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# European Class Actions

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## I. INTRODUCTION

Recent years have meant new and exciting renovations to the laws in European countries, as many countries introduced their first group action legislation. Though varying in scope and form, these actions have presented the opportunities for plaintiffs to bundle their claims and bring collective actions before the court. However, the changes are far from finished and the area of class actions is in an exciting period of expansion. These developments have spurred greater interest in the topic, and some European countries have looked to the United States as a guide for what to emulate or avoid in class action legislation. The following paper provides a general review of US class action law today, with an evaluation of its positive and negative attributes. Then, the article undertakes a more detailed assessment of collective claims in several European countries, as well as a glance at the projected future for European class actions as a whole.

## II. UNITED STATES

Class actions began in the United States with the 1938 adoption of the Federal Rules of Civil Procedure.[1] The law was "an invention of equity, allowing certain groups of individuals with common interests to enforce their rights in a single suit."[2] The use of class actions did not develop with any consistency; however, until the 1966 amendment of Rule 23, the federal class action rule.[3] Coinciding with the growth of civil rights, some felt the amendment itself was targeted at social reform.[4] Others felt it targeted the business community, making it vulnerable to more devastating suits at the hands of consumers.[5] In the 1980s, US courts began to expand the types of

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[1] Linda A. Willett, *US-Style Class Actions in Europe: A Growing Threat?*, 9 NAT'L LEGAL CENTER FOR PUB.INT. 1, 2 (2005).

[2] *Id.* at 2-3 (quoting Edward F. Sherman, American Class Actions: Significant Features and Developing Alternatives in Foreign Legal Systems, 215 F.R.D. 130, 132 (2003)).

[3] *Id.* at 3.

[4] *Id.*

[5] *Id.*

suits that qualify for class actions in an effort to lessen the burden that the individual suits would have on the courts.[6] The use of class actions has steadily increased from this time until the present day.

In a US class action, one or more individuals may represent a larger group of people with similar claims by bringing a suit on their behalf.[7] Federal Rule of Civil Procedure 23(a) outlines the following prerequisites applicable to all types of class actions:

> (1) the class is so numerous that joinder of all members is impracticable,
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> (2) there are questions of law or fact common to the class,
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> (3) the claims or defenses of the representative parties are typical of the claims and defenses of the class, and
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> (4) the representative parties will fairly and adequately protect the interests of the class.[8]

While a class must meet these prerequisites in order to be certified as a class action, it must also meet additional standards.[9] Under Rule 23(b), three types of class actions are recognized:

> (1) the prosecution of separate actions by or against individual members of the class would create a risk of
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> a. inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
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> b. adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impeded their ability to protect their interests; or

[6] *Id.* at 4.
[7] *Id.*
[8] Fed. R. Civ. P. 23(a).
[9] *Id.* at 23(b).

> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
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> (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.[10]

In determining whether the questions of law or fact of the class predominate over the questions of the individual class members, Rule 23 instructs the court to consider the following: the level of interest that individual class members would have in individually controlling their suit, the extent to which the controversy is already being litigated by or against individuals within the class, the desirability or lack thereof of litigating all of the claims in one forum, and the difficulties that may arise in the management of the class action.[11] Once these factors are weighed and the standards are met, the court may certify the action as a class by court order.[12]

However, all class members, including those who are absent, are bound by the judgment resulting from the suit.[13] If members of the class do not wish to be bound by the suit and the suit is for monetary damages, these individuals must be given a chance to opt out of the suit and to bring an individual suit later.[14]

The contingency fee is one feature that distinguishes US class actions and has been part of the US system since the early nineteenth century.[15] In this payment system, the lawyer's fee is conditional on recovery of damages.[16] However, the contingency fee can also result in a windfall to the plaintiff's attorney; and many critics claim the contingency fee motivates class actions.[17] Because lawyers claim up to 40% of the final award, critics argue that they are

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[10] *Id.*
[11] *Id.* at 23(b)(3).
[12] *Id.* at 23(c)(1)(A).
[13] Willett, *supra* note 1, at 4.
[14] *Id.*
[15] Willett, *supra* note 1, at 9.
[16] *Id.*
[17] *Id.* at 9-10.

able to fund speculative claims that would otherwise be financially risky.[18] The increase in private securities class actions within the United States demonstrates the ability to take on more speculative cases.[19] From 2003 to 2005, these types of actions increased by 16%.[20]

The United States underwent substantial class action reform in 2005. In February 2005, President George W. Bush signed a law aimed at deterring frivolous class actions, which he claimed inflated the cost of US legal fees, civil awards, and settlements nationwide to the sum of $240 billion per year.[21] The Class Action Fairness Act of 2005 gave federal courts jurisdiction over any class action where the amount in controversy is in excess of $5 million and the defendant is from the same state as less than one-third of the plaintiffs.[22] In addition, the Act "limits the recovery of contingent fees by attorneys in settlements where plaintiffs are awarded coupons, establishes guidelines that federal district courts are to follow before approving settlements, and specifies requirements for serving notice of proposed settlements on federal and state officials."[23]

Many note ironically that the expansion of European class actions seems to coincide with the US measures to scale back the class action phenomena.[24] A more in-depth examination of the expansion of class actions in Europe requires an assessment of individual countries. The remainder of this article will take a closer look at the status of class actions in the United Kingdom, Sweden, the Netherlands, Italy, Spain, France and Germany, while comparing them to each other, as well as the United States. The examination of Germany will focus on its recent implementation of an innovative collective claims system. Finally, the article will look at France, which has a collective claims system in place, but has begun the controversial step of pursuing a class action system similar to that of the United States.

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[18] Bob Sherwood & Nikki Tait, *Business Life The Professions: Class Actions Across the Atlantic*, FIN. TIMES UK, June 16, 2005, at 4.

[19] Lori Calabro, *In Your Own Defense*, CFO EUROPE.COM, May 2005, *available at* http://www.cfoeurope.com/displayStory.cfm/3929323.

[20] *Id.*

[21] Sherwood & Tait, *supra* note 18, at 4.

[22] John T. Nockleby & Shannon Curreri, *100 Years of Conflict: The Past and the Future of Tort Retrenchment*, 38 LOY. L. REV. 1021, 1033-34 (2005); *See* Class Action Fairness Act of 2005, Pub. L. No. 109-002, 119 Stat. 4 (2005).

[23] Nockleby & Curreri, *supra* note 22, at n.61.

[24] Sherwood & Tait, *supra* note 18, at 3.

### III. UNITED KINGDOM

Representative actions have been available in the United Kingdom for over two hundred years, but claimants rarely used this type of action "due to 'narrow court interpretations' and inapplicability to matters 'where the sole relief sought damages that would have to be proved individually.'"[25] Class actions seeking declaratory and injunctive relief are increasingly more frequent in the United Kingdom; but expansion in collective action law has also enabled class action claimants to seek damages, broadening the use of collective actions overall.[26]

There are several methods of collective action in the United Kingdom.[27] Parties with the same claim may join together.[28] Further, when more than one party has the "same interest" in a claim, they may bring a representative action.[29] Courts may order damages in representative actions where "(a) the class members' loss can be readily ascertained at the time of judgment and (b) class members have waived their rights to individual receipt of damages and instead wish their compensation to be paid to a body that represents their interests."[30] Like the United States, these actions can be initiated without court permission.[31] Unlike the United States, the courts do not closely supervise these actions and settlements do not usually require court approval.[32] Representative actions are rare, in part because they require the relief sought to be beneficial to all represented claimants.[33]

The more common form of collective action is called a group action.[34] Group actions can be compared to the Rule 23(b)(3) class actions of the United States, as they are discussed in the preceding section. Group actions occur "when there are multiple claimants and common issues of law or related

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[25] Willett, *supra* note 1, at 6 (quoting Edward F. Sherman, American Class Actions: Significant Features and Developing Alternatives in Foreign Legal Systems, 215 F.R.D. 130, 174 (2003)).

[26] *Id.* at 6-7.

[27] Mark Clough & Arundel McDougall, *The United Kingdom Report*, at 7, *in* DAMAGES ACTIONS FOR THE INFRINGEMENT OF EC COMPETITION LAW AS LAID DOWN IN ARTICLES 81 AND 82 EC, *available at* http://ec.europa.eu/comm/competition/antitrust/others/actions_for_damages/national_reports/united_kingdom_en.pdf (last visited on Feb. 6, 2007).

[28] *Id.*

[29] *Id.*

[30] Willett, *supra* note 1, at 6.

[31] *Id.* at 7.

[32] *Id.*

[33] Clough & McDougall, *supra* note 27, at 7.

[34] *Id.*

fact under a Group Litigation Order."[35] This form of litigation developed from the "European Directive on Injunctions for the Protection of Consumers," passed by the European Parliament & Council in 2000.[36] The Directive states that a representative must have "advanced determination of the right to serve as a representative rather than allowing the American or representative action 'self-selective approach.'"[37] In further contrast to representative actions, the court strictly supervises group litigation orders.[38] A senior judge must consent to the group litigation order (GLO) and the court may make a group litigation order whenever a number of claims possess shared or connected issues of fact or law.[39] A GLO specifies the issues to which it applies and requires a group register of the claims that it governs.[40] Group claims are transferred to the management court, which will also address any future GLO claims.[41] Under GLOs, one or more of the claims are used as test cases and the others are delayed until further notice.[42] Any judgment or order made regarding the group register claim is binding on the parties to all other claims, unless the court directs otherwise.[43] From 2000 to mid 2005, since group litigation orders became available in the United Kingdom, forty-nine such suits have been registered.[44]

A plaintiff in the United Kingdom has several potential fee situations to examine prior to bringing suit. As in Canada and Australia, UK claimants must consider the "loser pays" rule.[45] Analyzing the United Kingdom payment system, David Gold, a Herbert Smith senior partner, noted, "Where is the incentive for class actions? Unless you give lawyers real incentives to bring these class actions, they won't happen."[46] The "loser pays" rule requires the party that settles or loses the case to pay the prevailing party's legal expenses.[47] In situations where legal aid funded the claimant's case because

[35] *Id.* (citing Civil Procedure Rule[hereinafter CPR] Part 19, Rule 19.11).

[36] Willett, *supra* note 1, at 7.

[37] *Id.* (quoting Edward F. Sherman, American Class Actions: Significant Features and Developing Alternatives in Foreign Legal Systems, 215 F.R.D. 130, 144 (2003)).

[38] Clough & McDougall, *supra* note 27, at 7.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.* (citing CPR Rule 19.12(1)(a)).

[44] Sherwood & Tait, *supra* note 18, at 2.

[45] Ted Allen, *Interest in Class Actions Growing Outside the US*, SCAS ALERT, June 2005, at 5, *available at* http://slw.issproxy.com/securities_litigation_blo /2005/06/the_state_of_fo.html (citing Peter Burbidge, law professor at Westminster University).

[46] Sherwood & Tait, *supra* note 18, at 4.

[47] Willett, *supra* note 1, at 11.

the claimant would not have been able to pay the cost of potential loss, the rule is not applied.[48] Additionally, the United Kingdom has a conditional fee system that translates to a "no-win-no-fee system with a success fee based on hours worked at a percentage uplift related to the risk but capped at 100%."[49]

The United Kingdom's legal system shares several features with the United States that are not common in the rest of Europe. While most of the European Union has banned lawyer advertising, the United Kingdom has permitted such advertising since the 1970s.[50] Additionally, the United Kingdom, Ireland and Cyprus are alone in recognizing punitive damages, "though they are rarely awarded."[51]

Currently, securities class actions are a focal point of discussion in the United Kingdom. The UK law does not provide for securities class actions, but does allow investors to form associations that may bring suit against the company in question.[52] In the UK, company directors do not have a legal obligation to their shareholders; rather, their legal obligation is to the company.[53] Additionally, in April 2005, the UK Companies Act was amended to allow companies to indemnify directors against third-party claims.[54]

The recent *Railtrack* case illustrated the difficulties of bringing a class action in the United Kingdom. 55,000 former Railtrack investors raised £2.4 million to bring suit against government officials for misfeasance and damages to the shareholders' interest due to the company's collapse in 2001.[55] The High Court stalled the case when it refused to limit the potential liability of the Railtrack shareholders to £1.35 million for defense legal bills under the loser pays system.[56] Eventually, the plaintiffs lost the case when they failed to convince the High Court that the Transportation Secretary had acted with misfeasance.[57] Thus, they were liable for attorney's fees, demonstrating the high risk that must be weighed when deciding to pursue a class action in Europe.

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[48] *Id.*

[49] *Id.* at 10-11 (quoting Christopher Hodges, European Law Reform, Center for Socio-Legal Studies, University of Oxford, Wolfson College (Apr. 2004) at 2).

[50] *Id.* at 14.

[51] Michael Freedman, *Abogados, Advokaters, Advocaten*, FORBES, Dec. 27, 2004 at 1.

[52] Allen, *supra* note 45, at 5.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Defeat for Railtrack Shareholders*, BBC NEWS, Oct. 14, 2005, *available at* http://news.bbc.co.uk/1/hi/business/4340794.stm.

## IV. SWEDEN

Sweden was the first European Union country to introduce a class action equivalent to that of the United States.[58] On January 1, 2003, Sweden introduced the Class Action Act.[59] The Act allows the following group actions: private class actions, organizational class actions, and public class actions.[60] A private class action may be initiated by any person or entity that is both a member of the class and has his own claim.[61] The Swedish Government has proposed a potential elimination of this standing requirement so that individuals affected by situations such as competition law infringement could bring a suit where a party was injured without a contracting relationship with the infringing party.[62]

Organizational class actions occur when an organization brings a claim without having a claim of its own.[63] Both consumer and labor organizations may bring these actions and they generally relate to suits between consumers and providers of goods and services.[64]

Public class actions develop when the Swedish Government appoints an authority to act as a plaintiff and litigate on behalf of an injured class.[65] The government pursues these class actions when it appears that doing so would benefit the greater public interest.[66] A government committee examining the issue proposed that the Competition Authority should not be granted permission to bring class actions because the public law system sanctions competition sufficiently; thus, such action would not contribute to the public interest.[67] Rather, the government decided that the Consumer Ombudsman and

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[58] Judge M. Nordh, Remarks on the Swedish Group Proceeding Act (June 2, 2005) at 1, *available at* http://www.courdecassation.fr/manifestations/colloques/Colloques2005/actions_collectives/judge_nordh.pdf.

[59] Tommy Pettersson, et al., *The Sweden Report*, at 4, DAMAGES ACTIONS FOR THE INFRINGEMENT OF EC COMPETITION LAW AS LAID DOWN IN ARTICLES 81 AND 82 EC, *available at* http://europa.eu.int/comm/competition/antitrust/others/private_enforcement/national_reports/sweden_en.pdf (citing *lag* (2002:599) *om grupprattegang*) (last visited on Feb. 5, 2007).

[60] GROUP PROCEEDING FACT SHEET, SWEDEN, MINISTRY OF JUSTICE, Ju 02.10e (Dec. 2002) at 1, *available at* http://www.regeringen.se/content/1/c4/34/47/6cd3ccdf.pdf (referring to the Swedish Group Proceedings Act (2002:599).

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.* at Annex I, p. 21.

the Swedish Environmental Protection Agency should be authorized to bring public class actions.[68]

SFS 2002:599, Section 8, of the Swedish Code of Statutes places the following limitations on group actions:

> A group action may only be considered if:
>
> (1) the action is founded on circumstances that are common or of a similar nature for the claims of the members of the group,
>
> (2) group proceedings do not appear to be inappropriate owing to some claims of the members of the group, as regard grounds, differing substantially from other claims,
>
> (3) the large part of the claims to which the action relates cannot equally well be pursued by personal actions by members of the group,
>
> (4) the group, taking into consideration its size, ambit, and otherwise is appropriately defined, and
>
> (5) the plaintiff, taking into consideration the plaintiff's interest in the substantive matter, the plaintiff's financial capacity to bring a group action and the circumstances generally, is appropriate to represent the members of the group in the case.[69]

The Swedish Class Action Act allows claimants to "opt in" to a group action in which the decision would bind all of the litigants in the group.[70] This "opt in" system contrasts with the United States, which is an "opt out" system.[71] In order to opt into a Swedish class action, class members must give written notice to the court, and only these members "will be allowed to participate in the proceedings as passive members of the class."[72] The failure to give written notice to the court within the time period dictated by the court

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[68] *Id.* at 1.

[69] 8 § Special Preconditions for Proceedings (Swedish Code of Statutes [SFS] 2002:599).

[70] Sherwood & Tait, *supra* note 18, at 1.

[71] Willett, *supra* note 1, at 4.

[72] Pettersson et al., *supra* note 59, at 4.

results in the individual's withdrawal from the group.[73] To initiate a class action, one must be an individual, legal person, organization, or authority with special permission from the government.[74] Importantly, the Group Proceedings Act allows for damages, but only for various environmental damage claims.[75]

Additionally, plaintiffs may make an agreement with their attorney that the litigation fees shall be determined by the success of the case, but the agreement requires court approval in order to be asserted against the members of the group.[76] Thus, a form of contingent fees exists, as "the attorney will receive a particularly high payment if the group wins the case and little or no payment if the group loses."[77] The court may also determine in advance the amount of compensation a lawyer should receive, if this is reasonable in light of the estimated time and work that will be involved.[78] If the person representing the class settles, the court must approve the settlement for it to be valid for the whole class.[79] In granting its approval, the court ascertains whether or not the settlement "discriminate[s] against particular members of the group or [is] in another way manifestly unfair."[80]

Sweden adheres to the rule that the loser pays the costs of the proceedings and applies this rule to group actions as well.[81] However, as the members of the group are not actual parties to the proceedings, they are not liable for the costs.[82] This general rule does have some exceptions, but where members of the group do have to pay some costs, these costs shall "never exceed the sum accruing to them as a result of the proceedings."[83] An example of an exception would be if a member of the group increased the cost of litigation through "carelessness or oversight."[84] In such a situation, the member would have to pay the increased costs.[85]

As of the summer of 2005, very few actions had been filed in Sweden.[86] At that time, the following three cases were pending: a suit by five

[73] Swedish Code of Statutes, *supra* note 69, §14, at 4.
[74] Pettersson et al., *supra* note 59, at 4.
[75] Group Proceeding Fact Sheet, *supra* note 60, at 1.
[76] Swedish Code of Statutes, *supra* note 69, § 38, at 8.
[77] Group Proceeding Fact Sheet, *supra* note 60, at 2.
[78] Swedish Code of Statutes, *supra* note 69, § 30 at 6.
[79] Group Proceeding Fact Sheet, *supra* note 60, at 2.
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] Swedish Code of Statutes, *supra* note 69, §37.
[85] *Id.*
[86] Nordh, *supra* 58, at 5.

hundred airline passengers against a travel agency, a suit brought by approximately 7,000 individuals against an electric company, and a suit involving only seven members and individual claims of around €20.[87] The scarcity of pending suits illustrates that potential claimants are not utilizing the law of class actions in Sweden. Thus, while the law may closely resemble the United States, it is employed in far fewer cases.

## V. THE NETHERLANDS

The Netherlands has a limited class action law in place.[88] Class action claimants may pursue court orders, rescission of contracts, and refunds; however, they may not seek punitive damages.[89]

In the Netherlands, collective claims and representative actions may be filed by special-purpose associations.[90] The groups must demonstrate they have defined and pursued a specific purpose. Article 3:305a CC states:

> A foundation or association with full legal capacity can institute an action intended to protect similar interests of other persons to the extent that its articles promote such interests.... A legal person referred to in paragraph 1 shall have no locus standing if, in the given circumstances, it has not made a sufficient attempt to achieve the objective of the action through consultation with the defendant.[91]

Article 3:305a Section 3 CC limits a legal person from claiming damages by stating that the object of the action "may not be to seek monetary compensation."[92] Rather, the object may be to have an order against the defendant published, as determined by the court, and at the defendant's expense.[93] Plaintiffs will often institute joint actions to avoid these 3:305 limitations.[94] This is accomplished by either obtaining the same lawyer or "by

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[87] *Id.*

[88] Allen, *supra* note 45, at 6.

[89] *Id.*

[90] Weyer VerLoren van Themaat, et al., *The Netherlands Report*, at 3, DAMAGES ACTIONS FOR THE INFRINGEMENT OF EC COMPETITION LAW AS LAID DOWN IN ARTICLES 81 AND 82 EC, *available at* http://ec.europa.eu/comm/competition/antitrust/others/actions_for_damages/national_reports/netherlands_en.pdf (last visited on Feb. 6, 2006).

[91] *Id.* at 4.

[92] *Id.*

[93] *Id.*

[94] *Id.*

assignment of individual claims to a particular (legal) person."[95] Thus, the claims are "bundle[d]" and "joined procedurally."[96]

As in the United States, the Dutch Parliament has made representative action settlements binding on all class members, with the exception of those who opt out.[97] However, unlike the United States, the Netherlands banned lawyer advertising.[98] This ban on advertising has resulted in consumer advocacy organizations advertising class actions.[99]

One example of a legal foundation able to bring representative actions in court is "Stichting Regres en Verhaal Schade en Kosten Bouwfraude."[100] It was founded in June 2003 by several local municipalities and translates to the "Foundation for Recourse and Recovery of Damages and Costs resulting from Construction Fraud."[101] It is authorized to target construction and other companies for "bid-rigging."[102] By February 2004, the association had brought five cases to court as test cases.[103]

A 2004 report by the international firm Ashurst found that the Netherlands and Austria were the only countries in Europe with pending class action suits seeking damages.[104] In June 2005, a damages verdict was granted in favor of fifteen women who brought a class action suit against Akzo Nobel, a Dutch chemical and drug company.[105] The group alleged that the company had a misleading advertising campaign in which the drug Implanon was promoted as preventing conception when implanted in a woman's arm.[106] The women became pregnant due to their reliance on this ineffective contraceptive.[107] Some of the women estimated their damages (the cost of raising an unwanted child) at €1 million.[108] The court found the company

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[95] *Id.*
[96] *Id.*
[97] Mark Wegener & Peter Fitzpatrick, *Europe Gets Litigious, Class Actions and Competition Enforcement May Change Europe's Legal Culture*, LEGAL TIMES, Vol. XXVIII, No. 21, May 23, 2005, at 1.
[98] Willett, *supra* note 1, at 15.
[99] *Id.*
[100] VerLoren van Themaat, et al., *supra* note 90, at 4.
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] Freedman, *supra* note 51, at 1.
[105] Sherwood & Tait, *supra* note 18, at 6.
[106] *Id.*
[107] *Id.*
[108] *Id.*

negligent and the women entitled to damages, the amount of which was being reviewed.[109]

## VI. SPAIN

The class action system in Spain is more limited than that of the United States.[110] Spanish class actions are rooted in Article 11 of the Civil Procedure law.[111] These class actions are "only available for the protection of the rights of consumers and end-users."[112] Other individuals who are affected need to bring individual claims.[113] The types of losses covered by class actions are limited to physical and moral injury and economic loss.[114]

Generally, associations can sue to protect the rights and interests of the consumers and users they represent, as well as the associations' rights and interests.[115] Examples of associations that may bring class actions include: consumer and user associations, legally recognized groups designed to defend or protect consumers and users, and groups of impacted people where members of the group comprise at least half of the total number of affected persons.[116] Where the number of people affected by the loss is unascertainable; those consumer associations that are recognized by the law as representing general consumer interests may bring a claim under the protection of *intereses difusos* (diffused interests).[117]

In order to bring a class action, the requirements of the Civil Procedure law (CPL) Article 11 must be met.[118] Thus, associations formed by individuals other than consumers or end-users, such as the "defendant's competitors, distributors or customers," cannot bring an Article 11 class action.[119] If these parties are injured, they must sue individually, but may grant a barrister power to represent them in a joint action.[120] A judgment rendered in

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[109] *Id.*
[110] *Id.*
[111] Ashurst, Discussions on Class Actions Across Europe (Dec. 2005).
[112] *Id.*
[113] *Id.*
[114] *Id.* at 2.
[115] Jesus Almoguera, et al., *The Spain Report*, at 6, DAMAGES ACTIONS FOR THE INFRINGEMENT OF EC COMPETITION LAW AS LAID DOWN IN ARTICLES 81 AND 82 EC, *available at* http://ec.europa.eu/comm/competition/antitrust/others/actions_for_damages/national_reports/spain_en.pdf (citing Civil Procedure Law [hereinafter CPL] art.11.1).
[116] *Id.* (citing CPL art. 11.2, 11.3).
[117] *Id.* (citing CPL art. 11.2, 11.3).
[118] *Id.* at 6-7.
[119] *Id.* at 7.
[120] *Id.*

this scenario will only bind the parties represented in that trial, rather than all parties who could have chosen to join the suit.[121] A joint action occurs when several plaintiffs bring a set of claims with a common thread such that the judge joins the claims.[122] One judgment may be made which applies to all the claims, but the claims are still treated individually, and awards are granted separately to each set of plaintiffs.[123]

The court does not grant awards to the group as a whole, but rather to each individual claimant.[124] Thus, after the judgment, individuals must apply to the court "to be recognized as a member of the class or group" and "to quantify individual damages."[125] This process differs from class actions as recognized by the European Union Comparative Report.[126] The amount the claimant is awarded should correspond with what they would have recovered if the claimant had brought the action individually.[127] The Spanish law has no counterpart to punitive or exemplary damages.[128] While consumer associations can bring damage actions, as of June 2005, no damage claims had been brought.[129]

Attorney fee arrangements in Spain do not resemble those of surrounding countries. Contingency fees are prohibited in Spain.[130] However, the client may award the lawyer a minimum fee based on the trial outcome.[131] The employment of this type of fee arrangement depends solely on the agreement between the lawyer and the client rather than the type of action.[132] The only other European country to adopt this approach is Austria.[133]

## VII. ITALY

Italy does not have class actions, but rather has collective actions.[134] Lawmakers are considering a bill to give consumers better redress under these

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[121] *Id.*
[122] Sherwood & Tait, *supra* note 18, at 5 (citing Ashurst).
[123] *Id.*
[124] Ashurst, *supra* note 111, at 2.
[125] *Id.*
[126] *Id.* at 8.
[127] Ashurst, *supra* note 111, at 2.
[128] *Id.*
[129] Sherwood & Tait, *supra* note 18, at 2.
[130] Ashurst, *supra* note 111, at 2.
[131] *Id.*
[132] *Id.* at 5.
[133] Sherwood & Tait, *supra* note 18, at 2.
[134] David J. Goodman, *Lawyers Want to Bring Class Action Suits to France*, INT'L HERALD TRIB., Nov. 12, 2005, at Fin. 3.

collective actions.[135] The bill allows "consumer associations [identified by the law], professional associations and the chamber of commerce… [to] apply to the court… to obtain compensation of damages or the repayment of sums of money owed to individual consumers directly," where the damage is a result of mass torts.[136] These mass torts should be "in the context of contracts.... including those relating to consumers' credit facilities, insurance and banking relationships, financial instruments, investment and savings management services, to the extent that these harm the rights of a plurality of consumers."[137]

Under this bill, the lawsuit would proceed in two or three phases: the judgment or settlement, the dispute resolution mediation (which may be the last stage), and the enforcement of the judgment by individual consumers.[138]

The judges may award damages when they enter a judgment.[139] This judgment should also include the judge's criteria for awarding damages.[140] Should the parties choose to settle, a judge will preside over the agreement.[141] Following the judgment awarding damages or the settlement agreement, the parties join in a "non-contentious resolution" of the lawsuit.[142] The parties' attorneys shall be present and the meeting will be chaired by a professional mediator.[143] "The dispute resolution chamber shall establish... the terms and amount for settling the individual consumer's potential claim."[144] If the attorneys fail to come to a mediated agreement, the individual consumer may pursue the action in court, where the court will certify that the individual meets the criteria set forth in the judgment as well as the amount of damage compensation owed.[145] Then, "the judgment shall be enforceable against the defendant."[146] The representative associations and chambers of commerce do not have standing in this latter proceeding.[147]

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[135] *Id.*
[136] Italian Senate Bill, S.3058, art. 1, §1(2005).
[137] *Id.*
[138] *Id.* § 3-8.
[139] *Id.* §3.
[140] *Id.*
[141] *Id.* at § 4.
[142] *Id.* at § 5.
[143] *Id.*
[144] *Id.*
[145] *Id.* at § 7.
[146] *Id.*
[147] *Id.*

This bill was not intended to resemble the United States' style of class actions.[148] Massimo Maggiore, an Ashurst attorney in Milan, says that this is because Italy hopes "to reap the benefits of [class actions] but... adjust it to a different system."[149] Rather, "the envisaged judicial tool is more akin to a representative action than to a proper class action."[150]

In November of 2005, a class action suit against Sony was filed in both Italy and the United States. Electronic Frontiers Italy, an Italian digital rights group, requested that the Italian Government investigate Sony's implementation of anti-piracy software.[151] The software was designed to protect CDs from copyright but could make Windows computers more unreliable and slow them down.[152] Sony was also accused of making it difficult to obtain the software that could uninstall the program, XCP.[153]

## VIII. GERMANY

2005 also brought collective claim advancements in Germany. On November 1, 2005, Germany's Capital Investors Model Proceedings Act (CIMPA), also known as "KapMuG" (KapitalanlegerMusterverfahrensgesestz), came into effect.[154] Until now, Germany has never had a collective action comparable to a United States class action.[155] However, rather than emulate the United States class action, Germany pioneered a new way of forming collective actions within the established framework of German civil procedure.[156] The Federal Ministry of Food, Agriculture and Consumer Protection indicates that KapMuG creates an instrument which "enables the enforcement of similar claims in the interest of process economy and the saving of judicial resources dispensing with the

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[148] Email from Massimo Maggiore, Attorney, Ashurst, Milan, co-author of *The Italy Report*, *compiled in* DAMAGES ACTIONS FOR THE INFRINGEMENT OF EC COMPETITION LAW AS LAID DOWN IN ARTICLES 81 AND 82 EC, *available at* http://europa.eu.int/comm/competition/antitrust/others/private_enforcement/national_reports/italy_en.pdf, to Author (Jan. 4, 2005) (on file with author).

[149] *Id.*

[150] *Id.*.

[151] *Sony Sued Over Copy-Protected CDs*, BBC NEWS, Nov. 10, 2005, *available at* http://news.bbc.co.uk/1/hi/technology/4424254.stm.

[152] *Id.*

[153] *Id.*

[154] Karl Wach & Konrad Kern, *New Class Action Laws for Investors*, GERMAN BUS.GROUP UPDATE, Sept. 2005, at 1.

[155] *Id.*

[156] THE GERMAN "CAPITAL MARKETS MODEL CASE ACT", GERMAN MINISTRY OF JUSTICE (2005) at 2, *available at* http://www.bmj.bund.de/media/archive/1056.pdf.

disadvantages of the US-American class action, i.e. contingency fees and an alliance of the injured parties which is debatable under constitutional law."[157]

The KapMuG was created for specific types of disputes under the Capital Markets law.[158] The legislature's primary aim was to reduce procedural difficulties inherent in situations where large numbers of investors file claims against a single defendant as was seen in Frankfurt with the *Deutshe Telekom* case.[159] In *Deutshe Telekom*, fifteen thousand investors sought compensation for the company's misleading statements by filing over 2,100 German lawsuits.[160] The case may take up to ten years to litigate.[161] Lawmakers hope the sort of judicial entanglement that was seen in *Deutshe Telekom* can be avoided under the KapMug.

The law does not apply to other civil lawsuits, such as product liability cases.[162] Rather, "the law applies to proceedings at the first instance, in which

> (1) a claim for compensation of damages due to false, misleading or omitted public capital markets information or
>
> (2) a claim to fulfillment of contract, which is based on an offer under the Securities Acquisition and Takeover Act [SATA], is asserted."[163]

Ashurst attorneys Karl Wach and Konrad Kern speculate that KapMuG will potentially impact "all issuers of securities, offerors of other investments, investment banks, members of their management or advisory

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[157] Dr. Hans W. Micklitz & Dr. Astrid Stadler, THE RIGHT OF ASSOCIATIONS TO TAKE LEGAL ACTION IN THE INFORMATION AND SERVICE SOCIETY, GERMAN MINISTRY OF FOOD, AGRICULTURE AND CONSUMER PROTECTION (2005); *available at* http://www.verbraucherministerium.de/index0007128B310E11FEA14A6521C0A8D816.html.

[158] The German "Capital Markets Model Case Act", *supra* note 156, at 1.

[159] Wach & Kern, *supra* note 154, at 1.

[160] Adele Nicholas, *Class Action Litigation Makes Headway in Europe, New Rules Bring Europe Closer to the American System*, INSIDE COUNSEL.COM, Dec. 1, 2005, *available at* http://www.insidecounsel.com/issues/insidecounsel/15_169/global_views/238-1.html.

[161] *Id.*

[162] The German "Capital Markets Model Case Act", *supra* note 156, at 1.

[163] *Id.*

boards and persons otherwise responsible for a prospectus, as well as for bidders as defined in SATA."[164]

The model proceeding develops in several stages.[165] The process begins with the "commencement of the action."[166] At this stage, individuals must file their own separate actions.[167] Now, "the court at the seat of the issuer has exclusive jurisdiction over all cases falling under CIMPA."[168]

The second stage is the model proceeding application.[169] Either party may apply for the court's establishment of a model case.[170] In the application, a party may attempt to establish the existence or nonexistence of various conditions that would either justify or eliminate a potential claim.[171] The application may also be used to have specific legal questions addressed by a higher court.[172] The new electronic Complaint Registry logs the applications on the Internet so that the public can access them.[173]

The model proceedings form the third stage of the suit.[174] If ten claims referring to a similar matter accumulate in the registry during a four-month period, the Higher Regional Court will take over jurisdiction of the model proceeding.[175] The court will select one of the claimants to file a separate claim, and that claimant will serve as the model for the proceedings.[176] The court that previously had jurisdiction over the model claimant's case now has exclusive jurisdiction over all the cases filed under the model proceeding.[177] The Higher Regional Court tries the model claimant's case through the model proceeding and the other claimants may participate and comment in these proceedings.[178] All pending proceedings where the decision is contingent upon the outcome of the model case are suspended until the court issues a judgment in the model case.[179]

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[164] Wach & Kern, *supra* note 154, at 2.
[165] *Id.* at 1.
[166] *Id.*
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] The German "Capital Markets Model Case Act", *supra* note 156, at 1.
[171] *Id.*
[172] *Id.*
[173] *Id.* To view the complaint registry, go to www.ebundesanzeiger.de.
[174] Wach & Kern, *supra* note 154, at 1.
[175] *Id.*
[176] *Id.* at 1-2.
[177] *Id.* at 1.
[178] *Id.* at 2.
[179] The German "Capital Markets Model Case Act", *supra* note 156, at 2.

Judgment on the model claim is the last stage of the proceedings.[180] Once the Higher Regional Court issues its judgment, the judgment binds all similar claims filed up until the date of the court's decision.[181] After the judgment, the individual proceedings of each claimant are determined by the lower court on their specific facts and points of law that did not relate the model proceeding.[182] The court trying the other claimants will rule based on the precedent set in the model proceeding.[183]

The model proceeding can be settled, but all parties to the claims must agree.[184] Claimants seeking model proceedings do not incur any additional court fees and, in fact, the normal advance payments of certain court fees are suspended.[185]

The Ministry of Justice claims the Act offers several advantages.[186] It notes that the Complaint Registry allows investors to monitor claims and determine whether any proceedings relate to their own claims.[187] Additionally, the site may motivate the investors to file a claim themselves as model proceedings spread the cost of the case over all claimants.[188] Also, those who issue securities or offer other investments can view the site for a timely clarification of various legal issues.[189] Further, the compilation of the claims provides the court with a consistent standard with which to rule, while reducing the overall burden on the judicial system.[190]

However, the new Act may have negative consequences for businesses.[191] The reform will probably increase the number of investor claims overall.[192] Specifically, the Complaint Registry will enable greater publicity of claims and encourage other similarly situated individuals to join the case.[193]

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[180] Wach & Kern, *supra* note 154, at 1.
[181] *Id.*
[182] *Id.*
[183] The German "Capital Markets Model Case Act", *supra* note 156, at 2.
[184] Wach & Kern, *supra* note 154, at 2.
[185] *Id.*
[186] The German "Capital Markets Model Case Act", *supra* note 156, at 2.
[187] *Id.*
[188] *Id.*
[189] *Id.*
[190] *Id.*
[191] Wach & Kern, *supra* note 154, at 2.
[192] *Id.*
[193] *Id.*

This further complicates the case and would probably increase both the length of the trial and the financial vulnerability of the defendant.[194]

The legislature attempted to reduce these potentially negative consequences for businesses by avoiding a variety of features characteristic of US class actions.[195] For instance, unnamed or unknown plaintiffs may not be represented because model proceedings require individuals to initiate the proceedings themselves.[196] Germany has the "loser pays" rule and this rule applies to model proceedings.[197] Additionally, Germany does not have contingent fees or punitive damages, and each individual claimant must prove any compensatory damages.[198] These rules should help to dissuade any frivolous plaintiffs' suits.

For the next five years, the legislature will monitor the effects of the model proceedings.[199] The Act has a "sunset clause," which automatically discontinues the Act on November 1, 2010.[200] Should the legislature find the Act successful, it can prolong the act or broaden its scope at that time.[201]

## IX. FRANCE

Current French law does not have an equivalent to US style class action suits.[202] However, certain associations can bring a suit representing several individual interests ("*action en representation conjointe")* or collective interests.[203] In order to bring an "*action en representation conjointe*," the association must have an explicit mandate from the individual members allowing representation before the association can represent their interests.[204] The association cannot use the press to publicly ask for the mandate.[205] In regard to collective interest actions, the Administrative Supreme Court, known

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[194] *Id.*

[195] The German "Capital Markets Model Case Act", *supra* note 156, at 2.

[196] *Id.*

[197] *Id.*

[198] *See* THE GERMAN "CAPITAL MARKETS MODEL CASE ACT", *supra* note 156, at 2; *see also* Wach, *supra* note 154, at 2.

[199] The German "Capital Markets Model Case Act", *supra* note 156, at 3.

[200] *Id.*

[201] *Id.*

[202] Chantal Momége & Nicolas Bessot, *The France Report,* at 7, *compiled in* DAMAGES ACTIONS FOR THE INFRINGEMENT OF EC COMPETITION LAW AS LAID DOWN IN ARTICLES 81 AND 82 EC, *available at* http://europa.eu.int/comm/competition /antitrust/others/private_enforcement/
national_reports/france_en.pdf (last visited Feb.5, 2007).

[203] *Id. (*quoting Article L. 422-1 Consumer Code).

[204] *Id.*

[205] *Id.*

as the "*Conseil d'Etat*," has allowed associations to bring actions to defend either the association's interests or the collective interests of those they represent.[206] Associations do not need authorization for these suits.[207]

In another type of action, the public prosecutor, the Minister for Economic Affairs, or the chairman of the Competition Council can sue for damages on behalf of individuals, but this action is limited to damages arising from restrictive practices.[208]

In 1994, the French legislature passed a law allowing shareholders to bind together to sue in associations.[209] A minority shareholder is permitted to bring action against a majority shareholder, but the company receives any damages awarded.[210] An example of this occurred when "Orange minority shareholders challenged the fairness of the price offered in a buyout by majority shareholder France Telecom."[211]

In January 2005, French President Jacques Chirac proposed that France strengthen consumer rights by developing US style class actions.[212] The announcement surprised many in the legal community and has evoked great controversy.[213] The Paris Bar Association and consumer groups support Chirac's proposal.[214] The Ministry of Finance, the Ministry of Justice, the office of Prime Minister Dominique de Villepin, and Medef (an organization representing the interests of French businesses) all oppose initiatives for French class actions.[215] Each of these parties believes that the introduction of class actions would harm French business, particularly the financial sector.[216] Thomas Donohue, President of the United States Chamber of Commerce, visited Paris in January 2005 and made statements warning France to avoid US style class actions.[217] He asserted that their introduction would "damage the economy and shift money from 'good companies to lawyers.'"[218] The

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[206] *Id.* (quoting CE 28 December 1906, syndicat des patrons-coiffeurs de Limoges).
[207] *Id.*
[208] *Id.* at 8.
[209] Sherwood & Tait, *supra* note 18, at 6.
[210] Allen, *supra* note 45, at 10.
[211] *Id.*
[212] *Id.* at 5.
[213] Sherwood & Tait, *supra* note 18, at 6.
[214] Goodman, *supra* note 134, at 21.
[215] *Id.*
[216] *Id.*
[217] John Thornhill, *Europe: US Warns France on Class Actions*, FIN. TIMES UK, Jan. 26, 2005.
[218] *Id.* (quoting Thomas Donohue).

president of Medef, Ernest-Antoine Seillie're, hosted Donohue during his visit and supported his stance, claiming that class actions could have "catastrophic consequences" in France.[219]

President Chirac's class action review task force issued its report regarding the matter on December 16, 2005.[220] The report was open for consultation until March 1, 2006.[221] At the conclusion of this period, the French Government will issue a proposal.[222] The December 16th, 2005 proposal attempted to balance "the need to protect the consumer" with the "competitiveness of undertaking," as well as adhere to the principles of French law.[223] The report outlined the status of group action in a variety of other countries, provided a summary of current French law as it relates to the issue, and set forth two possible class action models, one of which is inspired by United States and Quebec class actions.[224] Some French lawyers feared that if Chirac's proposal was passed, it would require further US style reforms such as adjusted disclosure and discovery rules as well as relaxation on legal advertising rules in order to be effective.[225]

French business groups have drawn assistance from US and Canadian defense lawyers and businesses to lobby for class actions to be limited to only those plaintiffs who actively join the class. This differs from US style class actions where once a judge certifies a securities class action lawsuit, the judgment applies to all investors, with the exception of those that opt out.[226]

The existence of a French contingency fee may be one of the reasons that French plaintiffs' attorneys desire to import class actions. Many prominent Paris firms use contingency fees and are permitted to use the result of the suit as part of the fee basis.[227] Also, while France does not adhere to a loser pays rule, French judges do have the discretion to order the loser to pay a portion of the prevailing party's trial fees.[228]

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[219] *Id.* (quoting Ernest-Antoine Seillie're, Medef President).

[220] E-mail from Nicolas Bessot, Avocat à la Cour, Ashurst, Paris, Co-author of *The France Report*, *compiled in* DAMAGES ACTIONS FOR THE INFRINGEMENT OF EC COMPETITION LAW AS LAID DOWN IN ARTICLES 81 AND 82 EC (Jan. 5, 2006) to Author (on file with Author).

[221] *Id.*

[222] *Id.*

[223] *Id.* (quoting Nicolas Bessot's summary of the press release).

[224] *Id.*

[225] Sherwood & Tait, *supra* note 18, at 5.

[226] *Id.*

[227] Willett, *supra* note 1, at 10.

[228] Sherwood & Tait, *supra* note 18, at 4.

Though group actions are not currently permitted in France, some lawyers in Paris have formed a collective legal action website called classaction.fr.[229] The site allows users to pay as little as €12 to register for a lawsuit,[230] but the site is entitled to 40% of any damages.[231] Thus far, the creator of the site, Jean-Marc Goldnadel claims he has "gather[ed] over 700 individuals in a potential suit against Universal Pictures, Warner Brothers, and Columbia Tri-star" regarding a copy-protected DVD.[232] The website speculates that the claimants should receive awards up to €1,000.[233] The website has come under fire, as there have been allegations of ethical breaches and a suit to shut the website down.[234] Goldnadel also won a suit against Medef, but had to remove the advertising from the site.[235]

As of December 2005, the site was defending against a new suit by UFC-Que Choisir, a French consumer group and supporter of class actions.[236] The group claims that the site illegally recruits claimants and does not give the claimant sufficient control in settlement decisions.[237] In addition, French class action adversaries also oppose the site and use it as an example of the kinds of problems that US style lawsuits entail, "ambulance-chasing lawyers, ruinous damages awards and spurious lawsuits used to blackmail companies into settlement."[238]

## X. CONCLUSION

As class actions have expanded in Europe, the debate surrounding this legal apparatus continues on a global scale. Critics note that when there is a lack of common interest between the class members, a class action fails to provide the class members and defendants with "individualized determination of their disputes."[239] Additionally, critics feel class actions give plaintiffs an

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[229] Goodman, *supra* note 134.

[230] Laurence Frost, *Online Lawsuits Fuel Debate in France*, ASSOCIATED PRESS NEWS, Oct. 4, 2005, *available at* http://myway.com/article/20051005/D8D1I08G2.html.

[231] *Id.*

[232] Goodman, *supra* note 134.

[233] *Id.*

[234] Frost, *supra* note 231.

[235] Tony McAuley, *Class Actions Take a Hammering*, CFO EUROPE.COM, Dec. 2005, at 1, *available at* www.cfoeurope.com/displaystory.cfm/5245447/l_print.

[236] Goodman, *supra* note 134.

[237] *Id.*

[238] Frost, *supra* note 231.

[239] Willett, *supra* note 1, at 3 (quoting Edward F. Sherman, American Class Actions: Significant Features and Developing Alternatives in Foreign Legal Systems, 215 F.R.D. 130, 132 (2003)).

unfair advantage when bargaining by increasing defendant's risk of damages.[240] One writer summarized other criticisms as follows:

> (1) Damage class actions are solely the creatures of class action attorneys' entrepreneurial incentives.
>
> (2) It is easy to detect non-meritorious class actions and most suits are non-meritorious.
>
> (3) The benefits of class actions accrue primarily to lawyers who bring them.
>
> (4) Transaction costs far outweigh benefits to the class and society.
>
> (5) Existing rules are not adequate to insure that class actions serve their public goals.[241]

On the contrary, advocates for class actions highlight their positive attributes.[242] Class actions lessen the burden on the courts and the economy by bundling cases that would otherwise require trying the cases separately.[243] Additionally, resolving multiple yet related claims in a single trial provides a "consistency and finality" that is important for both efficiency and public confidence in the judiciary.[244]

Class actions balance the sometimes overwhelming differential between a large corporation and a small plaintiff. Plaintiffs with small claims often do not have enough incentive to bring a suit to redress legitimate wrongs, as the cost or hassle of the suit can exceed the damages. However, by bundling the claims, plaintiffs increase their leverage, which in turns provides opportunities where one did not exist previously.

Empowering the plaintiffs could lead to greater corporate responsibility. By punishing them through large settlements, the courts are speaking a language that businesses understand: money. If enough financial disincentive for ethical shortcuts and unsafe products are created, then we may actually see some real changes in businesses worldwide.

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[240] *Id.* at 3-4.

[241] *Id.* at 5 (quoting Deborah R. Hensler, Revisiting the Monster: New Myths and Realities of Class Action and Other Large Scale Litigation, 11 DUKE J. COMP. & INT'L L. 179, 195-196 (2001)).

[242] *Id.* at 3.

[243] *Id.*

[244] *Id.*

Some commentators have speculated that the increase of class action legislation among European nations could lead to a uniform European law on class actions.[245] In 2002, the European Commission appointed Lovells to study the product liability laws and their application in the European Union and to consider the possibility of reform.[246] One suggested reform was the introduction of product liability class or representative actions.[247] The study also suggested "greater harmonization in the EU of product liability laws under the directive."[248] The directive had already instituted measures to achieve this harmonization, such as a no-fault liability system.[249] The Lovell study found the directive generally accepted as a product liability feature in the European Union.[250] Overall, the Lovell study concluded that there was no need for directive reform at that point.[251] The broad acceptance of the directive in European Union countries helped to partly form the basis of this conclusion.[252]

More recently, the European Commission requested that Ashurst conduct a similar study.[253] The study was published in 2005.[254] The study examined the "conditions of claims for damages in case of infringement of EC antitrust rules."[255] Partial motivation for the study was the "well-established" finding that "private enforcement of the EC competition rules is lagging behind public enforcement."[256] The Ashurst study served as empirical support for the European Commission Green Paper on the topic.[257] Nicholas Bessot, attorney for Ashurst Paris and co-author of the French Report for the study, notes that the Green Paper issued by the European Commission concludes that one possibility for addressing private enforcement of competition laws could

[245] Allen, *supra* note 45, at 6-7.

[246] John Meltzer, Reform of Product Liability in the EU: New Report Finds General Satisfaction, 71 DEF. COUNS. J. 42 (Jan. 2004).

[247] *Id.* at 43.

[248] *Id.* at 49.

[249] *Id.*

[250] *Id.*

[251] *Id.*

[252] *Id.*

[253] EUROPEAN COMMISSION, Antitrust- Other Documents- Damages Actions for the infringement of EC Competition Law as Laid Down in Articles 81 and 82 E (2005), *available at* http://ec.europa.eu/comm/competition/antitrust/others/actions_for_damages/gp_en.pdf.

[254] *Id.*

[255] *Id.* at 4, n.3.

[256] EUROPEAN COMMISSION, *Open Procedure*, Comp/2003/A1/22.

[257] EUROPEAN COMMISSION, *supra* note 253.

include the introduction or development of "class/group/collective actions in EU Member States."[258]

Marc Gottridge, a securities lawyer for Lovells, doubts that such a change will occur in the near future, in part because the European Commission has yet to finish uniting the European securities laws.[259] He also asserts that even if all the class action initiatives in Europe pass, plaintiffs such as institutional investors will still prefer bringing class actions in US courts due to the more favorable rules of "pre-trial evidence gathering, jury trials, and punitive damage awards."[260] Additionally, Gottridge doubts that Europe will abandon its traditional stances on loser pays rules and the prohibition of contingency fees, both of which also make the United States a more favorable plaintiff's forum.[261]

The next few years will reveal whether or not Europe pursues a uniform policy on class actions. Some feel that this could hinge on the acceptance of the French class action. However, regardless of whether Europe decides to implement a unifying policy, now is an exciting time for class actions in Europe. The differing approaches taken by countries such as the United Kingdom, Sweden, Germany, and potentially France, will provide ample opportunity for the study of the strength and weakness of collective actions as applied in a variety of ways.

[258] Bessot, *supra* note 220.

[259] Allen, *supra* note 45, at 7 (citing Marc Gottridge, securities attorney with Lovells).

[260] *Id.*

[261] *Id.*