



The Danish Consumer Ombudsman

Collective redress in Danish law and perspectives at EU level

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globalization of class actions

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Topics today

- Remedies to consumers for individual redress
- Enforcement activities as initiated by the Consumer Ombudsman
- Legislation concerning class actions
- Challenges concerning cross-border infringements
- What can be done to improve the enforcement of consumer rights?

Remedies available to consumers at national level

- Complaint boards (ADR) if the claim exceeds DKK 800 (120 EUR)
- Individual civil action at court
- Lodge a complaint with the Consumer Ombudsman

Enforcement of consumer protection law at national level

- Administrative order imposed by the DCO
- (interim) injunction initiated by DCO and imposed by Court
- Penalty imposed by the Court
- Order initiated by DCO and imposed by Court
- Civil lawsuit on behalf of one consumer (e.g. a test case)
- Group action/Collective redress



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Why are rules on collective redress necessary?

- Smaller individual claims are often left unpursued due to lack of resources
- The current instruments available to the DCO are often not suitable to recover consumer losses
- The penalty is often disproportional to the profits
- Need for procedural rules which can effectively handle disputes concerning large numbers of uniform claims
- Act no. 181 of 28 February 2007 on collective redress takes effect 1 January 2008



Two types of collective redress

1. Opt in

Affected consumers must actively opt in for the redress action

2. Out opt

This redress action is based on automatic inclusion with the possibility of opting out

Note:

- Substantive legislation is unchanged, including e.g. the law of tort.
- The Court must approve the case (supervision)

Conditions

1. **Uniform claims** – arising from the same factual and legal basis
2. **Danish jurisdiction**
3. **Best way** - The court examines the claims
4. **Identification of members**
5. **Notification of members** – example: mass media
6. **A group representative**
 - a member of the group
 - a private organisation
 - a public authority authorized by law

The *opt out* model

- Only claims not exceeding DKK 2,000 (EUR 270)
- Secondary to the *opt in* model
- Only a public authority can be appointed as group representative
 - For the time being only the Consumer Ombudsman has been appointed to this effect



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Legal costs and the provision of security

- The losing party pays the legal costs
- Members of an *opt out* collective redress action can only be ordered to pay the amount of money which they stood to recover had the proceedings been successful
- The group representative may be required to provide security for the legal costs
- Possibility of free legal aid



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Examples of potential collective redress actions initiated by the Consumer Ombudsman

- Collection of an unlawful fee
- Contract concluded on the basis of misleading marketing activities (UCP Directive)
- Unfair terms of contract (Directive on unfair terms)
- **Experiences so far:** Settlements in three cases, e.g. the Viasat case



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Problems encountered in cross-border cases

Consumers' individual civil action:

- Normally protected by domestic law (Rome Convention becoming Rome I)
- Jurisdiction in home country (Brussels I Regulation)
- Help from Consumer Europe (ICC-network)

Public enforcement – challenges and/or obstacles

- E-commerce Directive (country of origin principle)
- Use the CPC regulation (2006/2004) to put an end to intra-community infringements

Limitations:

- It does not establish rules concerning civil law claims
- Only harmonized areas and only minimum rules

ex: Directive of Consumer Goods does not deal with issues such as conclusion of contracts, validity, execution and non-compliance (e.g. late delivery)

ex: different periods of withdrawal by distance selling



Cross-border enforcement: Is national collective redress sufficient?

- Actions against a Danish trader can also include claims from consumers in other Member States – **but only if they opt in**
- Actions against a business located in another Member State can only comprise claims raised by Danish consumers

Considerable uncertainty however:

Is it possible to use the opt out model in a lawsuit where the lawsuit only concerns a limited number of consumers apart from those who have already opted out?

A pending case

- An internet-based business located in France
- Danish version of the website (Danish language and currency)
- It is stated that the applicable law and jurisdiction is French

However:

- Danish mandatory consumer protection rules apply (Rome art.5)
- Danish jurisdiction for consumer contracts (Brussels I regulation)

CPC Regulation?

Only in case of violations of Community law

Group action?

Only jurisdiction for Danish consumers and therefore it may not be possible to use the opt out model



How can public enforcement be improved?

Problem:

The Consumer Ombudsman has to rely on the country of origin principle (CPC) whereas the consumer will be able to rely on the law of his country of residence (Rome I)

Solution:

- More EU harmonization of substantive rules
- Total harmonization if the level of protection is sufficiently high
Can increase consumer confidence: no knowledge of or confidence in protection in other countries
- A general clause of good marketing practices in the UCP Directive that requires traders in cross-border contracts to comply with contractual obligations deriving from the law applicable to the contract (Rome I)



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Need for community rules on collective redress?

Tools available today:

- CPC Regulation
- ICC Network
- Rome Convention and Brussels I regulation
 - court proceedings are often expensive and difficult to handle for the individual consumer

Which tools do we lack:

- More effective civil laws claims in cross-border transactions – e.g. collective redress at community level

- A possible starting point may be found within the framework of CPC regulation which provides a legal base for the public authorities to claim redress