European Class Action Report 2024

Welcome

This is our fourth European Class Action Report, and the data collected this year shows yet more growth in the number of class actions filed in Europe with risk continuing to rise. Not only have we gathered data on the number of claims, types of claims and defendant sector, we also continue to gather data on quantum sought. The numbers reveal interesting trends, including that the aggregate quantum claimed in Portuguese class actions now exceeds those claimed in Dutch class actions, at EUR 48bn and EUR 35bn respectively. The UK continues to see the highest figures, with cumulative claimed quantum now in the region of EUR 145bn. Relatedly, the growth of competition class actions in the UK is remarkable, with claims encompassing over 500 million class members filed by the end of 2023.

Features in this year's report include spotlights on the UK (pages 24-33), Germany (pages 36-38), the Netherlands (pages 39-41) and Portugal (pages 42-44). We also have a specific feature on the nascent class action regime in Scotland (pages 34-35). The risk map is again featured (page 18). We have an updated section on the implementation of the Representative Actions Directive (the "**RAD**")[1] (pages 45-46), to complement the extensive RAD analysis table in our 2023 Report. We also include features on areas of developing risk which can directly or indirectly increase class action risk, such as litigation by NGOs and a review of the new European Product Liability Directive and how it will facilitate class actions. Finally, pages 48-50 have a section on litigation funding from Rosie Ioannu of Fortress Investment Group, which discusses issues around regulation of litigation funding.

Europe has a patchwork of class action mechanisms with multiple mechanisms sometimes available within a single country. We therefore use a standard definition of "class actions", to mean: proceedings brought on a collective basis using any available procedural law (opt-in, opt-out, assigning claims, consolidating claims etc), provided that there are five or more economically independent class members who are seeking damages. Where a claim is brought seeking declaratory relief as a platform to seek subsequent damages, we also include it in our data. More information on our approach is set out in the Methodology section at page 61.

Thank you for reading our report. We hope you find it useful. Thank you to the many CMS personnel, including lawyers, business development personnel, design specialists and data analysts who contributed to this report. Particular thanks to Francesca Mullen, Amy McKeown, Sophie Campbell, Alexandra Cook, Fiona Dalling, Elizabeth-Anne Larsen, Sarojah Sathivelu, Sobhi El Saleh, Sam Witham, Stephen Rixon, Amber Turner, Charlotte Gibbons-Jones, Alicja Labunska-Dmowska, Zsuzsanna Kovacs and Rosie Coles. Thank you also to our friends at Solomonic for providing data for claims in England and Wales.

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Quantum

This year we have expanded our approach to collecting data on quantum and we now include figures for Portugal, as well as for the UK and the Netherlands. We will continue revising our dataset and including new countries in our quantum analysis going forward.

In assessing quantum, we normally take the figures asserted by the claimant law firm or the claimants. This is used as a proxy for true quantum – very few matters proceed to judgment, so a proxy is needed. We have sourced figures from a variety of public sources, including court filings, claimant law firm websites and news reports.

For opt-in matters it is not always clear how many claimants have elected, or will elect, to join the claim, so we have again estimated or inferred figures where the precise figure is unavailable. In some instances we have inferred claimed quantum by multiplying the number of claimants by the asserted per-claimant value. Where further claimants have joined a claim over more than one year, we have hypothesised overall quantum to the first year the class action was filed.

For a significant proportion of claims we were not able to identify sufficiently credible data, so those claims are not included in our figures. However, those tended to be the lower value and lower profile claims. Thus, while the true claimed quantum will be higher than our published figures, we have captured all claims necessary to give an accurate sense of risk. In some instances, it was not possible to ascertain full information on all relevant data points for certain specific claims, in which case those claims may not have been counted for the purposes of each reporting set.

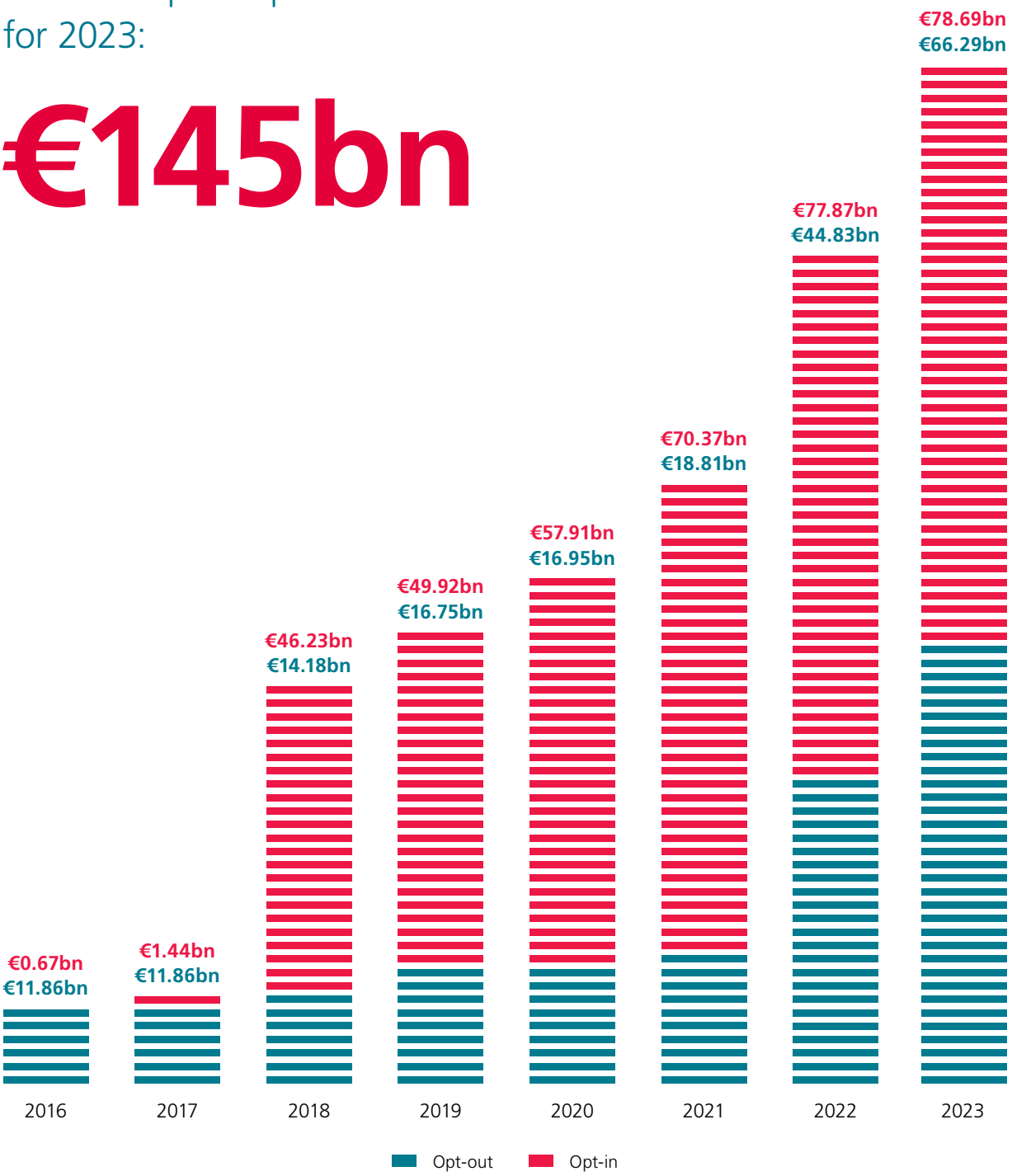
Several very high value data protection representative action claims were withdrawn following the UK Supreme Court's judgment in *Lloyd v Google*. We have not included these claims in our quantum analysis as they could otherwise skew the data.

For opt-out claims we use the figure in the claim "as filed." We do not track reductions if defendants are able to exclude part of the claim or otherwise reduce quantum.

UK cumulative quantum 2016-2023

Total UK opt-in/opt-out claims for 2023:

€145bn



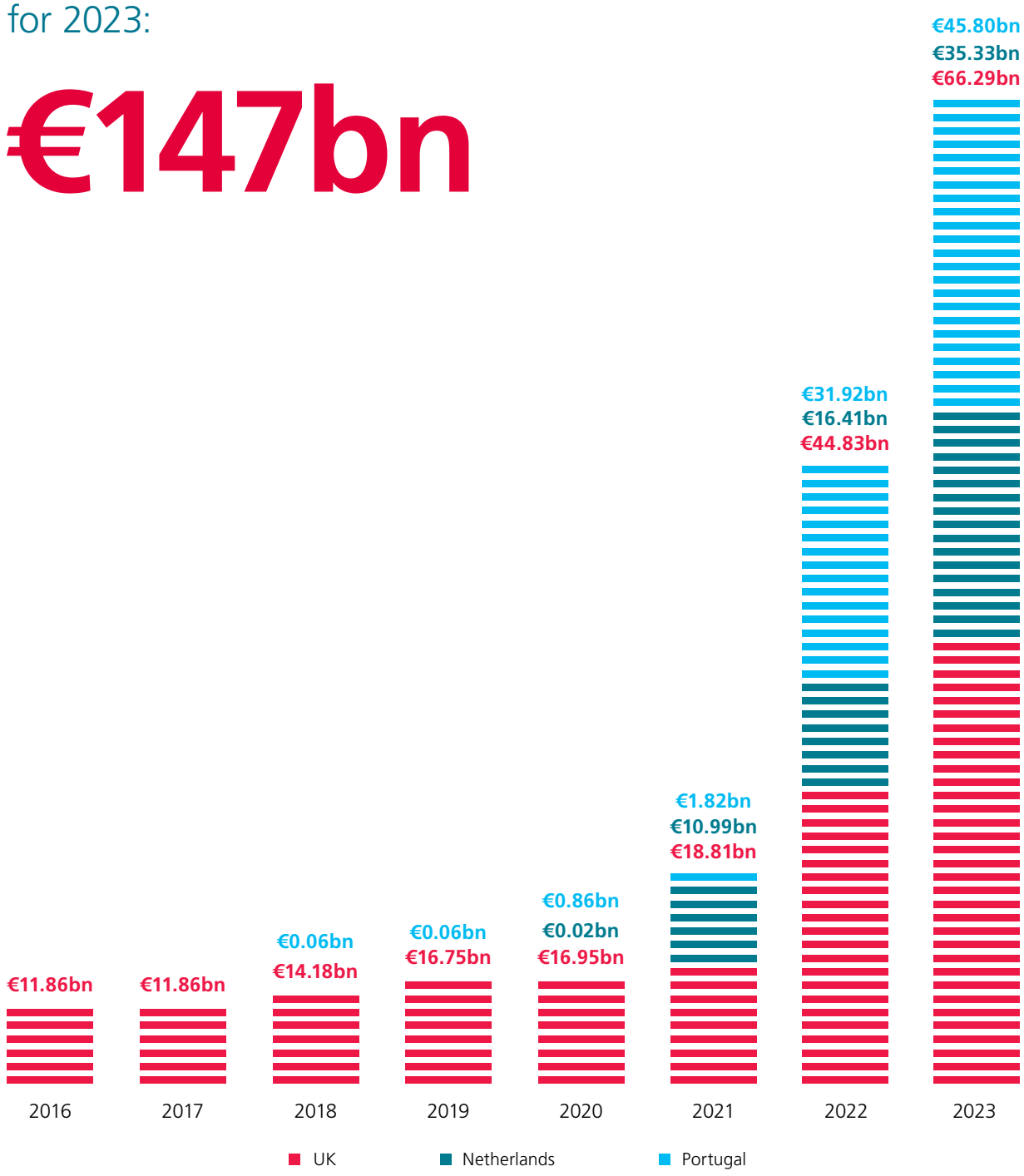
As at 31 December 2023, the total claimed value of class actions in the UK – opt-in and opt-out – is in the area of EUR 145bn. The value of UK opt-out claims in particular has risen considerably to EUR 66.3bn in 2023 – a 48% increase from 2022 figures. In comparison, the value of opt-in claims has increased only slightly, by 1%.

As in last year's report, the Mariana dam opt-in class action makes up a significant proportion of the cumulative UK figure since 2018. The total value of UK claims has increased by 18% between 2022 and 2023.

UK, Portugal and Netherlands opt-out quantum 2016-2023

Total cumulative opt-out quantum for 2023:

€147bn

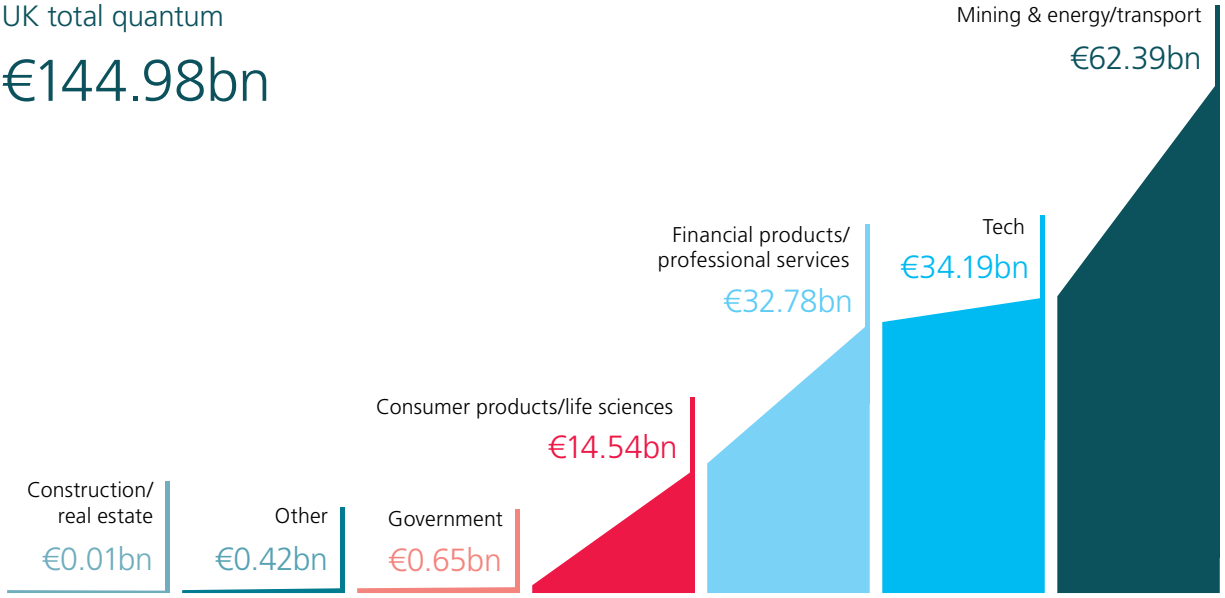


The total claimed value of opt-out claims in the UK, the Netherlands and Portugal has increased exponentially in the past three years, with eight-fold growth between 2020 and 2023. The total value of opt-out claims in the Netherlands and Portugal also increased substantially in 2023, increasing by 115% and 44%, respectively. Notably, the quantum at stake in Portugal now exceeds that in the Netherlands.

Quantum by defendant industry sector 2016-2023

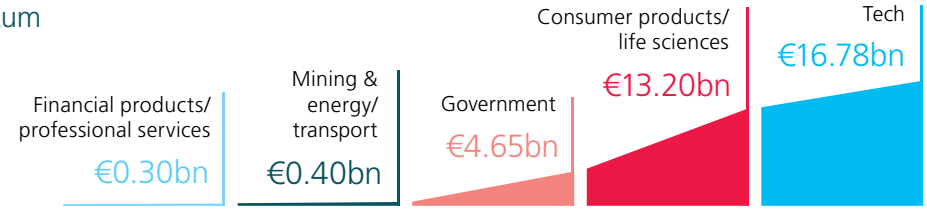
UK total quantum

€144.98bn



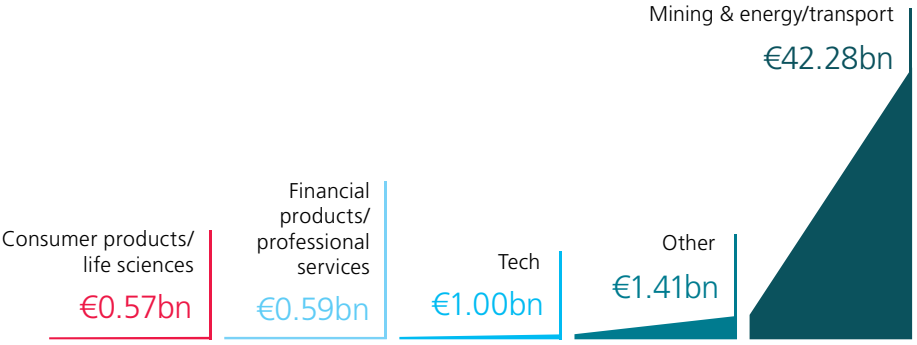
Netherlands total quantum

€35.33bn



Portugal total quantum

€45.85bn

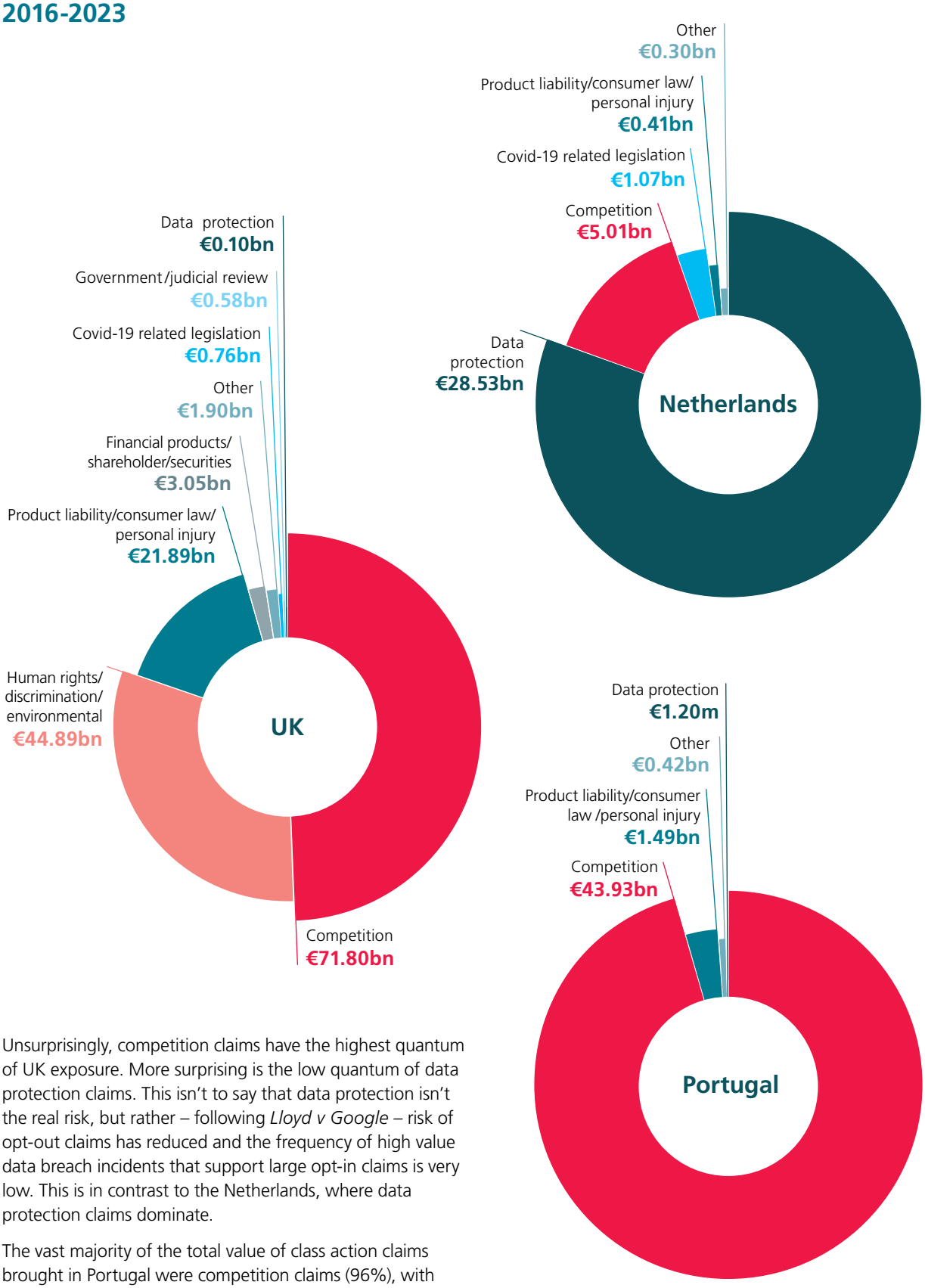


Taking a sector-focused approach, similarly to the UK, the Mining & Energy/Transport sector dominates the Portuguese data, primarily driven by large claims against airlines/aviation companies in relation to consumer law-related competition claims.

The UK technology sector attracted over EUR 16.9bn in claim value in 2023, making it the highest risk sector for high value class actions. Despite this, similarly to the last year, the Mining & Energy/Transport sector continues to lead in overall claim value in the UK (largely owing to the Mariana dam case).

The Netherlands' claims show a prevalence of high value claims against governmental bodies and tech companies, often by specialised interest groups. For a summary of the group litigation landscape in the Netherlands, see pages 39-41.

Quantum by claim type 2016-2023



Unsurprisingly, competition claims have the highest quantum of UK exposure. More surprising is the low quantum of data protection claims. This isn't to say that data protection isn't the real risk, but rather – following *Lloyd v Google* – risk of opt-out claims has reduced and the frequency of high value data breach incidents that support large opt-in claims is very low. This is in contrast to the Netherlands, where data protection claims dominate.

The vast majority of the total value of class action claims brought in Portugal were competition claims (96%), with virtually all claims being opt-outs. This figure is skewed by a small number of very high value claims in the aviation sector, as well as the significant subject matter overlap between competition and consumer claims (see the chart at page 15 for more detail).

What's trending in class actions?

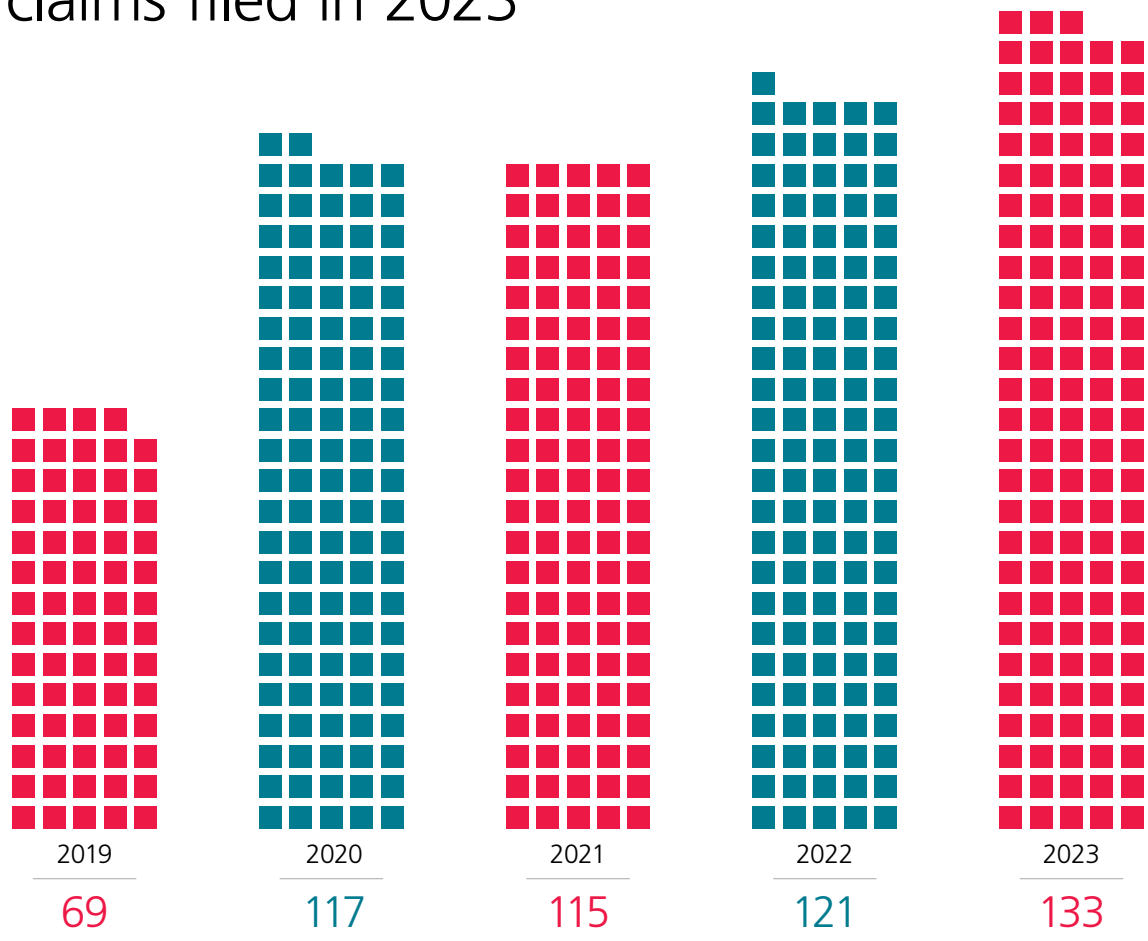
The following pages show the key trends for 2023 and preceding years. We set out total numbers of claims, where they are being filed, what types of claims are being filed, and against which industries.

Overall number of class actions

2023 has seen the trend of sustained growth in European class actions continue, with 133 claims filed[2] the highest number to date. With the RAD now being implemented at pace across the EU, we anticipate yet further increases in the years to come.

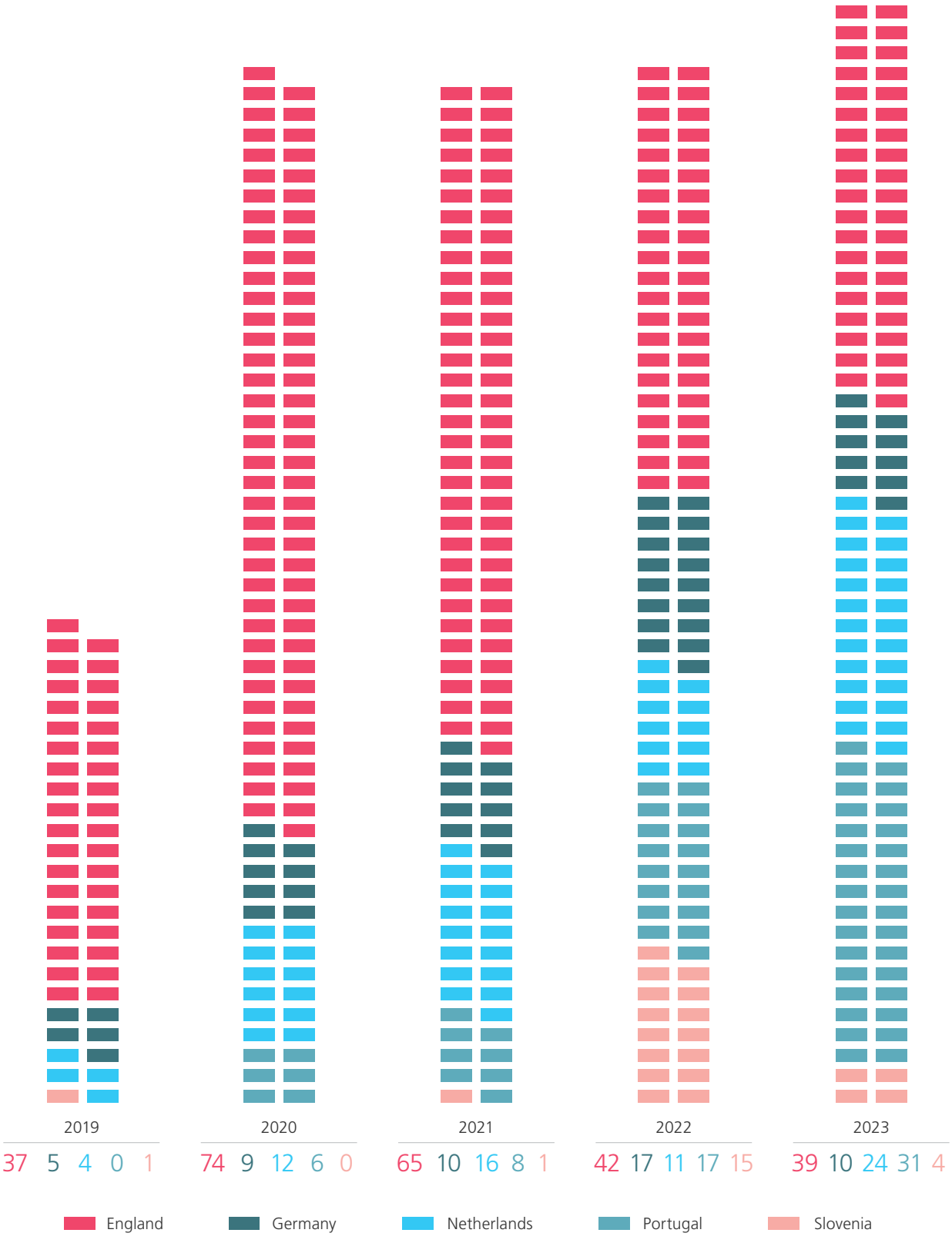
133

claims filed in 2023



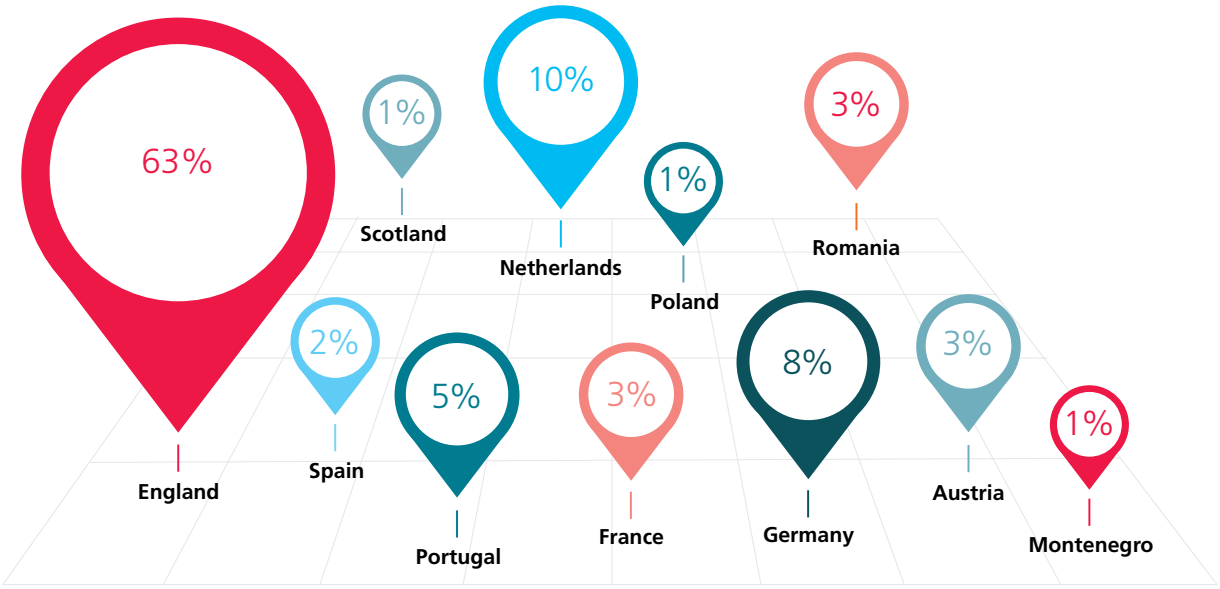
Growth in key jurisdictions

Claims issued in the last five years



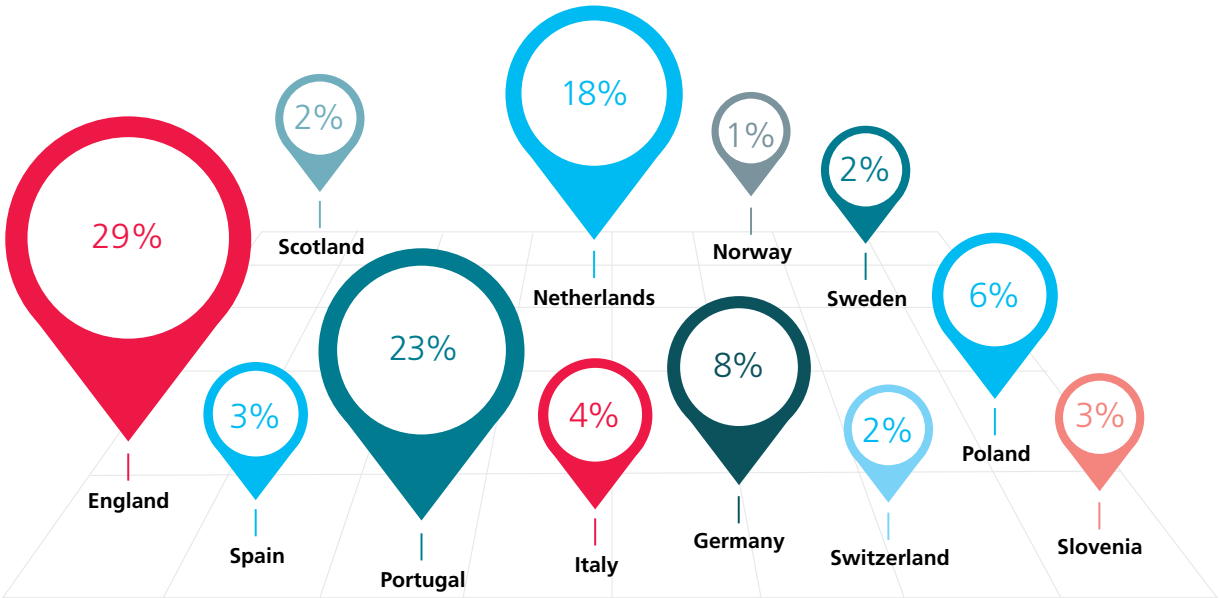
Jurisdiction distribution in 2020

While just a few years ago England & Wales was dominating the European landscape in terms of class actions filed, it has since reported a relative reduction in the number of claims filed each year since its peak in 2020. This does not mean the risk in the UK is reducing in absolute terms, but rather that risk is increasing elsewhere in Europe in both relative and absolute terms.



Jurisdiction distribution in 2023

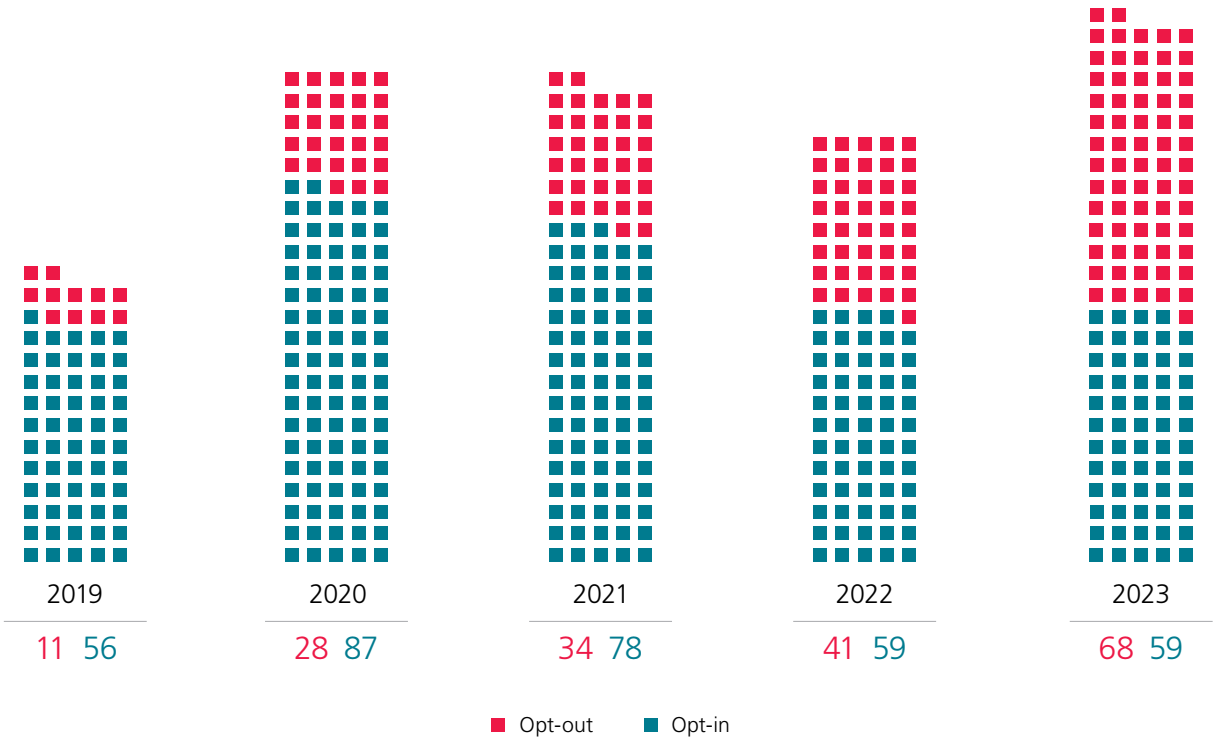
The countries showing key growth between 2020 and 2023 are unsurprisingly the Netherlands and Portugal.



The continued rise of opt-out claims

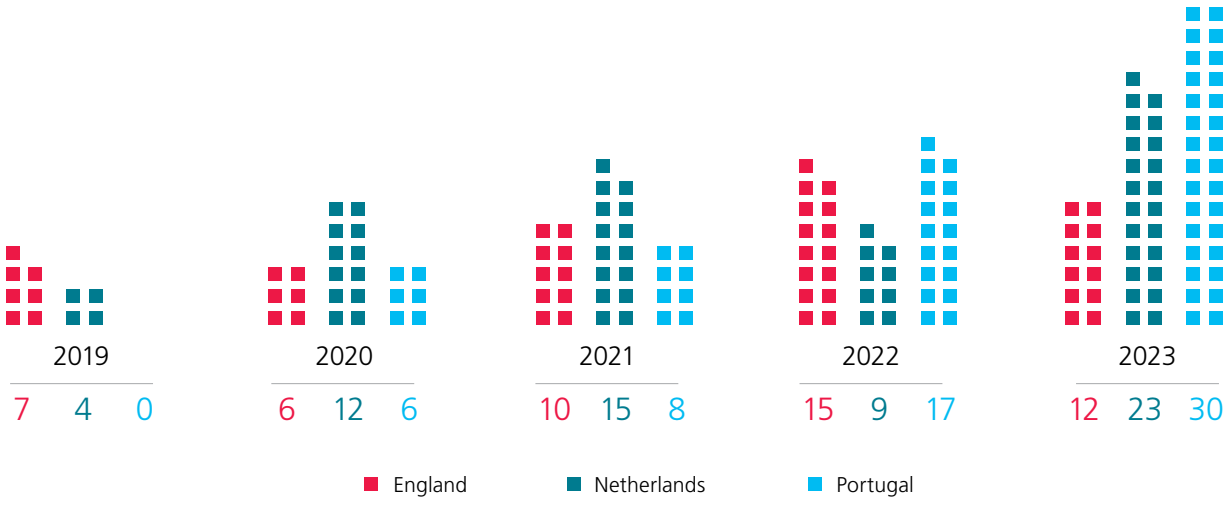
Opt-out and opt-in growth across Europe

In a key "first", 2023 saw the first time when the overall number of new "opt-out" class actions exceeded new "opt-in" class actions.



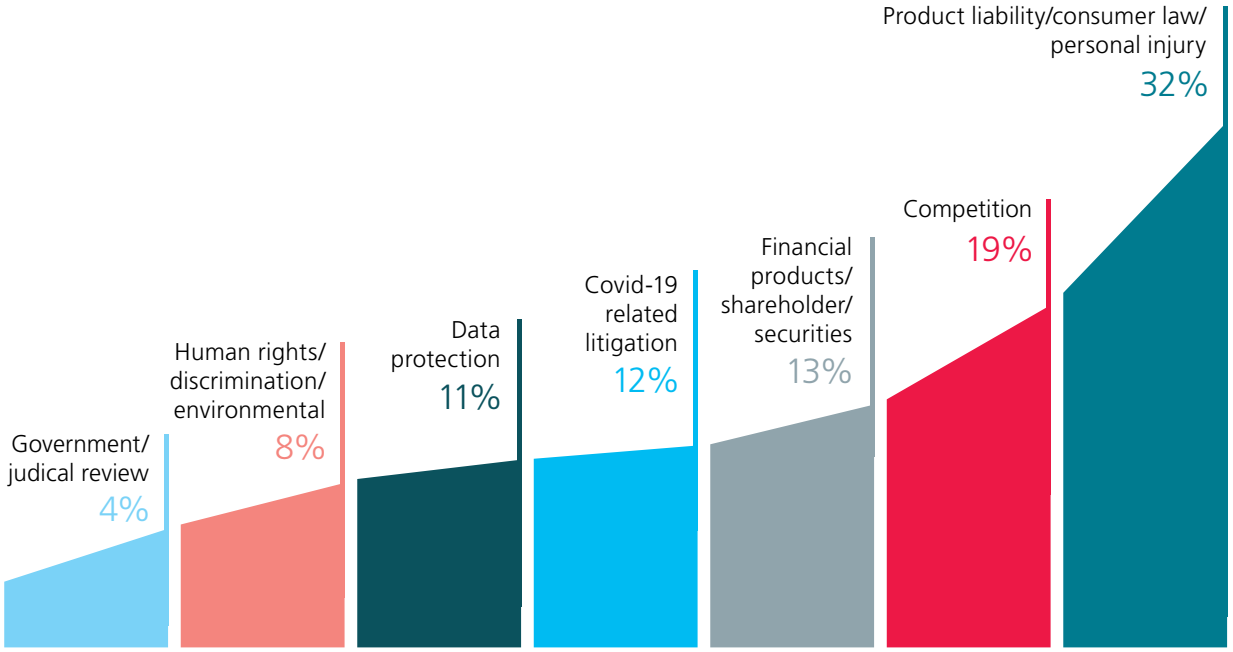
Opt-outs by key jurisdiction

At the same time, the "opt-out" trend in England & Wales appears to have slowed. As to what extent this trend was influenced by the UK Supreme Court decision in the *"PACCAR"* case, see the UK brief at page 24.



Types of claims

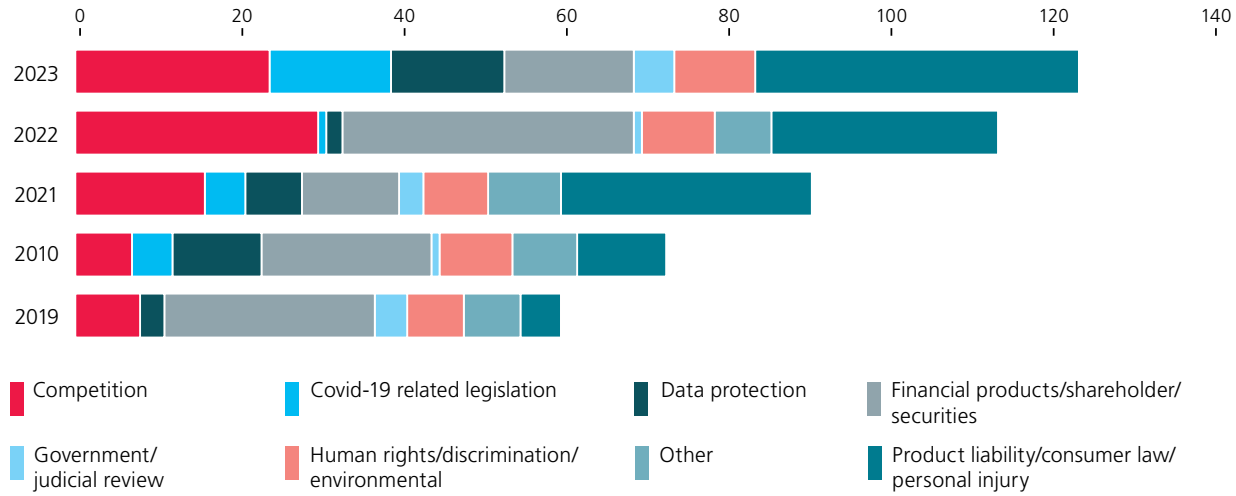
Types of claims in 2023



While the number and relative share of competition claims has decreased slightly from the high reported in our 2022 Report, this change is somewhat deceptive. In absolute terms, the number is still close to an all-time high, while many consumer claims of 2023, particularly those filed in Portugal, also have significant competition elements.

An interesting development is the increase in claims filed in relation to disruption caused by the Covid-19 pandemic, particularly (but not limited to) the large number of business interruption/insurance claims in England.

Trends in types of claims

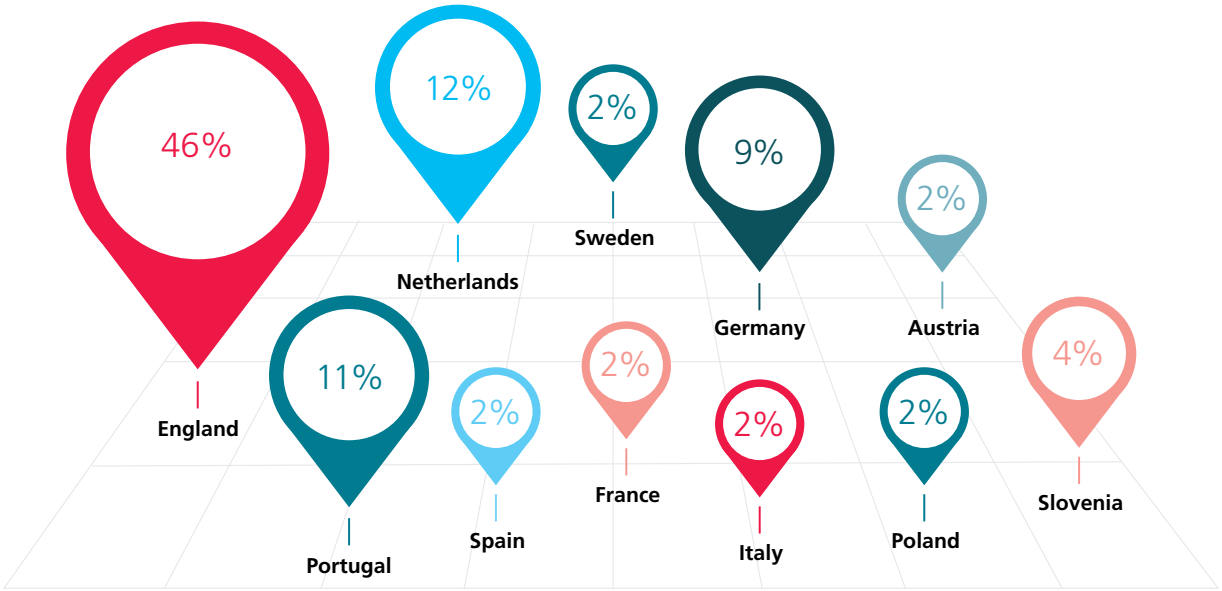


Five-year snapshot

Claims across jurisdiction

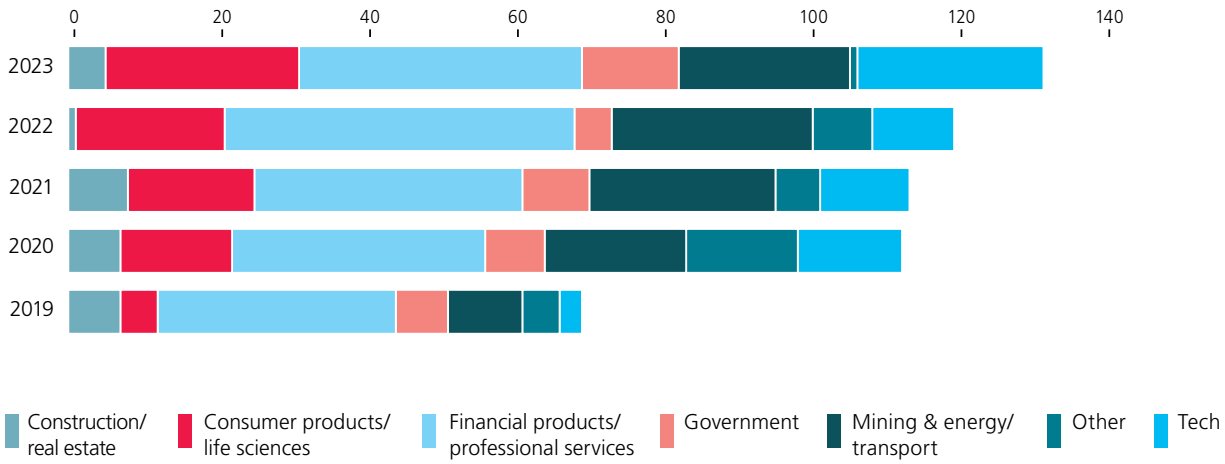
Consistent with data from our prior reports, the UK, the Netherlands, Germany and Portugal experience the most class actions, comprising 78% of all European class actions between them, a 2% increase compared to 2022. Of these, 46% of claims were filed in England (a 2% drop from its share last year.)

The diagram below shows the proportion of claims filed in the past five years. Croatia, Montenegro, North Macedonia, Norway, Romania, Scotland, Switzerland are not pictured, and account between them for c. 6% of the overall claims numbers.



Claims by defendant industry sector

2023 saw the largest number of claims yet against tech companies and defendants in consumer products/other consumer-facing sectors, as well as (mostly Dutch) claims against governments/governmental bodies. While the number of claims in the financial products/professional services sectors has fallen somewhat compared to 2022, it was still the second highest ever recorded. All this demonstrates a consistent growth trend in group litigation across all significant defendant sectors – no sector is entirely safe.

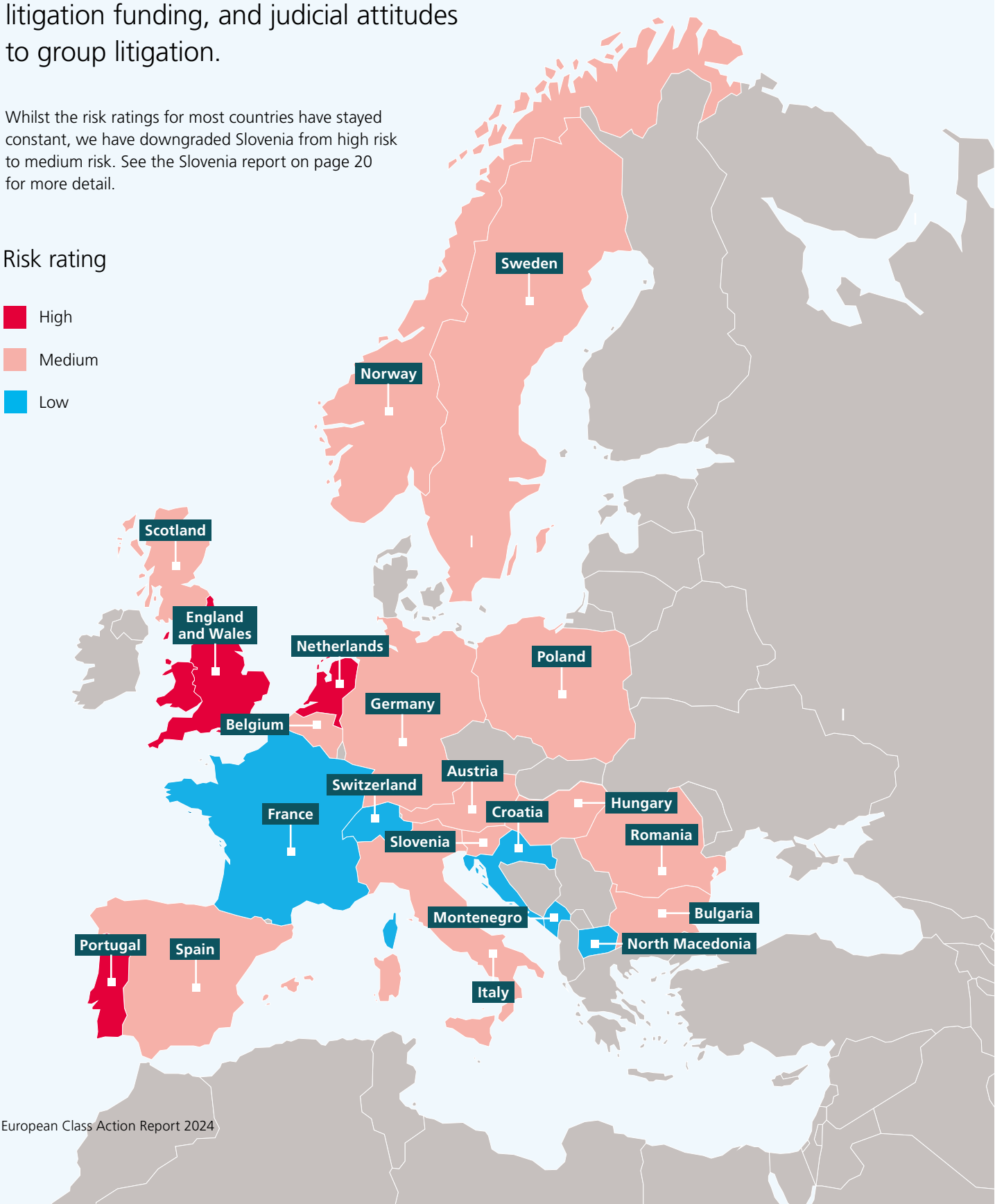


Risk map and country updates

Risk map

We allocate high, medium and low risk, according to domestic procedural mechanisms including the availability of opt-out mechanisms, prevalence of litigation funding, and judicial attitudes to group litigation.

Whilst the risk ratings for most countries have stayed constant, we have downgraded Slovenia from high risk to medium risk. See the Slovenia report on page 20 for more detail.



Country updates

France

When class actions were introduced into French law, they were initially limited to consumer and competition disputes. In 2016, their availability expanded to healthcare, discrimination, data protection and environment disputes and in 2018 to housing rental matters.

On 8 March 2023, in the context of the transposition of the RAD, the French National Assembly adopted a bill that aims to increase the recourse to class actions. The main changes are: (i) the adoption of a unique regime for all class actions (instead of the sector-specific rules that used to be in place); (ii) the extension of the persons/entities having standing to bring the action; and (iii) the expansion of the scope of class actions to cover injunctive or remedial relief.

The legislative process is still ongoing.

Italy

The new legislation, Law 12 April 2019 no. 31, effective from May 2021, significantly broadened the scope of class action, applying to a wider range of contractual and non-contractual rights across different sectors.

The number of class actions filed in Italy following the legislative reform has been gradually increasing. Most of the cases declared admissible by the Italian courts relate to alleged unfair commercial practices and environmental damages.

The increase in the use of class actions is partly due to greater public awareness, as well as to the decisions issued by the Italian courts, which have been streamlining the rules for admissibility of class actions, and providing greater clarity and certainty in the implementation of such procedures. We expect the use of these procedures to continue to increase further in the coming years.

On 15 May 2024, VW announced a EUR 50 million settlement to end a claim brought in Italy on behalf of 60,000 car owners. This outcome will encourage further class actions to be filed in Italy.

Poland

In Poland, class actions have been operating under an opt-in model since 2009. The largest class actions have been filed against banks and insurers. With the implementation of the RAD, which should be completed in the coming months, we expect an increase in the number of class actions.

This is due to several reasons:

— **First**, the draft law transposing the RAD provides for an opt-out mechanism for actions for injunctive measures and a procedural facilitation of an opt-in mechanism for actions for redress measures.

— **Second**, the Polish consumer authority is very active and its activities include, among other things, investigating whether traders use unfair commercial practices such as greenwashing and thereby mislead consumers.

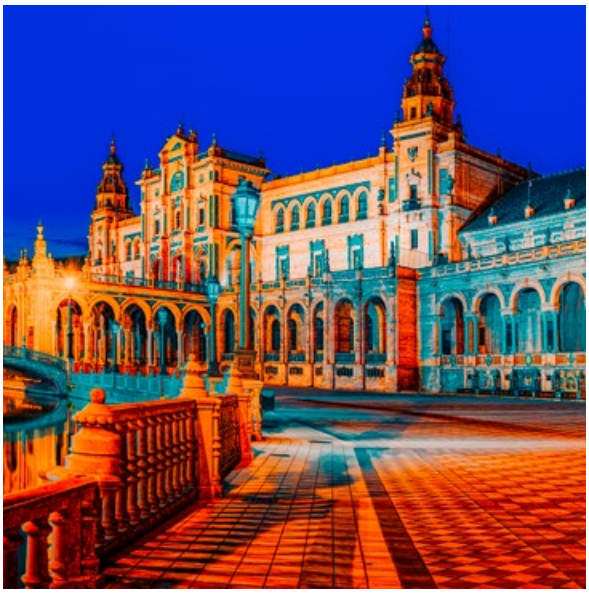
— **Third**, the number of representative actions may be influenced by the case law of the Court of Justice of the European Union. Poland is one of the most active countries when it comes to asking preliminary questions in consumer matters.

Slovenia

Having experienced a period of substantial growth, filings for new class actions in Slovenia exhibited a downturn in 2023 compared to prior years.

A key factor contributing to this slowdown may be the lack of established case law. Despite the enactment of the Class Actions Act in 2017, the practical application of the legislation remained dormant for several years. The first major class action lawsuit was filed in 2021, followed by a period of rapid growth. However, a lack of relevant case law persisted as most proceedings are still ongoing. This creates a significant level of uncertainty for new filings, as the courts' interpretation of certification requirements remains unclear.

A potentially game-changing ruling emerged in September 2023 from the competent court in the class action case against Apple Inc. The Court adopted a strict interpretation of standing, requiring claimants to demonstrate sufficient financial resources, human capital, and legal expertise to effectively represent the class. Notably, the Court ruled that success fee arrangements with law firms cannot circumvent these requirements. This is because the financing party must not exert undue influence on the claimant's procedural decisions.



Spain

The incorporation of the RAD is moving forward through the fast-track procedure, currently awaiting amendments from the Justice Committee.

The draft "Organic Law on measures for the efficiency of the Public Justice Service and collective actions for the protection and defence of the rights and interests of consumers and users" sets out a special procedure for collective redress, aiming to establish one sole coherent system for these kinds of claims, as opposed to the previous situation of regulatory dispersion. Keeping the scope of this special procedure as related to conducts by traders or professionals which infringe the rights and interests of consumers and users (including unfair terms), the draft Organic Law not only regulates the basic rules for collective claims, but also makes a distinction between class actions for injunctive relief and damages actions. Significantly, the proposed law will introduce an opt-out mechanism to complement the opt-in mechanism. We expect an increase in the number of class actions filed in Spain following implementation of the final text.

Sweden

In 2023, the Swedish Supreme Court issued an important ruling in the so-called PFAS tort case.

The case involved 165 plaintiffs who sued a municipal water company for compensation for personal injury in the form of highly elevated blood levels of PFAS (a type of synthetic chemical) from drinking the municipal water. The Court concluded, in a declaratory judgment, that the high levels of PFAS in the plaintiffs' blood were a compensable personal injury as a negative physical change in the body; however, the increased risk of future adverse health effects did not in itself constitute a personal injury. The Supreme Court did not rule on the amount of compensation.

Furthermore, in 2024, a judgment was delivered in a case where 35 people sued a company for negligent financial advice. The District Court found that the advice given by the company was negligent in relation to all claimants, but that only three of the claimants had complained to the company in time. Those three claimants were found to be entitled to damages from the company, while the claims of the other claimants were dismissed.

These significant rulings are likely to inspire other claims to be filed.

Spotlight on:

The UK

Scotland

Germany

The Netherlands

Portugal

Representative Actions Directive

Spotlight on: **the UK**

Litigation funding, legislative response and potential expansion of the UK's class action regime

The Supreme Court handed down the *"PACCAR"* judgment in July 2023. This was a technical but important judgment which considered section 58AA of the Courts and Legal Services Act. Section 58AA sets out parameters when a funding agreement qualifies as a Damages Based Agreement. This is important because DBAs are prohibited in opt-out competition class actions. They are permitted in other types of claims including other types of class actions, but only if they meet the requirements of the Damages Based Agreement Regulations 2013. In the *"PACCAR"* judgment, the Supreme Court ruled that litigation funders provided "claims management services". This is one of the criteria under section 58AA in assessing whether a funding agreement is a DBA. The Supreme Court did not explore the other criteria, which relates to how the funder's return is calculated: i.e., whether on a percentage of the settlement or damages figure, a multiple of the capital the funder invested or a variation or combination of those approaches.

Thus, the *"PACCAR"* decision concluded that funding agreements are capable of being DBAs, but whether they are or not depends on how the funder's return is structured. Prior to and after the Supreme Court's ruling, many funders sought to renegotiate their funding agreements so that their return is calculated on a multiple rather than a percentage as it was considered this approach gave lower risk of triggering the other criteria of section 58AA. In three first instance claims post-*"PACCAR"*: *Alex Neil v Sony, Commercial and Interregional Card Claims I Ltd v Mastercard* and *Gutmann v Apple*, the Competition Appeal Tribunal ("**CAT**") ruled that renegotiated funding agreements did not offend section 58AA and so were not DBAs. Those rulings are subject to appeal.

Notwithstanding that the courts have to-date approved restructured litigation funding agreements, in March 2024 the UK government introduced specific legislation to reverse the *"PACCAR"* judgment: the Litigation Funding Agreements (Enforceability) Bill. That bill was also drafted to have retrospective effect, which would have obviated the substantive rights of funded parties to seek recovery from funders where agreements were DBAs and therefore unenforceable. However, the UK general election prevented the bill from passing. It is not yet clear whether the bill will be reintroduced and it has not been included in the Labour Government's King's Speech.

In a separate development, the UK's Civil Justice Council ("**CJC**") has initiated a formal review of litigation funding. It is scheduled to publish an interim report in summer 2024 and its full report by summer 2025. The CJC will make recommendations, which could extend to formal regulation of litigation funding in England and Wales.

This is an important process; the output of the CJC's recommendations will play a role in shaping litigation funding in England for many years.

Also on the legislative side, two amendments were introduced to the Digital Markets, Compensation Competition and Consumers Bill that would have expanded the UK's competition class action regime to encompass claims for "unfair commercial practices" and also claims against companies that had been designated "strategic market status" where they breached certain obligations. Both of those amendments failed, but they are tangible demonstrations of the risk that the UK's existing opt-out regime for competition claims may be extended.

Competition class actions

The UK's competition class action regime continues to be extremely active. As set out at pages 28-33, in the period since its introduction in 2015 to the end of 2023 competition class actions encompassing over 500 million class members have been filed in the UK. This is a remarkable number of class members.

An area of particular focus is that we have now seen two settlements of these types of class actions. On 6 December 2023, the CAT approved the first competition class action settlement of £1.5 million inclusive of costs in the McLaren ro-ro car delivery class action.

On 10 May 2024, the CAT approved a settlement between the class representative and South Western Trains in the "Boundary Fares" claim. The settlement figure is £25 million plus £4.75 million to be paid to the class representative for his costs plus £750,000 for advertising the settlement. Some of the £4.75 million will go to the litigation funder, and if class members seek recovery of less than £10.2 million the class representative can apply to the CAT to allocate certain undistributed sums for further costs and fees with potentially further sums going to the funder.

At the time of writing, the first full trial of an opt-out competition class action had concluded but judgment had not been handed down. This is a claim brought by the representative Justin La Patourel against BT alleging excessive and unfair pricing of around 2 million customers for voice only and split purchase services.

As more claims move towards conclusion there will be much focus on the proportion of the relevant sums distributed to the class members. In the South Western Trains Boundary Fares settlement the class representative estimated that around 10%-20% of class members would come forwards to seek a share of the settlement sum. The CAT thought the actual figure might be less saying that it *"considers that even 10 percent may turn out to be an overestimate"*. Low distribution levels raise questions on whether the mechanisms can deliver access to justice.

Representative actions

In addition to the competition class action regime introduced in 2015, England and Wales has a separate opt-out class action regime which is not restricted to competition claims. This is the "representative action" mechanism, set out in rule 19.8 of the Civil Procedure Rules. It is a far less prescriptive regime than the competition procedure. It has only two requirements: first, that the representative and class members have the "same interest"; and second, that the court exercises its discretion to allow the instant claim to be brought as a representative claim.

In November 2021 the UK Supreme Court rejected the high profile claim of *Lloyd v Google* but in doing so it relaxed the "same interest" test. Read more here. That rejection led to several data protection class actions being abandoned. An effort to use this mechanism also failed before the High Court in *Wirral Council v Indivior*, which is a securities class action. Read more here. An important case to watch is *Commission Recovery Ltd v Marks & Clerk* where the representative action mechanism is being used to bring a claim for alleged secret commissions. The High Court permitted use of this mechanism, see High Court approves first CPR 19.6 representative action since *Lloyd v Google*. The Court of Appeal also approved use of the mechanism, albeit it suggested that certain issues might not be suitable for class-wide determination and unless those points are resolved that would prevent a class-wide award of damages, requiring individualised issues to be resolved subsequently: see *Commission Recovery Limited v Marks & Clerk LLP*: the Court of Appeal leaves commercial litigation funders with a challenge. This claim is scheduled for trial in January 2025.

Developments in other group litigation mechanisms

Group Litigation Orders

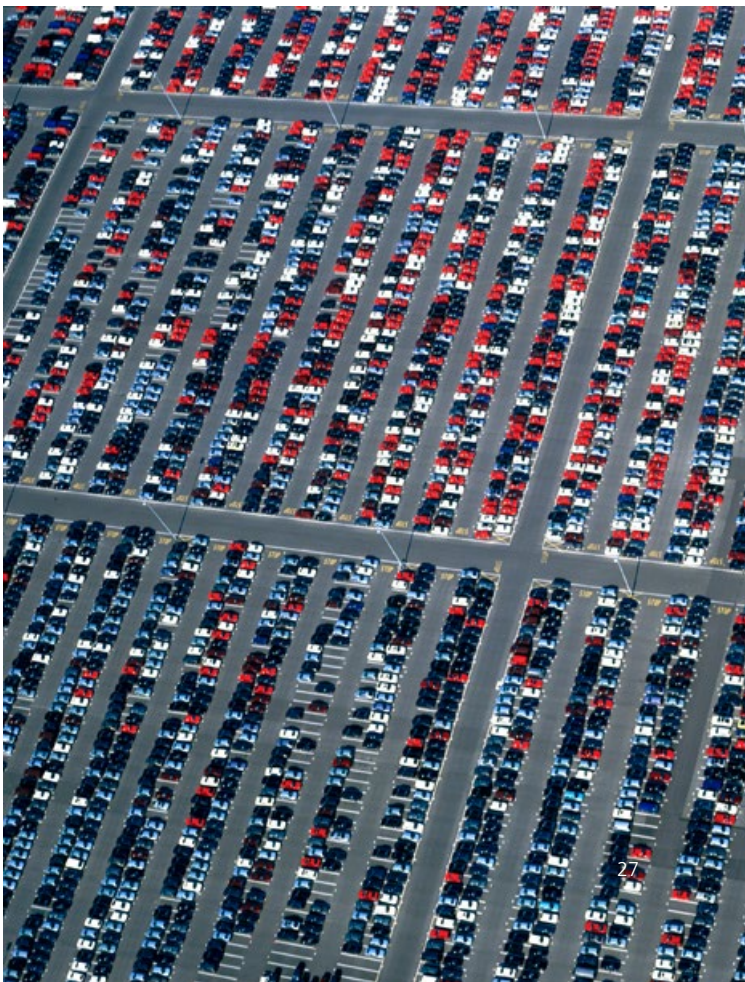
Group Litigation Orders ("**GLO**") can be used to resolve suitable common issues in opt-in proceedings. One of the largest sets of proceedings currently before the English courts are claims concerning NOx emissions brought by consumers against 13 manufacturers of vehicles plus in excess of 2,000 retailers and multiple finance companies.

A GLO has been granted, or is expected to be granted, in each of these claims. In December 2023 and then in March 2024, the High Court held hearings on case management as between these GLOs, now known as the Pan-Nox GLO matters. In summary, the court has selected four lead GLOs and laid down trials of different issues through October 2024 to March 2026. Defendants to non-lead GLOs have limited rights of participation in those trials, but equally they will only be bound by certain findings of law. While managing cases of this size is challenging for the courts, they are showing flexibility and innovation on how to balance competing interests.

Multiple claimants on claim form

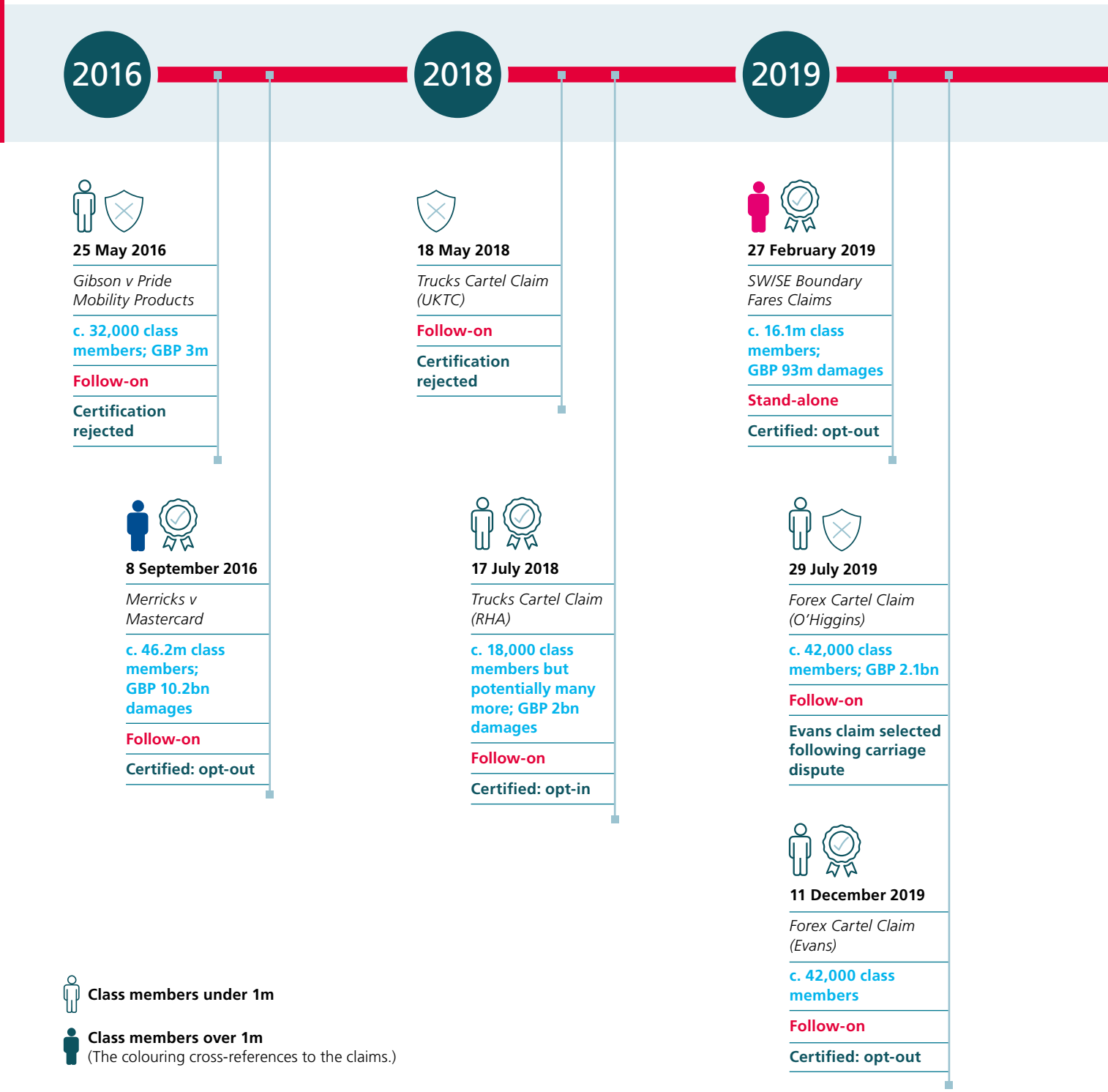
The Civil Procedure Rules ("**CPR**") imposes no absolute limit on the number of Claimants that can be included on a single claim form provided that, according to CPR 7.3, the claims by the different Claimants can be *"conveniently disposed of in the same proceedings."* In *Abbott v Ministry of Defence* the claimant law firm filed a claim form on behalf of 3,450 Claimants. The court considered CPR 7.3 and rejected the omnibus claim form and, in doing so, the court considered whether the claimants needed to show that the common issues were of sufficient significance to show *"real progress"* towards determination of all the claims.

In an April 2024 decision of the Court of Appeal, *Morris & Ors v Willaims & Co [2024] EWCA Civ 376*, the court permitted the use of a single claim form for 134 claimants and in doing so rejected any need to show that the common issues as between claimants would show *"real progress"*. The court said CPR 7.3 "means what it says" and there is no additional test beyond it being convenient to dispose of the multiple claims in the same proceedings. This ruling has been welcomed by claimant law firms and litigation funders as it makes it easier to bring multiple claimants on a single claim form, which is logistically simpler and often cheaper than issuing a claim form for each claimant.



CPO applications in the CAT

2023 saw a further 15 new claims being registered. The timeline below sets out the status of claims as at 1 July 2024.



2020

2021

20 February 2020

Car Delivery Charges/ RoRo Claim

c. 6.9m class members; over GBP 172m

Follow-on

Certified: opt-out

15 January 2021

BT Land Lines Claim

c. 2.31m class members; GBP 469m

Stand-alone

Certified: opt-out

18 February 2021

Which? v Qualcomm

c. 29m class members; GBP 480m

Stand-alone

Certified: opt-out

11 May 2021

Kent v Apple Inc.

c. 19.6 million class members; GBP 535m

Stand-alone

Certified: opt-out

10 June 2021

GTR Brighton Mainline Claim

> 1m class members

Stand-alone

Certified: opt-out

29 July 2021

Coll v Alphabet

c. 19.6m class members

Stand-alone

Certified:
UK domicile: opt-out
Non UK domicile: opt-in

1 November 2021

Home Insurance Consumer Action

c. 20m class members

Withdrawn

24 November 2021

TSGN Boundary Fares Claim

c. 10.1m class members; GBP 73.3m damages

Stand-alone

Certified: opt-out

> 2021 saw a near-tripling of the number of persons in **UK competition class actions.**

2022

14 February 2022

Gormsen v Meta Platforms, Inc.

c. 45m class members; GBP 2.2bn damages

Stand-alone

Certified: opt-out

6 June 2022

Visa I

c. 1m class members; GBP 1.87bn

Stand-alone

Certification pending*

17 June 2022

Gutmann v Apple Inc.

c. 26.1m class members; GBP 750m damages

Stand-alone

Certified: opt-out

26 August 2022

Korg Claim

c. 81,100 class members

Both

Certification hearing TBC

21 March 2022

Fender Claim

c. 1.95m class members

Both

Certification hearing TBC

6 June 2022

Visa II

c. 1m class members; GBP 1.87bn

Stand-alone

Certification pending*

29 July 2022

BSV v Bittylicious

c. 242,000 class members; GBP 5bn

Stand-alone

Certification hearing held 7 June 2024. Decision pending

26 August 2022

Roland Claim

c. 39,300 class members

Both

Certification hearing TBC

10 May 2022

Power Cable Cartel Claim

c. 30m class members; GBP 300m

Follow-on

Certified: opt-out

6 June 2022

Mastercard I

c. 1m class members; GBP 1.87bn

Stand-alone

Certification pending*

22 August 2022

Sony Interactive Entertainment Claim

c. 8.9m class members; GBP 500m

Stand-alone

Certified: opt-out

6 June 2022

Mastercard II

c. 1m class members; GBP 1.87bn

Stand-alone

Certification pending*

*On 7 June 2024, the CAT published its judgment regarding revised applications for CPOs in Visa I, Visa II, Mastercard I and Mastercard II. The CAT held that it intends to grant the CPO applications based on an adjusted class definition, but it requires the Proposed Class Representatives to issue fresh publicity notices and open a three-week window for any person who wishes to make representations to come forward.

2022 saw 15 new competition class actions filed on behalf of **169m** people in aggregate.

2023

16 September 2022

Yamaha Claim

c. 217,100 class members

Both

Certification hearing TBC

29 March 2023

Charles Arthur v Alphabet†

c. 200,000 class members

Stand-alone

Certified: opt-out

21 July 2023

Doug Taylor v MotoNovo Finance

c. 222,000 class members; GBP 194m

Stand-alone

Certification hearing N/A (Application strayed until 25 November 2024)

15 November 2022

Julie Hunter v Amazon

c. 52.4m class members; GBP 889m

Follow-on

Certification hearing N/A (Application stayed)

30 November 2022

Claudio Pollack v Alphabet†

c. 130,000 class members: GBP 9bn

Both

Certified: opt-out

2 June 2023

Elisabetta Sciallis v Casio Electronic

c. 100,000 class members; GBP 215m

Both

Certification hearing TBC

7 June 2023

Robert Hammond v Amazon

c. 49.4m class members; GBP 1.4m

Stand-alone

Certification hearing listed 25-27 September 2024

21 July 2023

Doug Taylor v Black Horse

c. 665,000 class members; GBP 581m

Stand-alone

Certification hearing N/A. Application stayed until 25 November 2024

21 July 2023

Doug Taylor v Santander

c. 178,000 class members; GBP 156m

Stand-alone

Certification hearing N/A. Application stayed until 25 November 2024

25 July 2023

Sean Ennis v Apple

c. 1,600 class members; GBP 785m

Unclear

Certification hearing listed for w/c 16 September 2024

†In October 2023, the *Charles Arthur v Alphabet* claim dated 29 March 2023 with a class size of c. 200,000 class members and estimated losses of £0.9bn-£2.7bn was consolidated with *Claudio Pollack v Alphabet* 30 Nov 2022 c.130,000 Proposed Class Members with estimated losses of £4.8bn-£13.2bn. These are now jointly named *"Ad Tech Collective Action LLP v Alphabet Inc. & Others"*.

1 August 2023

Christine Riefa v Apple

c. 36m class members; GBP 500m

Stand-alone

Certification hearing 11-12 July 2024. Decision pending

8 December 2023

Carolyn Roberts v United Utilities

c. 5.6m class members; GBP 378m

Stand-alone

Certification pending*

28 February 2024

Mr David Alexander de Horne Rowntree v the PRS/PRS For Music

c. 160,000 class members

Stand-alone

Certification TBC

2 August 2023

Carolyn Roberts v Severn Trent

c. 8.1m class members; GBP 322.5m

Stand-alone

Certification pending

7 September 2023

Nikki Stopford v Alphabet & Google

c. 65m class members; GBP 7.3bn

Follow-on

Certification hearing listed 20 September 2024

30 November 2023

Justin Gutmann v Vodafone/EE/BT/3G UK/ Telefonica

c. 28.2m class members; GBP 3.3m

Stand-alone

Certification hearing listed 31 March 2025

14 December 2023

Carolyn Roberts v Yorkshire Water

c. 3.9m class members; GBP 390.9m

Stand-alone

Certification pending*

14 December 2023

Carolyn Roberts v Northumbrian Water

c. 2m class members; GBP 225.1m

Stand-alone

Certification pending*

15 December 2023

Carolyn Roberts v Anglican Water

c. 4.8m class members; GBP 69.5m

Stand-alone

Certification pending*

29 May 2024

Bulk Mail Claim v International Distribution Services

c. 290,500 class members; GBP 878.5m

Follow-on

Certification TBC

20 June 2024

Waterside Class v Mowi/ Grieg Seafood/SalMar/ Lerøy Seafood/ Scottish Sea Farms

c. 44m class members; GBP 382m

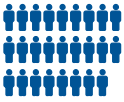
Stand-alone

Certification TBC

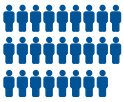
Estimated Class Size

This chart shows the cumulative estimated class sizes, based on publicly available information, for all UK competition class actions that have been filed in the CAT. It includes figures for claims that have been certified, withdrawn or where certification has been rejected.

2016 | **46,232,000**

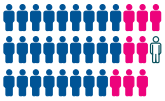


2017 | **46,232,000**

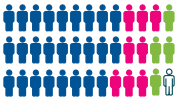


2018 | **46,250,000**

2019 | **62,493,819**

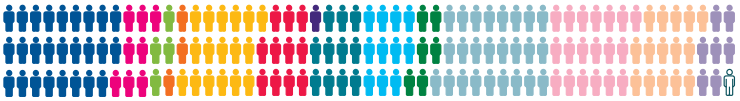


2020 | **69,393,819**

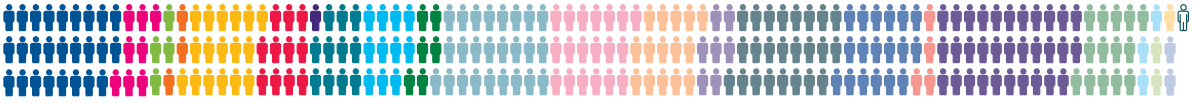


2021 | **171,003,819**

2022 | **340,013,333**



2023 | **544,389,933**



> By the end of 2023, class actions encompassing more than 500 million class members had been filed in a country with a population of 67 million people. This equated to 8.1 class actions for each person in the UK.

Class members under 1m

Class members over 1m
(The colouring cross-references to the claims.)

Spotlight on: **Scotland**[3]

Four years on from the introduction of opt-in class actions (known as "group proceedings") in Scotland, there are a number of such cases making their way through the Scottish Court.

A key theme emerging from the first wave of decisions is the Scottish Court's enthusiasm for the new procedure. So, for example, the Court has set a fairly low threshold for certification, has required little evidence of adequacy of resources to meet adverse costs from proposed representative parties, and has placed a strong emphasis on streamlined and expeditious case management, for example by refusing to order disclosure of documentation by claimants at the early stages of the litigation.

Scottish Court's permissive approach

As expected, the first phase of judgments has been dominated by the certification stage of the proceedings and some clear trends are developing.

The first trend that is emerging is that the Scottish Court has been applying a low bar for certification. To date, no application has been refused at the permission stage.

Another more recent theme is that the Scottish Court has been unwilling to overtly 'cookie-cutter' practical aspects of conducting group proceedings from other similar procedural devices in the UK, such as English GLO or class actions in the UK CAT. This was discussed in a recent decision of Lord Ericht in one of the diesel emissions cases in which the Court stated that *"English GLO procedure is not a good guidance as to how the Court will deal with Group Proceedings in Scotland"* and that *"the English practice of ascertainment of common issues is of no relevance in Scotland"*.

Given that in many class actions individual issues do inevitably arise, there is limited guidance on how the Court will grapple with these issues under the 'wrapper' of group proceedings, and how any individualised issues are to be resolved after the orders *"on behalf of all group members"* have been obtained.

Overall, in these early decisions we have seen the Court take a claimant-friendly approach.

Funding

At the certification stage of a class action, the proposed representative party should demonstrate that they have sufficient competence to litigate the claim. This includes a requirement that they have *"financial resources to meet any expenses"* (i.e., an order to pay the defendant's costs if the claim fails), although the rules also expressly provide that details of funding arrangements do not require to be disclosed.

To date, broadly the same approach has been put forward and accepted by the Court in all cases seeking certification, namely that the funder will provide an indemnity in favour of the proposed representative party for any adverse expenses. In line with the general claimant-friendly approach, the Court has accepted production of a draft indemnity and information on the funder's assets in annual accounts as sufficient to evidence the position. This does not properly examine whether a funder is contractually obliged to pay an award of expenses nor whether it has the means to do so.

Scotland has passed legislation that will improve transparency on litigation funding, but it is not yet in force. When these provisions come into force, claimants in civil proceedings who receive financial assistance from another person who is not a party to the proceedings, must disclose: (i) the identity of the funder(s); and (ii) the nature of the assistance being provided. This means that where a third-party funder has a financial interest in the outcome of litigation, certain basic information about those arrangements must be disclosed to the Court.

Opt-out proceedings?

Similar to the position with regulation of litigation funding, Scotland has passed legislation to permit opt-out class actions but the procedural rules for group proceedings have presently only been implemented on an opt-in basis. The Scottish Civil Justice Council which is responsible for developing Court rules in Scotland, has examination of the opt-out regime on its agenda. Moreover, the Scottish Ministers are required to report on the operation of the group procedure regime to the Scottish Parliament by 30 July 2025. This may prompt debate on if/when to expand this regime to an opt-out basis.

Importantly, the opt-out regime on the statute books would facilitate claims for any cause of action, not just for competition class actions as the UK-wide CAT regime is restricted to. If opt-out class actions for all causes of action were introduced in Scotland it would significantly increase litigation risk in that jurisdiction, but it would also impose pressure on the rest of the UK to follow suit.

Spotlight on: **Germany**

Traditionally, collective redress mechanisms have not been prominently featured in German law. Typically, German law mandates that individual claims must be initiated individually and that the outcomes of such proceedings are binding only on the parties involved.
This changed in 2018 when Germany introduced the "model declaratory action" (*Musterfeststellungsklage*) ("**MDA**"), a first of its kind mechanism providing for general collective proceedings by so-called qualified entities, e.g., consumer associations, which may be joined by consumers via an opt-in mechanism. Prior to MDAs, collective redress mechanisms were limited to specific areas of law, e.g. capital market law.

However, the MDA only provided for the determination of certain factual or legal aspects of the case at hand, and then required consumers (unless the matter was subject to a settlement) to subsequently file individual claims in order to have their potential damages determined. Thus, under the MDA regime, it is not possible to directly claim for damages or other specific remedies at the group litigation stage.

A new addition to the German litigation landscape

In 2023, the Consumer Rights Enforcement Act (*Verbraucherrechtedurchsetzungsgesetz* – **VDuG**) implemented the RAD and introduced the "redress action" (*Abhilfeklage*) as a new collective redress mechanism. For the first time, it is now possible for qualified entities to directly claim damages or other forms of relief (for example repair, contract termination, price reduction or purchase price reimbursement) on behalf of consumers or small businesses.

In general, all matters eligible for individual legal proceedings between consumers and businesses can also be addressed in a redress action. For instance, claims for cartel damages, not explicitly mentioned in the RAD, along with general tort claims, are potentially subject to redress actions. The main prerequisite for claims being the subject of a redress action is that the alleged claims of the consumers are of a similar nature (*Gleichartigkeit*), which needs to be determined by the court.

The new redress action is built upon the MDA, which remains in force as well. Qualified entities may now choose between these general collective redress mechanisms alongside the 'traditional' and more specific actions e.g. the model proceedings in capital market disputes.

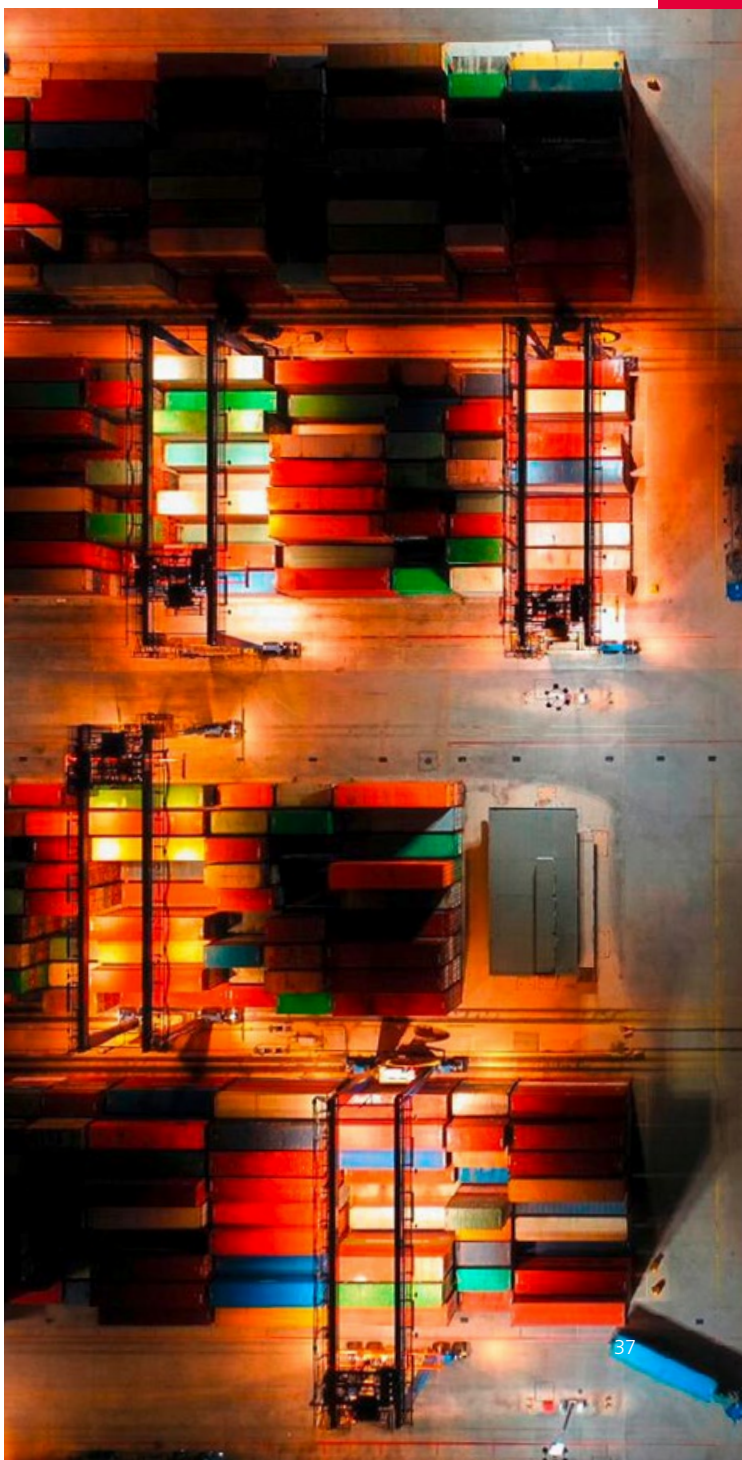
The redress action in a nutshell

The redress action is structured into three procedural steps, namely (1) the redress action proceedings themselves, (2) settlement phase, and (3) final implementation phase (*Umsetzungsverfahren*).

Whereas the initial steps – such as the filing of the redress action by a qualified entity and the opt-in procedure for consumers and small businesses using the claim register – are identical to those in an MDA, the court proceedings are structured differently. Should the court find the redress action to be well-founded, it will issue a preliminary judgment on the merits of the case, the so-called *Abhilfegrundurteil*. Conversely, if the action is deemed inadmissible or unfounded, it will be dismissed through a formal judgment.

In this *Abhilfegrundurteil*, the court sets out the conditions to determine consumer eligibility regarding the relief sought as well as the proof required from each consumer in the subsequent implementation proceedings. Following its decision, the court will then request a settlement proposal from the parties to facilitate an amicable implementation of its decision. If a settlement is not reached and the *Abhilfegrundurteil* becomes legally binding, the court will proceed by ordering the start of implementation proceedings (*Umsetzungsverfahren*) through a final judgment (*Abhilfeendurteil*), which also includes a decision on costs.

The implementation proceedings involve compensatory distribution handled by an administrator (*Sachwalter*), tasked with setting up and managing an implementation fund (*Umsetzungsfonds*). The administrator's responsibilities include verifying the eligibility of registered consumers and small businesses as per the criteria set out in the *Abhilfegrundurteil*.



Small businesses and litigation funding

Under the redress action framework, small businesses are classified as consumers, allowing them to join redress proceedings as well. In this context, small businesses are defined as those employing fewer than ten individuals and having an annual turnover or balance sheet not exceeding EUR 2 million. This approach marks a departure from the MDA regime, which faced criticism for excluding small businesses from joining.

In addition, the VDuG introduces rules on third-party funding of MDAs and redress actions. It specifically provides that an action is inter alia inadmissible if it is funded by a third-party who is a competitor of the defendant or has been promised a share of more than 10% of the performance to be provided by the defendant. Thus, the profit that funders can make from redress action claims is limited to 10% of the awarded compensation. This regulatory approach aims to strike a balance between enabling access to justice through third-party funding and protecting defendants from potentially exploitative practices. However, the cap is predominantly considered as too restrictive. The cap does not affect other types of legal claims under traditional German legal procedures, where no such specific limitation is imposed.

Redress actions filed so far

To date, six redress actions have been initiated, though not all have been publicly announced in the claim register and are open for registration. The redress actions initiated so far primarily relate to disputes concerning the validity of price adjustment clauses in General Terms & Conditions (*Allgemeine Geschäftsbedingungen*). Three of these actions challenge the validity of price increases by energy suppliers. Another action targets the telecommunication provider Vodafone GmbH with regard to alleged unilateral price adjustments for its internet and telephone services. Two of the most recent cases involve the streaming providers DAZN Limited and Amazon Digital Germany GmbH for alleged price raises for its existing customers. Most of these proceedings are brought by the *Verbraucherzentrale Bundesverband e.V.*, the umbrella organisation of the local consumer advice centers (*Verbraucherzentralen*).

The future of redress actions

Although the redress actions filed so far appear rather limited in scope, there may be significant expansions in the future. As the scope of the redress action is generally not limited by the law, redress actions are likely to be filed in other areas soon e.g. regarding data privacy and ESG issues. Furthermore, there is an overall trend towards collective redress actions being brought against companies for their alleged detrimental environmental practices, such as contributions to climate change, issues of greenwashing, and impacts on local communities.

The introduction of the redress action mechanism is therefore likely to pose a significant risk for companies. The future and success of the redress action (from the legislator's perspective) arguably depends on whether other qualified entities than the *Verbraucherzentrale Bundesverband e.V.* are going to enter the playing field.

Spotlight on: **the Netherlands**

The Netherlands has traditionally been a hotspot for class actions in Europe due to its legal system, sophistication of its law firms and availability of litigation funding.

Class action risk further increased with the introduction of the Resolution of Mass Damages in Collective Actions Act (so-called "**WAMCA**") on 1 January 2020. This created the possibility of bringing claims seeking damages on an opt-out basis. The WAMCA mechanism does include some safeguards with the intent of avoiding abuse including standards for admissibility.

Since the introduction of WAMCA, there has been an increase of registered class actions in the Netherlands. Although the law is relatively new, there have already been some judgments, which we highlight below.

Further, in 2023, the European Directive on RAD was implemented in the Netherlands. Because of the already existing comprehensive collective action regime, the Dutch legislators were able to fit many requirements from the RAD into the WAMCA relatively easily. The limited amendments of the WAMCA pursuant to the RAD include:

1. representative actions can only be brought by interest organisations outside of the Netherlands designated by their Member State as so-called 'qualified entities';
2. a distinction between the admissibility requirements of organisations for bringing collective actions in their own member state, and organisations for collective actions in another Member State; and
3. further rules on, among other things, the financing of collective actions to prevent abuse by interest organisations.

In this past year, consumer claims have remained a significant part of the commercial class actions landscape. However, the lucrative business of litigation funders of class action is being restricted by the courts. In this respect there have been discussions at the political level on the representation requirement of claimants under the WAMCA.

Next to that, the biggest part of the class actions last year relates to ESG litigation such as alleged infringement of human and citizen rights by governmental authorities (including in relation to climate change).

Consumer class actions

A significant percentage of class actions comprise consumer claims.

In previous years, the data shows that most registered collective consumer claims involved alleged (data) privacy infringements by tech giants and digital platforms.

Next to that, the most significant category last year was consumer claims in the healthcare and life sciences sectors against pharmaceutical companies. The next biggest consumer claim category of last year relates to 'traditional' competition law infringement.

By way of illustration, three representative entities filed a collective claim on behalf of TikTok users for alleged violations of privacy, telecommunications and consumer law. The Court was required to decide whether the relevant representative entities were admissible. In interlocutory decisions of 25 October 2023 and 10 January 2024, the Court of Amsterdam ruled that all the claims were admissible regarding the claim for material damages. However, with regard to claims for immaterial damages (i.e., damage which cannot be quantified such as that caused by mental suffering or loss of enjoyment of life), the Court decided that they are inadmissible, since any claim for immaterial damages by each user depended too much on that user's individual situation, so that there was no sufficiently similar claim.

Rise of ESG group litigation

In the Netherlands, companies and governments are increasingly facing litigation claiming they are responsible for alleged human rights infringements and impacting on climate change. The Netherlands – a small country under sea level with high population and limited nature and biodiversity – has been a testing pool for collective climate litigation. This is evidenced by e.g., the *Urgenda Foundation* case and other highly publicised climate cases, which, among other things, provided argumentation that was developed and deployed in the April 2024 "Swiss Grannies" climate judgment of the European Court of Human Rights.

Last year alone, there were separate class actions registered in relation to drought, high water levels and biodiversity (PFAS).

This ESG litigation trend will continue to rise in the coming years due to the introduction of legislative frameworks such as Corporate Sustainability Reporting Directive (EU) and Corporate Sustainability Due Diligence Directive (EU), and further acceleration of climate change throughout Europe.

In the past year, Greenpeace Netherlands initiated two class actions against the Dutch government for its alleged failure to mitigate negative consequences of climate change. In one class action, Greenpeace requests the Court to order the Dutch government to take all necessary measures in time to adequately protect Bonaire (an island in the Caribbean which is part of the Netherlands) and its residents from the effects of climate change and to order the Dutch government to take all measures necessary to ensure that the Netherlands' emissions of greenhouse gases is reduced. In the other class action, Greenpeace requests the Court to rule that the Dutch government is acting unlawfully by not reducing the nitrogen deposition on protected nature in the short term and to order the Dutch government to bring the Dutch nitrogen deposition below the critical deposition value.

Litigation funding in class actions

In the Netherlands, representative entities/foundations that initiate class actions claiming damages, almost all cooperate with an external (commercial) funder. There is an emerging trend of funders setting up the claimant foundation and then entering into funding agreements with the foundation they set up. For example, the class action of the foundation ICAM (in relation to an alleged data breach), is financed by a litigation funder that will receive 20% of the total damages, up to a maximum of five times the total costs of the lawsuit. In the event of a legal victory, the amount could therefore reach some EUR 5 million.

However, the judicial attitude towards commercially funded foundations has been becoming more critical. For example, in the TikTok case mentioned above, the Court stated that stipulated compensation for litigation funders could possibly be excessive if it is assumed that a certain payout applies irrespective of the amount of damages awarded, or the number of injured parties that can or do claim damages.

Representativity requirements in idealistic class actions

The Dutch legislator was concerned that the new possibility of claiming damages under the WAMCA would attract rogue advocates driven more by their own commercial motives than by the desire to stand up for a particular victim group. Therefore, the legislators elaborated on the legal requirement that the interests promoted by the claim must be "sufficiently safeguarded". This safeguarding requirement was elaborated on with a "representativeness" requirement and requirements regarding the governance of the representative organisation. If a significant number of the interested parties choose to opt-out, this can also be a sign to the court that the group claimant is not sufficiently representative. This happened in a class action in 2023 where unions represented flexible workers. Such workers who do not want to be represented by the union could 'opt-out', and over 15,000 of them did so. In October 2023, the Amsterdam Court subsequently dismissed all claims filed by the unions on behalf of the workers.

The court may disapply the governance requirements if "the action is brought with an idealistic purpose and a very limited financial interest" and the action does not seek "monetary damages". The representativeness requirement remains also for idealistic actions, but the law provides very limited guidance on how the representativeness requirement should be applied to idealistic claims.

In the case law of last year the Dutch courts were quite flexible with representativity requirements for idealistic class actions. That flexible attitude creates more collective ESG litigation risk.

Spotlight on: **Portugal**

In Portugal, the growth of the number of class actions intensified in 2023, with the actions seeking monetary payment having increased by around six times when compared to 2022. Consumer and competition continue to be the main types of claims, with data protection gaining ground in 2023.

The two most active consumers associations in 2022 – Ius Omnibus and Citizens' Voice – remained at the forefront of the class actions scene in Portugal. The third-party funding of multi-million euro claims is an important dynamic and part of the increased class action risk in Portugal.

Data protection claims

As far as data protection is concerned, Ius Omnibus filed at least four claims: two against TikTok, one against FloHealth and one against PubMatic.

In one of the claims against TikTok, Ius Omnibus alleges that the platform processes personal data without obtaining the appropriate consent from users, and does not have a clear data policy. Besides, TikTok is accused of misleading advertisement when it conveys the message that the platform is free of charge and only uses the data that is necessary for its functioning. Ius Omnibus is seeking damages of between EUR 657 million and EUR 668 million, resulting in EUR 211-218 of compensation per consumer. The other action brought by Ius Omnibus against TikTok is related to the use of the platform by children under 13.

Flo Health, an American company responsible for the development of an app that registers data on women's menstrual cycles, is accused of sharing sensitive data with other companies, such as Facebook and Google, without the consent of the Portuguese users. Ius Omnibus is seeking at least EUR 12,300 of material damages and at least EUR 41 million of non-material damages.

In the class action against PubMatic, a company operating in the field of digital marketing, Ius Omnibus claims that the company's data policy is insufficiently clear, and accuses PubMatic of installing unauthorised cookies and other tracking technologies.

Telecom companies

Telecom companies are also being targeted by consumer associations. Ius Omnibus brought two different actions against MEO and Nowo for participating in an alleged cartel. The consumers association seeks damages of EUR 383 million.

Vodafone was the target of four actions filed by Citizens' Voice. In one of these proceedings, Vodafone is accused of selling a GPS tracker which became obsolete before the warranty period expired.

Other cases

The majority of the 2023 class actions were submitted by a consumer advocacy association – Citizens' Voice – against supermarkets located all over the country for allegedly charging higher prices for certain products than the price displayed on the shelves.

Almost all of these supermarkets belong to chains – Pingo Doce, Lidl, Aldi and Auchan. In the case of Pi ngo Doce, the target of at least 66 class actions, the Citizens' Voice has later requested for the proceedings to be joined. In reaction to the tsunami of actions brought against it (i.e. the 66 class actions), and claiming to be defending its reputation, Pingo Doce filed an injunction against Citizens' Voice. Consequently, the consumer association and its president were ordered to remove all posts from their websites and social media where they accused Pingo Doce of having perpetrated crimes such as price speculation and misleading advertising.

Citizens' Voice also filed actions against several low-cost airlines. Easyjet, Wizz Air and Vueling are accused of anti-competitive practices for their policy of charging an extra price for a trolley bag, among others. Ryanair, in turn, is alleged to have failed to comply with its duties towards the passengers following the cancellation of a flight.

Citizens' Voice further sued at least two supermarkets for overcharging a tax on oil products whose values are legally fixed, and iServices and FNAC for violating legally fixed warranty periods. Endesa, a multinational company in the energy sector, is requested to pay a global compensation of EUR 14.6 million for misleading advertising, unfair competition and restriction of competition.

Ius Omnibus filed a class action against Sony for alleged anticompetitive practices, including in the supply of PlayStation digital content and services and fixation and coordination of prices, estimating total compensation of more than EUR 235 million.

The RAD implementation

2023 was also the year when the RAD was implemented in Portugal, entering into force on 6 December.

The Decree-Law implementing the RAD introduces the regulation of third-party funders' intervention in class actions, although is only applicable to class actions for the protection of the collective interests of consumers.

Claimants are now under a duty to submit information on funding to the court, including a certified copy of the funding agreement, a summary listing the sources of funding of the action and the costs and expenses that the third-party funder will bear. All amendments, additions or additional or ancillary agreements to the funding agreement will also have to be disclosed.

The funding agreement must comply with certain requirements, namely it will have to ensure that the Claimant is independent from the funder and that there is no conflict of interest. There are also stricter requirements regarding the remuneration of the funder when the Claimant is representing any holder of the interests in question that decided to intervene in the proceedings.

Since the Decree-Law implementing the RAD only entered into force on 6 December 2023 and only applies to actions filed from that date onwards, there is still no clear picture of eventual impacts in the unfolding of class actions proceedings.

As for the designation of qualified entities, the Portuguese General Office for Consumer Affairs has designated Ius Omnibus and DECO – Portuguese Association for the Protection of the Consumer.

Despite the fact that the substantial increase of class actions filed in Portugal in 2023 was largely due to dozens of proceedings with similar objects and defendants, it is clear that consumers associations are still targeting large companies. In the beginning of 2024, Ius Omnibus initiated several class actions against five of the main banks in Portugal for alleged anti-competitive practices.

The Representative Actions Directive and its implementation: European-wide perspective

The RAD requires that all EU member states have a consumer collective redress mechanism in place from 25 June 2023. To date, not all member states have complied with this requirement. Among those countries that have not yet implemented RAD are Austria, the Czech Republic, Estonia, Poland and Luxembourg.

The RAD is intended to facilitate collective redress for mass consumer claims. However, in Germany and the Czech Republic this mechanism can be used, not only for consumer claims, but also for claims from small businesses with fewer than ten employees and annual turnover of no more than EUR 2 million.

Representative actions present challenges for businesses and pose significant financial and organisational risks. These arise from the specific features of the representative actions, which are new to many European jurisdictions.

First, representative actions will be brought by consumer associations or public bodies. Individual consumers will not be parties to the proceedings and, in principle, will not bear the costs of these proceedings either. Under these circumstances, it can be expected that a greater number of consumers will choose to pursue their claims.

Second, most European countries permit third-party funding of representative actions and stipulate only that the courts at the preliminary examination stage of the case should examine whether the terms of the third-party funding jeopardise the interests of consumers. Beyond that simplistic requirement, most jurisdictions do not meaningfully regulate litigation funding. There are some exceptions – in Germany the benefit to the funder may not exceed 10% of the amount awarded. The current Polish draft law stipulates that in connection with a representative action, the consumer may not incur any costs other than an initial fee of 5% of the claimed amount and not to exceed PLN 2,000 (approximately EUR 500).

Third, in principle, where implementing the RAD Member States had the choice between introducing an opt-in mechanism or an opt-out mechanism for pursuing redress measures. In the case of an opt-in representative action, each consumer must agree to join the action. An opt-out mechanism allows a qualified entity to bring a claim on behalf of a specific group of consumers, without the consent or even knowledge of individual consumers. An opt-out mechanism for all or certain redress measures has been adopted in (or is expected to be adopted in), among others, Portugal, Spain, the Netherlands, Slovenia and Hungary. The opt-out mechanism increases the risk for businesses given the ease of bringing a large opt-out action rather than an action requiring the collection of individual consumers' consents.

The range of claims that may be brought under the representative action mechanism is broad.

The first representative actions have already been filed in Hungary against insurers. In Poland, although RAD has not yet been implemented, consumer associations are announcing their intention to use this mechanism to pursue consumer claims against the banks. This ties in with the recent high-profile rulings of the Court of European Justice ("**CJEU**") concerning foreign currency loans granted by Polish banks. It seems that a general correlation between CJEU case law and representative actions can be expected. The violations of consumer interests confirmed by the case law of the CJEU may be a natural source of representative actions. Therefore, the more preliminary questions the national courts ask, the greater the risk of representative actions. In this context, it is worth recalling that the largest number of preliminary questions in consumer cases is asked by German, Spanish, Italian, Polish, Romanian and Bulgarian courts.

The representative actions mechanism is also likely to be used to pursue claims relating to ESG issues. ESG claims may concern, for example, greenwashing, i.e. advertisements or other types of communication that are misleading as to the actual environmental impact of a given business.

Hot topics

FOCUS ON:

Funding of group claims:
A middle way

NGO litigation

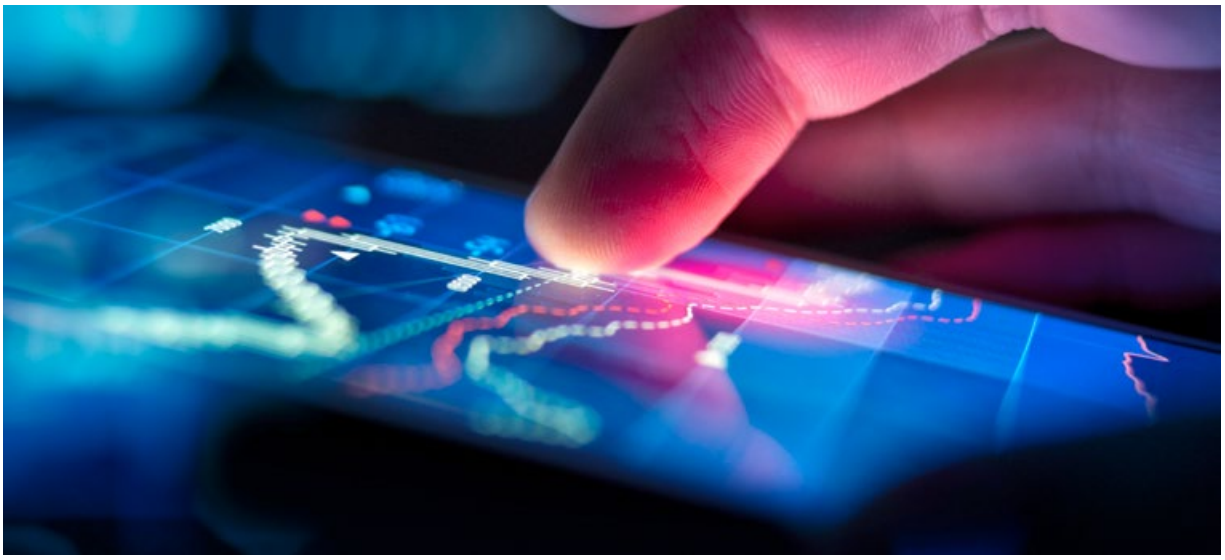
Product liability

Funding of group claims: A middle way

Rosie Ioannou is a Managing Director at Fortress Investment Group. In this role she provides bespoke funding solutions for high value commercial litigation and portfolio financing solutions for law firms and their clients. Rosie has experience both in private practice and as funder in a wide range of disputes both in the UK and internationally. She has particular expertise in funding large complex matters, including group claims and competition-related disputes. A solicitor of the Courts of England and Wales, before joining Fortress, Rosie worked at Vannin Capital. Prior to that she worked in the litigation department at Allen & Overy in London, where she trained and qualified.

The third-party dispute resolution funding market has risen in prominence in recent years. It continues to grow in sophistication and in its ability to meet the requirements of market participants. According to research by Swiss Re,[4] globally, the sector invested over USD 17 billion in 2021. In the UK alone, annual investment in 2021 is estimated to have been over USD 1.3 billion. Since 2019, the market has doubled in size, with a marked increase in the amount of capital and funding solutions available for law firms and their clients. Estimates suggest that by 2030, global annual investment will exceed USD 25.8bn.[5]

In the UK and across Europe, there has been particular growth in the funding of group claims, so-called 'class actions': be they consumer, securities or business to business claims. Along with other developments in the market, this growth has resulted in increased focus on the role of funding and the behaviour of funders.



Developments

On 13 September 2022, the European Parliament voted to support a report by German MEP Axel Voss advocating for the introduction of a Directive to regulate third-party litigation funding.

Among other things, the report called for minimum standards of transparency, independence, governance, capital adequacy and regulation of litigation funders, as well as regulatory oversight and limitations on funder returns and termination rights in their agreements with litigants. The Voss Report does not focus exclusively on group claims or consumer actions. Its intention appears to be to capture the whole litigation funding market.

In the UK, there has been a flurry of recent activity following the judgment by the Supreme Court in *"PACCAR"*[6] (that the funding agreement in that case constituted an unlawful damages-based agreement), resulting in, at the time of writing, what appears to be a 'legislative fix' to this issue. This activity, alongside discussions about the use of litigation funding in the now widely publicised Post Office case have generated more publicity than one would perhaps expect for, despite its recent growth, a relatively esoteric industry. Publication, on 24 April 2024, of the UK CJC Terms of Reference of a review into third-party civil litigation funding, at the request of the Lord Chancellor, Alex Chalk, serves to underline this.

The European Parliament's support for the Voss Report, the *"PACCAR"* decision and the CJC review of funding are inevitably being trumpeted by some as the starting point for a much-needed framework for the oversight of litigation funders in Europe. By others they are viewed as unnecessary overreach for an industryand market that is functioning well.

Whichever side of the fence, these developments are generating significant discussion about the rise and corresponding role of litigation funding across Europe and the activities and behaviour of litigation funders. As is often the case, the discussion is becoming partisan, with market participants and commentators picking a side (if they haven't already) and sticking to their guns.

A middle way

But there is a middle way.

Legislative and regulatory developments

The middle way acknowledges that there has been a rise in group claims across Europe in recent years – not only in consumer actions, but also in securities and business to business claims. It acknowledges that funding has clearly played a part in that increase. But, at the same time, it has to be accepted that without the legislation and regulation that has been introduced and developed across Europe in recent years (both at the European and individual state level), which has provided the framework for group claims to be brought, they simply couldn't and wouldn't have been.

No amount of available funding would result in group claims being brought in jurisdictions where they are not permissible or possible.

The success of the legislative and regulatory framework that has been introduced in recent years to encourage group claims (most notably, the opt-out collective procedure in the CAT and the WAMCA procedure in the Netherlands – neither of which are limited to consumer actions) should be praised. It has been a notable step forward for accessibility to redress and enforcement of rights across Europe.

Much of the progress achieved has been dependent on the availability of funding to bring those claims. This is for the simple fact that litigation is expensive (and becoming more so), meaning the costs of bringing claims on a single claimant basis are often prohibitive. A discussion about the rising costs of litigation is for another article, on another day, but the simple fact is that, without funding, meritorious group actions – which governments have actively legislated to introduce throughout Europe – would not be brought. Funding has facilitated the bringing of these actions, but it isn't the reason for them.

Responsible funders

The middle way also acknowledges that good, reputable funders already adhere to the key standards advocated for by the proponents of legislative fixes and regulation of the industry.

Good funders scrutinise cases closely, ensure budgets are adhered to, seek to achieve reasonable claimant returns, are well-capitalised and behave professionally, meeting relevant legislative and professional standards expected of them. Regulation is not needed for them to do so. It is in funders' interests to behave professionally and responsibly both for the cases they are already funding (and therefore for the investments they are already managing) but also for the future success of their individual businesses and the industry as a whole as the market continues to grow.

In the jurisdictions across Europe where funding of group claims is currently most developed – arguably the UK and the Netherlands – among other things, funding terms already need to be disclosed to the court, claimant returns are very closely scrutinised and monitored by the court and there are very clear rules around funder transparency and independence. As case law in this area develops, not just in relation to funding, but also on the broader structure of group claims and interpretation of the procedural and substantive mechanisms that have recently been put in place for the bringing of such actions, so will the clarity for funders, lawyers, claimants, defendants, judges and commentators alike.

A broader discussion

The middle way acknowledges that an open and honest dialogue between all stakeholders and all industry players is good for everyone. Very few would advocate that effective and accessible legal redress is bad. If claimants, be they consumers, investors or businesses (all of which use funding and are involved in group claims) have been harmed, they should receive redress for the harm that they have suffered.

But funding isn't a panacea for redress. It is simply a tool in the armoury – part of a broader solutions-based approach seeking to achieve efficient redress for claimants, alongside governments, judges, lawyers, experts and parties to the claims. The discussion about funding and the important role that it plays is helpful, but that discussion shouldn't happen in isolation, it should be part of a broader conversation and an acknowledgment of the role that all market participants play, not just singling out funding as the easy target for debate.

Conclusion

The rapid growth and development of dispute resolution funding means that, as an industry, it is in the spotlight – generally but especially so in the context of group claims. In it so being, it is important to recognise that, ultimately, funders, lawyers, claimants and, one would hope, defendants, are all looking to achieve the same thing – reasonable redress for losses that have been suffered by claimants in meritorious claims. Assuming that basic, hopefully uncontroversial, premise is acknowledged, the middle way should be uncontroversial, too.

NGO litigation

The term Non-Governmental Organisation ("**NGO**") typically includes groups or organisations that function independently of government, with the objective of improving, influencing and achieving public, social, cultural, environmental, or political good. With a 400 percent increase in the number of NGOs operating at an international scale, corporations are encountering NGOs on an increasingly frequent basis, via innovative – including legal – claims to tackle actual or perceived corporate wrongdoing. This is reflected in the twenty-fold increase in citations of "NGOs" or "nongovernmental organisations" in the Wall Street Journal and the Financial Times in the last ten years.[7]

NGO giant, ClientEarth, publicly states on its website, *"The law is the best way to empower people to protect their environment, and the only way to rebalance the power between governments, industry and individuals"*. Similarly, Greenpeace has promoted that it engages in *"strategic litigation"* and describes itself as being one of the *"key players in proactive litigation worldwide to respond to environmental problems and human rights harms"*. The Pharmaceutical Accountability Foundation states that litigation can *"inject a little bit of steel"* into campaigns and, at a recent legal finance summit on the rise of ESG Risks, Anja Ipp of Climate Change Counsel urged the audience to reach for litigation as *"the biggest fire extinguisher available"*.

Undoubtedly, NGO legal action against corporates is on the rise and a portion of NGO claims are driving class action risk. The prime motivator of NGO activity in the collective redress sphere is abundantly clear – to drive behavioural change and to change broader expectations about corporate responsibility and regulation, rather than simply meeting existing social expectations and legal requirements. The risk for corporates is (broadly speaking) three-fold: direct, operational, and indirect.

Direct risk

We are increasingly witnessing the class action regime being used against corporates to: (i) effect change in internal corporate policy, strategy and structure, (ii) secure a court declaration of wrongdoing, and/or (iii) attain compensatory damages.

Many recent claims have utilised class action litigation through the lens of human rights-based or climate-change arguments, effectively seeking collective redress through driving a company, who have been branded as *"unethical"* or *"polluters"* to redraw their future business models and plans. One such case via the Dutch courts dealt with a high-profile group action against Shell, in which six NGOs, alongside 17,000 individuals, successfully obtained a ruling requiring the oil and gas giant to reduce its worldwide aggregate carbon emissions by net 45% by 2030, relative to 2019 levels.

Similarly, NGOs use collective redress to obtain declaratory relief i.e., a declaration by the court that the corporate has engaged in wrongdoing. For example, the 2016 class action raised by Italian NGO Altroconsumo, before the Court of Venice, against Volkswagen Aktiengesellschaft and Volkswagen Group Italia S.p.A., whereby Altroconsumo represented more than 63,000 individuals and successfully sought a declaration that the corporations engaged in unfair commercial practices against Italian consumers.

Arguably, NGOs are well placed to lead or co-ordinate class action claims on behalf of groups of individuals who have suffered pecuniary loss. In 2019, IRAdvocates, a US-based NGO filed a class action lawsuit against Apple, Google, Tesla, Alphabet, Microsoft, and Dell alleging the corporations profited from child labour in their cobalt supply chains in the Democratic Republic of Congo. However, it is clear that NGOs are bringing legal claims – whether seeking compensation or declaratory relief – to seek to drive behavioral change. In the case law of last year the Dutch courts were quite flexible with representativity requirements for idealistic class actions via NGO's. That flexible attitude creates more collective ESG litigation risk.

Operational risk

Even if an organisation is not directly targeted by an NGO claim, it will be mindful of claims brought against any competitors engaging in similar activities. Corporates should consider the means to bring those claims, which includes: (i) derivative actions brought by shareholders to effect change, such as in the case of *ClientEarth and Shell*; and (ii) greenwashing claims against investors. These claims can lead to erosion of market value; destruction of reputation; de-stabilisation of employee morale; and, the limitation of scope for strategic action.

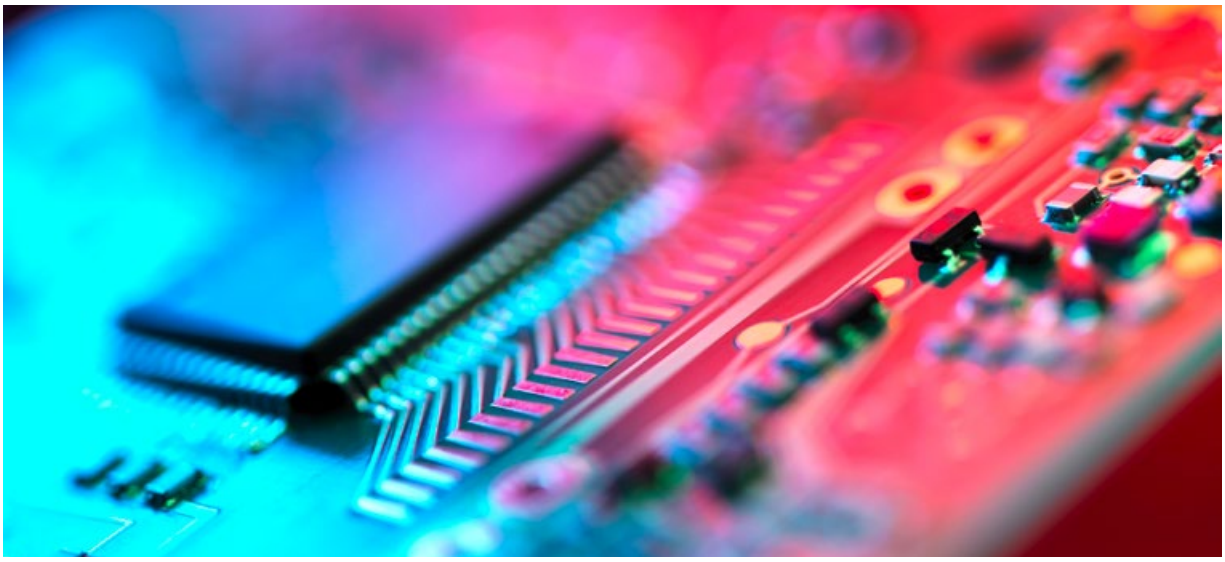
A particular operational concern is that NGOs are, in some parts of Europe, successfully changing the narrative on corporate responsibility. The successful claims in *Stichting Urgenda v State* and *Milieudefensie c.s. v Royal Dutch Shell* established that corporate entities have an increasingly emerging parallel responsibility to that of the state, in terms of protecting public interests, and NGOs acting in the name of 'civil society' are actually enforcing the fulfilment of those responsibilities in court. These claims demonstrate the extent to which the class action regime can be utilised to shape the future planning and existence of corporates as opposed to tackling liability for past practices *en masse* to class members.

Indirect risk

NGO activity against public bodies is rising at pace. The significance of this cannot be overlooked, in particular, the wide-ranging implications beyond the public realm in the face of corporates being held to account for a parallel responsibility to the state. NGOs and activists are also creative in their thinking, bringing claims against state and corporate entities. In April 2024, the European Court of Human Rights voted in favour of the "Swiss Grannies": the court agreed with the argument that Switzerland's response to climate change breached Article 8 of the European Convention on human Rights. Although the court did not order Switzerland to make specific changes, this is nevertheless a significant ruling as its finding that failures in climate change policy can breach Convention rights is binding on all countries that are signatories to the Convention.

Conclusion

Through such strategic use of the class action regime, we are seeing a stark rise in NGO advocacy, media engagement and their socio-economic standing as key players in the legal field. With claimant law firms and commercial litigation funders successfully cementing their seat in the class action arena, they will increase their focus on ESG issues. As the courts have recently emphasised: *"In a complex world, the demand for legal systems to offer means of collective redress will increase not reduce."*



The new EU Product Liability Directive and increased class action risk

Class action risk can increase through introduction of new procedures to aggregate claims, such as the RAD. Risk can also significantly increase through other changes to substantive or procedural law, such as shifting the burden of proof in favour of claimants. Changes set out in the new EU Product Liability Directive ("**PLD**") could materially increase litigation and class action risk.

The existing product liability directive dates from 1985,[8] the new PLD brings very significant changes and is expressly intended to *"ensur[e] a high level of protection of consumers and other natural persons."*[9]

The European Parliament formally adopted the EU's new PLD at first reading on 12 March 2024. The new PLD has not yet been formally adopted by the Council of the EU, but it will enter into force 20 days after adoption and publication in the Official Journal of the European Union. Thereafter, Member States will need to transpose measures laid down in this new PLD within 24 months from the date of its entry into force. In summary, it is likely to be in force in autumn/winter 2026.

This article (i) provides a brief overview of the key changes from the current PLD to the new PLD, (ii) discusses some of those key changes, and (iii) explores the impact of the PLD on disclosure, settlement considerations, and class action risk.

Key changes from the old to the new PLD

Key changes to the current PLD that could significantly increase litigation and class action risk include the following:

— Expansion of the scope of claims covered by the directive and the number of potential Defendants;

— Changes to the test for "defectiveness";

— Expansion of the categories of losses recoverable as damage;

— Removal of the minimum threshold limits for claims within the scope of the directive;

— Introduction of wide-ranging powers to order potentially burdensome and costly disclosure (discovery) by Defendants, which we anticipate will lead to applications for pre-action and early disclosure;

— Introduction of a rebuttable presumption to assist Claimants in proving their case and, in some instances, reversal of the burden of proof for "complex" products;

— Changes to the exemptions from liability, including enabling Member States to derogate from the development risk defence and introduce new and/or amended measures extending liability to specific types of products; and

— Extension of the long-stop limitation date for latent injuries to **25 years**.

We below briefly expand on the changes listed above.

Scope of claims

The new PLD, like the current product liability directive, applies to *"products."* The definition of *"product"* in the new PLD is significantly broader, expanding the types of claims that can be brought: tangible and intangible goods, components including related services integrated or inter-connected into a product, software, digital manufacturing files (digital version or digital template of a movable) and related digital services, and raw materials.

"Software" includes software embedded as a component of a broader product and also stand-alone software. The new PLD does not apply to free and open-source software developed or supplied outside the course of a commercial activity; it clarifies that information, however, is not a product. Therefore, product liability rules do not apply to the content of digital files or software source code.

Potentially liable economic operators

Under the current PLD, claims could be brought against the manufacturer of a defective product or component, the first importer who places the defective product onto the market in the EEA from a third country, and any person who attaches their name/trade mark/ distinguishing feature and holds itself out as the producer of the product ("own-brander").

Under the new PLD, the following economic operators have potential liability: 1) the "manufacturer" of the product, which includes a natural or legal person who substantially modifies a product outside the manufacturer's control/makes it available on the market or puts the product into service; 2) the manufacturer of an integrated or inter-connected component of the product within the manufacturer's control; and where the product or component manufacturer is established outside the EU, 3) the importer, 4) the EU authorised representative of the manufacturer, and, where no importer or EU authorised representative is established in the EU, 5) the fulfilment service provider ("FSP"). There is also potential liability for EU distributors where an EU-based economic operator cannot be identified and the distributor fails to identify either an economic operator in the EU or its own distributor and for online platform providers subject to certain conditions.

Multiple Economic Operators can be held jointly and severally liable, and liability to the injured person cannot be limited or excluded, either contractually or by national law.

Defect test

Under the new PLD, a product is defective *"if it does not provide the safety that a person is entitled to expect or that is required"* under EU or national law[10] – an objective assessment of the public's expectation of safety rather than a specific person's subjective expectation.

Courts should take into account several factors when assessing defectiveness, including the product's presentation and characteristics (e.g., labelling, technical features, packaging), *"the specific needs"* of the intended users, the product's purpose, relevant product safety requirements (*"including safety-related cybersecurity requirements"*), and any recall of the product or other relevant intervention by a competent authority or other economic operator for product safety.[11]

The inclusion of product recall in consideration of defect demonstrates the PLD's alleviation of the Claimant's burden of proof. Although products can be recalled for multiple reasons, the mere occurrence could now present additional challenges for manufacturers to successfully defend claims and may in fact discourage manufacturers from recalling a product where the necessity for which is equivocal.

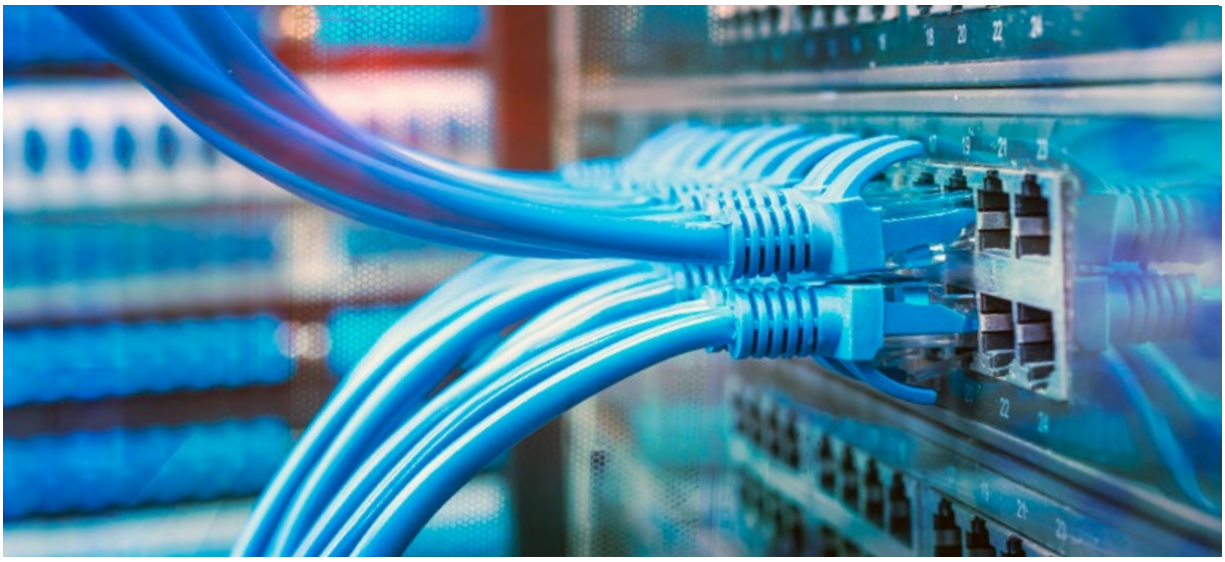
Damages

The new PLD broadens the categories of damages recoverable for defective products. Under the current PLD, recoverable damages include death, personal injury, and property damage[12] (excluding the actual product), and this has now been expanded to remove the minimum threshold for property damage and expand *"personal injury"* to include psychological harm which is defined as *"medically recognised and medically certified damage to psychological health that affects the victim's general state of health, and could require therapy or medical treatment…"* The new PLD also adds *"destruction or corruption of data that is not used for professional purposes,"* (i.e., not applicable to data used for both professional/private capacities) as recoverable damages.

Disclosure

The new PLD introduces a new disclosure regime that enables Claimants (including in representative actions) to obtain disclosure. The Claimant enjoys a low burden of merely having to "[present] *facts and evidence sufficient to support the plausibility of the claim for compensation"* before the Defendant *"is required"* to disclose relevant evidence – including documents created ex novo *"by compiling or classifying the available evidence."*[13] Whilst the apparent intention of enabling courts to order ex novo documents is to address the perceived asymmetry of information held by the manufacturer of a product versus the injured party, the sole burden of the Defendant to create documents takes the usual steps of producing documents for disclosure to a new level. Although Claimants can likewise be required to disclose certain relevant evidence, the realistic consequence of this new disclosure regime is that Defendants will bear the vast brunt of the time and costs to satisfy a court order for disclosure.

The new PLD does not provide guidance on how disclosure should be performed. Many Member States have limited experience with disclosure, and both Defendants and national courts will face challenges in introducing disclosure to Civil Law regimes not used to this mechanism.



Burden of proof/ rebuttable presumptions

The current PLD operates a no-fault regime whereby the Claimant has the burden of proof to prove defect, damage, and the causal link between the defect and damage suffered, on the balance of probabilities. However, the new PLD sets out circumstances where the burden of proof shifts to the Defendant to rebut presumptions of defect and/or causality.

Defectiveness will be presumed where: the Defendant fails to disclose relevant evidence; there is non-compliance with mandatory product safety requirements intended to protect against the risk of the damage suffered; and there is an obvious product malfunction during *"reasonably foreseeable use or under ordinary circumstances."* Causation will be presumed where it is established that the product is defective and that the damage suffered is typically consistent with the particular defect.

Defect, the causal link, **or both** shall be presumed where, despite the Defendant's disclosure of information, the Claimant *"faces excessive difficulties"* in proving defect, the causal link between the defect and damage, or both *"in particular due to technical or scientific complexity of the case,"* and merely ***"demonstrates"*** (not proves) the likelihood of the product's defect or causal link or both. Both assessment of *"excessive difficulties"* and determination of the *"technical or scientific complexity"* should be made by national courts on a case-by-case basis, taking into account various factors (e.g., the complex nature of a product such as an innovative medical device).

While these presumptions are rebuttable, there will be circumstances where it is challenging for Defendants to identify and adduce evidence to rebut the presumptions.

Limitation

The new PLD extends the long-stop limitation period from 10 years to 25 years for latent personal injuries. If a product was substantially modified, the limitation clock re-starts on the date the substantially modified product was made available on the market or put into service.

Development risk defence

The "development risk defence" is an exemption from liability when an economic operator proves that the state of scientific and technical knowledge at the time the defective product was placed on the market or put into service (or when in the manufacturer's control) was not such as to enable discovery of the defect's existence.

Under the new PLD, the development risk defence will not apply where the product's defect is due to a substantial modification, software/software updates/ software upgrades, or *"lack of software updates or upgrades necessary to maintain* [the product's] *safety,"* within the manufacturer's control.

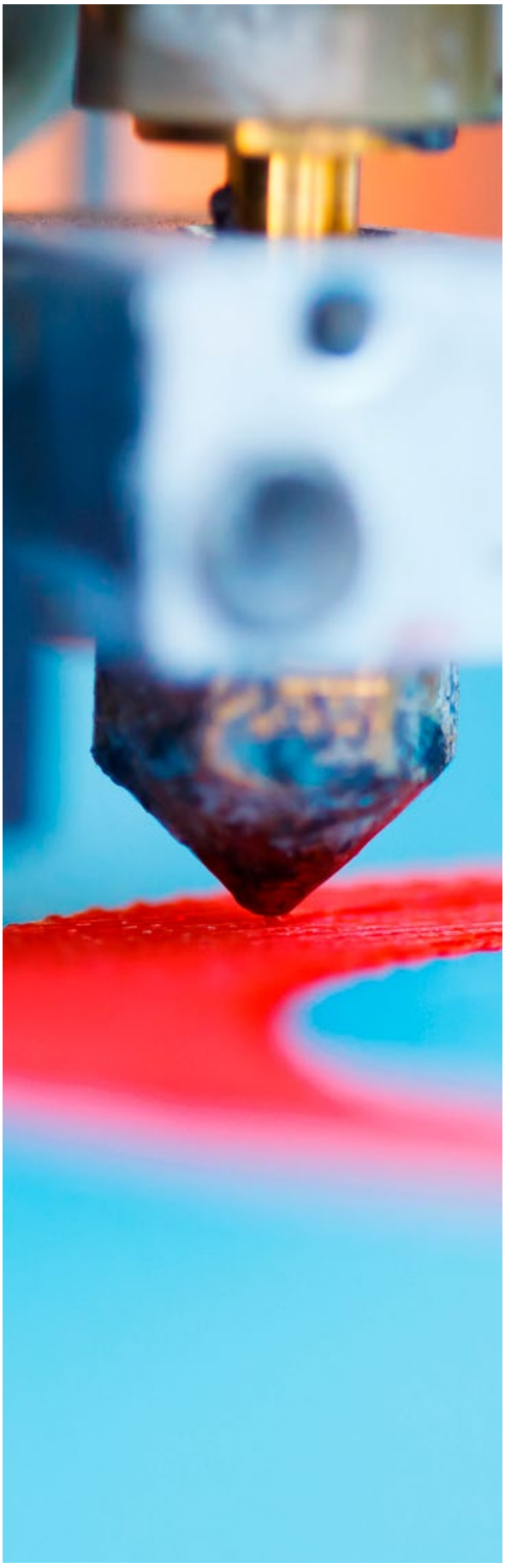
Member States will be able to derogate from the development risk defence and can introduce new measures or amend existing ones where the Member State already derogated from this defence in its legal system.

The PLD's impact on litigation and class risk

This new PLD could materially increase litigation and class action risk for companies within its scope. Broadening the categories of damages recoverable will have an obvious impact. Although not possible to measure, changes to burdens of proof could have a greater impact still. In some circumstances, companies simply will not have the data to hand to reverse the presumptions, and this practical difficulty will become more challenging yet, particularly with regard to the very lengthy limitation period under the PLD for claims involving latent injuries, leading to claims being brought relating to facts long in the past. As noted above, Defendant companies will also face disclosure burdens in jurisdictions which do not traditionally order broad disclosure.

In addition to class actions brought pursuant to the RAD (or other domestic class action mechanisms), the changes introduced by the PLD could encourage high volume relatively low value "nuisance" claims, in particular owing to the PLD's removal of the EUR 500 minimum claim value floor for property damage. Faced with reversed burdens and defence costs that are disproportionate to the damages sought, Defendants may feel significant settlement pressure.

The above discussed risks to economic operators under the new PLD could lead to frivolous litigation, potential forum-shopping, over-loading courts with disclosure applications on only "plausibility" of a claim being demonstrated by a Claimant, costly and burdensome disclosure obligations on Defendants for all claim sizes including de minimis and potentially unmeritorious claims, and ultimately increasing the number and size of class actions which have already been increasing across Europe.



Methodology

As noted in the introduction, our study on European Class Actions seeks to capture all types of group litigation filed on behalf of five or more economically independent persons seeking damages or other monetary payment (although other remedies may also have been sought). Although not formally an avenue to claim damages, we also included mechanisms that clearly facilitate subsequent mass claims such as the German model declaratory action.

Qualifying claims were captured irrespective of procedural device used and irrespective of whether the mechanism operated on an opt-in or an opt-out basis. Data on applicable cases were gathered by lawyers based in each applicable jurisdiction for claims filed in the years 2016–2023 inclusive. The overall reported number of class actions filed between 2016 and 2022 has changed compared to that set out in the previous year's report, due to improvements in our data set. While some countries have central repositories of claims filed others do not, and so lawyers used a variety of manual techniques, including searching publicly available information, subscription services and local knowledge regarding issued class actions in order to identify relevant claims. Data was then sense-checked at the local and central editorial level to ensure it reflects the picture in the local market and to reduce the risk of inaccuracies.

Jurisdictions included in our report are: Albania, Austria, Belgium, Bosnia Herzegovina, Bulgaria, Croatia, Czech Republic, England and Wales, France, Germany, Hungary, Italy, Luxembourg, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and Ukraine.

Certain major events, such as the "Dieselgate" claims, have resulted in many thousands of claims being filed and counting each of these claims as an individual data point would skew the trends. Accordingly, once we had gathered instances of qualifying group claims involving five or more claimants, we "compressed" claims arising from a single underlying or series of related or similar events, to avoid "overcounting". Where a single or series of related events resulted in class actions being filed using different procedures or in different countries or against different defendants we included them as a single data point per country and a single data point per defendant. Any charts in this report that relate specifically to defendant sector or type of claim are based on claims filed where this information was publicly available. Where the type of claim or defendant sector is "unknown", it has been filtered out of the related chart, leading to underreporting. Where large numbers and/or percentage distribution were reported on, numbers may have been rounded up or down as and when appropriate.

We would like to acknowledge the assistance of Solomonic Litigation Intelligence in providing certain data in relation to claims filed in England & Wales.

See page 5 for an explanation of our methodology for quantum data. We used a GBP to Euro conversion ratio of 1 GBP = 1.16 EUR.

Contacts

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Endnotes

Endnotes are interactive; click the endnote number to return to the main text.

1 Directive (EU) 2020/1828

2 Please refer to the Methodology section at page 61 for what constitutes a claim for this Report's purposes.

3 Scotland is a separate jurisdiction to England and Wales. That said, the competition class action regime applies to all of the UK and is addressed in the prior article.

4 https://www.claimsjournal.com/app/uploads/2021/12/swissre.litigation.funding2021.pdf.pdf (claimsjournal.com)

5 Global Litigation Funding Investment Market Size, Share 2032 (custommarketinsights.com)

6 R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others (Respondents) [2023] UKSC 28

7 See, Yaziji M, Doh J. Preface. In: NGOs and Corporations: Conflict and Collaboration. Business, Value Creation, and Society. Cambridge University Press; 2009:xiii-xvi. and M. Yaziji, "Institutional change and social risk: A study of campaigns by social movement organizations against firms," INSEAD (2004).

8 EU Directive 85/374/EEC

9 Chapter 1, Article 1, draft EU PLD as formally endorsed by the EU Parliament during its March 2024 plenary.

10 Article 7 sets out the test on defect

11 E.g., a product safety enforcement, General Product Safety Regulation, Regulation (EU) 2023/988.

12 Of a lower threshold of EUR 500, Art. 9(b), 85/374/EEC

13 Recital 42

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