, TRLGDCU the granting of public funds, as well as the benefit of Legal Advice established under Law 1/1996 of January 10.

⁴ REAL DECRETO LEGISLATIVO 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias. (Royal Legislative Decree 1/2007, November 16, approving the revised text of Law for the Protection of Consumers and users and other complementary laws). For future citation "RD 1/2007, TRLGDCU"

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?

There is no legal regulation in Spain prohibiting the use of the Quota Litis. Before, it was the Spanish Bar Associations that was imposing minimum fees under penalty in case of breach thereof. This was the situation until 2008, when the Supreme Court gave judgment declaring that lawyers would be free to agree with their clients the charge of a fee percentage depending on the results of the proceedings

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?

It depends on the jurisdiction to be taken into account:

In civil jurisdiction, in first instance the party having all its claims dismissed will have to reimburse the costs, provided the Court considers, and gives a reason therefore, that the case presented important doubts de facto or de jure. When bringing an extraordinary appeal for annulment and procedural error it can be ordered a payment of costs in case of being dismissed all the claims. For total amount not exceeding a third of the procedural expenses, by each one of the litigants obtaining such judgment, provided that the Court declares the recklessness of the litigant ordered to reimburse the costs.

In jurisdiction of administrative courts, in first or in sole instance, the party having all its claims dismissed will have to reimburse all the costs, provided that the court considers, and gives a reason therefore, that the case presented important doubts de facto or de jure. In the rest of instances the appellee will be ordered to reimburse the costs if the appeal is totally dismissed, provided that the court, by giving a reason therefore, considers that there is a coincidence of circumstances justifying not to order the reimbursement thereof. The reimbursement could be made on the total, partial or to a maximum amount.

In jurisdiction of labour matters, in first instance, there is generally no order to reimburse the costs, and in case of appeal the losing party will reimburse the costs, provided it has benefited from complete or partial legal aid or it is a trade union. To the maximum amount of 1.200 euros in appeals for reversal and 1.800 euros in appeals to Supreme Court Excluding the proceeding about industrial actions (actions affecting several workers, usually class actions), in which each party will be accountable for the costs incurred with their intervention. All that provided that the Court it declares that they acted recklessly or in bad faith.

The holders of the right to legal aid will only reimburse costs in those circumstances

established under the Act of Legal Aid.

Additionally, there are institutions such as the public Prosecutor, Ombudsman and administrative bodies that cannot be ordered to reimburse any costs.

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

The order of costs reimbursement is itself a rule aimed at avoiding incentives to abuse not only the collective redress systems but also any other kind of actions, and in some jurisdictions such as the jurisdiction of labour matters, there are fines for those cases in which there is wilful misconduct or recklessness. In addition, there are other fees and deposits demanded in cases of appeal.

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

There are circumstances in which if the person gives prove that he/she acted in good faith, he/she can avoid the order for costs reimbursement, which is the case of out-of-court claims in civil jurisdiction, or when reconciliation settlement is been followed in jurisdiction of labour matters.

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 enforceable proceedings the person can apply for an order for security of the costs of an amount not exceeding the 30% of the capital.

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

I am not aware of any ethical Bar rules.

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?

There is no specific general because first you have to determine the victim and what would the action be (e.g: consumers, workers...).

The answer to international private law rules has to be searched in the general instruments in the case of Europe, the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (particularly, Article 15 regarding consumers), or the Regulation (ec) no 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). Their application depends on the answer given to a previous conflict, i.e, on the descriptions made about the actions.

With regard to specific internal rules, there are specific acts, being applicable the Royal Decree 1/2007 of November 16 of the consolidated text of the general Act for the Protection of Consumers and Users. There is also the LEC in its Article 11 and 11bis ruling the legitimacy for collective actions.⁵

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

No. It depends on the type of action. See above 6.1

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

For this question it is necessary to consult domestic procedural law. The entities of other Member States of the European Community founded to protect the collective interests and the individual interests of the consumers prepared through its inclusion in the list published for that purpose in the Official Gazette of the European Communities do have legal standing. For those countries outside the EU it will be necessary to consult the bilateral Agreements signed in each specific case.

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

⁵ Laura Carballo Piñeiro, *Proteccion de inversores, acciones colectivas y derecho internacional privado*, 37 Revista de Derecho de sociedades 2011 at 209

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)?

Section ninth of the Regulation 44/2001 states the lis pendens and related actions:

“Article 27

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 28

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 29

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.”

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?

Yes, there are, and they are regulated by the Royal Decree 636/1993 of May 3, regulating consumer affairs arbitration system. The rules under this Regulation do not regulate in an exhaustive way the consumer affairs arbitration, for consumer affairs arbitration system is executed under the Act 60/2003 on Arbitration.

All the professionals and businessmen wishing to become a member of the consumer affairs arbitration system can join it by making a public offer of submission to consumer affairs arbitration system regarding future conflicts with consumers. Therefore, once the company has become a member of the consumer affairs arbitration system, it is subject to arbitration. The fact that this company has a conduct of inactivity won't prevent the award to be passed or deprive it of effectiveness. And this award will be binding and will have identical effects on the *res judicata*. (Art.10 and 17 Royal Decree 636/1993). Another thing would be that the party opposing to the submission can request an *Action for annulment of the award*. (Art. 40 Act 60/2003), on the grounds of, pursuant to Art. 41 Act 60/2003:

1. The award can only be annulled when the party requesting annulment alleges and proves:
 - a) That the arbitration agreement does not exist.
 - b) That the appointment of an arbitrator or the arbitration actions has not been dully notified, or it cannot, for any reason, make use of its rights.
 - c) That the arbitrators have decided about matters not subject to their decision.
 - d) That the appointment of arbitrators or the arbitration proceedings have not been done under the agreement between the parties, provided that the said agreement was against a peremptory norm of this Act, or, because of the lack of such agreement, have not been done pursuant to this act.
 - e) That the arbitrators have decided about questions not subject to arbitration.
 - f) That the award is against public order.

7.2 Are the parties encourages to settle the dispute out of court in any way,

and is it a usual practice in your jurisdiction?

Thanks to the Royal Decree 636/1993 of May 3, regulating the consumer affairs arbitration system, which was quickly established in Spain. Disputes settlements through arbitration or reconciliation are really developed in the sphere of consumers actions. This is not happening in other spheres, that is the reason why the disputes settlement out of the court is being promoted from public bodies, being useful for that purpose the Act 5/2012 of July 6, about mediation in civil and commercial matters.

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?

Pursuant to Art. 1973 of *CC* limitation periods applicable to the claims can be suspended in three ways: for its execution before courts, for creditor's out-of-court claims and for action of recognition of the debts by the debtor.

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?

The Royal Decree 1/2007 of November 16, by which the consolidated text of the General Act for Protection of Consumers and Users and others complementary acts are passed, includes different provisions preventing a seller from imposing to a consumer terms subject to mandatory arbitration. In this sense Art 10 establishes that "previous waiver of consumers' and users' rights protected under this act is void", and thus Art. 82 establishes that:

"All the terms not negotiated individually and all the practices not expressly permitted that, against good faith requirements, to the prejudice of consumers and users, a significant imbalance in rights and obligations of the parties taking part in the agreement will be considered as unfair terms. And under section 83 the consequences of the said unfair terms are described in the sense that "the unfair terms will be considered as null and void and will be removed".

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)?

Yes, provisions do exist, which regulate the way the victims of the practice are informed about the decision rendered in the class action. Which is the case of Art. 15 *LEC*, regulating publicity and intervention in proceedings for protection of rights and collective and individual interests of consumers and users.

- 1) In the proceedings promoted by associations, or by affected groups, those having been damaged as consumers or users of the good or service will be called to appear. This call will be made by the Court Clerk by publishing the admission of the claims in the media broadcasted throughout the whole territory where the damages on rights and interests are caused.
- 2) When it is about proceedings in which the persons damaged by the harmful event have been determined or are likely to be determined, the claimant or the claimants must have previously warned all the concerned persons about their purpose of lodging a claim.
- 3) When a harmful event damages several indeterminate persons or those persons unlikely to be determined, the call will stay the proceedings for a period not exceeding two months and the Court Clerk will decide in each case by taking into account the circumstances and complexity.

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

Pursuant to Art. 517 of the *LEC* the orders are enforceable within 5 years from the final decision (Art.518 *LEC*). The claimant will lodge the corresponding claims for enforcement in case the defendant has not voluntarily paid the amount that he/she was ordered to pay. Once the claims for enforcement are lodged there is no deadline thereof.

The same Court that followed the ordinary proceedings will follow the proceedings for enforcement.

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)?

Pursuant to Art. 589 of the *LEC* the requirement to the judgment debtor so that he/she declares the assets, whose seizure is sufficient to cover the amount for which the enforcement was made, could be done with warning letters about the imposing sanctions in case he/she does not provide his/her assets declaration. For the non-monetary sanctions Art.. 710 of the *LEC* establishes that in case the defendant breach the order:

- Reversion of the damage caused and abstention of repeating the misconduct will be demanded.
- To order compensation for damages
- To order a fine for each day's delay.

The amount of this fine should be deposited in the State Treasury, it can range from 600 to 60.000 euros depending on the type and importance of the damage caused and the economic capacity of the convicted person.

- To order the total or partial publication of the resolution against defendant.

[1] COM(2013) 401/2

[2] C(2013) 3539/3

[3] COM(2013) 404 final