



The role of the Court in Collective Redress Litigation : Comparative Report (Collection de l'Unité de droit économique de l'Université libre de Bruxelles)

Élodie Falla

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The key question facing European policy-makers is how to enable collective redress proceedings without producing the undesirable consequences that are associated with the U.S. class action model. How is it possible to find the balance between providing compensation for legitimate claims and preventing unmeritorious claims?

If the system encourages the vast majority of claims to be settled, how can it avoid the 'blackmail effect', which means it will be cheaper for defendants to settle unmeritorious claims than to fight them? How is it possible to avoid excessive transactional costs? etc.

In this report, it is considered that one of the of the important safeguards against the abuses of the U.S. class action system could be the active role of the court in collective redress litigation. Research is needed to see what concrete judicial powers are the most important in that respect. This report tries to achieve this challenge.

The first part of the report consists in a comparative analysis of national rules and case law in six Member States (United Kingdom (England & Wales), Germany, Italy, Portugal, Spain and Sweden) to identify which powers of the court in a collective redress trial ensure fair proceedings for both parties and act as safeguards against potential abuses of the system. Cases have been selected to illustrate the issues that arise and some of the creative solutions that have been applied so far by the courts at each stage of a collective redress procedure.

The second part of this report aims at looking ahead to ways in which recommendations for an optimal balanced framework for a European collective redress mechanism would be formulated. The result of the case analyses set out in this report attempts to demonstrate whether the European Union might be able to introduce an attractive approach towards collective redress which builds on previous knowledge by fusing different national approaches and provides benefits to consumers, competitors and the economy, without harmful risks.

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