# COLLECTIVE REDRESS AND ACCESS TO JUSTICE: A POTENT MIX BUT ELUSIVE REALITY?

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## 1. INTRODUCTION

This special issue of *Europarättslig tidskrift* builds on a conference that we organised in November 2025 under the auspices of the Swedish Network for European Legal Studies.[1] The conference was entitled "Collective Redress in Europe: Emerging Practices and Remaining Dilemmas" and gathered leading European academics together with practitioners, including ombudsmen, attorneys and judges, to discuss the potential of and challenges for collective redress in Europe. As alluded to in the title of the conference, our aim was for the conference to gather evidence for the current and nascent growth of collective redress in Europe, in particular in the Member States of the European Union (EU), but also to provide a forum for candid debate on the problems and issues that have arisen or become evident in this context. The articles in the special issue constitute a collection of contributions that emanated from the conference and that are written by several of the conference speakers. The contributions deal with a breadth of the central EU jurisdictions in which relevant case law or progressive legislative development is emerging with respect to collective redress. Furthermore, the contributions raise crucial questions from a variety of perspectives.

As will become evident below, as well as in some of the contributions, Sweden has not been one of the jurisdictions at the forefront of the current debate on, or the development of collective redress in Europe. Despite Sweden having been among the first jurisdictions in Europe that enacted specific domestic procedural rules for collective redress in 2002, over 20 years ago, collective

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[1] See https://www.snef.se/activity/collective-redress-in-europe-emerging-practices-and-remaining-dilemmas/, visited 10 July 2026.



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redress has not become a significant tool of litigation for private enforcement. Therefore, our hope is that the contributions in this issue will provide the impetus for a more active debate also in Sweden regarding collective redress, which crucially relates to the broader themes of effective enforcement of rights and access to justice.

Below, the background of and context to the theme of collective redress in Europe are first briefly presented (section 2). Thereafter, the contributions in this issue are introduced as well as the connecting threads between them (section 3). Finally, some reflections for the future are provided (section 4). Before delving into the substance of the overarching theme of this special issue, one terminological question should be raised, namely the understanding of the core concept of "collective redress". In its public consultation document of 2011, the European Commission (Commission) explained the concept aptly as follows:

> When citizens and businesses are victims of the same breach committed by the same company, bundling of their claims in a single collective redress procedure, or allowing such a claim to be brought by a representative entity or body acting in the public interest, could simplify the process and reduce costs. 'Collective redress' is a broad concept encompassing any mechanism that may accomplish the cessation or prevention of unlawful business practices which affect a multitude of claimants or the compensation for the harm caused by such practices.[2]

Thus, a salient feature of collective redress is that there are several potential claimants having similar claims because the claims are based on the same type of breach of law by the same defendant. This reflects the "collective" part of the concept, and that procedurally being able to bring the claims together in a collective action may have specific benefits. As noted by the Commission, the underlying idea is that a collective action can create procedural simplification. According to the quote above, simplification is explicitly expected to reduce procedural cost. However, it would be natural to also strive for a reduction in the duration of the proceedings. In addition, the concept of collective redress includes a component of "redress", which based on the quote above, is meant to be a broad term, encompassing different types of substantive remedies and potential claims.

In the same document, the European Commission continues its explanation of the concept collective redress by noting that:

> [t]here are two main forms of collective redress: by way of injunctive relief, claimants seek to stop the continuation of illegal behaviour; by way of compensatory relief, they seek damages for the harm caused. Collective redress procedures can take a variety of forms, including out-of-court mechanisms for dispute resolution or, the

[2] European Commission, Towards a Coherent European Approach to Collective Redress, SEC(2011) 173 final, 4 February 2011, p 3.



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> entrustment of public or other representative entities with the enforcement of collective claims.[3]

Hence, the main types of relief considered relevant for collective redress, are injunctions (eg what in Sweden would be called a prohibition order that can be combined with a threat of a fine) and monetary compensation (eg damages). Finally, collective redress encompasses a broad notion of procedural tools, not limited to court litigation but also potentially including alternative dispute resolution (ADR), such as for example out-of-court settlement or non-binding decisions issued by public boards (eg the Public Board for Consumer Complaints in Sweden). In addition, the relevant actors pursuing collective redress and representing the aggrieved group of claimants can, based on the explanation of the Commission, be both private and public bodies.

Our underlying conference took a broad approach and the contributions in this special issue have, respectively, not been limited in their take on collective redress. Thus, for example both procedural and remedial or substantive aspects to collective redress are raised in the contributions. However, due to the background context and recent developments explained briefly below (section 2) and presented in more detail in several of the contributions to this issue, the focus is more on collective redress as a means of private enforcement of rights, rather than on public enforcement. Therefore, the relevant rules and tools of public or regulatory and administrative bodies, such as for example the Swedish Consumer Ombudsman, to oversee and correct behaviour on the market are not the core focus of the contributions in this issue.[4] However, in the overarching debate on enforcement of rights and dispute resolution design, an awareness of these tools and their interaction with private enforcement is naturally important to bear in mind.[5] In addition, due to the emphasis on private enforcement, many of the contributions focus on compensation as the relevant type of redress rather than on injunctive forms of relief. Therefore, this issue does not cover all aspects of collective redress but rather deals with aspects of collective redress that are currently at the nexus of developments.

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3 Ibid.

4 On the interplay between public and private enforcement of consumer law in Sweden, see Antonina Bakardjieva Engelbrekt, Effectiveness and Enforcement of Consumer Law in Sweden, in H.-W. Micklitz and G. Saumier (eds), Enforcement and Effectiveness of Consumer Law, Ius Comparatum – Global Studies in Comparative Law 27, Springer, 2018, 613–644.

5 See inter alia Eva Storskrubb and Magdalena Tulibacka, Sweden, in Mary E. Bartkus et al (eds), Collective Litigation in Europe: Law and Practice, Juris Publishing, 2025, 677–696, who note the strong focus on regulatory redress in Sweden.



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## 2. BACKGROUND

The idea of EU-wide legislation on collective redress is not a new one. The above-mentioned broad consultation of the Commission in 2011 was preceded by diverse sector-specific policy documents and consultations on collective redress starting around 2008.[6] Notwithstanding, the consultation of 2011 did not immediately result in a legislative proposal. Rather the consultation demonstrated that several Member State governments had concerns at the prospect of action at the EU level in relation to collective redress; concerns among others linked to the issues of the competence of the EU to harmonise procedural matters in light of the historic notion of national procedural autonomy.[7] Therefore, the time was not ripe for EU-wide legislation at that stage. Instead, the Commission published two soft-law measures in 2013: a Communication, "Towards a European Horizontal Framework for Collective Redress" and a Recommendation, "Common Principles for Injunctive and Compensatory Collective Redress Mechanisms in the Member States Concerning Violations of Rights Granted under Union Law".[8] However, the Commission also indicated that it would re-assess within a certain number of years whether further measures of consolidation on collective redress were needed at the EU level. Ultimately, a limited sectoral harmonisation of collective redress, solely for consumer matters, was proposed in 2018. The limited sectoral approach renders the issue of EU competence somewhat less controversial because the Member States have been able to agree on the internal market competence as legal basis for procedural matters, focussing on consumer law as a core part of the internal market.[9]

Consequently, in 2020, the EU adopted the Representative Actions Directive for the protection of the collective interests of consumers (hereinafter, the RAD, or the Directive)[10], the first significant legislative act on compensatory

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6 Eva Storskrubb, Civil justice: Constitutional and regulatory issues revisited, in Maria Fletcher, Ester Herlin-Karnell and Claudio Matera (eds), The European Union as an Area of Freedom, Security and Justice, Routledge, 2016, 310.

7 Ibid, 311.

8 Communication: COM(2013) 401, 11 June 2013. Recommendation: C(2013) 3539, 11 June 2013, OJ L210/60.

9 See legislative proposal COM(2018) 184 final, 11 April 2018, based on Article 114 of the Treaty on the Functioning of the EU as legal basis. For further analysis on the issue of so-called sector-specific procedural harmonisation of EU civil justice see Eva Storskrubb, Civil Justice and EU Competence, in Xandra Kramer, Stefaan Voet and Adriani Dori (eds) European Civil Procedure, Walter de Gruyter, 2026, 33–34. See also regarding specifically consumer law Lena Hornkohl, Up- and Downsides of the New EU Directive on Representative Actions for the Protection of the Collective Interests of Consumers – Comments on Key Aspects, Journal of European Consumer and Market Law, 2021, 189.

10 Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409/1.



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collective redress at the EU level.[11] The Member States were under an obligation to implement RAD in December 2022 and its provisions were applicable from June 2023.[12] A number of Member States were late in the transposition of the Directive, prompting the Commission to initiate several infringement proceedings.[13] However, by now, most Member States have completed implementation[14] and relevant actors have started to use the applicable national mechanisms for collective redress. Therefore, it is arguably an opportune point in time for an assessment of the emerging practices and the remaining dilemmas for collective action in Europe. The Directive takes a minimum harmonization approach. Hence, it leaves space for considerable diversity in national regimes for collective redress. Therefore, the issue of the optimal design of representative actions remains topical despite the RAD providing an initial level of minimum harmonisation.

A better design for collective redress regulation is one of the main themes of the contributions in this issue. Further general questions that are addressed in the contributions, include: what are the advantages and disadvantages of different models for collective action; and which are the legal and practical factors (eg with respect to funding) that influence the intensity and success of collective action in specific national jurisdictions. Although the RAD is focused on the collective interests of consumers, the emerging development of collective redress in some jurisdictions in Europe is highly relevant in several other substantive fields, such as data protection, competition law and environmental protection. The conference, and several of the contributions in this issue, therefore, take a broader approach to collective and representative actions beyond the domain of consumer protection.

The questions mentioned above are salient questions to ask, since the overarching aim of the EU is for the RAD to contribute to increased access to justice in the Member States.[15] Notably, collective redress is not a new concept with respect of the procedural debate on access to justice.[16] It is impossible to analyse issues of access to justice without referring to the seminal comparative procedural work of the Florence Project led by Mauro Cappelletti and Bryant

[11] For earlier development see inter alia Stefaan Voet, Europe's Collective Redress Conundrum, Japanese Yearbook of International Law, 2018.

[12] Directive (EU) 2020/1828, Articles 22 and 24.

[13] Maria José Azar-Baud, Implementation of the Representative Actions Directive across the European Union: state of play (2025) 44(2) Civil Justice Quarterly, 2025, 124–125.

[14] Ibid. For implementation information see further: https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32020L1828, visited 10 July 2026.

[15] See: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/access-justice_en, visited 10 July 2026.

[16] See inter alia Eva Storskrubb, EU-rätten, access to justice vågorna och de svaga skandinaviska böljorna? in Anna Wallerman Ghavanini and Sebastian Wejedal (eds), Access to justice i Skandinavien: Principen om reellt rättsskydd och dess genomslag i Danmark, Norge och Sverige, Santérus Academic Press, 2022, 349–352.



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Garth in the 1970s and onwards. They showed that court reforms historically focused on the formal possibility of legally pursuing a claim but not on the parties' actual access to justice. However, they identified that in the 20th century a new focus emerged that centred on real access to the legal system. This global phenomenon, which they connected to the modern development of human rights and the welfare state, was, according to them, a fundamental prerequisite for a modern and equal legal system. They called the phenomenon the access to justice movement.[17] In their classic wave metaphor they identified three specific access to justice barriers that modern procedural development grapples to deal with: (i) the cost of litigation, (ii) the representation of diffuse or collective interests, and (iii) alternative means of resolving disputes (ADR).[18] The concept of access to justice is neither doctrinally nor practically static, and in some Member States legislative developments and case law on collective redress have been emerging in the past decade independently of legislation at the EU level. However, it is interesting to note that the second wave of access to justice identified as important already in the 1970s, concerning how to procedurally deal with collective redress, is still a highly topical issue and remains in a European context very much in development and evolution. Finally, it should be noted that access to justice can also have ideological connotations. How our civil justice systems are designed to achieve access to justice is not a wholly neutral matter. Specifically, when it comes to collective redress, there are significant interest groups in society that traditionally have different perspectives on the evolution of the rules.[19] Due to the nature of the questions posed at the conference, the contributions in this issue focus on furthering collective redress and on how access to collective justice can best be achieved. However, they are also cognisant of the risks that are often raised by the interests that want to limit collective redress.

## 3. THE INDIVIDUAL CONTRIBUTIONS

The first group of contributions in this issue present and critically analyse different systems of collective redress, either as advanced in projects of international harmonisation, such as the European Law Institute (ELI) and the International Institute for the Unification of Private Law (UNIDROIT) Model Rules and the RAD, or as introduced in some central European jurisdictions. In her contribution, Astrid Stadler provides insights in the process of elaborating the Model

[17] Mauro Cappelletti and Bryant Garth, Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective (1978)27 Buffalo Law Review 181, 183–185.
[18] Ibid.
[19] In the Swedish context see Per Henrik Lindblom, Grupptryck mot grupptalan (1995) SvJT, 81, and Per Henrik Lindblom, Group Litigation in Scandinavia, ERA Forum, 2009, 12.



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European Rules for Civil Procedure, a soft law legislative model rules for collective redress adopted within the framework of ELI/UNIDROIT. In the subsequent contribution, Miguel Sousa Ferro reviews recent experiences in Portugal, where collective actions have been on the rise, with some positive examples from the Netherlands, England and Wales. He seeks to identify crucial factors for success that can serve as inspiration for other jurisdictions. His article is followed by the contribution of Maria José Azar-Baud who gives her perspective on the evolution of the French system of collective redress, including the recent implementation of the RAD. There are certain recurring themes in these contributions such as: standing requirements for the representative entity that brings the collective claim, how the group is determined and constituted (opt-in or opt-out system), funding of the action, and how potential proceeds are distributed to the group members.

In her contribution, Astrid Stadler offers an initiated analysis of the relevant rules on collective redress in the model law project of the ELI/UNIDROIT called Model European Rules of Civil Procedure (Model Rules). Since she was one of the reporters in the working group on collective redress in the project, she is well-placed to do so. Stadler describes the background and objectives of the project as well as its organizational structure and working methods. Thereafter, she presents the approach and design of the specific rules on collective redress in the Model Rules. In general, she notes that there was a strong element of comparative work done in the working group and that for example the system of the Netherlands provided inspiration for some of the central solutions. However, naturally, the work in the group was based on its own debates and compromises. It is an interesting feature of the Model Rules that they have a strong focus on enabling settlement of mass or collective claims and provide rules for a stand-alone settlement mechanism for collective claims. Yet, if collective proceedings need to be instituted, many of the rules in the Model Rules are liberal in nature to enable collective action, including: (i) broad standing rules allowing both representative individuals and organisations to bring an action; (ii) allowing for court discretion to decide to use an opt-out mechanism under certain circumstances, although opt-in is a default mechanism; and (iii) allowing for third-party funding with disclosure to the court of the funding agreement and general transparency of the existence of funding. Stadler explains the relationship between the ELI/UNIDROIT project and the RAD. Since the Directive is a minimum harmonisation instrument that leaves broad discretion to Member States in the process of implementation, the Model Rules can in the author's view be (and have been) a source of inspiration for national lawmakers and can potentially give an impetus to voluntary approximation of rules.

Turning to the contributions on collective redress mechanisms in individual European states, Miguel Sousa Ferro, first, reviews in his article the existing and evolving systems of collective consumer redress in three jurisdictions in



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which there is a multitude of pending collective redress cases. The emphasis is on his own jurisdiction Portugal, but there are examples from the Netherlands, England and Wales. His analysis shows that the number of collective actions in these jurisdictions is increasing rapidly, as is the number of settlements. Some of the factors he identifies as being decisive for this positive development are: introducing an opt-in model of representation, more liberal regulation of third-party funding and creative schemes for distribution of the proceeds. Such solutions seem to increase the prospects for successful collective litigation and raise the popularity of collective actions. The emergence of actors specialising in the practice of collective litigation is yet another factor explaining the new, positive dynamics. In his article, Sousa Ferro critically discusses the – in his view exaggerated – focus on public enforcement in a number of European jurisdictions, including Sweden. Although public enforcement may have its advantages and its important role, he argues that it has been far from successful in providing real compensation to harmed consumers. Recalibrating and improving the existing procedural mechanisms for collective and group actions legislation by taking on board the positive examples from European jurisdictions such as Portugal and the Netherlands, should in his view stand high on the agenda of national legislators, if they want to make reality of the promise of high level of consumer protection.

In the following contribution, Maria José Azar-Baud deals with the new and partly innovative solutions in the French implementation of the RAD. She describes how France has incorporated the RAD, but also how the French development of collective redress in general was affected by the legislation that implements RAD. The French regulation of class actions, in connection with the transposition of the directive, went from being fragmented across different rules for different substantive areas of law to being more unified. Regarding the financing of collective action, she notes that third-party funding is now specifically allowed in France with a flexible approach only subject to judicial oversight of conflicts of interest. Furthermore, France has introduced a public fund to support the financing of collective actions; an original solution so far in a European context. A further distinctive and original feature of the French system analysed by Azar-Baud is the new substantive remedy called a civil penalty for profitable wrongdoing. In addition to these features, she provides a clear overview of the collective redress proceedings in France, which are divided into the three phases when a claim is made for monetary compensation. Interestingly, the French opt-in procedure takes place in the second phase, which is late in the proceedings, after the court has established that the defendant is liable. Still, these innovative solutions are prompted, in the author's view, by cultural caution, and confirm, rather than debunk "the myth of the French exception". Thus, the French reform reflects broader tensions in Europe between national procedural autonomy and the need for harmonisation. All three contributions



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(Astrid Stadler, Miguel Sousa Ferro and Maria José Azar-Baud) are united by a shared mission of finding effective and sustainable solutions for collective redress, notably such that ensure real compensation – and justice – for consumers and other victims of mass harms.

In the following contribution, Johan Skog deals with collective redress in Sweden. Although his focus is on litigation costs and funding issues, he also raises several points of general critique against the Swedish system and the Swedish Group Proceedings Act (GPA)[20], including among others a critique of the opt-in model and reflections on how difficult it can be in practice to actually identify and form the relevant group. Skog argues that the low uptake of the GPA and very limited number of cases since the introduction of the GPA in 2002 is itself proof of its failure. Specifically, the contribution of Skog also demonstrates the difficulties in funding a collective action in Sweden. Firstly, he raises issues connected to the rules on litigation costs, and notes that the traditional loser-pays rule in the Swedish setting and practice makes it very difficult for a group claimant to foresee and calculate its risk exposure of bringing a collective action. Secondly, he sets out the different potential means of funding a litigation including eg legal aid, lawyers' risk agreements, crowdfunding, and third-party funding (TPF). He analyses the pros and cons of each of these solutions, including the limitations which exist for many of these forms of funding in Sweden. Skog, himself active in the field of TPF, finds based on convincing argumentation that TPF appears to be the most viable option for large collective compensatory actions in many cases. However, TPF cannot constitute a funding solution for all cases, so there remain access to justice gaps, even if TPF would become more prevalent in collective redress in Sweden.

Eva Storskrubb focuses also on TPF in her contribution, and the issue of regulating TPF. There are limited provisions in the RAD on TPF. However, the issue of regulating TPF has also been raised at a more general level in the EU. At present, the EU Commission has decided not to initiate legislation at the EU level on TPF.[21] In this regulatory void, a soft law instrument has been published by the ELI, "Principles Governing the Third Party Funding of Litigation". Storskrubb analyses in her contribution what lessons we can learn from these principles and whether specific rules on TPF are necessary for collective redress. (The contribution of Storskrubb will be published in a later issue of ERT.)

The last two contributions analyse the relevance of collective redress in specific substantive law and policy fields – collective redress for infringements of digital rights in the contribution of Karl Wörle and Oskar Gstrein, and of climate litigation in the contribution of Agnes Hellner. Although the history

[20] Group Proceedings Act of 30 May 2002, SFS 2002:599 (*Lag om grupprättegång*).

[21] See eg Eva Storskrubb, Dispute Funding in Sweden – Old System and New Trends, in Xandra Kramer et al (eds), Sustaining Access to Justice: New Avenues for Costs and Funding, Hart Publishing, 2025, 131.



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of collective redress in Europe is most closely connected with the efforts to strengthen the enforcement of consumer rights, as noted above, what characterizes more recent legislative reforms in the field is the extension of collective action beyond the area consumer law. This extension is executed through two different legislative techniques. According to the first one, collective redress is introduced as a horizontal procedural instrument, available for all kind of law infringements, where certain fundamental conditions are met (notably common source of harm and a group of affected individuals). According to the second technique, collective redress instruments are extended to new law and policy areas by sector-specific legislation, for instance in competition, environmental or data protection law. The RAD has itself its origins in EU consumer law. However, in its final version, the Directive has an extensive list of EU law infringements that fall now within the ambit of the Directive[22], that arguably demonstrates a broad interpretation of consumer rights including eg rights under the General Data Protection Regulation (GDPR).

In their article, Wörle and Gstrein direct the attention to the employment of collective redress mechanisms in cases of mass infringements of digital rights, notably rights to personal data or harms caused by autonomous AI systems. What is distinctive of these cases is that they involve fundamental rights. The authors observe that such cases frequently end up in settlements, a solution that appears attractive since it offers efficiency and reduced transaction costs. At the same time, precisely due to the close connection with fundamental rights, the governance of such settlements requires careful scrutiny. The article examines the procedural design and judicial oversight of collective court settlements in digital rights disputes, with particular focus on the tension between efficiency and the normative force of fundamental rights. Wörle and Gstrein argue that robust procedural safeguards are essential to prevent settlements from degenerating into unprincipled bargaining detached from considerations of justice and accountability. In the authors' view, the RAD does not address the issue in an adequate manner, which they find regrettable. The article draws on comparative analysis of US class action settlement practice – in particular fairness review mechanisms – identifying principles and design features that could inform the governance of collective digital rights settlements in EU law. They argue that there are lessons that can be learned from the more mature US collective redress system and usefully employed when shaping the emerging EU framework and elaborating concrete criteria for balancing procedural efficiency with substantive legitimacy in the adjudication of fundamental digital rights.

In her contribution, Agnes Hellner explores the relevance of collective redress mechanisms for the enforcement of environmental law with a focus on climate justice. The author identifies several features of climate change litiga-

[22] Article 2 referring to the list of substantive instruments in Annex I to the RAD.



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tion that differ from conventional environmental law disputes. While in the latter, the actions typically concern specific sources of environmental harm, where the circle of affected individuals and the harm caused can be identified, in climate justice litigation the source of harm is global and hard to accrue to a specific environmental law infringement. Likewise, the circle of potentially harmed individuals is broad and includes future generations. The article examines how Swedish procedural law accommodates collective environmental and climate claims and how European law has influenced access to justice. The analysis focuses on standing, collective redress, and the interaction between Swedish procedural law, the Aarhus Convention, EU environmental law, and the European Convention on Human Rights (ECHR). Hellner argues that, although Swedish law formally provides several avenues for collective litigation, the practical significance of the Group Proceedings Act has remained limited. Instead, European legal developments – particularly the Aarhus Convention and the ECtHR's judgment in *Verein KlimaSeniorinnen v. Switzerland* – have strengthened the role of environmental organizations as representatives of collective environmental and climate interests. Hellner concludes that, despite expanded opportunities for collective action, uncertainty regarding standing and litigation risks continues to stand in the way to effective access to justice, indicating a need for further procedural reform.

## 4. CONCLUDING REFLECTIONS

The contributions in this special issue of *Europarättslig tidskrift* demonstrate vividly the complex dynamics of the law and practice of collective redress in Europe. The past years have seen a flurry of activity at both the European and the national level. The impetus has come foremost from the various soft law and binding legislative initiatives of the European Union, starting from the European Commission Recommendations in 2013 and, at least so far, reaching its apex with the Representative Actions Directive. However, voluntary harmonization may also increase, potentially in the future supported even more by such soft law instruments as the ELI/UNIDROIT Model Rules. A lot has also been going on at the national level, either driven by EU requirements, or by domestic political and legislative projects. In the course of the implementation of the RAD, all Member States of the EU had the occasion to review their existing legislation and transpose the minimum requirements of the Directive or go beyond this minimum standard. However, as illustrated in some of the contributions, since the starting positions of individual jurisdictions and their experience with collective litigation prior to the Directive have been widely divergent, Member States have taken different routes when implementing the



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Directive. The result is a fragmented landscape rather than the deeper harmonization originally proposed by the Commission.

While there is a growing consensus that collective redress can improve the procedural and substantive justice for European consumers and citizens, the contributions testify to still lingering skepticism and resistance among professional, business and political circles in some European jurisdictions, who – for different reasons – fear excessive litigation, skewed incentives and abuse of procedural rights. Therefore, even when collective redress schemes are introduced, they are constrained by procedural and practical safeguards, which can prevent collective action from becoming an effective instrument for redress in mass and collective harm situations. The reasons for the traditional European skepticism and resistance are multiple. Some are related to critical accounts of the US class action experience; others are linked to political and legal culture. Still others can be traced back to the powerful impact exerted by business stakeholders who see broader possibilities for collective litigation as a source of increased economic costs and a burden to the competitiveness of European business. This mix of socio-legal, cultural and economic reasons is also at the root of the cautious approach taken by the European legislator in the RAD.

Still, the articles in this special issue also provide testimonies of encouraging developments in a few European jurisdictions, such as Portugal, the Netherlands and – outside the EU – England and Wales, with a growing number of collective actions. These jurisdictions have undertaken bold steps and designed their procedural systems – either generally, or in certain policy areas such as competition law – in a collective-redress-friendly manner, introducing some of the features that have a proven positive impact on collective litigation, most prominently, opt-out system of representation, lower barriers for third-party funding and possibilities for out-of-court settlements. To be sure, even in these systems, the number of resolved cases with positive outcome is still limited. Proceedings tend to be protracted and complex, and some of the familiar difficulties of distributing the compensation, ensuring the transparency and fairness of settlements and overcoming the general reservations of the courts, are difficult to overcome. There is, in other words, no silver bullet for tackling the familiar procedural challenges of collective redress.

What we hope this special issue shows is the complexity and intricacy of regulating collective redress. The said complexity and intricacy require an open, competent and engaged debate on the pros and cons of collective litigation and on the procedural and institutional design that would secure an effective and practicable collective redress mechanisms. The main objective with this issue has been exactly to contribute to such a debate by adding new knowledge and perspectives on the emerging practices in Europe.



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