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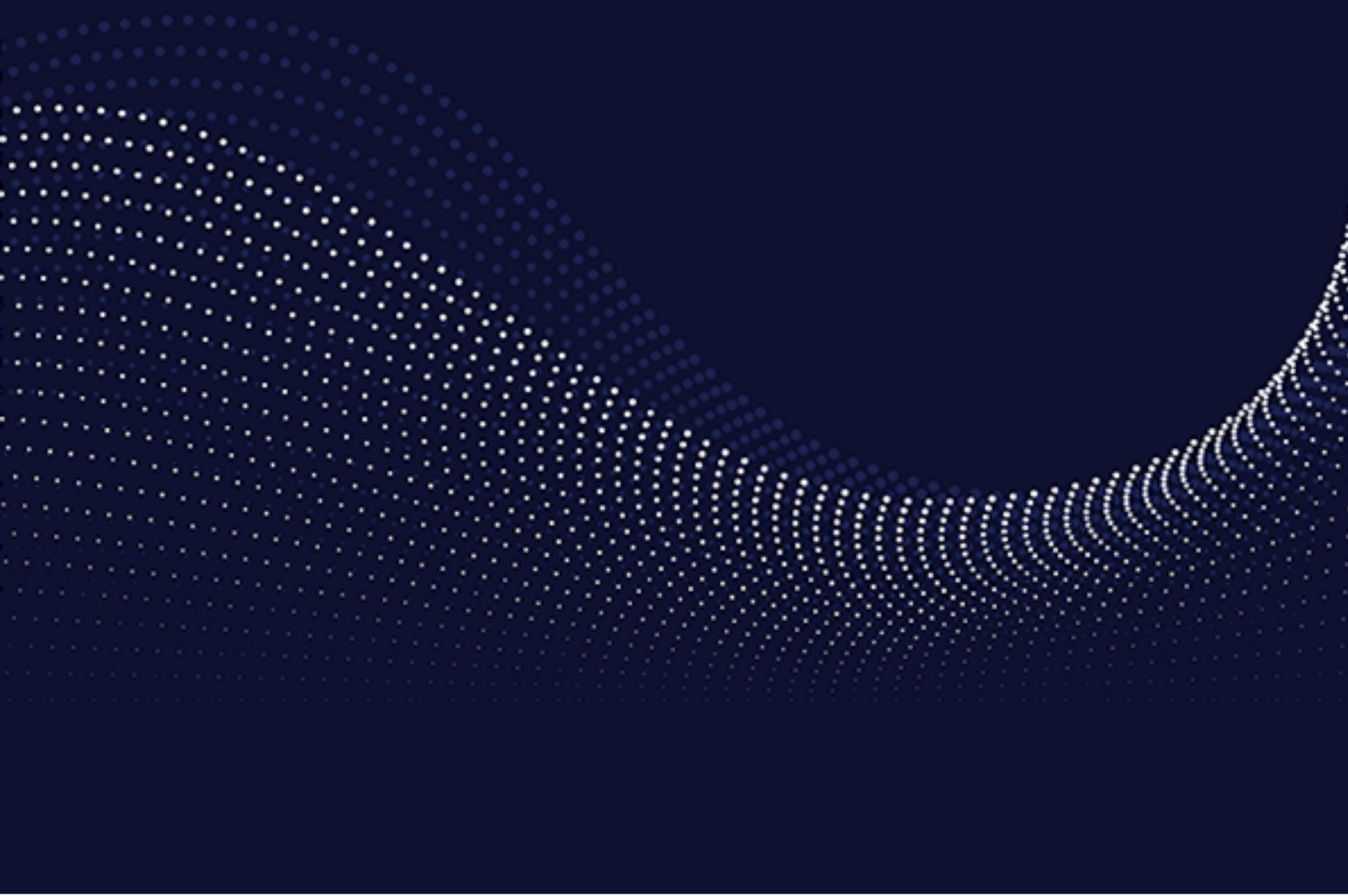
Getting The Deal Through

CLASS ACTIONS 2024

Contributing Editors

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Cleary Gottlieb Steen & Hamilton LLP



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Quick reference guide enabling side-by-side comparison of local insights, including an overview of the court system, frequency of class actions, legal basis, types of claim and relief; class formation; procedure; defence; settlement; judgment and appeal; regulatory action; alternative dispute resolution; fees, costs and funding, including potential selling of claims; and recent trends.

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Summary

OVERVIEW

- Court system
- Frequency of class actions
- Legal basis
- Types of claims
- Relief
- Initiating a class action and timing

CLASS FORMATION

- Standing
- Participation
- Certification requirements
- Consolidation

PROCEDURE

- Discovery
- Privilege and confidentiality
- Testimony

DEFENCE

- Defence strategy
- Joint defence agreements

SETTLEMENT

- Approval of settlements
- Objections to settlement
- Separate settlements

JUDGMENT AND APPEAL

- Preclusive effect
- Appeals

REGULATORY ACTION

- Regulators
- Private enforcement

ALTERNATIVE DISPUTE RESOLUTION

Arbitration and ADR
Court-ordered mediation

FEES, COSTS AND FUNDING

Contingency fees
Cost burden
Calculation
Third-party funding
Public funding
Insurance
Transfer of claims
Distributing compensation

UPDATE AND TRENDS

Legal and regulatory developments

OVERVIEW**Court system**

- 1 | Outline the organisation of your court system as it relates to collective or representative actions (class actions). In which courts may class actions be brought?

Collective actions are mainly provided for under the Greek Consumer Protection Law (Law 2251/1994). Recently, the relevant framework underwent amendment as per enacted Law 5019/2023 transposing Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC. The new law reforms the collective redress landscape and includes certain provisions regulating collective actions, which are re-named as 'representative actions'. It entered into force on 26 June 2023 and applies to representative actions filed from 25 June 2023 onwards.

Collective actions are in principle brought before the multi-member first instance court where the defendant resides or has its seat. However, where the subject matter of the collective action is a radio and television advertisement, the multi-member court of first instance of the registered seat of the radio or television broadcaster is competent. Once a first instance judgment is issued, it is subject to an appeal by the parties before the Appeals Court and appeal judgments may themselves be appealed before the Supreme Court.

Frequency of class actions

- 2 | How common are class actions in your jurisdiction? What has been the recent attitude of lawmakers and the judiciary to class actions?

Class action proceedings and collective claims are governed by a specific legal framework and are allowed as such where the law particularly provides for such proceedings.

Consumer unions recently seem to be much more active in filing collective actions in the context of the crisis in the energy market, seeking to attack price increases.

In this regard, consumer unions have challenged the validity of 'price adjustment clauses' in power supply contracts before the ordinary courts. Recently, numerous lawsuits have been filed under the Greek Consumer Protection Law (article 10, paragraph 16) against power suppliers. In the context of these proceedings, the Athens Multi-Member Court of First Instance has granted a provisional order in response to the request from consumer unions the effect of which extended until a decision is reached on the key issue of the clauses' validity. According to such provisional order, suppliers may not cut off power in vulnerable households owing to non-payment of the additional charges incurred by the application of the price adjustment clause.

The Public Power Corporation (PPC) requested the Supreme Court to hold a pilot trial on the so-called 'adjustment clause', to avoid a scenario in which contradictory decisions are issued by lower courts, and thus reduce its exposure to risks arising from use of the

adjustment clause. Greece's Supreme Court recently dismissed the request by PPC to resolve the issue through a pilot trial.

In numerous rulings during 2023, the Athens Multi-Member Court of First Instance ruled in favour of the legality of the price adjustment clause and dismissed the lawsuits.

With the recent enactment of Law 5019/2023, which aims to promote collective actions, the filing of such actions is likely to intensify.

Legal basis

3 | What is the legal basis for class actions? Is it derived from statute or case law?

The legal basis for class actions derives from the following statutes.

- The Greek Consumer Protection Law empowers consumer unions to represent consumers in court and file representative collective actions, aiming at protecting their rights and interests. The Greek Consumer Protection Law was recently amended to incorporate the provisions of Directive (EU) 2020/1828, to enhance and strengthen collective actions, among others.
- Although not a collective or representative action, an interesting tool that has been also recently introduced in the Greek legal system is the concept of pilot trials (Greek Code of Civil Procedure (new article 20A)). Essentially, when a new complex interpretative legal matter of general interest with impact for a wide group of persons is raised, any claim or appeal lodged before a civil court could be referred to the plenary session of the Supreme Court by an act of the three-member committee of the Supreme Court upon request of any litigant or of the court. This Supreme Court judgment aims to signal to the rest of the courts the path to adjudicate cases of a similar nature. The concept of pilot trials had already been introduced in the context of administrative cases before its endorsement by the civil justice system.

Types of claims

4 | What types of claims may be filed as class actions?

The Greek Consumer Protection Law regulates various related consumer issues, such as:

- general terms and conditions of consumer contracts;
- unfair contract terms;
- distance selling;
- doorstep selling;
- misleading and comparative advertising;
- product liability; and
- distance marketing of consumer financial services.

The collective actions may be divided in three basic categories according to their subject matter, namely regarding:

- abusive general terms and conditions (GTCs), mostly regarding banking and insurance contracts;
- product liability;
- misleading advertising; and
- other infringements according to other provisions of the Greek Consumer Protection Law.

In principle, the most common categories of collective actions relate to GTCs in banking and insurance contracts and cases of misleading advertising. Recently, collective actions have been filed in relation to the increasing prices.

Relief

5 | What relief may be sought in class proceedings?

In relation to lawsuits already filed prior to 25 June 2023, there were four main types of relief sought by means of those class actions, as per the applicable at that time Greek Consumer Protection Law:

- injunctive measures, namely interim measures (injunctions) to secure consumers' interests until a court decision was issued on the merits of a claim;
- prevention and cessation of any supplier who behaved unlawfully;
- declaration of the right of restitution of the damages that consumers had suffered owing to the supplier's unlawful conduct; or
- reparations for moral harm, in which the court awarded indemnity by taking into consideration:
 - the extent to which public order was harmed by the unlawful conduct;
 - the size and annual turnover of the defendant supplier's business; and
 - the need for the general and specific prevention (of such behaviour).

As of 26 June 2023, representative actions can be filed by consumer unions seeking either:

- injunctive measures (measures to cease or prohibit a practice where that practice has been deemed to constitute an infringement); or
- redress measures (consumers are provided with remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid).

Initiating a class action and timing

- 6 | How is a class action initiated? What is the limitation period for bringing a class action? Can the time limit for bringing a class action be paused? How long do class actions typically take from filing to a final decision?

Any action is initiated by filing the action with the competent court and serving it on the named defendants within the statutory deadline.

As of 26 June 2023, representative actions for an injunctive measure should be filed within one year from the time that the last unlawful activity occurred (instead of the shorter period of 'six months' provided for by the previous rules) (article 10(12), paragraph 2). Non-contentious proceedings apply in the above case as well (article 10(12), paragraph 4).

On the other hand, representative actions for a redress measure follow the ordinary procedural rules and the relevant adversarial proceedings (article 10(2), paragraph 6).

CLASS FORMATION

Standing

- 7 | What are the standing requirements for a class action?

As to lawsuits already filed prior to 25 June 2023, a consumer union of at least 500 members, which had been duly registered in the Registry of Consumer Unions for at least one year, could file an action of any kind for the protection of the general interests of consumers, provided that the illegal behaviour in question infringed the rights of at least 30 consumers without distinguishing between members and non-members. Chambers (commercial, industrial, handcraft and professional) could also file collective actions, but only for moral harm claims.

As of 26 June 2023, a consumer union, which has been duly registered in the Registry of Qualified Entities for the Exercise of Representative Actions, may file a representative action, provided that it can prove 12 months of actual public activity in the protection of consumer interests; and it can make publicly available in plain and intelligible language, in particular on its website, information that demonstrates its actual public activity.

Participation

- 8 | Do members of a class have to opt in or opt out of the action? Are class members notified that an action has been commenced on their behalf and, if so, how?

Regarding lawsuits already filed prior to 25 June 2023, legal consequences arising from a class action decision were valid for everyone, even if they had not been litigant parties. The res judicata of a decision that accepts in whole or in part a lawsuit seeking a declaration of the right of restitution of the damages that consumers have suffered owing to the supplier's

unlawful conduct was also valid for consumers incurring losses, even if they have not participated in the relevant trial.

As of 26 June 2023, representative actions for a redress measure follow the opt-in system, as individual consumers shall express their will to be represented by the qualified entity in the filing of the relevant action; while at the same time, individual consumers may benefit from a favorable court decision at a later time as well following a certain procedure provided by law (late opt-in). On the other side, regarding representative actions for injunctive measures, the opt-out system applies, as individual consumers are not required to express their will to be represented by the qualified entity.

Certification requirements

9 | What are the requirements for a case to be filed as a class action?

In relation to lawsuits already filed prior to 25 June 2023, a consumer union had standing to bring a collective action, provided that the illegal behaviour in question infringed the rights of at least 30 consumers without distinguishing between members and non-members of such consumer unions.

As of 26 June 2023, an action may be filed by a consumer union, as provided by law, without quantitative restrictions. Also, consumer unions are entitled to seek at least injunctive (measures to cease or prohibit a practice, where that practice has been deemed to constitute an infringement) or redress measures (consumers are provided with remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid).

10 | How does a court determine whether the case qualifies for a class action?

There is no specific procedure before the courts regarding the admissibility of the class action.

In practice, if a class action is filed by a consumer union that has standing and before the competent court, it qualifies as such.

In consumer protection cases, the injured party has the burden of proof in relation to the defectiveness of the product, the damage sustained and the causal relation between the damage and the defective product.

Consolidation

11 | Is there a process for consolidating multiple class action filings?

There is no specific process provided for consolidating multiple class action filings.

PROCEDURE

Discovery

12 | How does discovery work in class actions?

As a general rule, discovery (ie, the burden of proving an allegation in a claim, counterclaim, objection or counter-objection) lies on the party invoking the factual allegation in question. Therefore, each respective party is obliged to produce both documents and witnesses either in court or through an affidavit in order to prove its arguments.

In consumer protection law cases, the injured party has the burden to prove the defectiveness of the product, the damage sustained and the causal relation between the damage and the defective product.

Privilege and confidentiality

13 | What rules and standards govern non-disclosure of documents on the grounds of professional privilege, litigation privilege or other confidentiality considerations?

The concept of legal privilege takes the form of protection of confidentiality and professional confidentiality.

Greek law recognises the concept of attorney-client privilege. The main sources of protection are the Greek Lawyers' Code, which regulates the legal profession; the Greek Lawyers' Code of Conduct; the Greek Criminal Code; the Greek Code of Criminal Procedure; and the Greek Code of Civil Procedure.

Testimony

14 | What rules apply to submission of factual and expert witness testimony? In what circumstances will the court order witness-examination?

Evidence may be presented both through live testimony and in written reports. All evidence (including testimonies) is submitted by the parties together with their pleadings and in support of their factual allegations. The evidence produced is then evaluated or rebutted by the parties through counterpleadings.

DEFENCE

Defence strategy

15 | What mechanisms and strategies are available to class-action defendants?

Defences available relate to the jurisdiction of the court, admissibility of the collective action and the relief sought or the merits of the case.

Joint defence agreements

- 16 | What rules and standards govern joint defence agreements? Are they discoverable?
| What are the advantages and disadvantages of these agreements?

There are no ad hoc rules on joint defence agreements. As every party produces their own evidence before the court, even if there is such an agreement it is not likely that it would be produced. However, co-defendants may jointly appoint counsel to align their defence and they may also file joint briefs and pleadings.

SETTLEMENT

Approval of settlements

- 17 | Describe the process and requirements for approval of a class-action settlement.

Civil claims are generally freely disposable and therefore subject to settlement.

Court settlement requires a statement before the court, the judge handling the case, or a notary. The attempt to reach a settlement can begin after the initiation of the court proceedings, at any stage during the case, and until the issuance of a non-appealable court decision. If the attempt to reach a settlement fails, the court continues with the trial. If a settlement is reached, a note is made in the court transcript and the trial is terminated. If parties reach a settlement other than the court settlement, the settlement agreement is deemed an out-of-court settlement. This requires the issuance of a judgment in order to be vested with an enforceable title.

As of 26 June 2023, the consumer union and the defendant trader may jointly propose a settlement to the court solely for representative actions related to redress measures, in favour of the represented consumers. The court assesses the legality of the proposed settlement under the Greek Code of Civil Procedure. Approved settlements are binding upon the consumer union, the trader and any interested individual consumers.

Objections to settlement

- 18 | May class members object to a settlement? How?

As of 26 June 2023, individual consumers affected by the representative action and the following settlement may either accept or refuse to be bound by the settlement within a certain time limit.

Separate settlements

19 | How are separate class action settlements handled?

As of 26 June 2023, approved settlements shall be binding upon the consumer union, the trader and the individual consumers concerned. Individual consumers concerned by a representative action and by the subsequent settlement may accept or refuse to be bound by the settlement. Redress and restoration through an approved settlement shall be without prejudice to any additional remedies available to consumers which were not the subject of that settlement.

JUDGMENT AND APPEAL

Preclusive effect

20 | What is the preclusive effect of a final judgment in a class action?

The particularity of the collective actions filed under non-contentious proceedings is due to the fact that the court's decision issued has an erga omnes effect, binding non-litigants as well. The final effect of a decision recognising (even partially) damages suffered by consumers can be enforced by any affected consumer, even if they did not participate in the specific trial. The final judgement of the court recognising the existence of an unlawful activity that is harmful to collective interests may be used by any claimant as proof according to the rules of the Greek Civil Code of Procedure.

Appeals

21 | What type of appellate review is available with respect to class-action decisions?

Parties may appeal a class-action decision before the Court of Appeal when they are wholly or partially defeated in the first instance and the judgment erred in fact or law.

The grounds of an appeal can be either procedural or substantive, or both.

REGULATORY ACTION

Regulators

22 | What role do regulators play in connection with class actions?

In relation to lawsuits already filed prior to 25 June 2023, the General Directorate for Consumer Affairs of the Ministry of Development and Investments was the primary competent authority. This Directorate kept the register in which consumers unions of all degrees were registered. Moreover, the General Directorate for Consumer Affairs had a

five-member committee in order to certify the actual operation of consumers unions and other compliance matters.

As of 26 June 2023, the General Secretariat for Trade of the Ministry of Development and Investment is competent to inform and review the entities qualifying for the filing of a representative action. The above Secretariat has the competence to notify the European Commission each time the list of consumer unions that are considered qualified entities changes, as well as to review once every two years whether the qualified entities fulfil the criteria provided by law.

By decision of the Minister of Development and Investment, Annex II of Law 2251/1994 (as added by article 14, paragraph 4(13) of Law 5019/2023) may be amended. Annex II provides for a list of legislative actions and provisions whose breach could lead to the filing of a class action, such as the Greek Consumer Protection Law, the law on the rights of persons with disabilities, the General Data Protection Regulation and the law on the protection of free competition. The above article has been in force since 14 February 2023.

Private enforcement

23 | Describe any incentives the civil or criminal systems provide to facilitate follow-on actions.

There are no such incentives.

ALTERNATIVE DISPUTE RESOLUTION

Arbitration and ADR

24 | What role do arbitration and other forms of alternative dispute resolution play in class actions? Can arbitration clauses lawfully contain class-action waivers?

As of 26 June 2023, alternative dispute resolution proceedings on contractual disputes between a consumer and a provider or supplier may apply. However, there is no clear provision for the application of proceedings to representative actions.

Court-ordered mediation

25 | Do courts order pretrial mediation in class actions? Does the appointment of a mediator make it more likely that the court will approve a settlement?

In relation to lawsuits already filed prior to 25 June 2023, it was not mandatory to resort to mediation in class actions and courts did not usually order pretrial mediation. However, as of 26 June 2023 it shall be mandatory to join a preliminary mediation session in the case of actions seeking redress measures.

Moreover, a conciliation committee for the out-of-court dispute resolution is provided (article 11 of Law 2251/1994). A case can be brought before the above committee following

either the request of a consumer or a local consumer union, or the reference of the Consumer Advocate.

FEES, COSTS AND FUNDING

Contingency fees

26 | What are the rules regarding contingency fee agreements for plaintiffs' lawyers in a class action?

The Lawyers' Code (ie, the rules of professional conduct and ethics for lawyers) provides that attorneys may – by specific written agreement – take cases on a contingency basis. A contingency fee may not exceed 20 per cent of the value of the case. If a client is represented by more than one lawyer in a single case, the aggregate contingency fees payable to all attorneys may not exceed 30 per cent of the value of the case.

Cost burden

27 | What are the rules regarding a losing party's obligation to pay the prevailing party's attorneys' fees and litigation costs in a class action?

The unsuccessful party is required to pay both court and legal costs. Court expenses are only judicial and extrajudicial expenses that were necessary for the trial.

As of 26 June 2023, individual consumers affected by the representative action for redress measures are not required to pay court costs unless these resulted from their own fault or negligence.

Calculation

28 | How are costs calculated? What costs are typically recovered? Does cost calculation differ in the litigation and settlement contexts?

It remains at the court's discretion whether to award expenses in whole or in part and to order the defeated party to pay these expenses. It should be noted that Greek courts usually award costs that are substantially lower than those actually incurred.

Third-party funding

29 | Is third-party funding of class actions permitted?

In relation to lawsuits already filed prior to 25 June 2023, third-party funding of any actions, including collective ones, was not specifically regulated under Greek law. Certain insurance companies offer legal expenses protection to cover the costs of litigation.

Under Law 5019/2023, as of 26 June 2023, third-party funding of representative actions is prohibited.

Public funding

30 | Is legal aid or other public funding available for class actions?

There is no specific provision for class actions.

Insurance

31 | Are adverse costs, adverse litigation judgment or after-the-event insurance available?

Certain insurance companies offer legal expenses protection covering the costs of litigation.

Transfer of claims

32 | Can plaintiffs sell their claim to another party?

There is no statutory provision on this topic. It could be argued that as the legal standing is special, while the trial lasts, the consumer union cannot do so.

Distributing compensation

33 | If distribution of compensation to class members is problematic, what happens to the award?

The union may claim the satisfaction of moral damages suffered by consumers.

In collective actions, the way the amount of the one-off moral harm award is calculated and the effect of the relevant decision as discussed above bring it closer to a pecuniary sentence, known as a civil sanction, imposed on the defendant. Such calculation by the court of the moral harm damages takes into account the extent of the breach at issue, the financial status of the defendant entity and especially its turnover and the need for a general and special prevention. Any remaining redress funds that were not recovered within the deadline set by the court by the consumers that have expressed their will to be represented by the consumer union are passed to the consumer union, provided that the period of 60 days from the invitation sent by the entity to the consumers in order to receive their redress funds has lapsed (article 10(11), paragraph 7 of Law 5019/2023). Concerning the distribution of funds, the general rules apply.

UPDATE AND TRENDS

Legal and regulatory developments

34 | What legislative, regulatory or judicial developments related to class actions are on the horizon?

On 25 November 2020, the European Parliament adopted the Representative Actions Directive, which has been transposed into national legislation by Law 5019/2023 introducing changes to the Greek Consumer Protection Law (Law 2251/1994). The vast majority of these changes came into force on 26 June 2023 and apply to representative actions filed from 25 June 2023 onwards.



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