



**British Institute of  
International and  
Comparative Law**

# COLLECTIVE REDRESS FINLAND



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**British Institute of  
International and  
Comparative Law**

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# I. General Collective Redress Mechanism

Finnish legislation does not contain any specific provisions for a horizontal collective redress mechanism, only generic provisions on joinder of claims. These are provided in the Code of Judicial Procedure<sup>1</sup>, the primary law regarding judicial procedure in general courts. The general provisions regarding joinder of claims in the civil process, known as joinder (or cumulation of claims), form Ch. 18 of the Code of Judicial Procedure. Subjective joinder means that lawsuits initiated by a single defendant against multiple defendants, or lawsuits initiated by multiple plaintiffs against a single defendant, can be processed collectively.

The requirement is that the lawsuits are based on an essentially the same legal facts (CJP 18:2). For example, joinder of claims could be applied in a case of damages, where the claims are made by multiple plaintiffs, based on a common damage incident, against a single defendant. The application of subjective joinder, while a horizontal redress mechanism, is somewhat more limited when compared to class action lawsuit, in the sense that a subjective joinder requires that the claims are based on the exactly same legal facts, whereas class action lawsuit only requires the legal facts to be similar (CAA section 2). On the other hand, general cumulation of claims is not limited to consumer claims. There are no limitations on plaintiff's representation. Both injunctive and compensatory relief is available depending on the cause of action.

## 1. Procedural Framework

### a. Competent Court

Any district court in Finland can hear a claim for damages or injunctive relief based on a civil cause of action. Separate actions brought by a plaintiff against the same respondent may be considered by the District Court where the respondent is obliged under law to respond to one of them, if the actions have been brought at the same time and they are based on essentially the same grounds (CJP 10:10). The prerequisites for the hearing of actions in the same proceedings are that the actions have been brought in the same court, that the court is competent to consider the actions to be joined and that the actions may be considered according to the same procedure (CJP 18:7(1)).

### b. Standing

Each claimant must meet the general standing requirements, as well as the specific prerequisites for joinder of claims. Each party is responsible for its own case. This was one of the main reasons Parliament rejected developing the rules on joinder of claims to comply with the Commission Recommendation.<sup>2</sup>

Relating to the cases discussed below, the Tobacco –cases could be considered private actions on behalf of one or a few individuals. The Nokia Tyres- case could be considered a public action inviting anyone with a grievance against the named defendant to sign up for the mass action.

### c. Availability of Cross Border collective redress

Subject to general forum rules.

### d. Opt In/ Opt Out

Each party is responsible for its own case. Prior cases of others do not moot later actions as long as the claim is brought within the applicable statute of limitations. The general statute of limitations for claims is three years from the event that gives rise to the injury. In any event the claim must be brought within 10 years of the initial transaction.<sup>3</sup>

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<sup>1</sup> Oikeudenkäymiskaari 1.1.1734/4

<sup>2</sup> HE 154/2006 p. 14.

<sup>3</sup> Laki velan vanhentumisesta 15.8.2003/728 (Sections 4 and 7).

## 2. Main procedural rules

### a. Admissibility and certification criteria

There are no special rules for admitting a cumulated claim other than those for any civil cause of action under the law. A claim may not be added to a cumulated proceeding after the pre-trial hearing without the consent of the defendant(s).

### b. Single or Multi-stage process

The general rules of procedure call for written preparation and oral pre-trial preparatory hearing, during which the parties are strongly encouraged to reach settlement. If a settlement is reached it can be affirmed by the court. If the parties do not reach settlement, the case will go to trial and the court, after hearing the parties, witness-testimony and reviewing evidence, will give its final verdict. Damages are limited to actual damages. The loser-pays rule applies, which includes reasonable lawyer fees. Considering the increased workload of cumulated claims, the fees will likely be very high and not likely to be adjusted.

### c. Case-management and deadlines

Strict time limits apply for all stages of summons, preparation, pre-trial hearing, trial and verdict (7 days - 1 month). However, the parties have discretion in civil cases. Settlement negotiations give legitimate cause for extension. The same is true for complex cases. The court may decide to split cumulated claims into separate proceedings, if it is warranted and feasible.

### d. Expediency (particularly in injunctive cases)

A cumulated claim is not likely to proceed quickly through general civil procedure, partly due to the parties' discretion to request the court for extensions due to exigent circumstances, such as preparing the case, negotiations for settlement, review of evidence.

### e. Evidence/discovery rules

General rules of procedure apply. Finnish law does not recognize specific procedures for discovery. Parties will state the evidence that backs the claim and will be presented at the pre-trial hearing. Witness testimony is heard at trial.

### f. Interim measures

All courts may consider the full range of interim measures under CJP Ch. 7, where applicable.

### g. Court directed settlement option during procedure

Yes.

### h. In case of out of court settlements: judicial control

The court may affirm a settlement reached by the parties (reached in or out-of-court) upon their request. The settlement may pertain to some claims or all claims of the cumulated claims. A settlement may not be confirmed if it is contrary to law, clearly unreasonable or if it violates the right of a third party (CJP 20:3(2)). It is likely that a Finnish court will not affirm a settlement including punitive damages or exigent fees, since it would be considered contrary to Finnish law.

## 3. Available Remedies

### a. Type of damages

Finnish law does not recognize punitive damages. Only actual damages, direct or indirect may be compensated.

### b. Allocation of damages between claimants for compensatory claims/ distribution methods

Case law is not sufficient to draw conclusions.

### c. Availability of punitive or extra-compensatory damages and their conditions

Not available under Finnish law.

### d. Skimming-off/ restitution of profits

Not an issue in Finland, but case law is not sufficient to draw conclusions.

#### e. Injunctions

All courts may issue injunctions in summary proceedings or after hearing the case.

#### f. Possibility to seek an injunction and compensation within one single action.

Yes.

#### g. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

Injunctions would likely target certain activity on the part of the trader, and an injunction would be set on pain of fine against renewing the unlawful activity, not as such against a particular plaintiff. Claimants, who would have missed the window for joining the cumulated claim, would absent lapse of right on other grounds, likely reach settlement on the same grounds to avoid further litigation costs.

#### h. Limitation periods

General rules discussed above.

### 4. Costs

The Loser Pays Principle governs all civil disputes, which includes reasonable attorney fees.

### 5. Lawyers' Fees

A peculiar side-track in the Tobacco-cases involved, whether plaintiff's attorney would be jointly liable for attorney fees in a criminal battery trial. The district and appellate courts ordered plaintiff's attorneys to pay damages for prolonging the proceedings and providing false evidence regarding the causal connection between tobacco products and cancer. The Supreme Court reversed, stating that disagreeing with the prosecutor's view on causal connection did not constitute false witness provided that the presented evidence is not demonstrably false.<sup>4</sup>

### 6. Funding

No public information available.

### 7. Enforcement of collective actions/settlements

#### a. Framework for enforcement

General procedures for enforcement apply, including the aid of the Executive proceedings.

#### b. Efficient enforcement of compensatory/ injunctive order

No cases available. Finnish enforcement procedures are very efficient as can be seen for example enforcement of judgments relating to copyright infringement against individuals.

#### c. Cross border enforcement

No information available.

### 8. Number and types of cases brought/pending

The cases discussed in this section are intended to address the questions related to profiting from litigation, the Loser Pays -principle and lawyer's fees. With the current design of the CAA a case can only be brought by the Consumer Ombudsman. Hence, ad hoc licenses, within the meaning of the Commission Recommendation, for other entities or individuals are not available under Finnish law. The cases discussed here, are high profile cases targeting one or a few companies by one lawyer or law firm. Finnish courts have dealt with only a few cases with some characteristics of a class action under general procedural law. The Tobacco-cases tested the Finnish legal system with the stated goal of procuring precedent for further law suits on similar grounds. The first case was brought in 1988, involving one plaintiff, Aho, who'd been smoking from 1941 to 1986, when he was diagnosed

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<sup>4</sup> KKO 2001:65.

with throat cancer and chronic bronchitis. All courts found that Tobacco companies were liable for causing illness or injury, but failed to find a causal connection between Aho's throat cancer and his use of tobacco products.<sup>5</sup> The case turned on the question of whether the tobacco companies were liable for misleading consumers in advertising, despite general knowledge of the health risks relating to smoking. The widow of Aho successfully brought a claim against the Finnish government before the European Court of Human Rights, and was awarded 8 000 euros in damages and 2000 euros in costs for the prolonged proceedings (12 years) in the Finnish court system.<sup>6</sup>

The second strand of Tobacco –cases had four plaintiffs who had been smoking light cigarettes both as minors and adults. These cases involved tobacco advertising that allegedly led consumers to believe that light tobacco products were less harmful than traditional cigarettes. The plaintiff's lost in both district court and on appeal, but the request for appeal to the Supreme Court was withdrawn, after the parties had reached a settlement. The terms of the settlement have been kept confidential. At the time of settlement plaintiff's stood to incur liability for FIM 800 000 (roughly equivalent to 120 000 euros) in defendant's attorney fees, under the Loser Pays- Principle. <sup>7</sup> Professor Erkki Aurejärvi, the main attorney in all 22 years of litigation of the Tobacco-cases in Finland, did not profit from the litigation.

In May 2015, Professor Aurejärvi approached the Consumer Ombudsman on behalf of Mr. Glan, who had used nicotine products designed to help consumers quit smoking. The effort is made to prompt the Consumer Ombudsman to bring a class action against tobacco companies for the sale and promotion of electronic tobacco and other tobacco substitutes.

In 2016, the news broke that Nokian Renkaat Ltd., a leading tyre-manufacturer admitted to cheating in industry tyre-tests, by submitting tyres for testing that were of superior quality than those sold to customers. On 2.3.2016, Turre Legal Oy reportedly filed a group claim on behalf of customers that had bought tyres affected by manipulated tests.<sup>8</sup> The customers included consumers and businesses with an estimated damage 500-1500 euros. According to the leading attorney, the claim was calculated at a rate of a 30 % discount on the price of the tyres, which would reflect the price reduction between a top-testing tyre and an average-testing tyre. Turre Legal Oy reportedly represents 250 complainants, who had bought app. 300 sets of tyres over the last ten years. Nokian Renkaat Ltd. has publicly refused to negotiate with Turre Legal Oy. Turre Legal has reportedly transferred the bulk of the claims to the Consumer Disputes Board in November 2016, citing Nokian Renkaat Ltd's refusal to negotiate.<sup>9</sup> The Consumer Disputes Board had already received and decided claims from individuals, where compensation had not been recommended.

## 9. Impact of the Recommendation/Problems and Critiques, including

### a. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

The government bill cited the Swedish experience in the Skandia-case<sup>10</sup>, as an example of the type of impact desired for Finland. The consumers in question were not awarded compensation, only access to observe closed

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<sup>5</sup> KKO 2001:58

<sup>6</sup> Case Aho v. Finland, ECtHR judgment 16.10.2007, Application 2511/02. "On the date of entry into force of the Convention with respect to Finland, the compensation claim had been pending before the District Court for two years. The court gave judgment one year and some nine months later. It thus took it three years and eight months to examine the claim. The Court of Appeal gave judgment six years and some eleven months later and the Supreme Court a further two years and some five months later"(para. 44). "Notwithstanding the undoubted complexity of the case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement" (para.49).

<sup>7</sup> Saarikoski, Mikael- Ellonen, Jarmo: Kevytsavukeoikeudenkäynti Suomessa 2005-2010, Terveiden ja hyvinvoinnin laitos Raportti 18/2012, p. 18.

<sup>8</sup> Helsingin Sanomat 2.3.2016: Nokian Renkaita vastaan vireillä "joukkokanne" – asiantuntija epäilee rahastusta ja varoittaa tuhansien eurojen oikeudenkäyntikuluista.

<sup>9</sup> MTV Uutiset, 9.11.2016 Lakifirma sysää Nokian Renkaiden asiakkaiden ratkaisupyynnöt kuluttajariitalautakunnan ratkaistavaksi.

<sup>10</sup> An association representing 15 000 retirement plan-savers was given a license for a private class action claim against Skandia, whose internal corporate practices in restructuring the business had favored the mother company and cost the Swedish branch a loss of 1 billion SEK.

arbitration proceedings. Acting *en mass*, the class was able to induce a corporate entity to change their behaviour, a feat not likely accomplishable through individual redress.<sup>11</sup> In Finland, the Tobacco-cases have influenced Finnish tobacco legislation and in particular the restrictions the sale of electronic cigarettes and nicotine fluids. While the Consumer Ombudsman is an efficient institution in enjoining and curtailing unlawful trading practices<sup>12</sup>, the private class actions seem to seek social impact, rather than direct monetary compensation or gain.

#### b. Problems relating to access of justice/fairness of proceedings including

##### **Restrictions on access to justice negatively affecting collective redress**

Individuals have other means of redress for compensation either through Consumer Disputes Board free of charge or through general court.

##### **Time and burden of collective actions on courts and parties compared to non-collective litigation**

Time and burden is high, since class action is generally free of charge and low-risk.

##### **Risks of and examples for abusive litigation**

None

##### **Effective right to obtain compensation**

None/slim

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<sup>11</sup> HE 154/2006, p. 27.

<sup>12</sup> Katja Lindroos- Joonas Huuhtanen: Country report -Finland at pp. 344 in Study for the Fitness check of consumer and marketing law, European Union, May 2017.

## II. Sectoral Collective Redress Mechanism(s)– Class Action

### 1. Scope/ Type

#### a. Sectoral

The scope of class action, as regulated by the Class Action Act, is limited to consumer sales, specifically to disputes between a consumer and a trader for trading goods or services. Furthermore, certain financial services within the consumer sector are excluded from the scope of Class Action Act (CAA section 1). This is incompatible with the Commission Recommendation 2013/396/EU art. 1, which aims to facilitate access to justice, stop illegal practices and enable injured parties to obtain compensation in mass harm situations caused by *any* violation of rights under EU law. However, the financial services sector is heavily regulated in Finland and supervised by the Financial Supervisory Authority.<sup>13</sup>

The Class Action Act was originally intended to cover environmental damages in addition to consumer claims, but this approach was later abandoned, as various actors expressed concerns regarding the designation of a competent authority to act as plaintiff in these matters. Another cause for concern was the intention to grant a secondary license for organizations to act as plaintiff in claims based on environmental damages.<sup>14</sup>

#### b. Injunctive or compensatory or both

The scope of class action is not limited to either injunctive or compensatory claims.

### 2. Procedural Framework

#### a. Competent Court

For class actions, there are five competent courts, one in each appellate court district. These are the district courts of Turku, Vaasa, Kuopio, Helsinki and Oulu. The competent court out of the five aforementioned district courts is the one that is located within the appeal court district where the defendant would normally be obliged to answer to civil charges made against him (CAA section 3). This differs from the general forum arrangement to ensure, that the courts processing class actions possess the necessary resources and expertise. It was also anticipated that the courts would be processing only isolated class action cases each year, and as such focusing the cases to selected courts was the only way to enable to courts to establish functional procedural practices and routines.<sup>15</sup>

#### b. Standing

The Consumer Ombudsman (kuluttaja-asiamies) is the designated entity to act as a representative and initiate class actions in the consumer sector. As the general authority, whose objectives include the supervision that the Consumer Protection Law and other laws passed to protect consumers are observed, the Consumer Ombudsman can be considered to meet the requirements set in Commission Recommendation 2013/396/EU art. 4.<sup>16</sup>

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<sup>13</sup> For interviews by stakeholders and Financial Supervisory Authority on consumer protection in the financial services market see Katja Lindroos- Joonas Huuhtanen: Country report -Finland at pp. 344 in Study for the Fitness check of consumer and marketing law, European Union, May 2017.

<sup>14</sup> HE 154/2006, p. 31. Furthermore, the consumer sector was deemed the best choice for testing the collective redress mechanisms in practice, and the scope of the legislation could later on be extended to other sectors.

<sup>15</sup> HE 154/2006, p. 37.

<sup>16</sup> While The Consumer Ombudsman does not primarily resolve individual disputes where the consumer seeks reimbursement for an error with a product or service, he or she may aid the consumer as necessary in resolving individual disputes, if its resolution carries a significant impact on the interpretation of the law or the general well-being of consumer.

This arrangement also ensures, that the collective redress mechanisms are not used for abusive litigation, as such concerns were expressed during the legislation process.<sup>17</sup> As the Consumer Ombudsman is publicly funded, the risk that collective redress mechanisms would create an incentive for litigation that is unnecessary from the point of view of the interest of any of the parties involved, is greatly reduced.

#### c. Availability of Cross Border collective redress

In cases where the dispute concerns natural or legal persons from several Member States, the competency of the court is not determined by the Class Action Act, but would in most cases be determined by international treaties and community legislation.<sup>18</sup> For enterprises incorporated abroad and without a place of operation in Finland, the District Court of Helsinki would be the appropriate forum under Finnish consumer law.

#### d. Opt In/ Opt Out

##### **Principal availability of either/or/both options?**

In regards to the forming of the claimant class, Finnish legislation has adopted the Opt In approach, in accordance with Art. 21 of the Commission Recommendation. Furthermore, any member of the claimant class may leave the class at any time before the final hearing. After this, leaving the class is only allowed with the consent of the defendant (CAA section 15).

##### **Conditions for either type (prescribed by law or discretion of the judge?)**

General condition for Opting In is that the individual and the claimant class have a similar claim against a common defendant. Application to the class requires a signed notification to the Consumer Ombudsman, who acts as plaintiff in all class actions (CAA section 8). It is also her/his responsibility to determine each applicant's qualification to the class.

#### e. Main procedural rules

##### **Admissibility and certification criteria**

In Finland, the application of class action has the following requirements (CAA section 2):

- Several persons have claims against the same defendant, based on the same or similar circumstances
- The hearing of the case as a class action is expedient in view of the size of the class, the subject-matter of the claims presented in it and the proof offered in it
- The class has been defined with adequate precision

All of the aforementioned criteria must be met. The evaluation of the requirements is performed by the competent court at the same time when the claim is being processed. This is in accordance with Art. 8 of the Commission Recommendation 2013/396/EU. The admissibility of the case is in no way limited by the size of the group. However, the suitable size of the group would be determined through practical considerations.<sup>19</sup>

##### **Single or Multi-stage process**

In Finland, initiating a class action is a two phase procedure. In the first phase the Consumer Ombudsman files a claim as in any other civil process. This is processed by the court, which determines whether the requirements for class action set out in CAA section 2 are met. If the court determines that the case may be processed as a class action, the Consumer Ombudsman is notified. He will then assemble the class and present their claims to the court.

According to the Class Action Act section 5, the claim shall contain the following information:

- the class to which the action pertains (definition of the class and all the known individual members of the class)

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<sup>17</sup> HE 154/2006, p. 16.

<sup>18</sup> HE 154/2006, p. 38

<sup>19</sup> HE 154/2006, p. 18.

- the known claims
- the circumstances on which the claims are based
- the basis on which the case should be heard as a class action (as detailed in CAA section 2)
- the circumstances, as known to the plaintiff, that are relevant to the hearing of the claims of given class members only
- in so far as possible, the evidence that the plaintiff intends to offer in support of the action, as well as the facts that the plaintiff intends to prove with each item of evidence
- a claim for the compensation of legal costs, if the plaintiff deems this necessary
- the basis for the competence of the court (in accordance with CAA section 3)

After the time for class application has expired, the Consumer Ombudsman has one month to submit a supplemented application for summons to the court. This supplemented application for a summons must indicate the names and addresses of the class members, the particulars of their claims and, if necessary, supplemented grounds for the claims.

#### **Case-management and deadlines**

Unless the claim is dismissed as a class action, the court must notify each member of the class of the start of the class action process. This should be done by mail or email. If this not possible, the notification on the class action may be posted in one or more newspapers or other suitable media. In addition to this notification, the court must set a deadline for Opting In, which may later be extended by the court when necessary (CAA section 6).

#### **Expediency (particularly in injunctive cases)**

Consumer Ombudsman may request a preliminary injunction issued by the Market Court, which may be reinforced by a notice of a conditional fine. A temporary injunction may be considered in a written procedure if necessary (Market Court Proceedings Act chapter 5 section 9).<sup>20</sup>

#### **Evidence/discovery rules**

The Class Action Act does not contain any specific provisions on the use of evidence in class action procedure. However, the expected use of evidence is still taken into the account at the time of evaluating the claims admissibility as a class action (see CAA section 2). Particularly cases that are expected to require varied individual evidence from each member should be processed individually instead of a class action.<sup>21</sup>

#### **Interim measures**

Consumer Ombudsman may request a preliminary injunction issued by the Market Court. This injunction may be reinforced by a notice of a conditional fine. If the violation of consumer protection or marketing law is not legally significant, the Consumer Ombudsman may also issue this injunction independently. If done so, the injunction must be brought to the Market Court within three days or it will cease (Consumer Ombudsman Act, section 7).<sup>22</sup>

#### **Court directed settlement option during procedure**

The Class Action Act does not contain any specific provisions on court directed settlement during the class action procedure. As the general provisions on civil procedure apply to class actions, general preconditions for settlement are evaluated at the start of the process (CJP Ch. 5:19), and as a plaintiff, the Consumer Ombudsman may accept or negotiate a settlement on behalf of the claimant class at any time.<sup>23</sup> The settlement shall then be affirmed by the ruling court in accordance to the provisions set in CJP Ch. 20.

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<sup>20</sup> Laki oikeudenkäynnistä markkinaoikeudessa 100/2013.

<sup>21</sup> HE 154/2006, p. 20. This does not mean that individual evidence may not be presented at all. For example, individual evidence on extent of damages could be presented in a class action lawsuit, where the rest of the legal facts are common for the whole class.

<sup>22</sup> Laki kuluttaja-asiamiehestä 40/1978.

<sup>23</sup> HE 154/2006, p. 22.

## In case of out of court settlements: judicial control

Judicial control over out of court settlements in class actions belongs to the Consumer Ombudsman.

### 3. Available Remedies

#### a. Type of damages

There are no specific limitations as to damages covered by class actions. However, Finnish law restricts damages to actual damages.

#### b. Allocation of damages between claimants for compensatory claims/ distribution methods

The CAA section 16 is phrased in a way that requires the ruling court to identify and specify every member of the claimant class and, for example, their individual compensation. For compensatory claims, the allocation of damages between the claimants is based on the demands of the claim (CAA section 5). As such, it is not possible to file a claim based on a single figure, and divide this between the members of the class afterwards.<sup>24</sup>

#### c. Availability of punitive or extra-compensatory damages and their conditions

Punitive damages are not available under Finnish law.

#### d. Skimming-off/ restitution of profits

The Consumer Ombudsman acts ex officio and is funded by the government.

#### e. Injunctions

The Consumer Ombudsman may issue injunctions on pain of fine.

#### f. Possibility to seek an injunction and compensation within one single action

Yes, in theory. In practice, the Consumer Ombudsman negotiates compensation and may, if necessary (not voluntary compliance) issue an injunction.

#### g. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

No, since Consumer Ombudsman is recognized as the only plaintiff under the Class Action Act.

#### h. Limitation periods

General statute of limitations are discussed above.

### 4. Costs

#### a. Basic rules governing costs and scope of the rules

In Finland, the general rules governing costs of legal process, as specified in the Code of Judicial Procedure Ch. 21 apply to class actions.

#### b. Loser Pays Principle (and exceptions from it)

According to the Code of Judicial Procedure Ch. 21 section 1, the loser is accountable for all the necessary and reasonable legal costs. The exception from this general rule in class actions is that the members of the claimant class are not held personally accountable for any legal costs (CAA section 17). As such, the legal costs are distributed between the Consumer Ombudsman and the defendant as determined by the Code of Judicial Procedure. A Member of the class can, however, be held accountable for any costs to the defendant caused by said members infringement of the rules provided in the Code of Judicial Procedure Ch. 21 section 5, such as failing to appear in court, or providing false information as part of testimony. The member of the class is responsible for extra costs incurred by such action.

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<sup>24</sup> HE 154/2006, p. 48

## 5. Lawyers' Fees

The fees are born by the parties according to the Loser Pays Rule. However, since the Consumer Ombudsman is the official plaintiff, members of the class are not obligated to pay lawyer's fees, if the case is lost. Thus, the lawyer fees of the defendant are recoverable from the state if the class action is unfounded.<sup>25</sup>

## 6. Funding

The Class Action Act does not provide any specific restrictions to the funding of class actions, or provisions on conditions or control of third party funding as detailed in Arts. 15 and 16 in the Commission Recommendation 2013/396/EU. However, as the Consumer Ombudsman acts as a plaintiff in all class action, and the individual claimants are not held accountable for any legal costs, this has not been seen as a major problem.

## 7. Enforcement of collective actions/settlements

There are no specific provisions on enforcement of collective actions/settlements.

There are no specific provisions on cross-border enforcement, however, the Consumer Ombudsman may persuasively utilize its official capacity to induce compliance.

## 8. Number and types of cases brought/pending

No class action claims have been filed by the Consumer Ombudsman (June 2017).

## 9. Impact of the Recommendation/Problems and Critiques

### a. Consequences where no collective redress mechanism is available

The Consumer Ombudsman has general jurisdiction, and has successfully negotiated contract terms also in industries regulated by sector-specific regulation that are outside the scope of the Class Action Act. This has reduced the need for sector-specific collective redress mechanisms in the Finnish legal system.<sup>26</sup>

### b. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

The Class Action Act has been criticized as being too lenient, the major problem being that the competence to file a class action claim is exclusive to the Consumer Ombudsman, who has so far favoured a more conciliatory approach to mass harm situations. It has been proposed, that the competence should be expanded to both private citizens and interest groups, and the scope of collective redress mechanisms be expanded to include environmental damages. It has also been pointed out on several occasions, that the fact that the Class Action Act has not been applied even once since it was enacted in 2007, is proof enough of its inefficiency<sup>27</sup>

Other criticism has been pointed at the swiftness of the available collective redress mechanisms. As many frauds directed at consumers operate on a very limited time frame, the applicability of either class act or group complaint is only theoretical.<sup>28</sup> Class action has also been viewed as an extremely expensive approach, estimated costs of extensive cases easily reaching hundreds of thousands of euros, and consumer interest groups have pointed out that the Competition and Consumer Authority likely lacks the necessary resources for such an undertaking.

As to the inefficiency of the Class Action Act, the Consumer Ombudsman has pointed out, that while it is true that no class action claims have been filed as of yet, the current legislation does have a major preventive function, and that the authorities have had considerable success in reaching desirable outcomes trough

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<sup>25</sup> HE 154/2006 p. 23.

<sup>26</sup> On the general jurisdiction of the Consumer Ombudsman, see. *Study for the Fitness Check of EU consumer and marketing law*, Study to support the Fitness Check of EU Consumer law – Country report FINLAND p. 344.

<sup>27</sup> Consumer organizations such *Finnish Consumer Association* (Kuluttajaliitto) have been particularly keen on these issues. see. [https://www.kuluttajaliitto.fi/wp-content/uploads/2016/09/18\\_2012.pdf](https://www.kuluttajaliitto.fi/wp-content/uploads/2016/09/18_2012.pdf).

<sup>28</sup> Competition and Consumer Authority publication, p. 36. <https://www.kkv.fi/globalassets/kkv-suomi/julkaisut/selvitykset/2016/kkv-selvityksia-1-2016-kuluttajajuhijaukset.pdf>

negotiations between the conflicted parties.<sup>29</sup> Considering this, and the fact that the primary function of the Competition and Consumer Authority is to observe that traders behave in accordance with existing legislation, instead of resolving individual disputes, the authorities have shown reluctance at changing their stance on the use of collective redress mechanisms.

Other interest organizations have pointed out, that the lack of active use of the available collective redress mechanisms implies that both the Competition and Consumer Authority and the Financial Supervisory Authority are functioning efficiently in providing protection and preventing mass harm situations. As such, the need for collective redress mechanisms in Finland is relatively low.<sup>30</sup> Particularly the business sector has expressed opinions that collective redress mechanisms are generally ill-suited for Finnish legal system, and that they have a negative impact on Finland's competitiveness in the international market.<sup>31</sup>

### c. Incompatibilities with the Recommendation's principles

While the Finnish Class Action Act is in accordance with many provisions of Commission Recommendation 2013/396/EU, such as the Opt In approach, Loser Pays principle and limiting representative actions to designated non-profit making character, there are some major incompatibilities, the most noteworthy being the scope of the available collective redress mechanisms.

While the Commission Recommendation aims to facilitate collective redress mechanisms to all violations of rights under the EU law, Finnish legislation restricted the use of collective redress to consumer sector exclusively. This approach was adopted in the late stages of the legislation process, as the consumer sector was considered the best option for testing the performance of collective redress mechanisms in Finnish legal system.<sup>32</sup> As the application of these mechanisms in the consumer sector has been reserved at best, the discussion on expanding the scope of the Class Action Act to environment damages has not yet lead to legislative action.

Other notable differences are the lack of specific provisions on third party funding of collective actions or collective alternative dispute resolution and settlements. While these may be viewed as incompatibilities, it is worth noting that no widespread criticism has been directed at the Finnish legislation in these areas. This may be due to the authority centric approach to representation, as well as the general procedural provisions on civil process that also apply to collective redress mechanisms.

### d. Problems relating to access of justice/fairness of proceedings including

#### **Time and burden of collective actions on courts and parties compared to non-collective litigation**

In the consumer sector, a court proceeding can be a cumbersome and costly process, especially considering that many of the cases are based on interests of 1500 euros or less. This reduces the consumer's willingness to seek redress through courts, especially in the light of the Loser Pays principle, when there is even the slightest chance of losing the case. As such, without the availability of collective redress mechanisms, consumer's socio-economical position might pose an obstacle for access to justice. Due to the fact that the Consumer Ombudsman acts as plaintiff in all class action lawsuits, the availability of collective redress mechanisms can be seen to improve the overall access to justice. As the ruling of the competent court is binding to all the members of the class, application of collective redress mechanisms is reasonable from the process economical point of view as well.<sup>33</sup>

The lack in pursuit of collective actions in practice is likely due to the complexity of and time-consuming nature of such cases. The Consumer Ombudsman has preferred to use non-litigious methods for consumer protection.

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<sup>29</sup> See the case involving Caruna Ltd. the owner of electricity transmission network in Finland, detailed in the *Study for the Fitness Check of EU consumer and marketing law*, Study to support the Fitness Check of EU Consumer law – Country report FINLAND, p. 363.

<sup>30</sup> Central Chamber of Commerce (Keskuskaupakamari), <https://kauppakamari.fi/2013/06/12/eulta-siedettavaryhmakannesuositus/>

<sup>31</sup> Dan Frände etc. at *Prosessioikeus*, 2017, p. 1290.

<sup>32</sup> HE 154/2006, p. 31. It was considered, that the collective redress mechanisms could later be expanded to environmental damages if the experiences from the consumer sector proved favorable.

<sup>33</sup> HE 154/2006, p. 12-13.

When the application of class action is considered unsuitable for a particular case, consumers may file an individual complaint to the Consumer Disputes Board free of charge.

**Risks of and examples for abusive litigation**

None

**Effective right to obtain compensation**

None/slim

# III. Sectoral Collective Redress Mechanism(s) – Group Complaint

## 1. Scope/ Type

Group complaints, based on the Consumer Disputes Board Act, are strictly restricted to the consumer sector. This form of collective redress resembles the afore-discussed class action in many ways, with a few major differences.

### **Injunctive or compensatory or both**

Compensatory claims may be processed as a group complaint. The Consumer Ombudsman has jurisdiction to grant injunctions or seek one from the Market Court.

## 2. Procedural Framework

### a. Competent Court

Group complaints are directed at the Consumer Disputes Board, which is a neutral and independent expert body whose members represent consumers and business in a balanced way. The Consumer Disputes Board is not a monitoring authority, and the decisions reached by the Board are only recommendations concerning the resolution of a dispute. As such, the Board's decisions are not binding in the same way as a court ruling.<sup>34</sup> For this same reason, the provisions regarding the group complaint are intentionally left to allow more flexibility.<sup>35</sup>

### b. Standing

As in the case of group complaints, the Consumer Ombudsman is the designated entity to act as a representative and initiate group complaints on behalf of multiple consumers, who have or may be expected to have similar demands against a business in the same matter. As to the qualifications under Art. 4 of the Recommendation 2013/396/EU, Finland has implemented only the option in Art. 4(7) without alternatives.

### c. Availability of Cross Border collective redress

There are no specific provisions for Finland relating to cross border collective redress. The Consumer Disputes Board will hear any claim brought by a consumer and based on a consumer sale in Finland.

### d. Opt In/ Opt Out

Neither. The application of group complaint is solely under discretion of the Consumer Ombudsman, who may on his or her own initiative file a claim to the Consumer Disputes Board. A group complaint can, for example, be filed if multiple consumers have bought a product with the same design or manufacturing defect, or a service that does not correspond to what has been agreed upon.

### e. Main procedural rules

### **Admissibility and certification criteria**

The jurisdiction of the Consumer Disputes board is restricted to Business to Consumer transactions. The Consumer Disputes Board follows written procedure.

## 3. Available Remedies

Recommendation of payment of compensation to a specified amount. Usually a price reduction, but sometimes the full price.

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<sup>34</sup> Approximately 80% of businesses comply with the Board's decisions, however. <http://www.kuluttajariita.fi/en/index/valituksenteko.html>. Published 12.7.2013.

<sup>35</sup> HE 115/2006. p. 9.

#### f. Availability of punitive or extra-compensatory damages and their conditions

Not available under Finnish law.

#### g. Skimming-off/ restitution of profits

Not applicable to these proceedings.

#### h. Injunctions

Not available in these proceedings.

#### i. Possibility to seek an injunction and compensation within one single action

No.

#### j. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

No.

### 4. Costs

The Consumer Disputes Board handles cases free of charge. Activities are funded through the state budget. As a rule, parties are responsible for covering any costs they may incur, however (Consumer Disputes Board Act 2 section 19). These costs are generally much smaller than in legal proceedings.

#### Basic rules governing costs and scope of the rules

Parties bear their own costs in Consumer Dispute Board proceedings.

### 5. Lawyers' Fees

Not applicable, since both Consumer Ombudsman and Consumer Disputes Board are publicly funded.

### 6. Funding

Not applicable to group complaints.

### 7. Enforcement of collective actions/settlements

The Consumer Disputes Board handles most of the consumer complaints and effectively induces businesses to comply with non-binding rulings favouring compensation. The Competition and Consumer Authority publishes a black list of traders who do not comply with the Consumer Disputes Board's recommendations.

### 8. Number and types of cases brought/pending

There has been one reported instance where group complaint has been used, in 2011. The claims were based on misleading marketing information regarding apartment deals, made by a construction company Peab Ltd. These claims were dismissed in the Consumer Disputes Board in 2012.

While there have been no other reported cases of group complaints having been initiated, the authorities have stated that just the availability of such collective redress mechanisms has increased businesses' willingness to negotiate, and as such has helped to reduce the need to resort to such mechanisms.<sup>36</sup>

### 9. Impact of the Recommendation/Problems and Critiques

As a collective redress mechanism, group complaint and class action possess many similar incompatibilities with the Commission Recommendation 2013/396/EU. As with class action, the group complaint is similarly restricted

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<sup>36</sup> Case of Caruna Ltd. electricity transfer price increases in the early 2016 was particularly publicized, due to the large number of individuals affected. The Consumer Ombudsman was reported to having considered the option of filing a class action claim, but the parties reached an acceptable agreement through extensive negotiations. see: <https://www.kkv.fi/en/current-issues/press-releases/2016/18.2.2016-caruna-and-the-consumer-ombudsman-reach-a-negotiated-solution--caruna-will-phase-in-price-increases-over-a-longer-period-of-time/>

to consumer sector exclusively, as is the jurisdiction of the Consumer Disputes Board. Overall, the provisions on group complaint are relatively flexible. For instance, the Consumer Disputes Board Act does not contain any specific provisions on alternative dispute resolution mechanisms regarding group complaint, and yet the Consumer Ombudsman has had considerable success in negotiating acceptable terms between the conflicted parties, as was evident in the case of Caruna Ltd.<sup>37</sup>

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<sup>37</sup> <https://www.kkv.fi/en/current-issues/press-releases/2016/18.2.2016-caruna-and-the-consumer-ombudsman-reach-a-negotiated-solution--caruna-will-phase-in-price-increases-over-a-longer-period-of-time>

## IV. Information on Collective Redress

### 1. National Registry

As no class actions have been initiated at the time of this report (June 2017), there is no national registry specifically for collective redress actions. However, should the need arise, it is likely that any information on collective redress actions would be published through the web-site of the Competition and Consumer Authority. The Competition and Consumer Authority publishes all decisions of the CDB and Consumer Ombudsman on its web-site.

### 2. Channels for dissemination of information on collective claims

The Competition and Consumer Authority, including the sites of the Consumer Disputes Board and Consumer Ombudsman's Office is an effective channel for dissemination of information. The Consumer-magazine is also published by the Competition and Consumer Authority.

### I. Case summaries

<b>Case name</b> Peab Ltd.	<b>Keywords</b> Consumer, dispute, marketing, construction
<b>Reference</b> <a href="https://www.kkv.fi/ajankohtaista/Tiedotteet/kuluttajavirasto/2012/19.4.2012-ryhmavalitus-peab-oyta-vastan-kaatui-kuluttajariitalautakunnassa/">https://www.kkv.fi/ajankohtaista/Tiedotteet/kuluttajavirasto/2012/19.4.2012-ryhmavalitus-peab-oyta-vastan-kaatui-kuluttajariitalautakunnassa/</a>	<b>Summary of claims</b> The claim was made on behalf of 11 shareholders, who demanded rabate on the apartment deals made with Peab Ltd.. The claims were based on misleading information provided during the marketing process, specifically the information on condominium payments. The individual claims varied between 6000-9000€, depending on the size of the apartment.
<b>Subject area</b> Consumer	<b>Findings</b>
<b>Dispute resolution method</b> Group Complaint	The Consumer Disputes Board came to a conclusion, that the information provided during the marketing process was only an estimate, and therefore not to be taken exactly.
<b>Court or tribunal</b> Consumer Disputes Board	<b>Outcomes</b>
<b>Cross-border character/implications, if any</b>	The board concluded that there had been no infringement, and therefore no compensation was recommended.
<b>Opt-in/out</b> Neither, see 19 q	

<b>Type of funding</b> None	
<b>Costs</b> Publicly funded	
<b>Abusive litigation</b> no	
<b>Case name</b> Caruna Ltd. <b>Reference</b> <a href="https://www.kkv.fi/en/current-issues/press-releases/2016/18.2.2016-caruna-and-the-consumer-ombudsman-reach-a-negotiated-solution--caruna-will-phase-in-price-increases-over-a-longer-period-of-time/">https://www.kkv.fi/en/current-issues/press-releases/2016/18.2.2016-caruna-and-the-consumer-ombudsman-reach-a-negotiated-solution--caruna-will-phase-in-price-increases-over-a-longer-period-of-time/</a> <b>Subject area</b> Consumer	<b>Keywords</b> Consumer, dispute, electricity, pricing, alternative dispute resolution  <b>Summary of claims</b>  Caruna Ltd., the owner of electricity transmission network in Finland, after purchasing the network from the government in 2014, informed their clients of a rise in the basic electricity transmission fee by 22-27%. Caruna claimed raised costs due to necessary investments in the network. From consumer's point of view, such a substantial one time increase was considered unreasonable.
<b>Dispute resolution method</b> Settlement  <b>Court or tribunal</b> Consumer Ombudsman	<b>Outcomes</b>  Settlement: yes  Remedy: The Consumer Ombudsman intervened and reached a settlement with Caruna, to reduce the raise by 25 % in 2016, refrain from raises in 2017, and keep future raises within 10-15% stretched over a longer period of time, and calculated on the consumer's earlier fee, including VAT.
<b>Cross-border character/ implications, if any</b> None	
<b>Opt-in/out</b> N/A	
<b>Type of funding</b> None	
<b>Costs</b>	

N/A	
<b>Abusive litigation</b> No	

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