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1. Developments

Debates on class actions at EU level started many four decades ago in relation to consumer-trader disputes. During the 2000s damages for breach of antitrust also came into focus, as a consequence of increased public enforcement of EU competition law. Many Member States did not have national class action laws so the EU did not have a political majority to introduce harmonising legislations. Extensive scrutiny of the US class action system, and lobbying by pro and ante groups, led to a clear political conclusion in the EU that the extensive use of private enforcement that typified the US was alien to EU principles and models, and that US-style class actions involved a 'toxic cocktail' of elements that produced unavoidable abuse. Further, realisation spread that consumer-trader disputes, which typically involve very small sums of money and simple issues, fell below even small claims court systems, and were better resolved by 'consumer ADR' or ombudsman mechanisms. At the same time that the European Commission took a timid step to issue a Recommendation that Member States should introduce national collective action mechanisms, the EU took a bold step in establishing a pan-EU framework of consumer ADR entities through Directive 2013/11/EU on consumer ADR and a pan-EU online dispute resolution (ODR) platform to handle cross-border disputes. The rapid extension of online trading has only been facilitated by the parallel development of supporting ODR mechanisms. Further debates and developments are likely.

Some ADR systems, especially the consumer ombudsmen that exist in some States, effortlessly process multiple similar claims. At the same time, public regulatory authorities in some countries have included redress within their objectives and powers. Leading examples of 'regulatory redress' exist in Denmark and the UK. These mass-ADR and regulatory redress mechanisms have been demonstrated to be far quicker, cheaper, more effective, and deliver better outcomes, than the relatively small number of court-based collective procedures that have been brought. At the same time, public regulators have moved away from the theory that they affect behaviour through deterrence, but rather through other more supportive and collaborative strategies, and Hodges has suggested that behavioural psychology supports that practice and that the empirical evidence for deterrence is slim. Accordingly, the general direction of travel in Europe appears to be towards public and co-regulatory enforcement, rather than aggressive, polarised private enforcement. The development of ADR-like systems with their own specific architectures (outside the courts) should continue.