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# **The Reform of Class and Representative Actions in European Legal Systems**

A New Framework for Collective Redress in Europe

**Christopher Hodges**

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## THE REFORM OF CLASS AND REPRESENTATIVE ACTIONS IN EUROPEAN LEGAL SYSTEMS

This book examines the principal trends and policy goals relating to collective redress mechanisms in Europe. It identifies three principal areas in which procedures and debates have emerged: within consumer protection and competition law, and from some national court systems. It identifies differing national models of public and private enforcement in consumer protection law in the Member States, and the search for more efficient and inclusive procedures that would deliver increased access to justice and enhanced compliance with desired standards (arguably through deterrence).

A sequence of case studies illustrates the pros and cons of differing models. Lessons are also drawn from the experience of class actions in the USA over the transactional costs of private law mechanisms and adverse economic consequences.

The various policy strands are unravelled and prioritised, and options for the future are recommended. The American 'private enforcement' model is contrasted with the more prevalent European public and mediated enforcement tradition. New developments involving Ombudsmen and oversight of compensation by public enforcement bodies are identified, and underlying theories of restorative justice and responsive regulation discussed. Public, private, formal, informal, ADR and voluntary methodologies are evaluated against criteria, and it is concluded that the optimal options for collective redress in Europe involve a combination of approaches, with priority given to public and voluntary solutions over private court-based mechanisms.

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*Christopher Hodges*

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# Glossary

ADR	Alternative dispute resolution, i.e. alternative to resolution through judgment in the public courts.
BEUC	The European association of consumers' associations.
BUSINESSEUROPE	The Confederation of European Employers' associations.
CA	Consumer association.
CAT	Competition Appeal Tribunal.
CFA	Conditional fee arrangement.
Class action	A procedure for combination of multiple individual claims in which a single claim stands as representative of the class, the typical example being under Rule 23 of the US Federal Rules of Procedure.
Collective action	A procedure for resolution of multiple individual claims on a collective basis.
Community law	The law of the EU.
CPC Regulation	Regulation (EC) 2006/2004 on consumer protection cooperation.
CPR	Civil Procedure Rules of England and Wales.
DECO	The consumers' association of Portugal.
DG COMP	The Directorate-General for Competition of the European Commission.
DG SANCO	The Directorate-General for Health and Consumer Affairs of the European Commission.
ECJ	European Court of Justice.
European Commission	The Commission of the EU.
ECHR	European Convention on Human Rights.
EU	European Union.
FOS	Financial Ombudsman Service.
FSA	Financial Services Authority.
FS&MA	Financial Services and Markets Act 2000.
GAR	Guaranteed annuity rates.
Globalisation Project	The project on globalisation of class actions led by Professor Deborah Hensler of Stanford Law School and Dr Christopher Hodges of the Centre for Socio-Legal Studies, University of Oxford, see < <a href="http://globalclassaction.stanford.edu">http://globalclassaction.stanford.edu</a> > accessed 5 June 2008.

GLO	Group Litigation Order, as defined in the Civil Procedure Rules of England and Wales.
HSE	Health and Safety Executive.
KapMuG	<i>KapitalanlegerMusterverfahrensGesetz</i> , the German Capital Investors' Model Proceeding Law.
KVI	<i>Verein für Konsumenteninformationen</i> , The Austrian consumers' association.
Member State	A Member State of the EU.
MHRA	Medicines and Healthcare products Regulatory Agency.
NCA	National competent authority.
NGO	A non-governmental organisation.
OECD	Organisation for Economic Co-operation and Development.
OFT	The UK Office of Fair Trading.
Opt-in	The approach in a multi-party action in which all individual claimants have to take a positive step in order to participate.
Opt-out	The approach in a multi-party action in which all individual claimants who fall within the definition of the class will be deemed to be bound by the result of the representative case(s) without being required to take any positive step, save that any individual may leave the class and not be bound if she or he takes a positive step to indicate this.
Representative action	A procedure for combination of multiple individual claims in which a single claim or entity represents the group. A US class action and a claim brought by a European representative organisation are both examples, albeit different ones.
SME	Small and medium-sized enterprise, defined in Commission Recommendation 2003/361/EC of 6 May 2003 as having between 50 and 249 employees.
TSD	Trading standards department of a local authority.
USA	United States of America.
VZBV	<i>Verbraucherzentrale Bundesverbands</i> , the German national consumers' association.
Which?	The consumers' association of the UK.

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