

Feature

KEY POINTS

- The European Commission is planning the introduction of European class action for consumers.
- Substantive and procedural (litigation) law are not harmonised in the EU member states.
- European class action will not create new claims. It will only provide an effective enforcement. Given the differences in national laws and language barriers the Commission will face significant problems.

Authors Peter Mattil and Vanessa Desoutter

Class action in Europe: comparative law and EC law considerations

INTRODUCTION

Class action is a horror for the US industry: proceedings which allow individuals to file unlimited claims for payment for a whole class of claimants through legal action.¹ Despite the dubious excessive use it does permit small investors to join legal proceedings without the risk of incurring legal costs. Due to the pressure of mass class action and peculiarities in US procedural law these claims are often settled.²

At present the European Commission is working on a study to introduce European class action.³ The project is currently at the stage of obtaining expert reports and opinions. A survey carried out by the Commission showed that more than 70 per cent of EU citizens would exercise their rights with other claimants in the event of joint proceedings.⁴ The possibility of group action would enable inexpensive legal action and would also act as a deterrent.⁵

The Commission has declared that it will not be copying the US system, will avoid abusive and excessive practices and will take account of the 27 legal systems of member states that have developed over time. The instrument of class action will not confer any new rights or create new claims but will only provide new ways of asserting these.

Some European states already have proceedings which are similar to class action, others have introduced compromises, such as legal action taken by associations, although most EU member states do not have any such instruments. There is absolutely no regulation at EU level. The Commission has set itself a difficult task: apart from the language barriers, it will need to take account of separate legal systems which are not harmonised. There are significant differences in the scenarios that can trigger claims under substantive law, eg liability for statements made in a prospectus or made in the secondary market in the securities sector, limitation rules (from six months to 30 years) and procedural law. Most

The European Commission is working on a study to introduce European class action. This article describes the current legal situation in the US and selected European Union ('EU') states on the existence of collective actions, examines the respective competence of the EU legislator and considers several aspects which, in the authors' opinion, are necessary to effectively implement class action in the EU. In the process, the contribution is restricted to financial markets law.

states are at an experimental stage in terms of collective actions.⁶

DEFINITIONS

A distinction is generally made between four main types of 'mass class action', each of which has variations:

Class action (US type): The distinctive feature of this system is that the lawyer can initiate proceedings with a single plaintiff. The claim and the class of people also affected are defined in the statement of claim. If he is designated as the leading plaintiff by the court, he conducts the proceedings as a representative of a whole class of claimants. The individual plaintiff agrees a conditional fee with the lawyer which then also applies to everyone else (after being admitted by the court). It is only necessary to estimate the damage suffered in the statement of claim, a fixed amount does not need to be stated. All other persons affected are automatically included in the action unless they expressly opt out.^{7 8}

Group action: In this case an exactly defined number of people or an individual (by other parties' claims being assigned) can conduct joint legal actions in one procedure. In contrast to the US class action, claims for individually stated amounts are filed. There are different versions of group action.⁹

A judgment or a settlement does not have a binding effect on people who do not participate in the proceedings.

Representative action: This is filed by an association, an authority or an individual. Its aim might be to receive damages or to achieve injunctive relief (eg general business

conditions). Most of the injured parties do not become party to the legal dispute. Proceedings such as this may only be conducted by approved consumer associations or similar organisations.¹⁰ Depending on the elaboration, a judgment can serve as a basis for claims for damages, eg if a court discovers that a fee was wrongly charged.

Test case procedure: With this type of procedure, each claimant must file an individual action. On application, a leading decision can be taken, eg whether a prospectus or capital markets information is incorrect. All pending actions are suspended until a final and absolute decision has been made and are then continued individually, based on the binding decision. Only the claimants who file action benefit from a favourable decision. It does not result in a court order for the payment of damages.

Injunction proceedings (UKlaG – Das deutsche Unterlassungsklagengesetz): The law, which is based on an appropriate EU directive, permits specific associations to file legal action for injunctive relief in case of unlawful general business conditions or practices contrary to Consumer Protection.¹¹ As injunction proceedings do not result in damages being paid to consumers, it is only mentioned here for the sake of completeness.

The same applies to mediation, ombudsman proceedings and similar procedures.^{12 13}

There are many ways of designing class actions. The EU Commission will need to find a solution which takes account of national peculiarities and guarantees effective legal protection.

THE LEGAL SITUATION IN SELECTED EU STATES

Germany

Germany has special laws on liability in the case of faults in prospectuses¹⁴ as well as strict court rulings if incorrect investment advice is given.¹⁵ Where claims for damages or rescission are filed, each and every injured party must enforce his claim in court as a basic principle. There are only a few exceptions to this rule which have showed themselves to be unsuitable in practice.¹⁶

► *Investor Test Case Act (KapMuG)*¹⁷: In the event that incorrect capital markets information is given or where a matter is covered by the German Securities Acquisition and Takeover Act, a leading decision can be taken by the court on the prerequisites creating or barring a claim or on the clarification of legal issues upon application by at least ten plaintiffs. This procedure has little in common with class action because each entitled party must bring a legal action – which is suspended until the court decision becomes legally effective – if the entitled party wants to profit from a favourable decision.¹⁸ Only investors who purchased securities or shares in assets within the first six months after publication of the prospectus may assert prospectus liability claims at all (preclusion period).¹⁹ Claims become time-barred within one year after knowledge, and three years after publication of the prospectus at the latest.²⁰ Therefore the injured investors cannot afford to wait until a leading decision has been passed to pursue their claims in court.

► *Company law*: According to s 148, 147 of the German Stock Corporation Act, a shareholder minority, the shares of whom represent 1 per cent of the share capital or the proportionate amount of €100,000, may apply for permission to file claims for compensation to be paid to the company in their own names. This action, which can be directed at the management board or supervisory board, only aims at payment to be made to the company.²¹ Hence this is not a collective action filed by the shareholders themselves.

Austria

The class action²² provided for in Austrian law is a consolidation of claims by a plurality of investors in one action who assign their claims to the *Verein fuer Konsumenteninformation* (VKI – Association for Consumer Information) which conducts the proceedings. The investors themselves do not appear as party to the legal dispute. In the past, many of the class actions were conducted with the aid of private companies which financed the legal proceedings and then received an appropriate share of the success if the case was won (which is prohibited for lawyers, as it is in Germany).²³ Unless the action is financed, there is a risk to the investor of incurring litigation costs which means that the losing party pays all of the costs of the legal dispute. A judgment is only binding on those persons who have assigned their claims to the VKI (opt-in principle).

As Austria does not have the same short limitation periods as Germany, an injured party can assert his claims himself, if appropriate up to three years after gaining knowledge of the claim at the earliest.²⁴ On 8 January 2008, group action was due to be introduced (but has since been suspended) according to s 619 ff of the Austrian Code of Civil Procedure. At least three injured parties who filed at least 50 claims based on the same points of fact and law against the same person could apply for this. However, the group action was restricted to determining the points of fact and law which the claims had in common.

UK

The UK has had group litigation since 2000.²⁵ One party can apply for a group litigation order ('GLO') or the court can order this. The application contains a summary of the request for a legal remedy, the number of parties affected and the common legal issue. If a GLO is issued, a group register is set up containing the necessary information, including the registration deadline among other things.²⁶ Only the claimants entered in the register (opt-in) are bound by the judgment. The court appoints a lead solicitor whose action is conducted as a test case procedure. Group litigation is thus a special procedure under procedural law for individual actions. Hence,

this bears greater resemblance to the German investor test case procedure. Claims, eg arising from liability for statements made in a prospectus, only become time-barred after six years which means that the pressure to bring action is not the same as in Germany.²⁷

Netherlands

A procedure for the collective settlement of mass action claims has been in place since August 2005.²⁸

The Act on Collective Action (2005) enables a legally binding group settlement to be reached between the damaging party and a foundation or an association with full legal capacity representing the interests of the injured parties based on its rules of association.²⁹ The agreement must meet minimum requirements, eg define the group affected, specify the requirements for entitlement, the manner of damages etc. An agreement is reached with the adverse party out of court. Upon application by one of the parties, the agreement reached may be declared binding on all damaged parties.³⁰ The damaged parties may opt out if they do not want to be bound by the judgment.³¹

Sweden

Since 1 January 2003, the laws of Sweden have provided for group action.³² This permits a private individual or an association to bring an action for a defined 'class' (similar to the US). The action can be aimed both at injunctive relief and at the payment of damages. The group (class) action is examined by the court to determine whether the plaintiff is suitable to represent the group. The group action must be superior to any other method of settling the matter. The class of injured parties must be defined in the statement of claim. Other claimants affected must expressly register themselves as a member of the class (opt in).³³ A judgment is binding only on these parties. If the action is dismissed, the plaintiff representing the class pays the costs. The other injured parties of the group do not have any risk of litigation. Sweden also permits a conditional fee to be agreed with the lawyer within certain limits.³⁴ For example, the lawyer can double his hourly fee if the case is won and completely waive it if it is lost. However, it is not possible to agree

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the percentage share which is customary in the US (up to 30 per cent).³⁵

Spain

Group action, which has been in force since 2001, is possible under the Spanish code of civil procedure.³⁶ Consumer associations have the right to claim collective damages in court. A group of injured parties can also file a group action. All of the potentially affected parties are informed by notification/call and requested to take part. The legal force also extends to parties affected who do not participate in the proceedings. In the case of a defined or definable group of injured parties, the judgment must provide details of the scope and amount of the damages awarded. Spain also has an important exception: it is not possible to claim for losses arising from securities.³⁷

France

Recognised associations can also pursue claims for damages in the name of consumers.³⁸ The association must be mandated by at least two injured parties (it is expressly prohibited to publicly call or advertise for injured parties). Furthermore, an associations' action exists specifically for investors.³⁹ This procedure empowers recognised investor associations to also file claims for the individual losses of identifiable investors. At least two express mandates are required in this case and the ban on advertising applies. The court, however, can allow the association to publicly prompt shareholders to mandate them.⁴⁰ Legal action is brought only on behalf of shareholders who have expressly granted a mandate.⁴¹ The judgment is binding only on these. These associations' actions are scarcely used in practice.⁴² Attempts to incorporate 'class action à la française' have failed to date.⁴³

Portugal

The laws of Portugal have mass class action with an opt-out principle.⁴⁴ Hence, investors must expressly declare that they do not want to take part in the proceedings. An injured party can institute proceedings.⁴⁵ After admission of the 'popular action' (the court examines the legitimacy of the plaintiff) those potentially affected are publicly informed about the action. Silence implies their consent

to participation. The judgment is binding on those who have not expressly opted out. In the judgment the court decides on the respective amount which is to be paid to the injured participants; for unidentified or unidentifiable participants, the court can specify a total amount which is to be distributed.⁴⁶

Belgium, Cypress, Denmark, Greece, Hungary, Ireland, Luxembourg, Malta, Slovakia and Slovenia do not have any procedures in place for bringing collective action. However, it is currently under discussion in some countries.

REQUIRED LEGAL ACTS OF EC BODIES

Solutions must be found both under substantive law and procedural law. In this process, the question of the level of competence required also poses itself.

Substantive law

The basis on which claims are asserted for damages or rescission, enrichment or otherwise have not been harmonised on an EU-wide basis. The special legal liability for statements made in a prospectus – which exists only in a few countries – and facts giving rise to claims based on contracts, trust and tort come into question. Each member state has its own liability provisions which differ significantly. Apart from the capacity to be sued (personal liability of members of management boards and supervisory boards, chartered accountants), provisions differ ranging from the scope of damage (rescission or damages) through to limitation (six months up to 30 years).^{47, 48}

Article 61(c) in conjunction with art 65 of the European Community Treaty could serve as a legal basis for the introduction of a collective law instrument at European Community level.⁴⁹ Apart from the recognition and execution of decisions, measures in place for the smooth functioning of the single market include the promotion of conflict of law rules and the elimination of obstacles in order to process civil cases.

Place of jurisdiction

Before conducting legal proceedings, the question arises as to the competence of the court. Especially in cross-border cases and where several claimants and adverse parties

participate who might easily be domiciled in different states, an explicit decision must be made as to the place of jurisdiction. The Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is applicable at European level. Apart from the domicile or the official business location of the defendant, the place of jurisdiction of the tortious act (art 5 No 3) as well as arts 15 and 16 (consumer matters) must be taken into consideration. Article 5 establishes that the court at the place of the damaging event is competent, while arts 15 and 16 specify the place of jurisdiction as being at the consumer's place of residence (on the conditions named in art 15).

Consumer jurisdiction will fail if the majority of the plaintiffs are located in different countries. Hence, consumer jurisdiction creates problems in practice because the defendants usually dispute that the requirements specified in art 15 have been met (consumer capacity and orientation to the member state).⁵⁰ Article 6 specifies the place of jurisdiction for joinders of parties if there are several defendants (in case of a factual connection).⁵¹ 'Forum shopping' (choosing the court) as well as the contentious issue of whether the court before which the case is brought is competent should be avoided. The place of jurisdiction should relate to the matter in dispute and be located where the focus of the case lies. This is the obvious solution particularly as it is possible to maintain registered offices (letterbox companies) in one member state while the head office is located in another.⁵²

Applicable law

Difficult problems also arise as regards the law to be applied. Within the scope of judicial co-operation in civil matters the European Community is competent 'for promoting the compatibility of the conflict of law rules applicable in member states and provisions to avoid conflicts of competence'. The development of a European International Private Law ('IPL') is currently at completion stage. This is applicable both for contractual obligations (Rome I)⁵³ and non-contractual obligations (ROME II).⁵⁴ The regulations will contain rules on which law is applicable in case of cross-border matters. However,

contractual obligations based on marketable securities are excluded from the scope of application of these regulations. The proposed 'ROME I' regulation also excludes obligations arising under a pre-contractual legal relationship from the scope of application.⁵⁵

To date the respective national IPL is based on the Rome Convention 1980. The points of contact of the German IPL are specifically: the right of the state with which a contract has the closest connections (art 28 EGBGB (*Einführungsgesetz {n} zum Bürgerlichen Gesetzbuch*) – Introductory Law of the German Civil Code), the application of German law in case of consumer contracts (art 29 EGBGB), the place of the action or the success in the case of tort (art 40 EGBGB). If there is a plurality of persons liable to receive compensation and injured parties, the tort statute must be determined separately for each and every person liable to receive damages or for the claims of each injured party.⁵⁶

The ROME I and ROME II regulations contain exceptions from the scope of application – in particular for pre-contractual obligations and marketable securities – which means that gaps remain in the area of financial markets. The European Community will face particular challenges when working out a uniform class action because, for example, the domicile of the issuer of securities and the stock exchange may differ (there might be several listing places).

Recognition, execution

If the respective national – different – types of collective actions are maintained, problems might arise in having judgments recognised and executed. For example, an order to pay an exorbitant sum of damages might be impeded by the fact that it is not recognised.⁵⁷ The popular action in Portugal is based on the opt-out model which means that if an action is dismissed, the basic principle of having a right to be heard before a court is violated.⁵⁸

OTHER RELEVANT ASPECTS

There are huge differences in provisions relating to the code of civil procedure of member states. In Germany, for example, a plaintiff must make an advance payment in court fees of €2,568 for disputes valued

at €100,000, while no advance payment is required at all in Portugal.

Effective access to the courts also requires harmonisation of lawyers' fees which are subject to a ban on the agreement of a conditional fee in EU member states (apart from certain exceptions).⁵⁹ As many small investors do not pursue claims due to the legal fees entailed, the European Community will have to consider a regulation in this regard.⁶⁰

The functioning of a European-wide procedure essentially requires access to appropriate information. Pending proceedings must therefore be entered into the register of each member state or into a central register yet to be created. This would also necessitate that language barriers are taken into account.⁶¹ In the authors' opinion, it would also be necessary to standardise the statutes of limitations.⁶²

PROPOSAL/SUMMARY

Regulation at EU level is desirable and necessary, especially since appropriate national procedures have been created in most states or are currently under way. As these have little in common, but particularly since the securities market in the EU is largely regulated,⁶³ the European class action represents a necessary supplement. Such regulation should include the entire capital markets.

In the authors' opinion, it should be possible for one plaintiff to conduct proceedings as a representative. This kind of representative or test case procedure should suspend the limitation of claims for all those affected. The opt-in model should take precedence over the opt-out model.

The place of jurisdiction and applicable law should be based on the typical service or the focal point of the activity. The law on lawyers' fees should be harmonised and should permit conditional fees within certain limits. Furthermore, it should be ensured that investors can obtain information from a central register in a language that they can understand. To protect companies, the legitimacy of the collective action should be examined and claims restricted to the actual damage suffered. It remains to be seen whether the Commission will find a solution as to how it will reduce the huge differences in substantive law, procedural law and ethically

appropriate rules for lawyers to a common denominator. ■

- 1 Whole sectors were allegedly on the brink of ruin in the US, cf Prof G Miller in: *Tagesanzeiger*, 16.9.2007.
In a suit in the US against a telephone company, the telephone customers received a five-dollar credit note while lawyers received fees of US\$16m; BEUC. The European consumers organisation: private group actions, 8.10.2007. In Canada and Australia, where class action is also permitted, extortionate and other abusive class actions are unheard of: Study for the European Commission by the Centre for European Economic Law, Katholieke Universiteit Leuven, Belgium: Final Report 17.1.2007. An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings, p 264.
- 2 Derrara, 'Big Securities Class Actions Keep Rising', *Chicago Lawyer*, April 2004.
- 3 Study Leuven, Final Report dd. 17.1.2007, loc. cit. (fn 1).
- 4 Special Eurobarometer, European Union citizens and access to justice in October 2004.
- 5 BEUC, loc.cit. (fn 1), p 2 ff.
- 6 Study Leuven, Final Report dd. 17.1.2007, loc. cit. (fn. 1), p 260 ff.; cf the German Investor Test Case Act (KapMuG) which ceases to be effective after five years. In Italy: Act No 244 dd. 24.12.2007.
- 7 To prevent abuse, class action was reformed by the Class of Fairness Act (s 2) of 10.2.2005.
- 8 According to US law, punitive damages can be imposed and not only the actual damage suffered. This serves to act as a deterrent and punishment and not to compensate for the actual damage. Cases are known in which the relationship of punitive damages to the damage suffered amounted to 526:1. A BMW buyer was awarded punitive damages of US\$4m for paint damage: *BMW of North America versus Gore*, 515 US 559 (1996).
- 9 Section 59 ff. ZPO; art 1, a 3 No 8 German Legal Advice Act (RBerG).
- 10 Eg France which only permits approved consumer associations to carry out a representative action; art L 422-1 Code de la consommation (consumer code) and art L 452-2 Code monétaire et financier (financial code).

- 11 Directive 98/27/EC.
- 12 Cf for instance in Sweden the consumer Ombudsmann.
- 13 In the German Federal Republic: s 1029 ZPO.
- 14 Since 1.7.2005: Prospectus obligation based on s 8f Prospectus Act (VerkProspG).
- 15 Summary in eg DFI-Report Spezial, special issue: 2004.
- 16 Cf Baumbach/Lauterbach/Albers/Hartmann, German Code of Civil Procedure, 65th edition 2007, s 59 marginal note 4 ff.
- 17 Act on the Introduction of Test Case Litigation for Capital Investors – Kapitalanleger-Musterverfahrensgesetz (KapMuG) of 16.8.2005, *Fed. Gazette I* 2005, p 2437: The law has been in force since 1.11.2005; it is effective until 31.10.2010.
- 18 In this connection in the Final Report, study Leuven 17.01.2007, p 292.
- 19 German Stock Exchange Act (BörsG).
- 20 For prospectus liability: s 46 German Stock Exchange Act (BörsG).
- 21 See Frankfurt/Main Regional Court WM 2007, 2385.
- 22 Section 227 Austrian code of civil procedure (ZPO).
- 23 An amendment is imminent in Germany (Federal Constitutional Court (BVerfG) 1 BvR 2576/04).
- 24 Claims become time-barred.
- 25 Civil procedure rules (CPR) 1998, Pt 19, s III in conjunction with 58.6 A CPR.
- 26 Harbour/Schelley, The Emerging European Class Action: Expanding Multi-party Litigation to a Shrinking World, ABA Annual Meeting, Section of Litigation, August 3-6, 2006, p 3: these authors report on the registration of approx. 50 GLO.
- 27 Limitation Act 1980: Limitation begins to run upon knowledge of the claim.
- 28 Wet collectieve afwikkeling massaschade (Act on Collective Action) of 23 June 2005. Cf Study Leuven, Final Report, loc.cit. (fn 1), p 275.
- 29 Article 3:305a and 305B Burgerlijk Wetboek (Dutch civil code).
- 30 Harbour/Schelley, loc. cit. (fn 26), p 7.
- 31 This instrument has only been used twice to date, according to BEUC, loc. cit. (fn 1), p 24.
- 32 Act on Group Action: SFS 2002: 599, in force since 1.1.2003; no judgment had been passed in Sweden on the basis of a collective action at the time of writing this article, Harbour/Schelley, loc. cit. (fn 26), p 6.
- 33 Cf the draft act on the Act on Class Action: 2001/02;1070064. 8 on the substantiation of the opt-in solution.
- 34 Generally on the conditional fee in Europe: Ros, *Fédération des barreaux d'Europe*.
- 35 Cf Study Leuven, Final Report, loc. cit. (fn. 1), p 317.
- 36 Act 1/2000 of 7 January 2000 de Enjuiciamiento civil, art 6 7 amended by Act 39/2002 of 28 October 2002.
- 37 As in Finland; interesting contrast also to the German Test Case Act; this applies only to investors.
- 38 Referred to as Action en representation conjointe, art L 422-1 Code de la consommation (consumer code).
- 39 Article L 452-2 Code monétaire et financier (Finance Act).
- 40 Lipskier, *La Semaine juridique entreprises et affaires*. Nos 18-19, 2005, 675.
- 42 In a case against mobile phone suppliers, the national consumer association UFC-Que Choisir incurred huge staff costs (20 per cent of its work force) and operative costs (over €500,000) to prepare an action only to conclude the case with a disillusioning result since only 0.06 per cent of all of the damaged parties had given them a mandate: BEUC, loc. cit. (fn 1), p 14.
- 43 Cerutti/Guillaume, *Rapport sur l'action de groupe*, of 16.12.2005, <http://www.finance.gouv.fr>, p 24.
- 44 Lei 83/95, known as the 'Acção popular'.
- 45 An association can also institute proceedings both in the name of the identified and the unidentified injured parties.
- 46 A Portuguese consumer organisation had brought action against Portugal Telecom. The court ordered Portugal Telecom to repay a certain fee to all its customers. This obligation came to a grand total of €120m. Portugal thus has a system which most closely resembles that of the USA. BEUC, loc. cit. (fn. 1), p 11.
- 47 Cf Hopt/Voigt, *Prospekt- und Kapitalmarkt-Informationshaftung*, 2005.
- 48 Eg in France: art 1382 Code Civil on tortious liability or art 1147 Code Civil on contractual liability.
- 49 Simplified access to the courts or improved legal protection. The provisions of private international law and civil procedural law are included by the legal basis. However, it does not include alignments with substantive law. It is doubted whether art 95 can be consulted on this (Calliess/Ruffert, *EGV Komm*, 3rd edition 2007, art 65).
- 50 Rauscher, *Europäisches Zivilprozessrecht*, vol I, 2nd edition 2006.
- 51 Article 6 No 1 is supplanted by the special provision in art 15 ff.
- 52 Cf eg the ECJ case C-81/87 (*Daily Mail*); case C-212/97 (*Centros*); case C-208/00 (*Überseering*); case C-167/01 (*Inspire Art*).
- 53 'Proposition by the European Parliament and the Council for a regulation on the law governing contractual obligations' (ROME I) of 15.12.2005, KOM (2005)650. To date, the Convention on the Law Applicable to Contractual Obligations (Rome Convention 1980) is applicable. Obligations arising from securities are excluded in both texts.
- 54 (EC) Regulation No 864/2007 of the European Parliament and the Council of 11.7.2007 on the law applicable to non-contractual obligations (ROME II), Abl No L 199 of 31.7.2007, p 40. Enters into force on 11.1.2009. Obligations arising from marketable securities are also excluded in this case; art 1 (2) c).
- 55 Article 1 (2) i) Proposal on the 'ROME I' reg.
- 56 Schwark, *Kapitalmarktrechts-Kommentar*, 3rd edition 2004.
- 57 Regulation No 44/2001, art 34 No 1.
- 58 Cf Geimer, loc. cit. (fn 57), s 34, margin No 79.
- 59 See C III V above, England and Sweden.
- 60 There is a tendency towards conditional fees anyway: Ros, *Fédération des barreaux d'Europe*.
- 61 Directive 2004/109/EC demands that national company registers are set up. A European central register would be advisable. See Mattil/Möslein, (2008) 1 JIBFL 27.
- 62 The Product Liability Directive 85/374 EEC, for example, specifies a limitation period according to which the claim for compensation becomes time-barred after a three-year period from the date on which the plaintiff gains or should have gained knowledge of the damage. (art 10 of the Directive).
- 63 Known as financial instruments; eg Directive 85/611/EEC; Directive 93/22/EEC; Directive 2000/39/EC; Directive 79/279/EEC; Directive 80/390/EEC; Directive 89/298/EEC; Directive 2003/6/EC, Directive 2003/71/EC; Directive 2003/6/EC; Directive 2004/109/EC etc.