

Cross-Border Class Actions

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The European Way

edited by

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Published with the support of the European Commission

ISBN (print) 978-3-86653-231-1

ISBN (eBook) 978-3-86653-967-9

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.dnb.de>.

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Production: Karina Hack, Munich. Printing and binding: AZ Druck und Datentechnik GmbH, Kempten. Printed on acid-free, non-ageing paper. Printed in Germany.

Foreword

The rise in multi-party litigation and claims for collective redress is challenging the traditional mechanisms of civil litigation in Europe and worldwide. The recent recast of the Brussels I Regulation – an instrument designed primarily for individual litigation – has provided the impetus for an examination as to whether the legislative instruments of EU private international law – and the institutional mechanisms of judicial cooperation – can effectively and efficiently address the challenges that collective litigation poses for European civil justice. Can the Brussels I jurisdictional system be used to handle collective redress litigation? Should entirely new rules of private international law be designed? What should be the territorial reach of collective redress mechanisms within and outside the EU? Should one law or multiple laws apply? What is the role of arbitration to settle collective claims? Should the EU adopt different rules to deal with cross-border redress in specific fields, such as competition law, financial regulation and consumer protection?

These questions, amongst others, are examined in this book. Taken together, the papers in this volume offer a comprehensive effort to cover the various issues pertaining to European judicial cooperation in collective redress litigation. The division in three parts corresponds to the emphasis in the respective papers: the papers by Hess, Nuyts, Fentiman and Michaels discuss the conflicts aspects of collective redress in general; the papers by Athanasiou, Gorywoda, Karayanni and Radicati renew the policy discussion on collective redress and the mechanics of class actions; the papers by Hellner, Posnow, Gonzalez/Anovero, Kapetanaki and Corneloup present case studies in the most characteristic fields involving EU market regulation, i.e. competition, consumer and securities law. They are preceded by an introductory concept paper discussing market regulation and the policies underlying EU private international law.

This is the culmination of a two-year international research project coordinated by the Unit for Private International Law of the University of Brussels (Université Libre de Bruxelles) and the Laboratory for Private International Law, Commercial Law and Comparative Legal History of the University of Cyprus, led respectively by Professor *Arnaud Nuyts* (the project's director) and Professor *Nikitas Hatzimihail* (the project's co-director), with the participation of a group of experts coming from other leading universities in Europe and in the United States.

The project was funded by the European Commission. The first phase of the project involved background research by Lukasz Gorywoda, research fellow at the University of Brussels and led to a series of background papers, the identification of issues that would benefit the most from further research and the assignment of paper topics among the group's experts. An initial meeting of the group took place in Cyprus in late September 2011 and was accompanied by a public workshop aimed at acquainting the local audience with these themes. The project culminated in an international conference held in Brussels on 27 April 2012, where the experts presented communications based on the papers contained in this volume. In the published version of some of these contributions, we have sought to take account of developments up to the June 2013 Commission Communication on collective redress and the Directive Proposal on damages for competition violations.

Our academic collaborators in this project have included *Richard Fentiman* (Cambridge), *Burkard Hess* (Heidelberg), *Horatia Muir Watt* (Sciences Po Paris), *Alegria Borrás*, *Joaquim Forner*, *Cristina Gonzalez* (Barcelona), *Anna Gardella*, *Luca Radicati di Brozolo* (Catholic University of Milan), *Louise Ellen Teitz* (Hague Conference on Private International Law), *Michael Karayanni* (Hebrew University, Jerusalem), *Ralf Michaels* (Duke), *Lia Athanassiou* (Athens), *Aurelia Colombi-Ciacchi* (Groningen), *Maciej Szpunar* (Silesia-Katowice), but also *Ioannis Voudouris* (Cyprus), *Lukasz Gorywoda*, *Natalia Kapetanaki*, *Malgorzata Posnow-Wurm* (Brussels). We wish to acknowledge ECtHR Judge *André Potocki*, ECJ Judge *George Arestis*, *Alexander Layton QC*, *Dean André Puttemans* and *Salla Saastamoinen* for their own contributions to this project. The administrative help of *Fleur Goddefroid* was vital to the successful conclusion of the project, as was the moral support and practical advice of *Carole Moal-Nuyts* and *Maria-Tsampika Lampitsi*.

The research project was financed through the European Commission's Framework Program for Judicial Cooperation in Civil Matters. The general objective of this program is to promote judicial cooperation in civil matters, aiming in particular at improving access to justice, promoting mutual recognition of judicial decisions, advancing the necessary harmonization of legislation, and eliminating obstacles created by the disparities in civil law and procedure.

Arnaud Nuyts & Nikitas Hatzimihail
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