

European Class Action Report 2026

Welcome

The sixth edition of our European Class Action Report examines developments in collective redress across Europe during 2025, together with significant legal and regulatory developments arising during the preparation of the 2026 edition.

Whilst data from our 2025 report showed a one year drop in class action filings in 2024, this year shows increased claims being filed which is consistent with the overall trend of increased risk. Claim filings are spread unevenly across Europe, with the UK, the Netherlands and Portugal particularly high-risk jurisdictions. But even lower risk jurisdictions are seeing an increase in the number of claims filed.

As in prior years, this report has spotlight articles on high-risk countries and also key snapshots on other jurisdictions. We also have feature articles on: implementation of the Representative Actions Directive; a retrospective on competition class actions in the UK; ESG and climate change litigation; product liability; class action risk in the aviation sector; Spain's potential movement to opt-out; and class action risk in the gaming sector. Finally, we have a feature on communications in class actions, provided by external specialists at the DRD Partnership.

As in previous reports, we 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 96.

Class action risk is increasingly part of the norm for businesses operating in Europe. Whilst the growth of huge quantum opt-out claims grabs media attention, this is only part of the broader increase in litigation risk more generally. This manifests in more litigious NGOs filing cases in seeking to change corporate behaviour, but also increasing numbers of opt-in claims which – although typically lower value than opt-out claims – can still bring significant risk and exposure. We are also seeing more coordination on the claimant side, with claims for the same alleged behaviour being filed in multiple jurisdictions.

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. Thank you also to our friends at Solomonic for providing data for claims in England and Wales.

Unless indicated otherwise, the data in this report reflects the position as at 31 December 2025. The narrative and the articles reflect the position as at 1 September 2026.



Kenny Henderson
T +44 20 7367 3622
E kenny.henderson@cms-cmno.com



Paola Ghezzi
T +39 06 47 81 51
E paola.ghezzi@cms-aacs.com



Anna Cudna-Wagner
T +48 22 520 55 29
E anna.cudna-wagner@cms-cmno.com



Daniel Keating
T +44 161 393 4796
E daniel.keating@cms-cmno.com



Douglas Campbell
T +44 131 200 7433
E douglas.campbell@cms-cmno.com

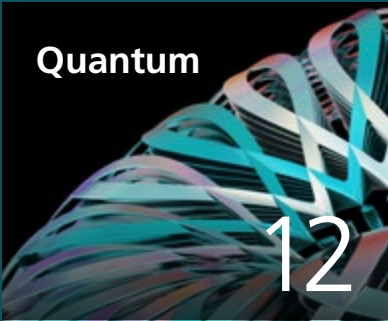


Alex Danchenko
T +44 20 7367 3723
E alex.danchenko@cms-cmno.com



Sobhi El Saleh
T +44 20 7367 2750
E sobhi.elsaleh@cms-cmno.com

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What's trending in class actions?

What's trending in class actions?



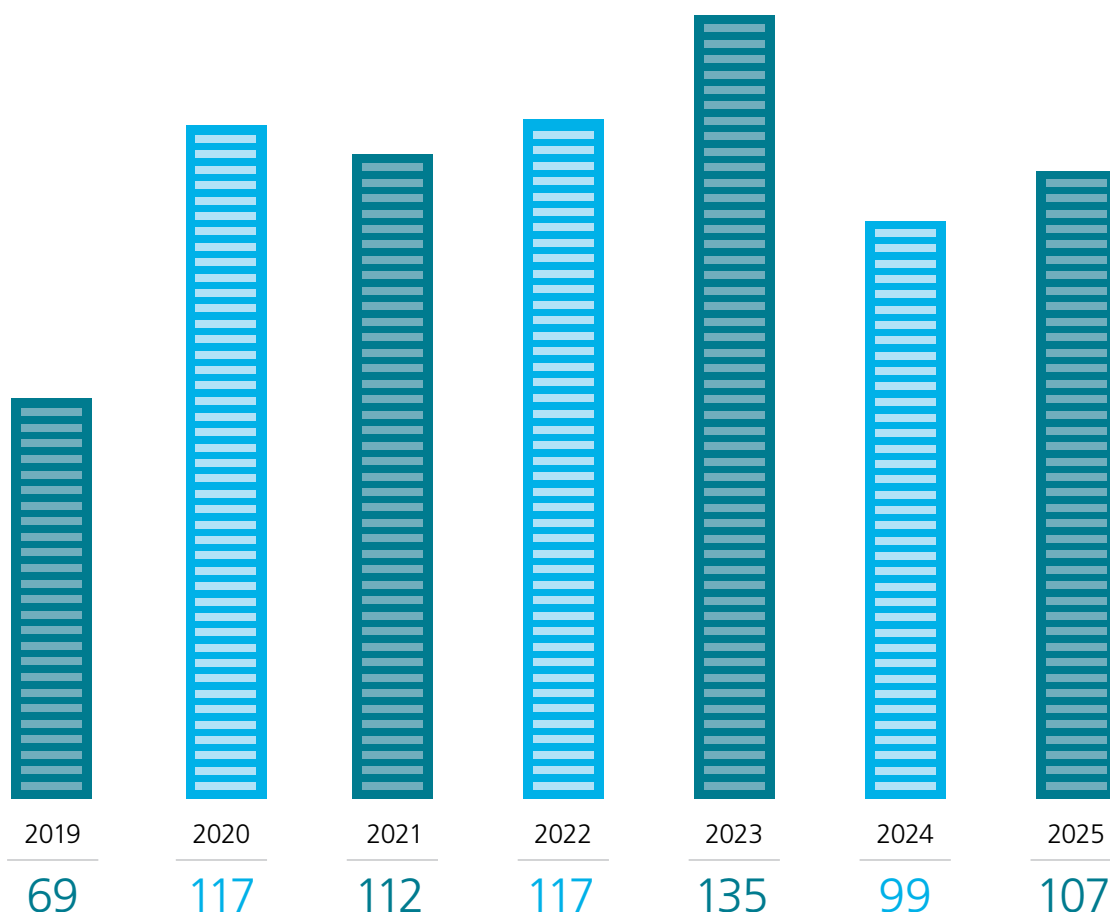




The following pages show the key trends for 2025 and preceding years. We set out total numbers of claims, where they are being filed, what types of claims are being filed, and against which industries.

Overall number of class actions

107
claims filed in 2025

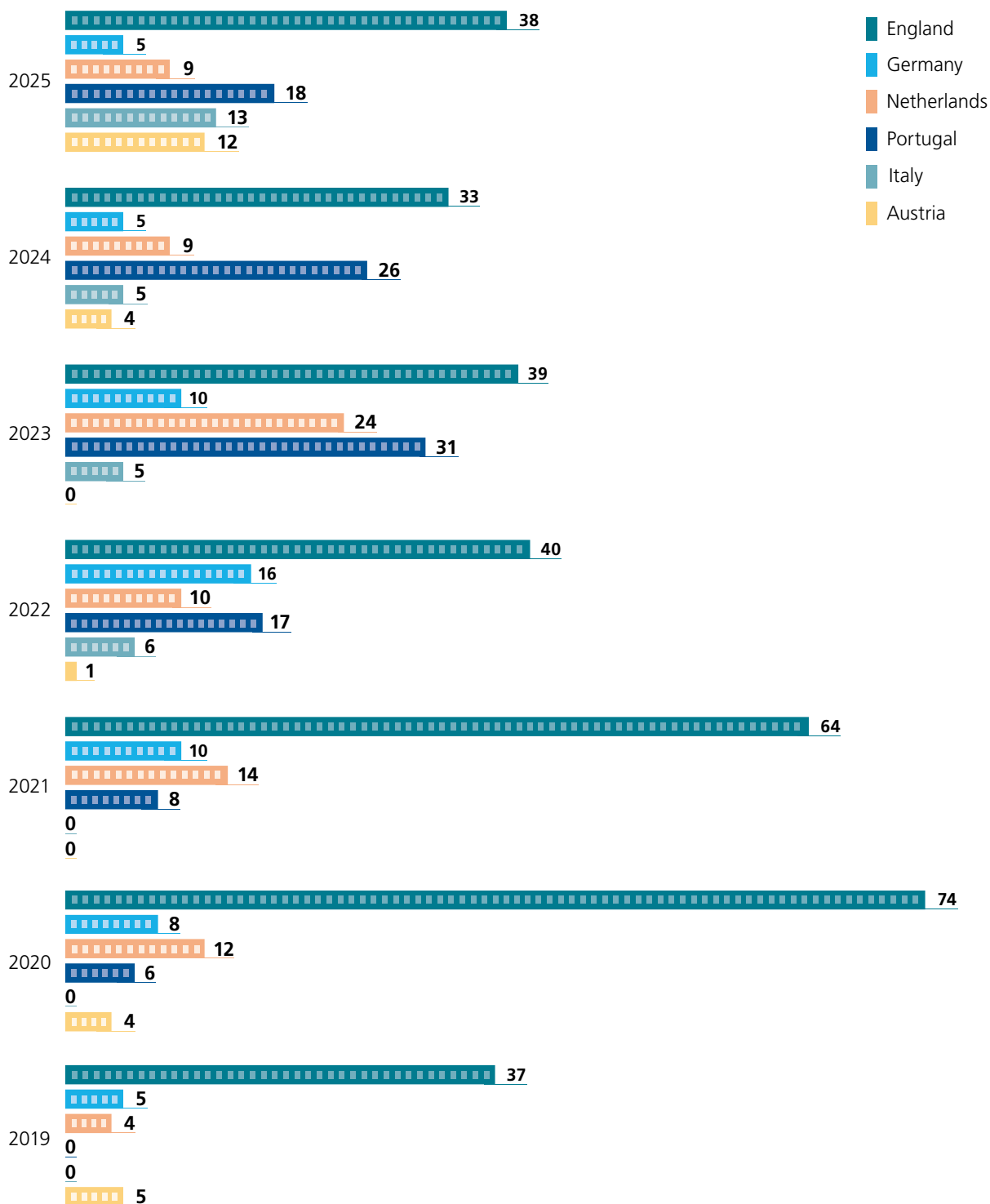


Following a dip in 2024, 2025 saw the overall number of filed class actions increase, both in line with the general trend in increased risk, and in line with our predictions in last year's report. We believe this trend will continue as a number of risk factors for class actions converge: the wave of new and threatened EU regulations, several significant judgments on liability in England (***Kent v Apple***, ***Município de Mariana v BHP***), and a number of high-profile multi-billion US\$ social media addiction settlements in the US.

Growth in key jurisdictions

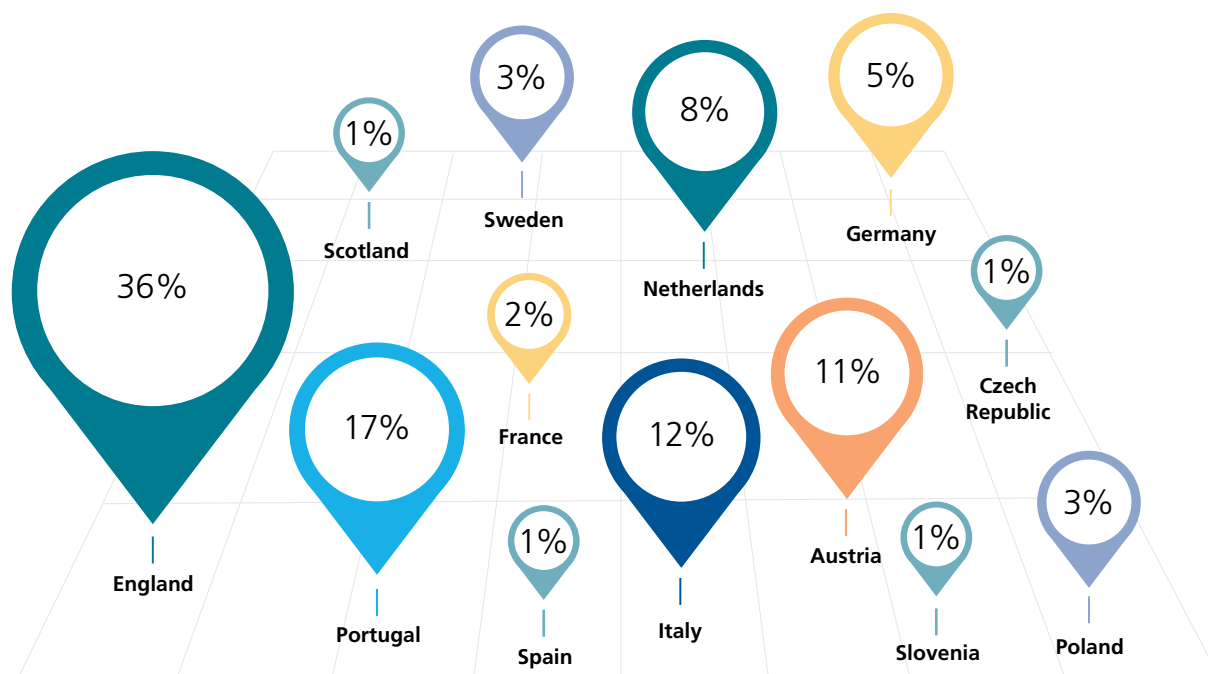
Claims issued in the last seven years

The level of group litigation activity remained steady across all key reported jurisdictions, with the level of English claims increasing compared to 2024. At the same time, we have seen consistent growth across a number of years in Italy and Austria. In both of those jurisdictions, unlike e.g., in Slovenia as reported few years prior, this is driven by a diverse range of claims across different sectors and causes of action rather than one or two high-impact events.



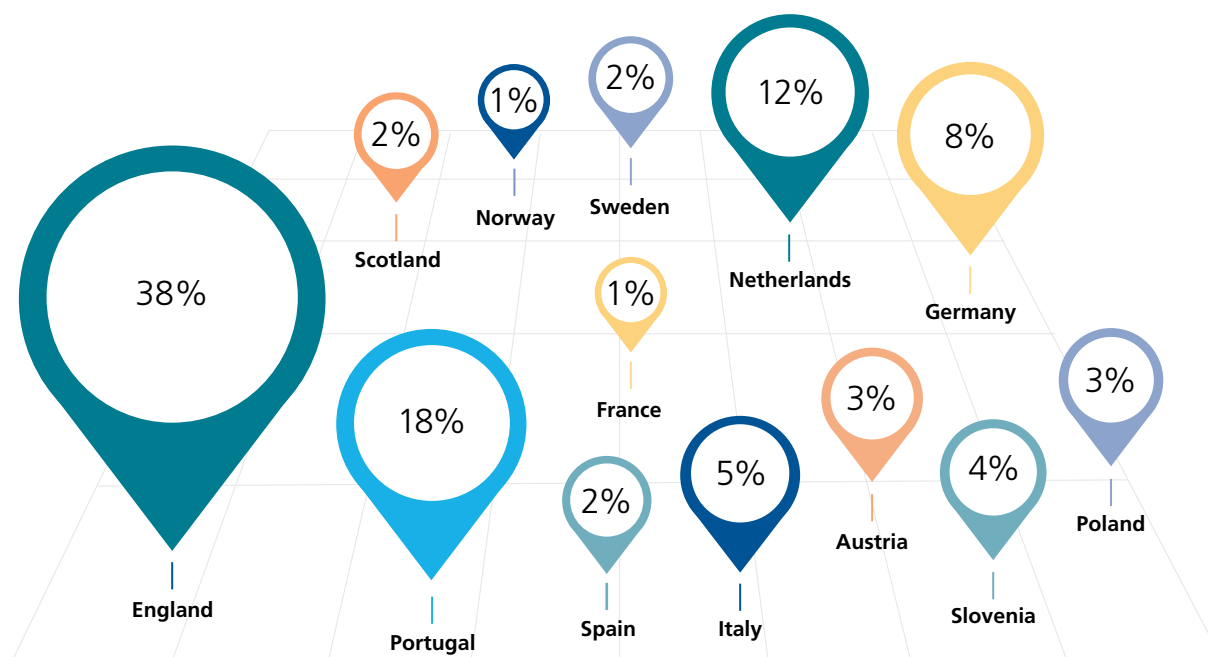
Jurisdiction distribution in 2025

Again, the relative risk profile of key jurisdictions remains steady, although there have been some minor movements amongst them. Portugal has seen a relative dip (17% this year cf. 27% in 2024, and just under the 5-year average of 18%). Conversely, there has been an increase in Austrian and Italian claims. It remains too early to assess whether this represents a long-term trend towards those two jurisdictions' growing class actions risk profile, as claims filed in both of them were considerably above the 5-year trend (11% to 3% and 12% to 5%, respectively).



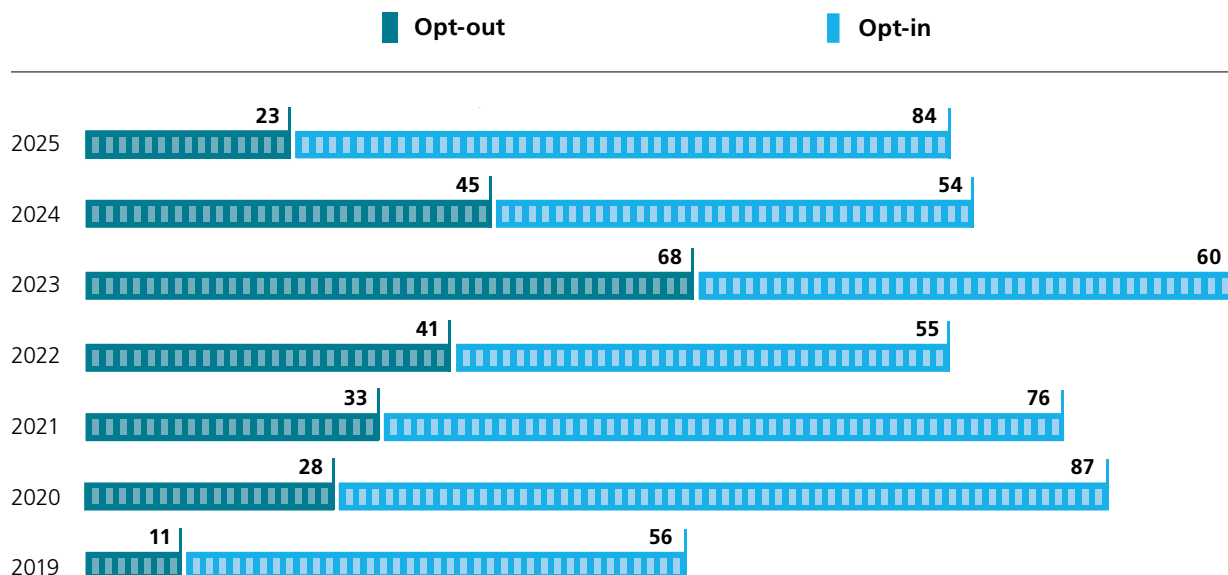
Five-year claims by jurisdiction 2021–2025

Our running five-year data average remains largely consistent with data reported in 2024. By now, the group litigation centres and hotspots across Europe have become well-established with a stable picture of the key risk jurisdictions.



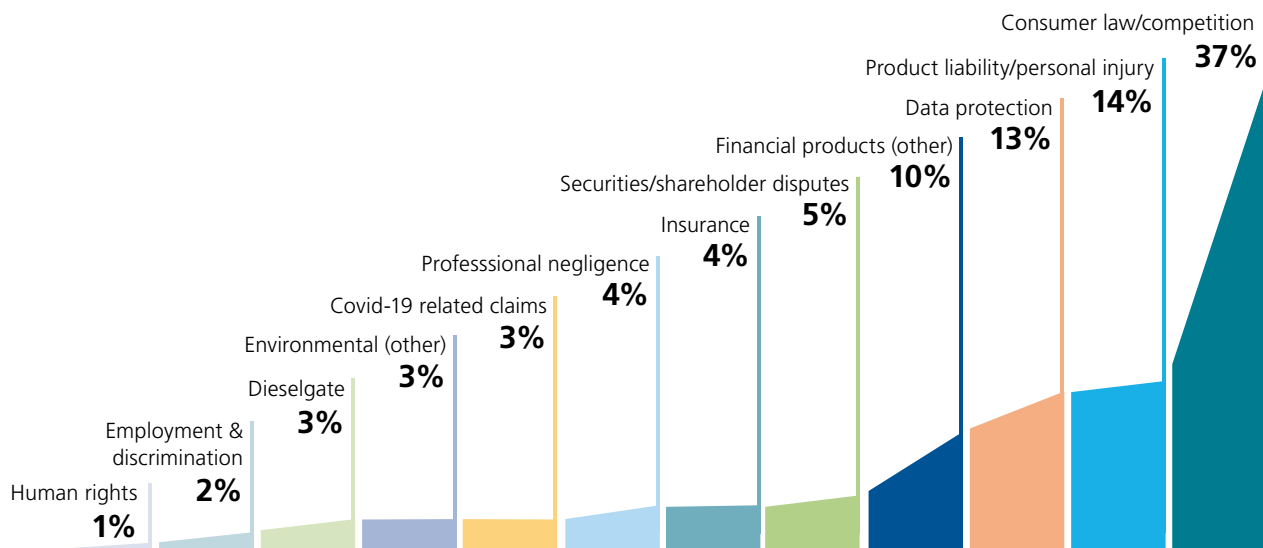
Proportion of opt-out claims

2023 was the first year where more opt-out claims were filed than opt-in claims. Since then, the proportion of new opt-in claims has fallen, with 2025 seeing a pronounced fall at almost 50%. Despite the swing back to filings of opt-in claims, opt-out claims remain the key driver for quantum growth, with just under EUR20 billion claim value of new 2025 opt-out claims in England – and just over EUR10 billion in Portugal. These figures are remarkable, and show the scale of opt-out cases being brought across Europe.



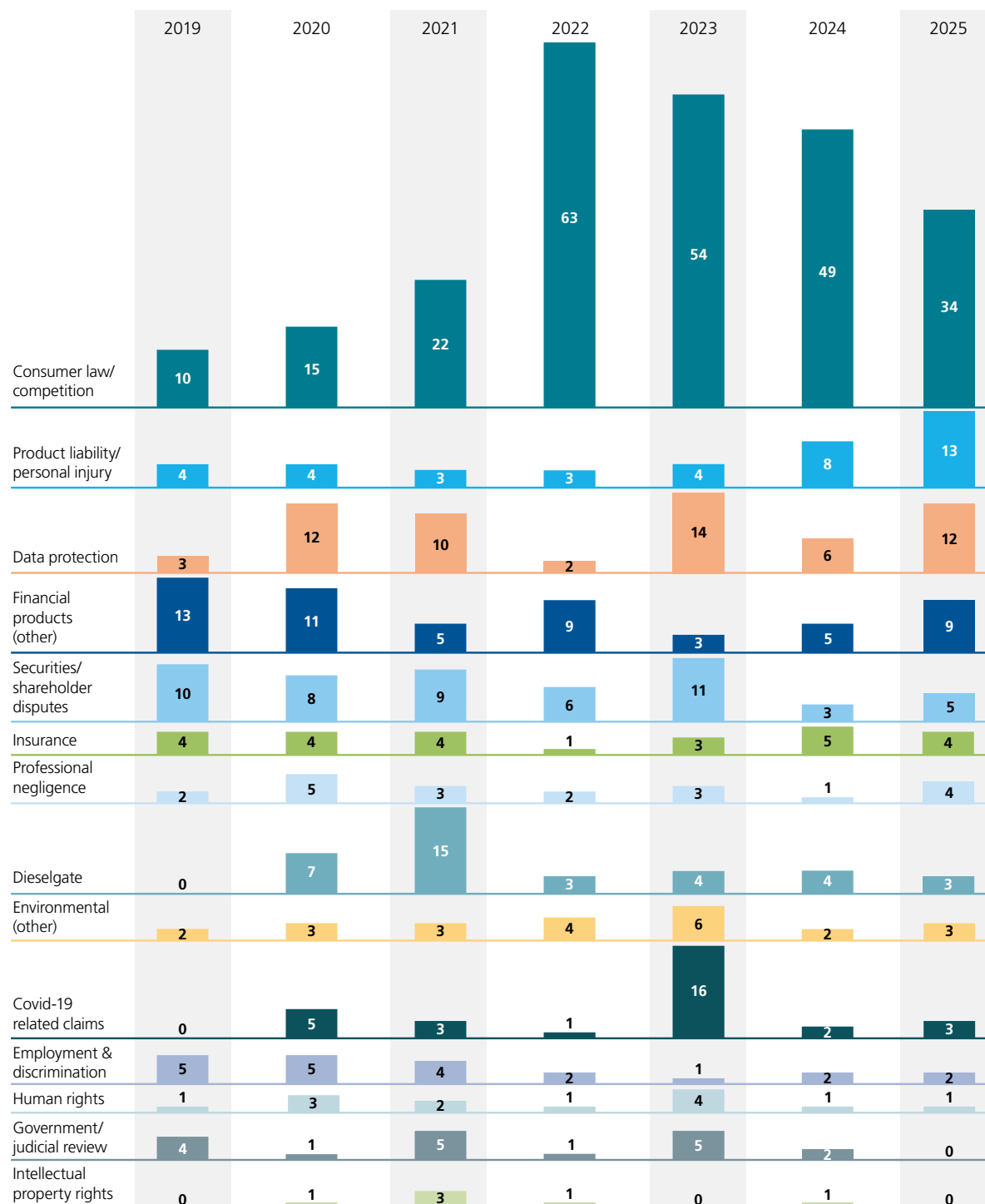
Types of claims in 2025

2025 saw considerably more product liability, data protection, financial product, and competition claims brought than any other types of claims. As always, our classification of claims involves a degree of subjectivity, as many claims can be characterised to fit into more than one category (particularly in consumer claims, where there is often overlap with, among other things, competition or product liability).



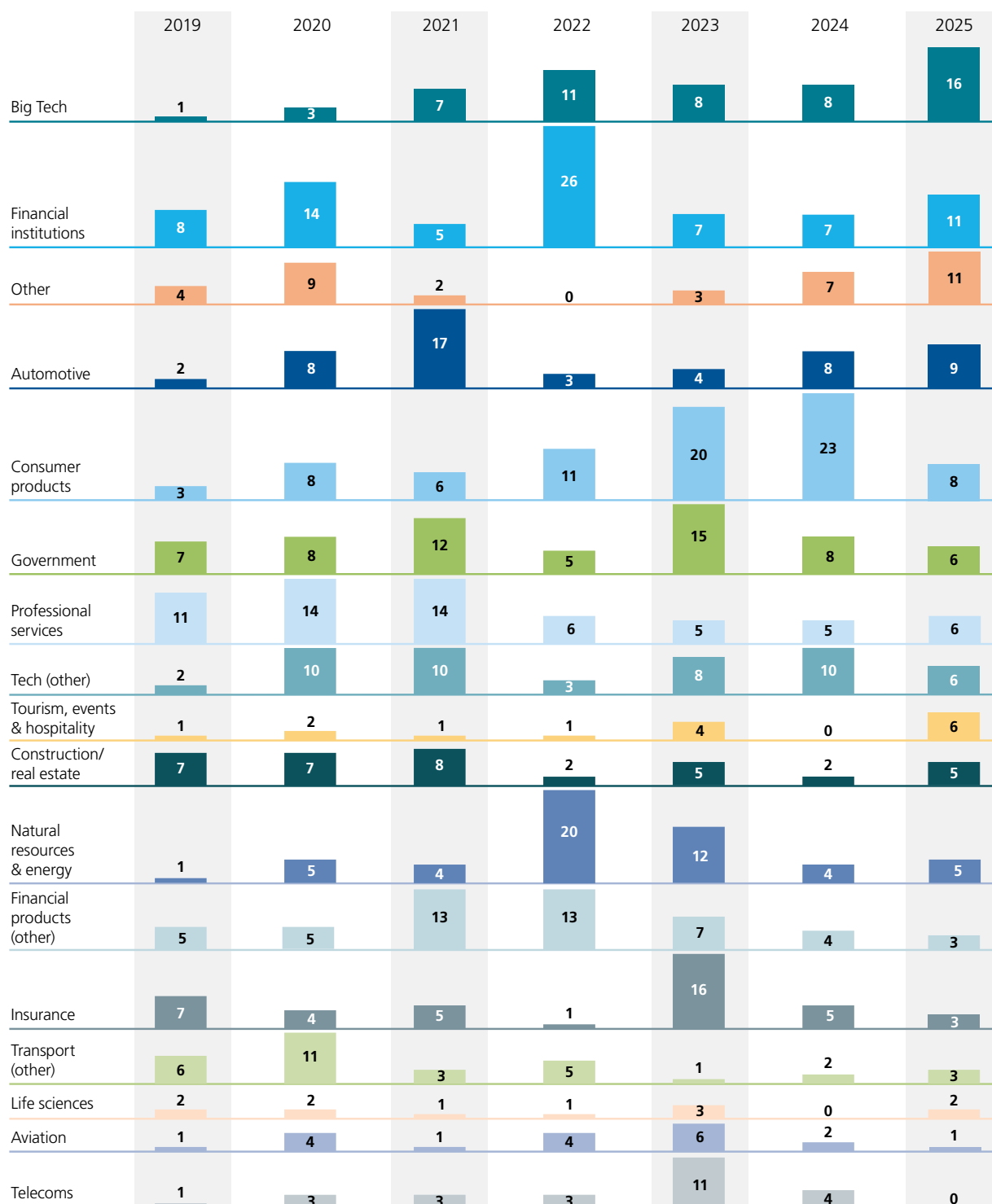
Trends in types of claims

Although there were proportionately fewer new competition law claims than in prior years, competition claims are still by far the most common type of claim. There is a clear increase in the number of new product liability/personal injury claims, and a continued long-term decline of Covid-19 claims. The reduction in new Covid-19 claims is unsurprising, but we may see a spike in the short term as approaching limitation periods force decisions on whether or not to file.



Claims by defendant industry sector

For the first time, the highest number of reported claims this year was against the US Big Tech companies. We expect that this sector will continue to be targeted, and this could, in turn, force the creation of new categories of claim, such as for social media addiction, and in relation to AI. Relatedly, Big Tech companies featured both among recent high profile adverse decisions on liability (*Kent v Apple*) as well as prominent approved court settlements (*Rodgers v Google*).



Quantum



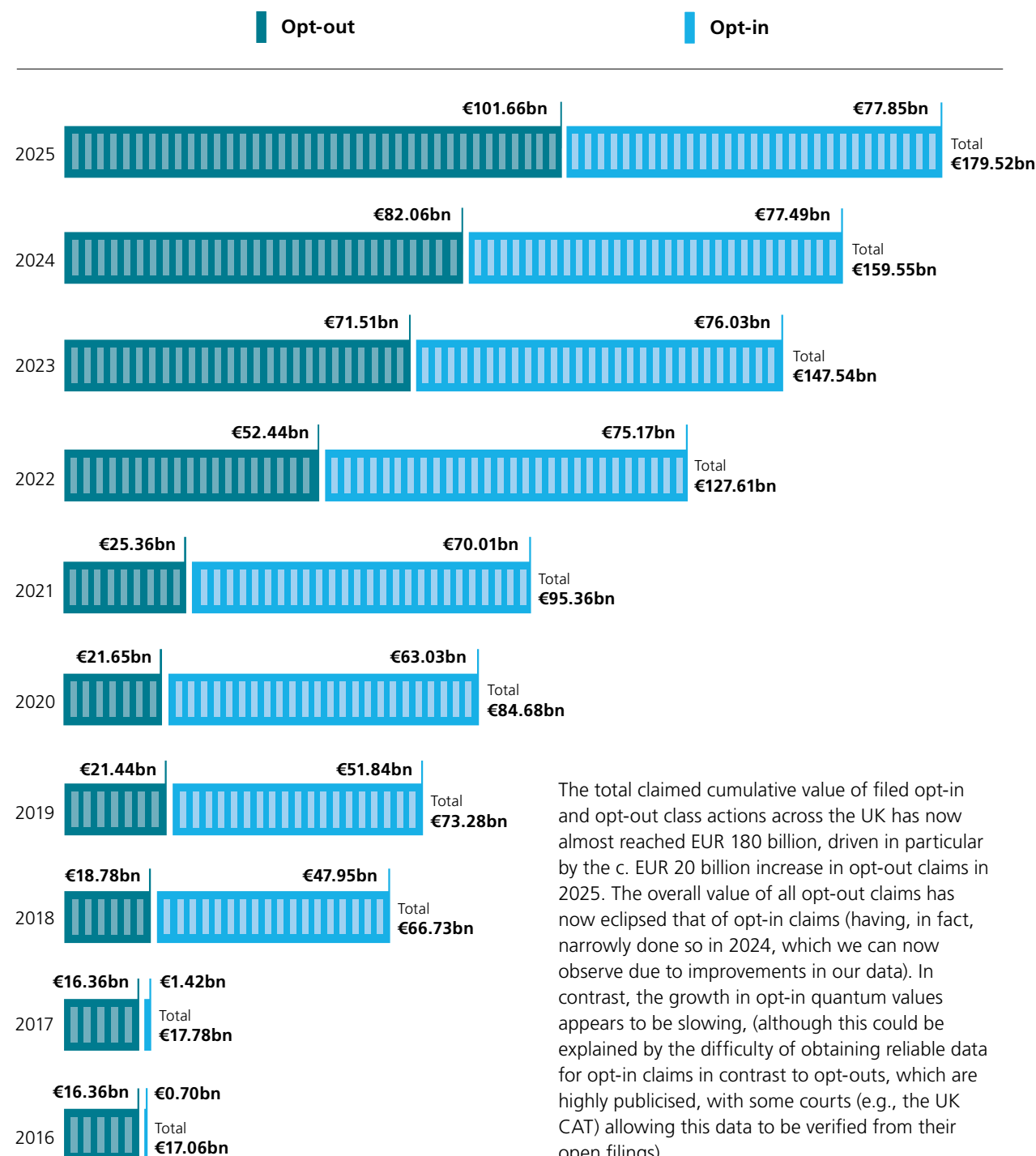




UK cumulative quantum 2016–2025

Total UK opt-out/opt-in claims for 2025:

€180bn

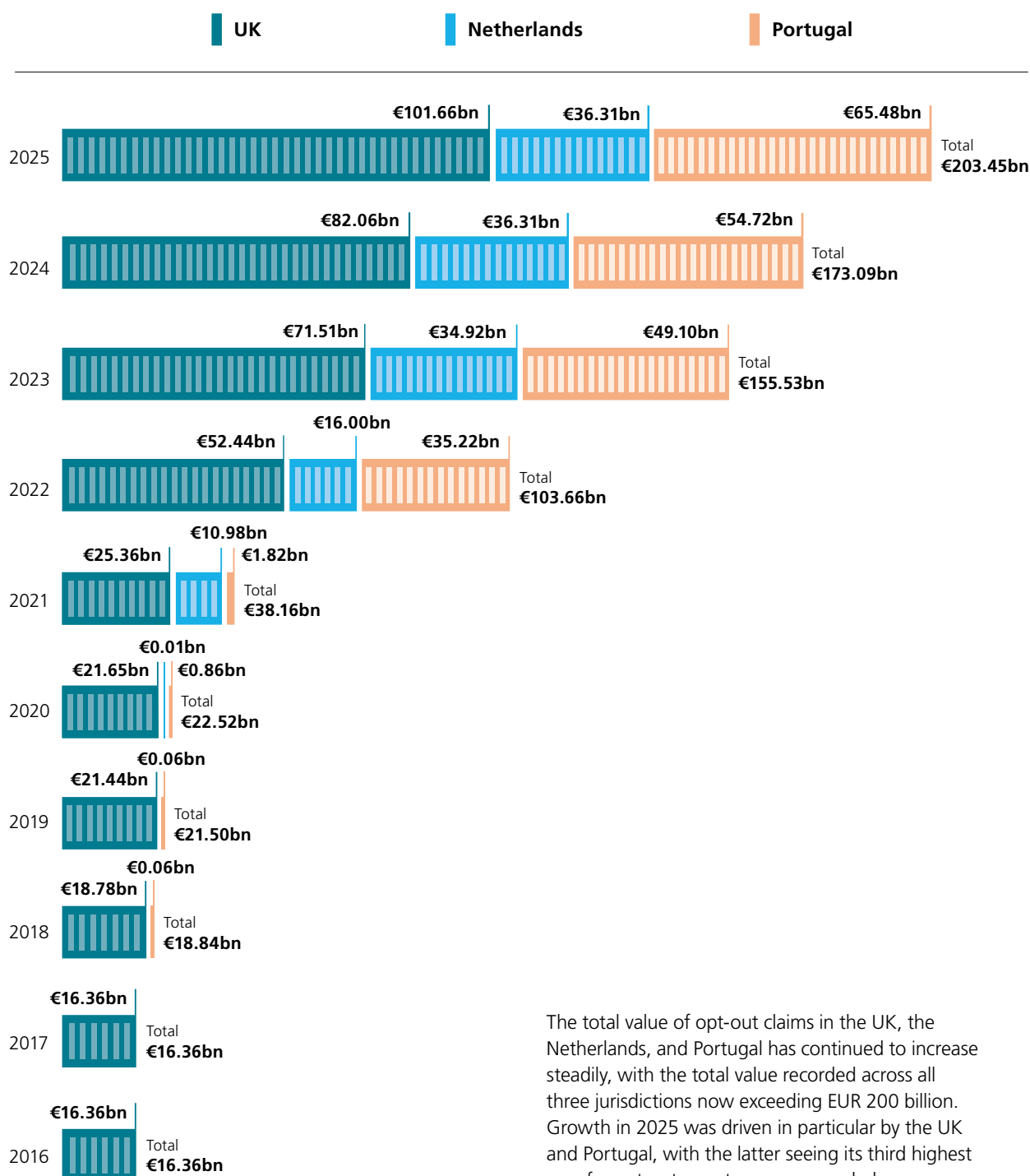


The total claimed cumulative value of filed opt-in and opt-out class actions across the UK has now almost reached EUR 180 billion, driven in particular by the c. EUR 20 billion increase in opt-out claims in 2025. The overall value of all opt-out claims has now eclipsed that of opt-in claims (having, in fact, narrowly done so in 2024, which we can now observe due to improvements in our data). In contrast, the growth in opt-in quantum values appears to be slowing, (although this could be explained by the difficulty of obtaining reliable data for opt-in claims in contrast to opt-outs, which are highly publicised, with some courts (e.g., the UK CAT) allowing this data to be verified from their open filings).

UK, Netherlands and Portugal opt-out quantum 2016–2025

Total cumulative opt-out quantum for 2025:

€203bn

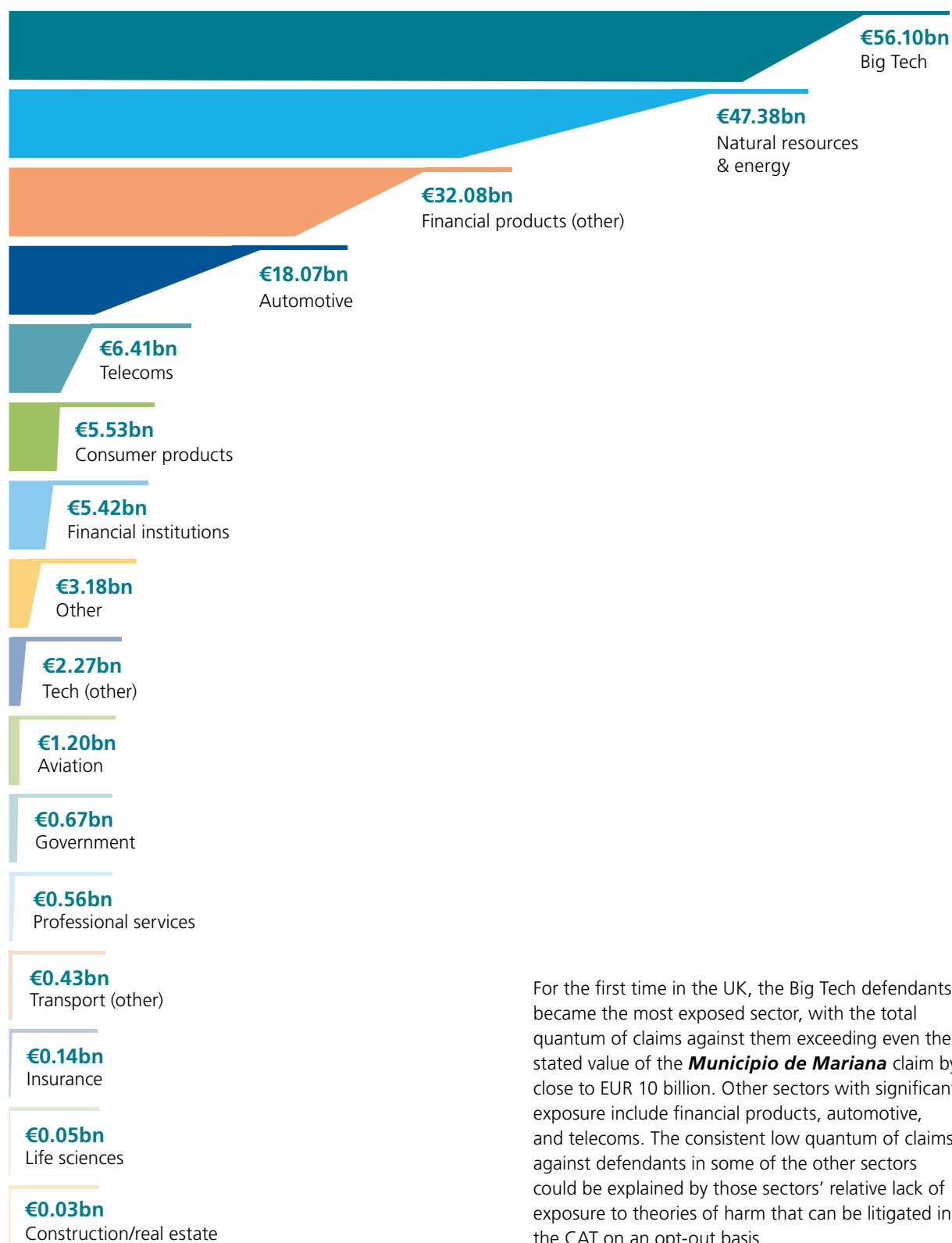


The total value of opt-out claims in the UK, the Netherlands, and Portugal has continued to increase steadily, with the total value recorded across all three jurisdictions now exceeding EUR 200 billion. Growth in 2025 was driven in particular by the UK and Portugal, with the latter seeing its third highest year for opt-out quantum ever recorded.

Quantum by defendant industry sector 2016–2025

UK total quantum

€179.52bn

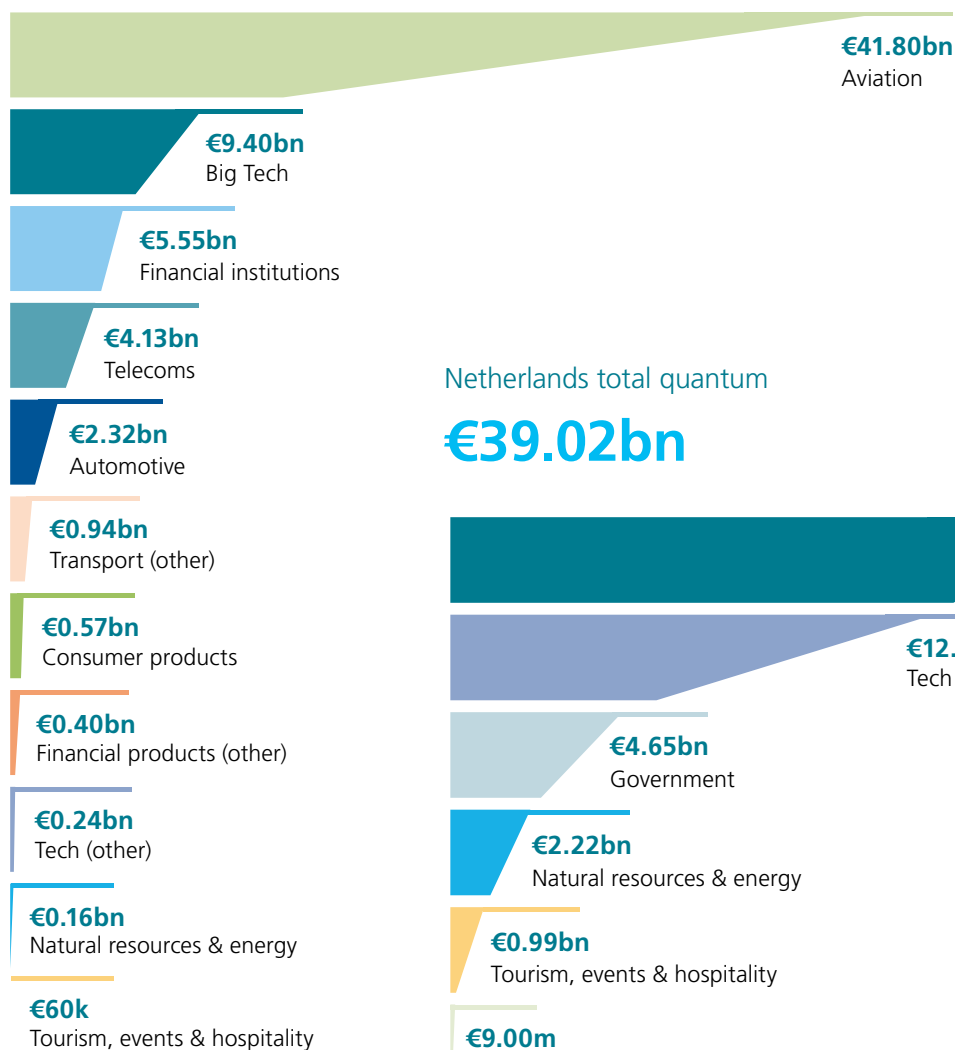


For the first time in the UK, the Big Tech defendants became the most exposed sector, with the total quantum of claims against them exceeding even the stated value of the **Municipio de Mariana** claim by close to EUR 10 billion. Other sectors with significant exposure include financial products, automotive, and telecoms. The consistent low quantum of claims against defendants in some of the other sectors could be explained by those sectors' relative lack of exposure to theories of harm that can be litigated in the CAT on an opt-out basis.

Quantum by defendant industry sector 2016–2025

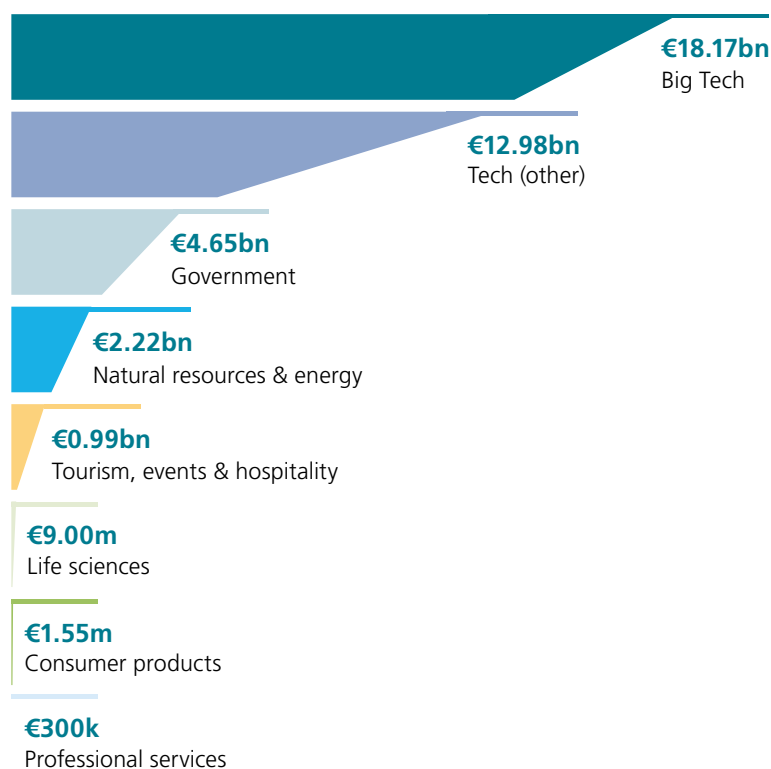
Portugal total quantum

€65.52bn



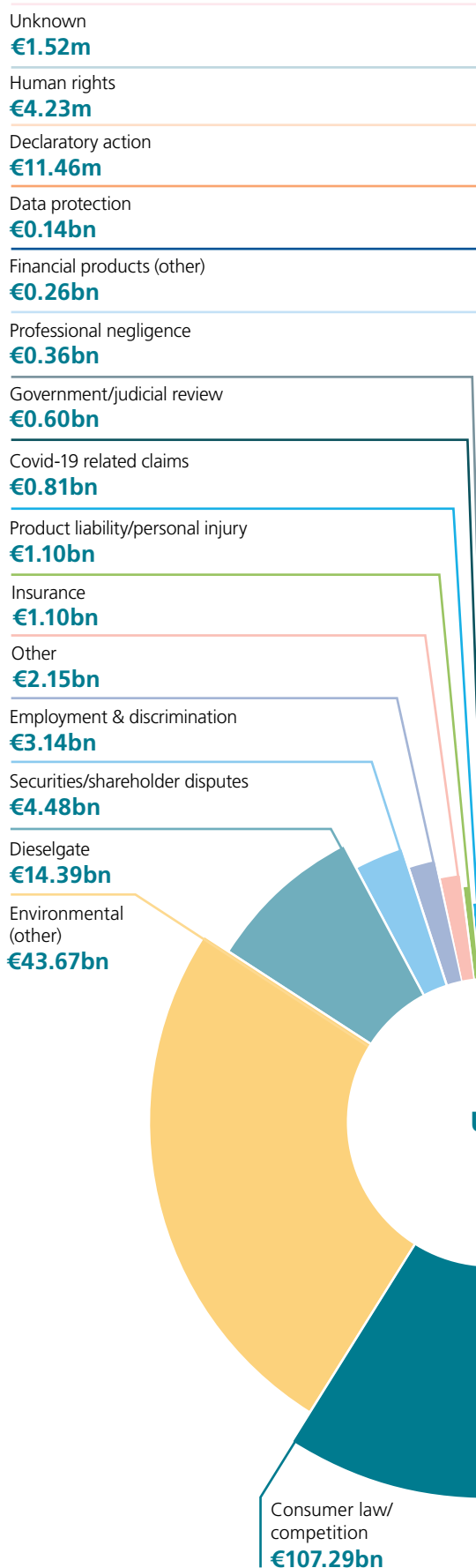
Netherlands total quantum

€39.02bn



The quantum in these jurisdictions shows a consistent picture to that identified in previous editions, with Aviation and Big Tech claims dominating activity in Portugal and the Netherlands respectively. However, almost all of the c. EUR 10 billion quantum growth in Portugal was driven by claims against Big Tech (cf. EUR 0.24 billion in 2024), which leapfrogged the Financial Institutions and the Telecoms sectors. This highlights the increasing risk that US Big Tech Companies face in Europe as a result of the ever-growing litigation wave.

Quantum by claim type 2016–2025



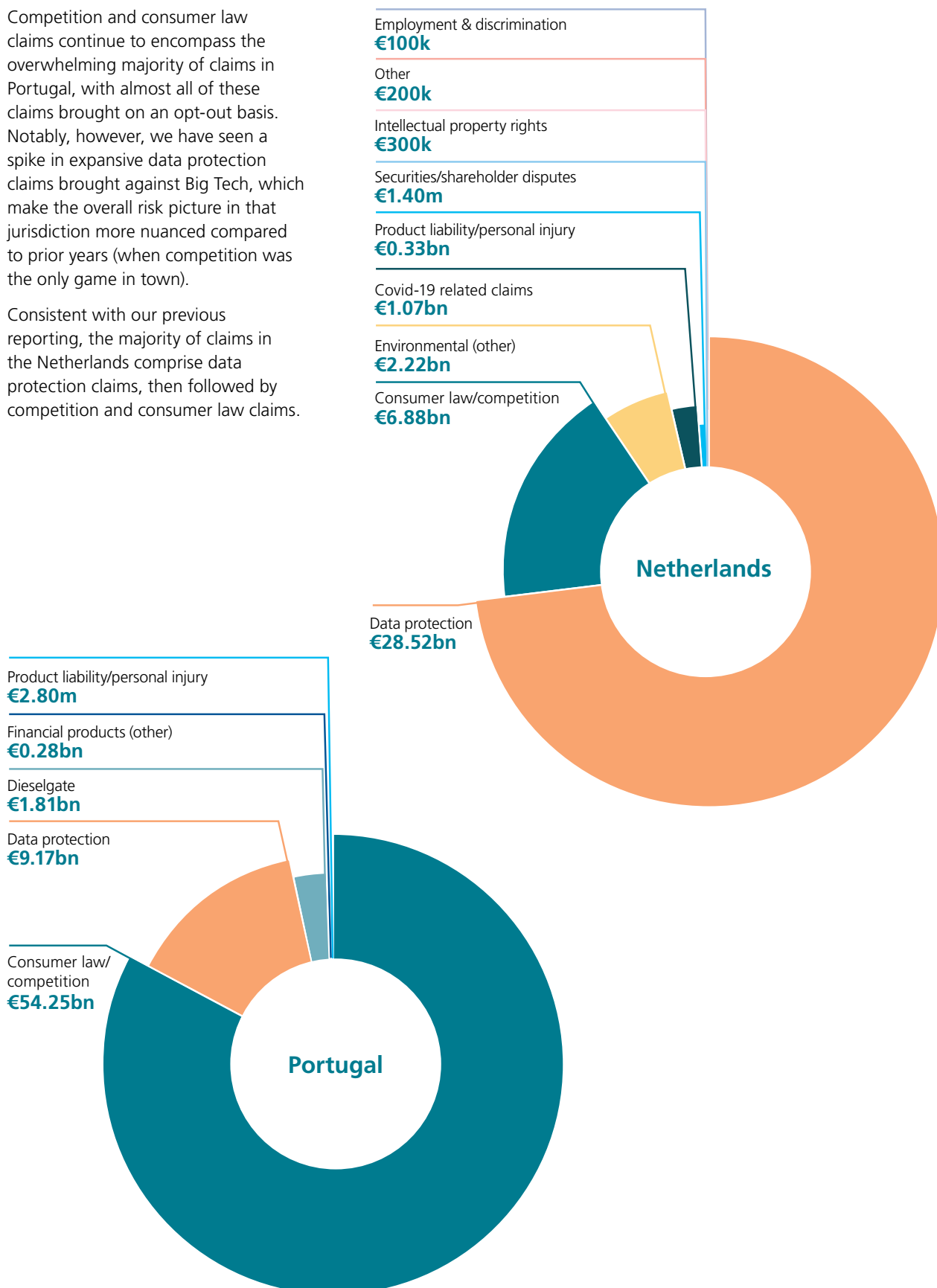
As in previous years, consumer law and competition claims represent the highest value of claims in the UK, with the overall proportion increasing to close to 60%. The rest of the spread remains consistent with the trends reported in prior years, further reinforcing our conclusion that consumer and competition claims represent the single most important driver of group litigation risk in England.

As noted in our previous reports, and so as to avoid skewing the data, we do not include quantum values of data protection claims which collapsed following the ruling in *Lloyd v Google*.

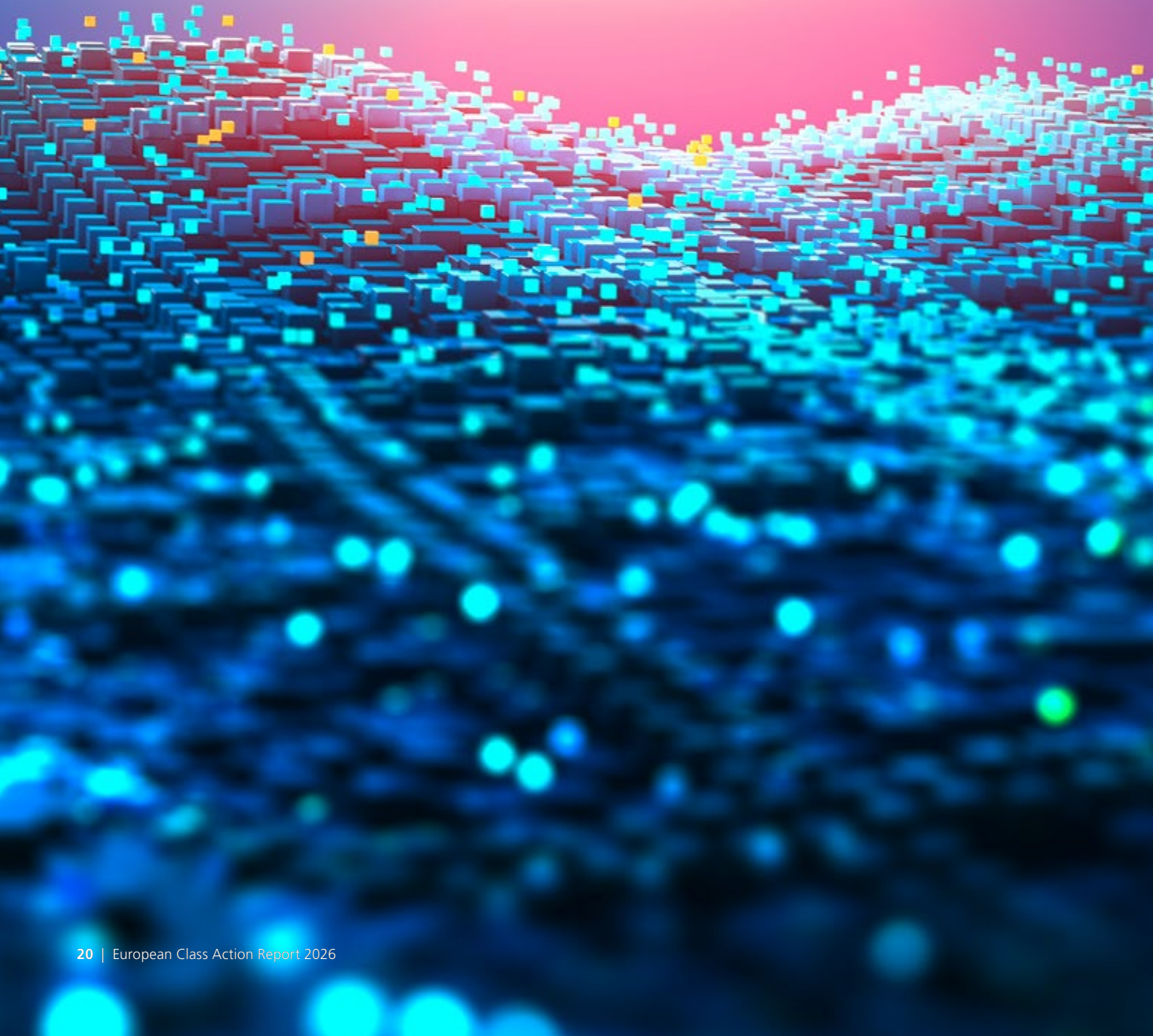
Quantum by claim type 2016–2025

Competition and consumer law claims continue to encompass the overwhelming majority of claims in Portugal, with almost all of these claims brought on an opt-out basis. Notably, however, we have seen a spike in expansive data protection claims brought against Big Tech, which make the overall risk picture in that jurisdiction more nuanced compared to prior years (when competition was the only game in town).

Consistent with our previous reporting, the majority of claims in the Netherlands comprise data protection claims, then followed by competition and consumer law claims.



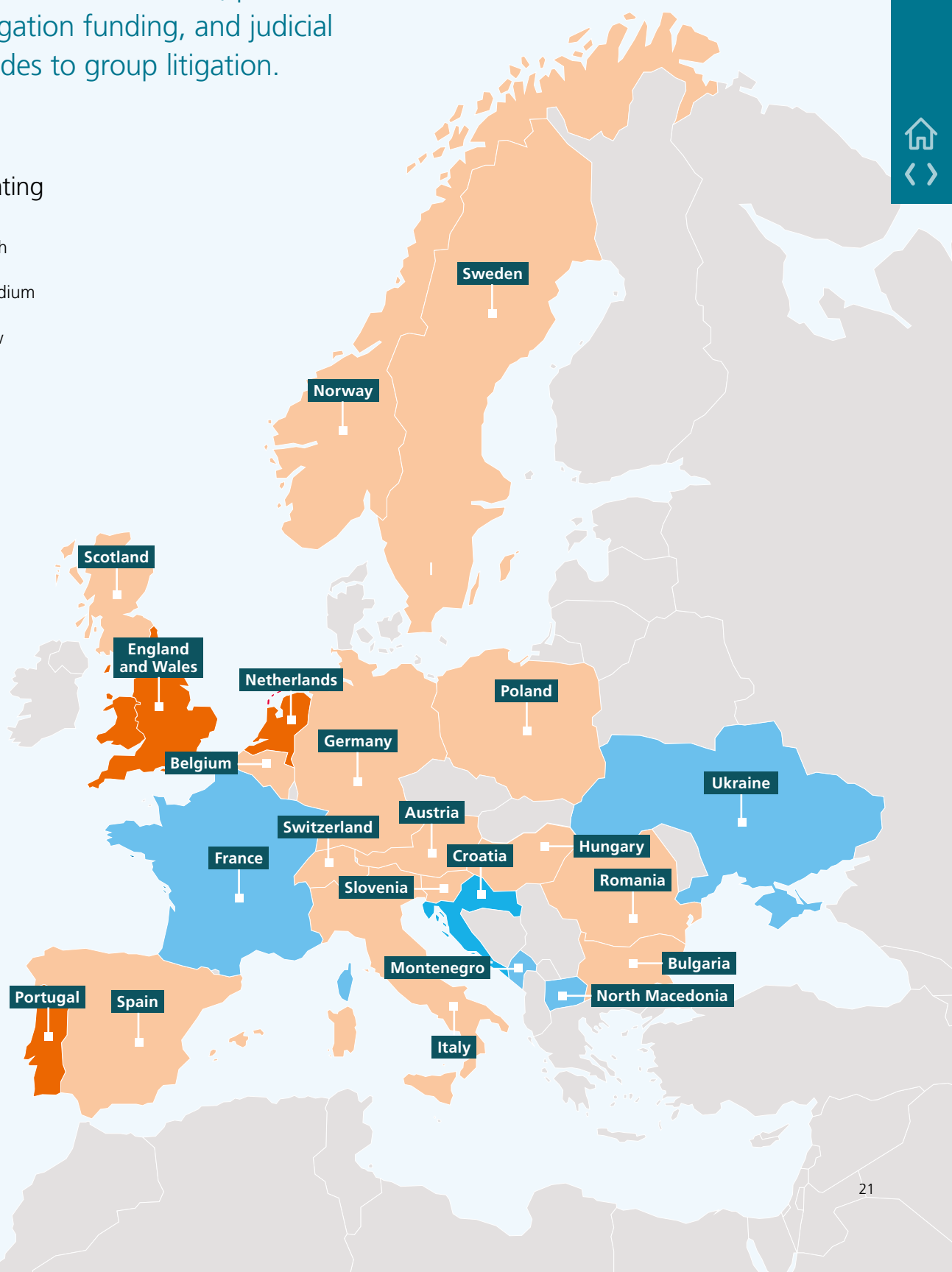
Risk map



This map gives a high level assessment of relative class action risk across the countries in scope. Risk is allocated, according to domestic procedural mechanisms including the availability of opt-out mechanisms, prevalence of litigation funding, and judicial attitudes to group litigation.

Risk rating

- High
- Medium
- Low



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Spotlight on: the UK



*Kenny
Henderson*



*Daniel
Keating*



*Douglas
Campbell*



*Matt
Peacock*



*Chris
Gorman*

The UK remains one of the highest, if not the highest, risk jurisdictions in Europe. This is for a number of reasons, including: a well developed claimant bar, many of whom have close relationships with U.S. plaintiff firms, or are UK offices of U.S. firms; broad rules on disclosure; a sophisticated litigation funding market; and procedural mechanisms that facilitate class actions.

This year has seen further important developments that impact on class action risk. There have been significant liability and final judgments. In particular, the claimants succeeded in proving liability in the sprawling Mariana dam collapse case which was brought in England on behalf of affected Brazilians. Permission to appeal was refused and the quantum trial is scheduled for April 2027.

There have also been a number of significant settlements, particularly of competition class actions. The returns to funders could prompt further capital being invested, facilitating new claims.

That said, there have also been high profile failures including in the first instance ***Pan-NOx judgment*** on liability which was largely a victory for the defendants.

Aside from live cases, there are several important ongoing public consultations in the UK, which could lead to a range of outcomes from expanding class action devices through to regulating litigation funding. These are busy times, and the output of these consultations will set the risk profile for the medium term.

Policy developments

The significant growth in class action claims has been noticed by the UK government, and several policy initiatives and consultations have been launched. Relatedly, there has also been regulatory scrutiny of the behaviour of certain operators in the class action space. This section summarises the key developments.

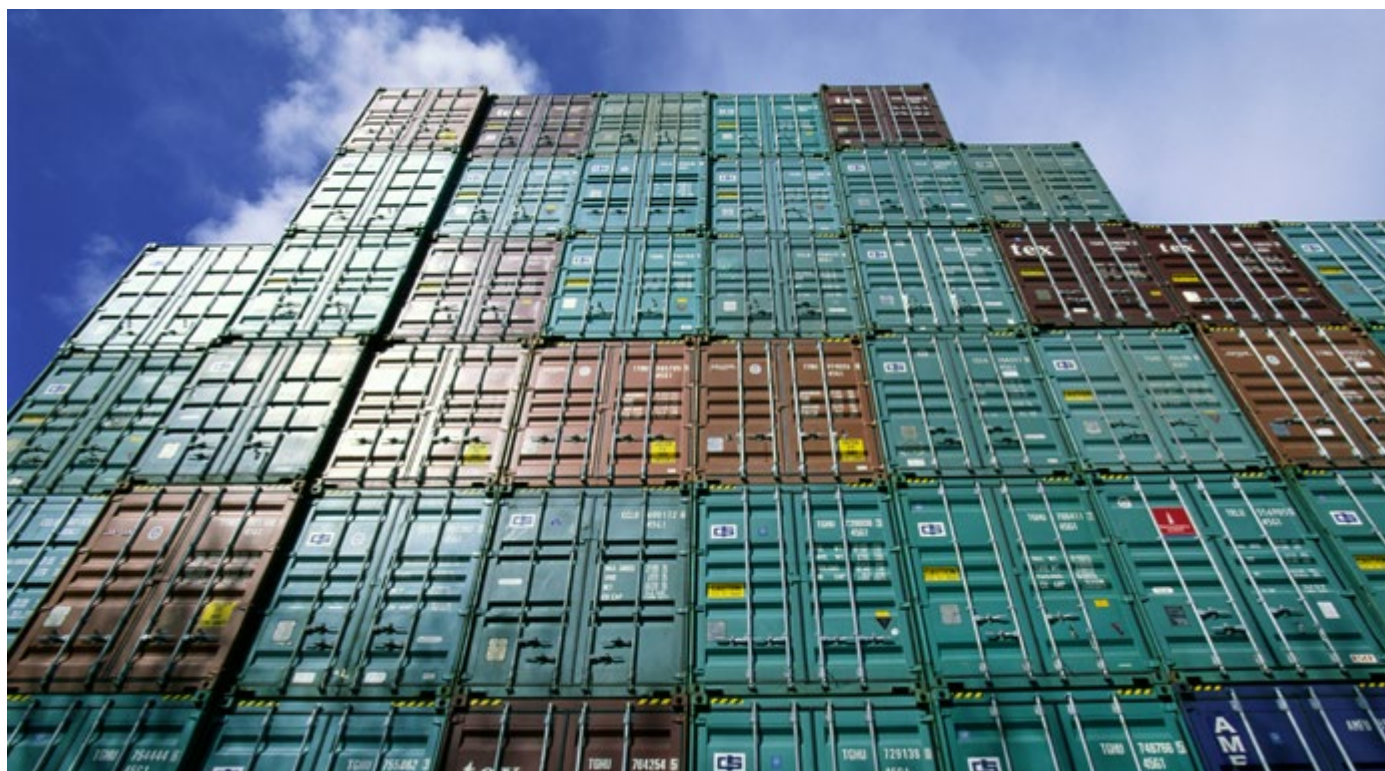
Opt-out competition class actions

In August 2025, the then Department for Business and Trade (DBT) launched a call for evidence on the opt-out collective actions regime ([Opt-out collective actions regime review: call for evidence – GOV.UK](#)). The DBT initiative was to consider *“whether [the regime] is delivering access to justice for consumers in a way that brings value without being disproportionately burdensome on business”*. DBT observed that the number of claims filed and the costs incurred are far higher than was expected, as set out in the government’s impact assessment prior to the regime being introduced. It also stated that the caseload of the CAT has developed in unexpected ways. For example, it had been anticipated that the majority of claims filed would be follow-on claims which relied on the binding findings of a regulator. In fact, approximately 90 per cent of claims filed are stand-alone, where the class representative is seeking to prove a breach of competition law. The call for evidence centred around questions about access and funding, scope and certification of cases, ADR and distribution of funds.

On the latter, specific questions are posed around consumer information, transparency and whether returns are “meaningful” for individual class members.

Following the DBT call for evidence, in July 2026 the Department for Business, Innovation, Science and Trade (DBIST) (which now incorporates the DBT), launched a formal consultation which encompasses potential changes to the opt-out regime ([Swifter and simpler competition redress, regulatory appeals and competition enforcement – GOV.UK](#)). That consultation closed on 25 September 2026.

Although DBIST will consider responses and conclude its policy recommendations in due course, the consultation document gives hints on the government thinking which suggest that there will not be any radical reforms to the opt-out regime. For example, the regime will not be terminated, nor – in the short term – will it be expanded to encompass non-competition claims. Instead the focus is on improving areas of identified deficiencies, such as making the certification stage more meaningful to act as a more effective early filter for inappropriate claims. The consultation also suggests that the government is open to permitting the use of Damages Based Agreements (DBAs) (pure contingency arrangements) in these cases. The stated intention of permitting DBAs is to lower the cost of funding to facilitate lower value claims, but use of DBAs risks other adverse consequences including significantly enriching lawyers involved in these cases.



Law Commission Consultation on consumer class actions

In parallel with the DBIST consultation on the existing opt-out regime in the CAT, the Law Commission has initiated a review into whether an opt-out regime should be introduced for consumer claims. This workstream is at an early stage and there is overlap between this review and the DBIST consultation. The Law Commission published an Initial Scoping Questionnaire in April 2026, with responses due on 30 October 2026. The Law Commission has stated that it expects to start its work on this project “during autumn 2026”. Whilst a timeline for next steps has not been set, Law Commission projects typically last in the region of two years.

Law Commission Consultation on product liability

In late summer 2025, the Law Commission launched a review into the product liability regime in England and Wales by publishing an Initial Scoping Questionnaire, with responses due by 31 December 2025.

The Law Commission has not published an update on this workstream since then, but it has stated that it intends to set out proposals for reform and a consultation in “the second half of 2026”. More detail is available here: [Product Liability Regime Review: AI and Legal Update by CMS](#). A significant issue is that in relation to product liability, Northern Ireland is in regulatory lockstep with the EU, and accordingly Northern Ireland will implement the changes to the EU Product Liability Directive. Thus, the UK government will face a political and policy decision on whether to adopt the EU provisions across the UK, or to have regulatory divergence between Northern Ireland and the rest of the UK (see our Hot Topic “Product Liability Updates and Increased Class Action Risk” [here](#) for more detail).

Solicitors Regulation Authority (SRA) finds numerous problems in conduct of high-volume claims and consultation on litigation funding

On 22 August 2025, the SRA published the findings of its thematic review into firms operating in high-volume consumer claims. The SRA identified troubling conduct, and the introduction to its review provides, “We, and others in the industry, are growing increasingly concerned about issues we are seeing across the high-volume consumer claims market. Our concerns pertain to this area of the market not working as well as it should, which is leading to potential risks to consumers, and eroding trust and confidence in the solicitors’ profession”. The introduction also states, “... the number of firms we are actively investigating in relation to potential misconduct has risen sharply over the past 12 months. As of 31 July 2025, we have 95 open investigations relating to 76 firms, who between them handle hundreds of thousands of claims”. On any view, the problems identified by the SRA are widescale.

As to the scope of its review, the SRA identified 129 firms active in the consumer claims market, “who between them were handling more than 2.4 million live claims”. The SRA sent those firms mandatory surveys and then visited 25 of those firms in order to conduct interviews, review client files, and review learning and development records and policies and procedures on how consumer claims work was handled. Of the 25 firms visited, “18 had litigation funding in place” but “only six of the 18 firms visited who use litigation funding had included checks on how a litigation funder sourced investment funds in their due diligence, and fewer still included sanctions (four firms) or anti money laundering checks (five firms).” Commenting on the importance of these checks, the SRA said, “It was concerning that only a small proportion of firms were including these types of checks in their due diligence, and that some firms did not know where the funders sourced the funds they were lending to the firm.”





Not only did few firms advise on the terms of the litigation funding, but they did not even inform the claimant of the terms; *"We reviewed 28 files where the firm had secured litigation funding for the claim. On 21 of these files, the terms of the litigation funding agreement impacted the level of damages/ compensation the client received, the client's obligations, and the risks of the claim, such as the withdrawal of litigation funding in certain circumstances. In these cases, we would expect firms to inform clients of the relevant terms of the litigation funding agreement in a clear and readily understandable manner. We were worried by how few firms did this... "* More details will emerge as the SRA publishes the results of its ongoing investigations.

The SRA followed up this review by publishing a discussion paper and questionnaire on 19 September 2025 ([High-volume consumer claims – discussion paper](#)) which asked 13 open-ended questions that go to the heart of how high-volume claims are conducted. One question is framed around problems caused by the term *"no win no fee"* and asks whether use of the term should be banned. Relatedly, in July 2026 the SRA launched a consultation titled: *"Protecting consumers when solicitors and law firms use and/or arrange third-party litigation funding for consumer claims"* ([SRA | Protecting consumers when solicitors and law firms use and/or arrange third-party litigation funding for consumer claims | Solicitors Regulation Authority](#)), with responses due in September 2026. The key harms and risks summarised by the SRA on its website are as follows:

- **"managing risk:** some solicitors and law firms are not doing enough to identify, monitor and manage the legal and financial risks of third-party funded consumer claims, or to actively monitor business viability."
- **"maintaining independence and acting in clients' best interests:** some solicitors and law firms may have failed to properly safeguard their independence from third-party funders and may have failed to identify 'own interest' conflicts, when arranging litigation funding for clients."
- **"client information:** some solicitors and law firms are not providing the information clients need to make informed decisions about proposed third-party litigation funding arrangements or are presenting the information in a way that means it cannot be readily understood by clients."
- **"due diligence and financial crime risk:** some solicitors and law firms are not alert to the risk that receiving funds from a litigation funder may risk receiving criminal property, or funds transmitted in breach of the UK sanctions regime."

Regulation of litigation funding

The Ministry of Justice continues to digest the report of the Civil Justice Council (CJC) into the regulation of litigation funding ([Review of Litigation Funding – Final Report](#)). The CJC report set out 58 recommendations including statutory regulation of litigation funding, enhanced consumer protection, capital adequacy requirements, anti-money laundering measures and improved transparency. The report proposed a twin track to its recommendations, with initial legislation to reverse the effects of the **PACCAR** decision and that such *"legislative reform should not wait for further consideration of any wider reforms that the CJC may recommend"*. The Government has not yet published any draft legislation to reverse **PACCAR** or implement any of the other recommendations of the CJC.





Competition class actions

October 2025 saw the 10-year anniversary of the introduction of collective actions in the Competition Appeal Tribunal. The Hot Topics section [Opt-out actions in the CAT – ten years on](#) (page 62) in this report, looks at whether the regime is achieving its objectives.

The landscape

2025 saw a slight slow-down in new filings, most likely caused by the considerable exposure that the litigation funding market already has to the regime. However, as the early cases begin to reach a conclusion, it is clear that the appetite for funding collective actions remains. By July 2026, there were already more new collective actions filed than for all of 2025, with others in the pipeline according to press releases by claimant law firms and funders.

The last year has seen some significant judgments for the collective action regime. In October 2025, the Tribunal handed down judgment in the **Boundary Fares** and **Kent v Apple** cases. In **Boundary Fares**, the Tribunal held that the defendants had not abused their dominant position, therefore the class representative's case failed. By contrast, in **Kent v Apple**, the Tribunal found in favour of the class representative, holding that Apple's App Store commission was an abuse of its dominant position, awarding an estimated £1.5bn of damages to the class of approximately 36 million consumers who purchased apps or made in-app transactions on their Apple devices. After a series of failures and relatively modest settlements, this outcome is likely to bring a degree of hope and confidence to claimant law firms and the funders that back them.

Merits and opt-in versus opt-out

When considering the collective action landscape in the UK, it is important to look at the certification stage, the process which sets collective actions apart from other multi-party and individual actions in the UK. In 2020, the Supreme Court in **Merricks** confirmed that the threshold for certification was extremely low.

In December 2025, in **Evans v Barclays Bank & Others**, the Supreme Court (overturning an earlier Court of Appeal judgment) upheld the CAT's decision to refuse certification. It held that the Tribunal was entitled to find that the proceedings had a very low prospect of success and therefore should not be certified on an opt-out basis. The Supreme Court decision was an encouraging indication that the CAT can legitimately consider merits at certification.

The Supreme Court also made clear the need to strike a balance between assisting claimants to obtain redress and protecting defendants from oppressive litigation. The regime is designed to accommodate a wide spectrum of cases, to allow classes of claimants a reasonable opportunity to litigate, but not an absolute or specially privileged right to do so.

The **Evans** judgment was interpreted by some as an indication that the Tribunal would apply a more stringent merits assessment, and it may be more challenging to get certification of claims on behalf of businesses. However, in April 2026, the Tribunal gave judgment in **Stasi v Microsoft**, certifying a standalone claim on behalf of organisations which obtained a licence to use Windows Server. The Tribunal did not agree that the claim was strong, but was satisfied it was suitable for certification.

It noted that there was a diverse class and treated the economic viability of an opt-in claim as a factor weighing in favour of certifying the opt-out proceedings. Following **Evans**, a number of defendants brought applications to vary or decertify the claims against them, including in **Rodger v Google** and **Ennis v Apple**. In both cases, the Tribunal found that there was no basis to depart from the earlier certification decisions as there had been no material change of circumstances and it considered that both claims undoubtedly had merit. The stage of proceedings was also a factor, with the Tribunal noting the practical consequences of revoking or varying the certification.

Distribution

As at the date of this report, only **Boundary Fares** has progressed to distribution, following a settlement of up to £25m with one of the defendants. Only approximately £200,000 (0.8%) of the settlement sum was distributed to the class. At the certification judgment in that case, the Tribunal had found that the cost-benefit analysis came out against certifying the claim but, weighing up all other factors, it found that the claims were suitable to proceed as collective proceedings.

The Tribunal has since observed that it is unclear whether the same result would have been reached today, with the benefit of hindsight.

Distribution has not yet taken place in the **Merricks, Kent, and McLaren v MOL** proceedings. The Tribunal has made clear that it expects the level of distribution to be materially higher, and it is paying close attention to the distribution proposal and likely take-up rates.

Distribution is likely to be a key battleground at certification going forward. In **Waterside Class Limited v Mowi & Others**, the Tribunal was concerned about the costs of the proceedings, relative to the anticipated sums which will be returned to the class. The Tribunal observed that many class actions offer enormous and irresistible commercial benefit to the lawyers and funders, whereas the commercial benefit to individual members of the class is relatively small. Although the Tribunal did not strike the claim out, it invited the class representative to reformulate the case to meet the Tribunal's concerns, noting that there should be scope to have a far smaller cost budget, alongside a creative mechanism for distribution with the potential to return close to 100% of damages to the class.



Estimated class size

This chart shows the cumulative estimated class sizes, based on publicly available information, for all UK competition class actions under the Collective Proceedings Order Regime (the CPO Regime) 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 | 187,403,819



2022 | 356,413,333



2023 | 560,789,933



2024 | 671,444,610



2025 | 752,194,610



“Claims encompassing three quarters of a billion class members have now been filed in the UK. Despite the chatter of PACCAR reducing funder appetite, the data shows that the competition class action regime is continuing to boom.”



Class increase per year



Representative actions

The representative action mechanism in CPR 19.8 is a less prescriptive regime than the CAT regime. It permits a person to bring a claim as a representative of any other persons who share the same interest in that claim, with any resulting judgment binding on the entire represented class. 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. Significantly, a representative action can be brought for any cause of action, unlike the regime in the CAT which is restricted to competition claims. Despite its theoretical promise, given it could be used for a wide range of claims, claimants have not yet been able to bring successful claims using this device.

The 'same interest' test

In **Lloyd v Google** [2021] UKSC 50, the court held that the 'same interest' test required claims to raise a common issue or issues. It also recognised that at some point those interests may diverge, in which case a 'bifurcated process' could be adopted to decide common issues (fact or law) amongst the represented parties, with other individualised issues being the subject of separate and later determination.

While the decision in **Lloyd v Google** appeared to adopt a permissive approach to bringing CPR 19.8 claims, subsequent decisions have revealed that actually satisfying the 'same interest' requirement for representative proceedings, and persuading the court to exercise its discretion to permit the claim to proceed, remains difficult. A common theme emerging is the court's expectation on Claimants to demonstrate that they have meaningfully grappled with practical and case

management issues, such as challenges of individualised evidence for a class that does not actively participate in the claim.

In **AFM** and **SAG-AFTRA & Ors v Secretary of State**, the High Court considered the Defendant's application that certain claimants not be permitted to act as representatives. It rejected arguments that the class of claimants was unclear and that there were conflicts of interest between class members. However, it agreed that the claims required a complex and individualised assessment of damages. While this was theoretically permitted by the bifurcated process in **Lloyd v Google**, the court was troubled by the *"significant practical issues that have to be worked through in order to decide whether the CPR 19.8 procedure is workable"*. However, perhaps surprisingly, the court gave the Claimants an opportunity to correct their errors – albeit whilst making clear it would *"need to see firm and workable proposals that deal with all practicalities"*.

In **Getty Images v Stability AI**, the High Court considered the Defendant's application for an order that a claimant may not represent over 50,000 persons whose copyright had been exclusively licensed to the Claimants but, it was alleged, infringed by the Defendant via mass use of imagery to train its AI model. The Court applied the well-established principle from **Emerald Supplies v BA** that whether members of the class have the same interest can only be addressed if it is clear whether any particular person qualifies for membership of the class. It held that *"the question of whether copyright has been infringed by the Defendant...can only be determined at trial. Thus, if the class is dependent upon this definition, it appears to me plainly to fall foul of [this] principle"*.

The Claimant's further oral arguments during the hearing did not help as they still did not reveal a *"basis on which the court can be satisfied that any particular person qualifies as a member of the class proposed"*. The scale of case management issues that stemmed from this were such that even if the class had been ascertainable, the court held that it still would not have exercised its discretion to allow the claim to continue as a representative action.

Finally, in **Tesla v InterDigital**, the claimant made a novel and ambitious attempt to deploy CPR 19.8. Tesla sued InterDigital as a representative of all members of the relevant 5G platform, totalling over 66 class members, most of whom were foreign companies with no presence in England. The case failed at first instance, upheld by the Court of Appeal. The court gave a number of reasons why it would refuse to exercise its discretion to allow the claim to proceed as a representative action. By the time that the Claimant appealed to the Supreme Court, it had dropped its attempt to rely upon CPR 19.8. The Court of Appeal noted that *"It is one thing for a court to permit a claimant who wishes to act in a representative capacity to do so when the defendant opposes such a representation order. It is a different thing to permit a claimant to bring a claim against a defendant in a representative capacity when the defendant is unwilling to act in that capacity, as in this case"*.

As we concluded in last year's Class Actions Report, it remains difficult to establish class-wide damages using the representative action mechanism. Nevertheless, claimant law firms and funders are likely to continue to try because this mechanism can be used on an

opt-out basis for non-competition claims which makes it potentially very powerful: there is no outstanding question whether such claims can be brought successfully. The only outstanding question is how to structure them.

Securities representative class actions

Last year's report discussed the case of **Wirral Council v Indivior plc & another**, in which the court considered the suitability of representative procedure for securities claims under sections 90 and 90A FSMA. At first instance, the High Court rejected the use of representative procedure to address only the common, defendant-related questions, such as the existence of misleading statements. The decision was upheld by both the Court of Appeal and Supreme Court.

Although claimants may now feel less inclined to bring securities litigation via CPR 19.8, the judgments in **Wirral** do not mean that such claims are bound to fail. In October 2025, two claims were issued in the Commercial Court by **Equite Capital Pte**: one against **S&P Global UK Limited** concerning losses arising from allegedly defective credit rating models used to rate collateralised debt obligations and constant proportion debt obligations; and the other against **Fitch Ratings Ltd**, in relation to allegedly concealed adjustments said to have inflated credit ratings assigned to synthetic CDOs. No rulings have yet been made on the suitability of the representative procedure or on whether the same interest test is satisfied, but given the outcome of **Wirral** we expect claimant law firms and funders to be watching these two cases closely.



Group litigation orders (GLOs)

A GLO is an opt-in mechanism, whereby the High Court can resolve common issues for multiple claims. The GLO is a fairly flexible tool. If a GLO is granted, the court will often select lead cases for trial of the common issues (or GLO issues). That may not include all of the issues, for example certain factual or liability issues may be common or sufficiently common to the class, with quantum a highly individual assessment.

In July 2026, the High Court handed down judgment on the main liability issues in the **Pan-NOx emissions litigation**. This was a very large series of cases, brought on behalf of around two million users and owners of diesel cars who contended that the vehicles breached emissions legislation. GLOs had been implemented in the claims against each defendant, and then a “Pan-GLO” as between these cases. In broad terms, five defendants had the status of lead defendants and participated fully in the liability trial. Findings of law are binding on all defendants, but findings of fact – and applications of the law to the facts – are only binding on the sample vehicles for the lead defendants. The judgment was largely a success for the defendants, albeit the Claimants are seeking to appeal.

Multiple claimants on claim forms

Aside from representative actions and GLOs, group proceedings or class actions can also be brought by filing multiple claims on the same Claim Form. This can be an attractive approach for claimant law firms where the individual claims are low value and would otherwise be allocated to the Small Claims Track. Where claims are allocated to the Small Claims track, it is not possible to recover legal fees save for very small figures in specific circumstances. By bundling claims and avoiding the Small Claims Track, the claimant side can seek to recover their legal fees which can make the economics of mass claims more viable.

The test for adding multiple claimants to the same claim form is found at CPR 7.3: “A claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings”. Several cases have grappled with the interpretation of this rule in recent years. This article outlines key recent developments in the case law.

The issue was considered in **Abbott and others v Ministry of Defence**, a noise-induced hearing loss claim against the MoD involving some 3,550 claimants listed on a single claim form. The Court held that a single claim form should be allowed where there were “common issues of sufficient significance that their determination would constitute real progress towards the final determination of each claim in a set of claims”. This became known as the ‘real progress test’.



However, that test was quickly overturned in **Morris & Others v Williams & Co Solicitors**. The Court of Appeal rejected it on the basis that the CPR should be interpreted according to its own language: “there is no exclusionary rule of real progress” and “no test beyond the words of rule 7.3”. It would therefore be for the courts to determine convenience on the facts of each case. The judgment altered the legal landscape for omnibus claims and was welcomed by claimant solicitors as “likely to make it easier for claimants to bring claims even where there are differences between the claims and the claimants” (reported in Legal Futures, 19 April 2024).

The interpretation of CPR 7.3 has recently been revisited, and likely broadened, by the Court of Appeal in **Black Horse Ltd v Angel 2026**, a car finance commission case with more than 5,000 claimants split across eight omnibus claim forms. In **Black Horse**, the claimants used a single, generic particulars of claim and provided the individuals’ specific facts by amended schedule. The Court of Appeal found that the claimants were entitled to use omnibus claim forms, even though determination of each claim was likely to be fact-specific.

In **Black Horse**, Lord Justice Coulson helpfully summarised the principles applicable to convenience under CPR 7.3 at paragraph 46 of his judgment, namely that:



- (i) the burden of demonstrating convenience rests with the claimants;
- (ii) as per **Morris** the test of convenience requires no elaboration because the word “conveniently” carries its usual meaning and many matters may be relevant to the question;
- (iii) common legal and factual issues may indicate convenience – if those common legal or factual issues will bind most of the claimants this will normally satisfy the convenience test, however, that is not the only factor;
- (iv) an omnibus claim should be a convenient means of disposal, but need not be the most convenient method;
- (v) the test does not mean that all claims have to be disposed at the same point in time, i.e., a single final trial; and
- (vi) the test should consider the needs of all parties, the court, and the court system.

The reaction in the press has been to hail **Black Horse** as a ‘landmark victory’ for claimants as it is likely to allow greater use of omnibus claim forms under CPR 7.3, particularly where the use of other forms of class actions, such as GLOs, may not be available. However, it is important to note that Coulson LJ prefaced his judgment by noting several restrictions, including the limited grounds of appeal, the need for caution when

overturning lower courts’ case management decisions, and the risk that claimants would be unwilling or unable to pursue their claims if the case were disaggregated. Furthermore, Coulson LJ emphasised at paragraph 86 of his judgment that the procedural history and restrictions “*mean that the result of this appeal cannot easily be extrapolated into setting out any new or wider principles to be followed in other cases where the Rule 7.3 point has arisen*”.

As such, **Black Horse** is very much a decision which turns on its own facts, primarily because it is subject to these important limitations. While this is undoubtedly a significant development for fact-sensitive multi-claimant matters, it remains to be seen how widely **Black Horse** will be applied in practice, particularly given Coulson LJ’s comments that this procedural mechanism is not the ideal starting point for claims of this nature. Accordingly, the Court of Appeal’s decision still affords defendants scope to resist multi-party omnibus claims, although they may face difficulties in persuading the Court that the factual matrix differs sufficiently between claimants.

Importantly, Coulson LJ ends his judgment by noting that the Civil Procedure Rule Committee (CPRC) decided not to review CPR 7.3 two years ago but states that it is his understanding, given the increase in omnibus claims pursuant to CPR 7.3, that the issue is back on the CPRC’s radar which in his view “*is a topic that is well worth their reconsideration*”. This is space worth monitoring.

Spotlight on: Scotland

Opt-out on the horizon



Jo
Clark



Collin
Hutton



Douglas
Campbell

Scotland introduced its first collective redress procedure, known as group procedure, in 2020. The framework legislation, passed in 2018, permitted both opt-in and opt-out rules to be introduced. However, the Scottish Civil Justice Council (SCJC), charged with drafting the rules, decided only to create an opt-in mechanism in the first instance, deferring consideration of opt-out until sufficient working experience had been gained of the opt-in regime.

In last year's Class Actions Report, we highlighted that the SCJC had established a working group to review group procedure and consider whether the court rules should be extended to introduce opt-out proceedings. The working group has been active with this project since mid-2025, first with a targeted consultation on

how opt-in procedure is operating in practice, and then with a Call for Evidence launched in October 2025 primarily focused on the introduction of an opt-out mechanism. A wide range of stakeholders responded to the Call for Evidence, including law firms, consumer bodies, industry associations and financial institutions.





Key themes

The questions in the Call for Evidence span several broad themes:

- Whether opt-out proceedings should be introduced as a matter of principle;
- Procedural design, in particular how certification should operate, and what safeguards would be needed for group members and defenders;
- How settlement and distribution should be managed; and
- Issues with funding and costs, including where the balance should be struck between transparency and confidentiality in relation to funding arrangements.

Some key points from the responses

The case for and against opt-out

Strong views were expressed on both sides of this. Arguments made by proponents included that:

- Opt-in mechanisms are inherently insufficient to address widespread but low-value harms;
- Opt-out proceedings would enable individuals who lack awareness, motivation or resources to participate in collective redress; and
- Opt-out would complement public enforcement, increase deterrence of unlawful conduct and prevent wrongdoers from retaining the proceeds of their misconduct.

Concerns raised by opponents included:

- A recurring theme of prematurity. Consideration of opt-out was explicitly deferred to allow experience

to be gained of opt-in first. At this point, the opt-in regime remains largely untested, with no case having yet got close to trial;

- The need for a detailed evidence-based review on the impact of such a significant reform on taxpayers, businesses, insurers and the wider Scottish economy; and
- Questions over whether opt-out genuinely delivers consumer redress or primarily benefits litigation funders and lawyers. Respondents pointed to the low take-up rates in opt-out proceedings in the Competition Appeal Tribunal (CAT) and in other jurisdictions with get-out mechanisms in querying whether opt-out mechanisms are capable of delivering access to justice.

Procedural design – certification

One of the key design issues the Call for Evidence focused on was certification. There was broad consensus among respondents that certification should be robust but there was a marked divergence of views on the appropriate threshold.

A number of respondents indicated that the approach to certification in any opt-out procedure should not mirror the approach that has been taken in opt-in proceedings, where the bar has been set very low. They argued that, given the significant leveraging advantage that opt-out confers, a much more robust test, particularly on merits, is required (a point which was discussed in detail in the UK Supreme Court's 2025 decision in **Evans v NatWest Markets Plc**, an appeal from the CAT). Other respondents opposed stricter certification, arguing that this can itself create access to justice barriers.

Distribution of unclaimed sums

The treatment of unclaimed settlement or damages sums was a point of sharp divergence between respondents. Some respondents argued these should revert to the defendant, consistent with the compensatory principle (i.e., that damages are awarded to restore the claimant to the position they would have been in had the wrong not occurred, rather than to punish the defendant). Other respondents argued for such sums, or elements of such sums, to be distributed to access to justice charities, consistent with the approach in the CAT.

Funding

Finally, funding was an area which attracted significant comment from respondents. Most agreed that funding arrangements should be subject to some level of court scrutiny. However, there were widely differing views on the appropriate degree of disclosure, from near-full transparency to the sharing of only very limited information.

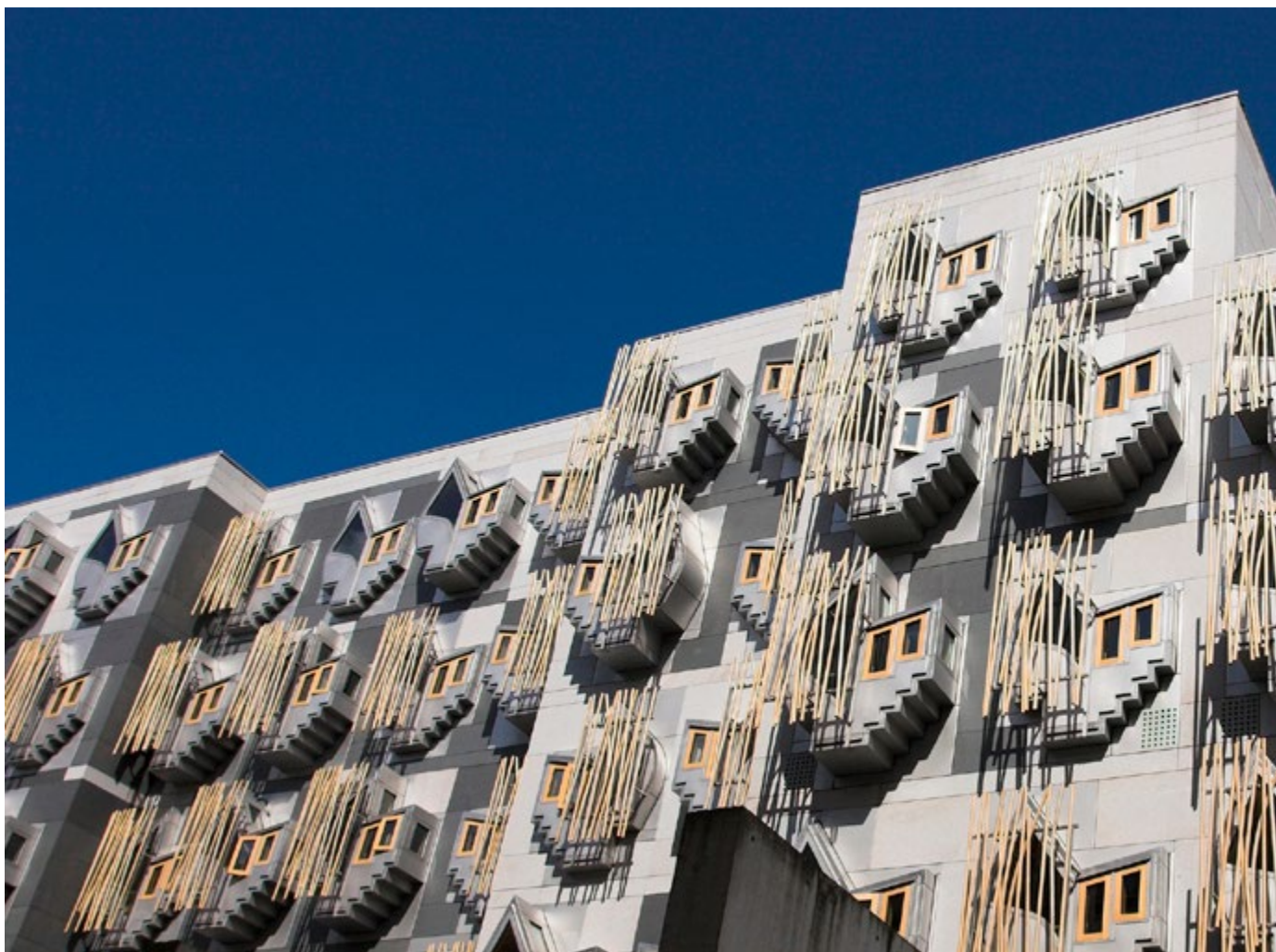
Additionally, responses included calls for:

- Robust adverse expenses protection for defendants
- Requirements for funders to demonstrate capital adequacy and anti-money laundering controls; and
- Enhanced notice and communication obligations to protect group members who may be unaware of proceedings.

Next steps

The SCJC is considering the responses and next steps and an update on this is expected in the coming months. Any draft rules they produce will be subject to a full public consultation. This is likely to attract significant attention. As the responses to the Call for Evidence clearly show, there is a wide range of stakeholders who are deeply engaged with this issue and sharply divided on the appropriate way forward.

Over the last year, the prospect of opt-out proceedings in Scotland has moved from the theoretical to the practical. The coming year will be pivotal in determining whether, and in what form, this mechanism may be introduced.



Spotlight on: France



Anne
Renard



Marie
Santori

Introduced by the Act of 17 March 2014, the French class action mechanism was designed to improve access to justice and the protection of collective interests, drawing inspiration in particular from US class actions.

The 2014 mechanism has been little used, owing to its procedural complexity, its cost and its limited scope. The results yielded have been widely regarded as disappointing: fewer than thirty collective actions were filed in over a decade, most of which either failed or settled without any finding of liability.

It was against this backdrop that Article 16 of Law No. 2025-391 of 30 April 2025 (the *loi DDADUE*) was adopted, transposing the European Directive of 25 November 2020 on representative actions. It marks a major reform of the French system. The following overview examines the key developments introduced by the reform. The reform does not represent a complete break with the existing rules. Certain features are retained and often extended, including the fundamental distinction between an action seeking an injunction to cease the breach and an action for damages, both of which may be brought simultaneously in all domains (while cessation actions were before restricted to some sectors).

Expansion of the scope of class actions

Prior to the reform, class actions were highly segmented in that they were available only in certain sectors: consumer affairs, the environment, discrimination, public health, and breaches of data privacy regulations. Each sector was governed by its own legal framework, with its own specific rules and procedures. The reform has overturned this segmentation by establishing a common procedure for all class actions. Through this harmonisation, class actions may now cover any subject matter and are intended to remedy any type of harm. Only class actions in the field of health retain a specific regime limited to certain products listed in the Public Health Code.



Extension of standing to bring proceedings

Whilst the class action remains a designated action and can only be brought by certain authorised persons, the list of these authorised entities has considerably expanded.

Firstly, class actions may now be brought on behalf of both natural and legal persons. Secondly, the reform grants standing to certain entities depending on the nature of the action brought or the status of the claimant. In addition to accredited non-profit associations – whose accreditation conditions have been standardised – standing now extends to representative trade unions, and qualified EU entities inscribed on the Official Journal list. For cessation-only actions, the Public Prosecutor and unaccredited associations (registered and active for at least two years) also have standing to sue. It should be added that the reform allows the claimant, in all matters, to bring proceedings directly against the defendant's insurer.

Third-party funding and control of conflicts of interests

Whilst provisions governing conflicts of interests were already included in the 2014 legislation, the reform significantly strengthens them. It provides that any conflict of interests involving the claimant will render the class action inadmissible. This ground of inadmissibility (*fin de non-recevoir*) may be raised at any stage of the proceedings, without the need to demonstrate the existence of any grievance.

The court also has the discretionary power to raise it of its own motion. Such conflicts of interest are more likely to arise as the reform introduces the possibility of third-party funding of a class-action. As a safeguard, the law specifies that the funder must not influence the introduction or conduct of proceedings in a manner prejudicial to represented persons, and detailed financial disclosures must be published from the date the action is filed.

Introduction of a civil sanction

This is perhaps one of the most significant innovations of the reform. The new Article 1254 of the Civil Code introduces a civil sanction for deliberate misconduct causing serial harm. Critically, this provision applies to any legal proceedings, whether individual or collective, and is not limited to class actions.

The sanction applies where a person has deliberately breached their legal or contractual obligations to obtain an undue gain or saving, and this breach has caused serial damage to victims placed in a similar situation. The amount of the sanction must be proportionate to the seriousness of the misconduct and the profit derived there from, and may not exceed five times the profit realised where imposed on a legal person. The sums collected are paid into a dedicated fund for the financing of class actions. Meant as a deterrent, the law provides that this risk is not insurable. Only the Public Prosecutor (before the civil courts) and the Government (before the administrative courts) may initiate proceedings for a civil sanction; private entities are excluded from this power.



Procedural changes

From a procedural standpoint, several notable innovations have been introduced. The observation that class actions have been particularly slow, costly and, consequently, a deterrent to potential claimants, prompted the authors of the reform to introduce various procedural tools. These include the introduction of a procedure for the judge to dismiss manifestly unfounded claims swiftly, as well as a plea of inadmissibility that can be raised against any claim involving a conflict of interests.

The creation of specially designated courts with exclusive jurisdiction to hear class actions is also intended to simplify procedures, as is the removal of the requirement for prior formal notice, which previously had to remain unanswered for four months before any action could be brought. This latest change does not, however, apply to class actions in the field of employment law, which remain subject to this requirement. Furthermore, where the action seeks the cessation of a breach, it will not be necessary to establish either the damage suffered or the defendant's intent or negligence, thereby giving concrete expression to the aim of simplifying the claimant's position.

Finally, the reform aims to increase the publicity of class actions, in particular through the judge ordering publicity measures to inform the relevant public of the decision adopted, as well as by making available a public register of class actions that have been concluded, withdrawn or are pending before all courts, on the Ministry of Justice's website. This register is not yet online but currently we can list more than 35 class actions, marking a real but not significant increase.

Entry into force and transitional provisions

The law was published in the *Journal officiel* on 2 May 2025, and the reform accordingly applies to class actions brought from 3 May 2025. The civil sanction, however, may only be imposed for actions where the event giving rise to liability occurred after the date of publication.

Conclusion

Whilst this reform is a significant change to the French class action procedure, it is too early to assess its consequences and potential effectiveness. Even if the new procedure encourages more claims, France's decision to stick with an opt-in model should mean it avoids the huge claims filed in recent years in the UK, the Netherlands, and Portugal.

Spotlight on: Germany

From diesel to digital platforms to PFAS: New frontiers for collective redress in Germany



Christian
Piroutek



Thomas
Lennarz



Peter
Wende

Germany's journey towards collective redress began with diesel emissions litigation. In 2018, the Volkswagen emissions scandal triggered the introduction of the model declaratory action (*Musterfeststellungsklage*).

The action brought against VW was joined by over 400,000 consumers and ended in a settlement of approximately EUR 770 million which is considered the largest mass settlement in German legal history.

Other areas where model declaratory actions have been filed included sectors such as energy, telecommunications and banking. Due to the limited scope of the model declaratory action (which aimed only at the determination of similar facts and legal issues, while the individual claims still needed to be pursued via individual follow-up proceedings), there have been calls for further reform.

From diesel to digital platforms

That reform came in October 2023 with the Consumer Rights Enforcement Act (*Verbraucherrecht durchsetzungsgesetz, VDuG*), transposing the EU Representative Actions Directive into German law. It kept the model declaratory action but added a more powerful mechanism: the redress action (*Abhilfeklage*). For the first time, qualified entities, i.e., consumer organisations entitled to bring representative actions under the VDuG, can now seek direct compensation on behalf of registered consumers without the need for subsequent individual litigation.

Recently, Big Tech companies and their digital platforms have become the primary targets of the new mechanism.





Amazon: collective actions on two fronts

One of the first redress actions was filed against Amazon. In early 2024, the company introduced advertisements into its Prime Video streaming service for existing subscribers. Consumers could only avoid them by paying an additional fee of EUR 2.99 per month. The Saxony Consumer Centre filed a redress action, arguing that this unilateral modification was unlawful. More than 200,000 consumers have since opted in via the claims register. In parallel, the Consumer Centre for North Rhine-Westphalia has filed a separate redress action over Amazon's 2022 price increase for Prime memberships. In both cases, the consumer associations seek a declaration that the contractual modifications were invalid and claim reimbursement of the alleged excess fees paid by consumers.

Meta: data privacy as a basis for mass claims

Meta faces three separate collective proceedings before the German courts. The Federation of German Consumer Organisations (vzbv) has brought a redress action before the Hamburg Higher Regional Court over a Facebook data leak, in which personal data of millions of users was allegedly exposed. Separately, the Austrian Consumer Protection Association (VSV) has filed a combined redress and model declaratory action – also before the Higher Regional Court Hamburg – challenging Meta's collection, transmission, and processing of personal data from Facebook and Instagram users using Meta Business Tools on third-party websites and apps.

Amongst other things, the VSV claims the payment of an appropriate monetary compensation for the consumers' loss of control over their data based on EUR 5,000 per adult user and EUR 10,000 per minor. Most recently, the Dutch foundation SOMI has filed a further redress action against Meta before the Schleswig-Holstein Higher Regional Court. This action concerns damages arising from the processing of personal data for AI training purposes and from interaction with AI-driven systems allegedly designed to be addictive, with claims ranging from EUR 1,000 for adult users to EUR 7,000 for minors.

TikTok and X: cross-border actions and their limits

SOMI has further filed redress actions at the Higher Regional Court Berlin (*Kammergericht*) against both TikTok and X (formerly Twitter), alleging large-scale unlawful data collection and the use of manipulative algorithms, particularly affecting younger users. However, on 30 April 2026, the Court dismissed the action against X as inadmissible. The VDUG requires that the claims pursued in a redress action are of a 'similar nature' (*Gleichartigkeit*). The court held that GDPR-based damages claims are inherently individual: whether a consumer has suffered compensable harm through loss of control over personal data – and if so, to what extent – depends on the specific circumstances of each user, making these claims unsuitable for collective enforcement. The court did not rule on the legality of X's data practices. This is the first significant judicial test of the VDUG's requirement of 'similar nature' and will be closely watched in the pending TikTok proceedings, where SOMI faces the same procedural hurdle.

Outlook: from digital platforms to chemicals?

So far, Germany has moved from diesel litigation to a diverse portfolio of collective actions targeting some of the world's largest digital platforms. The issues range from the validity of price adjustments based on the platform's terms and conditions to alleged data privacy violations. Qualified entities, including foreign consumer organisations such as SOMI and VSV, are making active use of the framework. At the same time, the dismissal of the redress action against X shows that the 'similar nature' requirement remains a hurdle for claimants, particularly for GDPR-based damages claims.

Beyond the digital sector, the redress action is likely to open up new fronts in other areas in future as well. One prominent candidate is PFAS litigation. PFAS (per- and polyfluoroalkyl substances, commonly known as 'forever chemicals') are already the subject of litigation in the US. In Europe, proceedings are already under way in Sweden, Italy, England and Belgium. The range of potentially affected industries is broad. Chemical manufacturers and their downstream users in sectors such as semiconductors, textiles, food packaging and medical devices may face product liability exposure. Operators of airports, military bases and industrial sites

where PFAS-containing firefighting foams have been used may face environmental remediation claims. Utilities and municipal water suppliers confronted with contaminated drinking water sources could be pursuing cost recovery actions. Insurers across all these sectors could have to assess their portfolio exposure.

The future of PFAS claims is likely to be shaped primarily by the EU Product Liability Directive, which must be transposed by December 2026 by the Member States and will, amongst other things, introduce rebuttable presumptions of defectiveness and causation, remove existing liability caps, and extend the long-stop period to 25 years for latent personal injuries; all of which could directly affect PFAS exposure cases. Combined with the collective redress tools now available under the VDuG, the conditions for large-scale PFAS claims in Germany could be falling into place. However, the Berlin court's reasoning in the X case suggests an obstacle: like GDPR-based claims, PFAS-related claims could fail the 'similar nature' test as well, since PFAS exposure and any resulting harm may differ widely between individuals. PFAS litigation could nevertheless become the next major development within Germany's collective redress framework.



Spotlight on: the Netherlands

**Collective redress in the Netherlands:
Navigating between access and excess**



*Andries
Polkerman*



*Joanne
Bruins*

The WAMCA's admissibility bottleneck: necessary safeguards, unwanted delays

Since the Collective Mass Damages Act (Wet Afwikkeling Massaschade in Collectieve Actie, the "WAMCA") entered into force in January 2020, the Netherlands has become one of Europe's most active collective redress jurisdictions. Building on the WCAM – which facilitated collective settlements but not stand-alone damages claims – the WAMCA allows claim foundations to seek collective damages, generally on an opt-out basis. Activity has been significant: approximately 130 collective actions have been filed since 2020, many cross-border, with total claims exceeding EUR 100 billion. Yet only around twenty cases have concluded. The bottleneck is the mandatory admissibility phase preceding any merits assessment.

The WAMCA's admissibility requirements serve important objectives, amongst others: ensuring efficient resolution of mass claims, assessing the quality of representative organisations, and preventing excesses by shielding defendants from commercially driven organisations or litigation funders. In practice, however, the admissibility phase can take years, prolonged by appeals and interpretive uncertainty inherent in a young statute. A comprehensive five-year WAMCA evaluation, published in September 2025, identified this as practitioners' most cited concern. Legal scholars warn that extended procedural battles over admissibility risk becoming an end in themselves, undermining the legislation's purpose.

Judicial trends: navigating potential 'shortcuts'

Recent case law suggests courts are finding ways to move through the admissibility phase more quickly while preserving its core safeguards.

One approach examines whether EU law constrains the scope of national admissibility requirements. In a data privacy action on behalf of approximately five million Dutch Amazon account holders, the Rotterdam District

Court referred preliminary questions to the CJEU in July 2025, asking whether the WAMCA requirements are compatible with Article 80 GDPR, which sets arguably less onerous conditions for representative organisations. A ruling limiting Dutch requirements could significantly reduce admissibility debates in data protection cases – one of the fastest-growing collective action categories.

The TikTok litigation illustrates a different approach based on a broad interpretation of admissibility requirements. One condition requires that claims be sufficiently “similar” for collective treatment. At first instance, the court ruled that non-material damages claims were too individual to bundle. However, in October 2025, the Amsterdam Court of Appeal disagreed, holding that varying individual harm does not prevent collective treatment: the WAMCA allows courts to work with claimant categories, leaving individual damage assessment for the substantive phase.

This approach was endorsed in a January 2026 advisory opinion by Advocate General De Bock in the Oracle/Salesforce collective action. On similarity, she agreed with the approach taken in TikTok: a court need not reach a definitive conclusion at the admissibility stage, and a reasonable preliminary assessment suffices. Finer questions, such as whether individual claimants have actually suffered harm, can be reserved for the substantive phase. On representativity – the requirement that a claim foundation demonstrates sufficient support from the group it purports to represent – she reasoned that an intrusive quantitative test would conflict with the WAMCA’s purpose to ensure efficient and effective resolution of mass claims, as well as its opt-out system, where affected parties are included by default. In the final judgement however, the Dutch Supreme Court dissented on this issue, ruling that courts must assess whether, given the circumstances of the case, the claim foundation has the demonstrable support of a sufficiently large proportion of the total group of persons on whose behalf the foundation acts.

Crucially, De Bock’s much-cited opinion strongly supports the position that a more lenient approach to the admissibility requirements should only apply to non-commercially driven organisations. Where a claim foundation prioritises funder interests over those of the affected class, courts should scrutinise admissibility more rigorously. How exactly that scrutiny should be conducted remains an area of legal uncertainty, as both the five-year evaluation and the academic literature cited by De Bock acknowledge.

What such scrutiny can look like in practice was illustrated shortly before the A-G’s opinion, in the **Airbus** case. In December 2025, The Hague Court of Appeal upheld the inadmissibility of claim foundation SILC, finding that the litigation funder was so intertwined with the claim organisation financially and operationally that it functioned as the funders’ “vehicle.” The Court characterised this as “entrepreneurial lawyering” –

precisely the commercially driven litigation the WAMCA was designed to prevent.

Outlook

These developments signal an evolving judicial consensus: addressing the admissibility phase must become faster and more proportionate if the WAMCA is to deliver effective collective redress. Some of the WAMCA admissibility requirements are being interpreted with greater pragmatism, and the CJEU referral may recalibrate the framework for GDPR-based claims. Yet as **Airbus** demonstrates, the courts are prepared to deploy admissibility for its gatekeeping function, ensuring proceedings serve affected parties rather than funders and entrepreneurial lawyers. Striking the right balance between access and excess will define the next chapter of Dutch collective action practice.



Spotlight on: Portugal



*Mariana Maia
Gonçalves*



*Rita
Gouveia*

In 2025, Portugal's class actions landscape remained active and diversified. Data protection and platform economy claim intensified, competition/consumer cases broadened to digital distribution and app store ecosystems, and a new wave of automotive "Dieselgate style" filings emerged alongside retail pricing, e-commerce and travel tech disputes.

The most active claimants were again the consumer associations Lus Omnibus and Citizens' Voice, with DECO also bringing a significant competition/consumer matter. Third party funding continued to feature in several large claims, including data privacy suits involving minors and the automotive filings, underscoring sustained litigation risk.

Data protection and platforms

Lus Omnibus filed two cornerstone actions against Google, one on behalf of users under 13 and another covering users aged 13 and over. Both suits allege unlawful processing of personal data, intrusive tracking and misleading commercial practices. The "≥13" action cites aggregate losses estimated at approximately €6.7 billion. The "<13" action pleads provisional pecuniary and non pecuniary damages exceeding €1.29 billion, subject to monetary update and interest.

Lus Omnibus also sued Meta, alleging processing of children's data without valid consent and deceptive practices. It seeks wide ranging injunctive relief, including account closures for under 13s, parental consent mechanisms, deletion of unlawfully processed data, and restrictions on data used to train AI, as well as global compensation. The claim identifies aggregate non pecuniary damages exceeding €1.04 billion.

Private antitrust on digital distribution and app stores

Ius Omnibus filed a representative action against Valve/Steam alleging price parity clauses that restricted inter platform competition and raised prices in the digital distribution of PC games. In parallel, DECO brought a representative action against Apple concerning alleged anticompetitive conduct connected to in app payments on iOS and a resulting “surcharge” on streaming subscriptions, seeking a declaration of infringement, injunctive relief, and the creation of a compensation fund.

Energy and infrastructure

Citizens’ Voice sued Red Eléctrica de España (REE), tying alleged grid/interconnector mismanagement to the 28 April 2025 Iberian blackout and widespread service interruption in Portugal. Official Government communications issued contemporaneously and thereafter emphasised that the origin of the incident was outside Portugal and later publicised European technical findings attributing causes externally and focusing on resilience recommendations.

Consumer practices: retail, e-commerce and travel tech

Citizens’ Voice filed an action against FNAC, a specialty electronics and entertainment retailer in the consumer discretionary sector, for allegedly misleading “price reduction” campaigns regarding a Fujifilm Instax Mini 41 camera. The suit frames the conduct as misleading advertising and an unfair commercial practice, and reserves quantification to court directed expert evidence and equitable assessment. Citizens’ Voice also sued Amazon Media EU over alleged unlawful “bundling” within the Prime offering, seeking injunctive relief and compensation for overcharges and moral damages. Separately, Ius Omnibus sued Amazon Europe Core and a supplier over Kraft “Original Mac & Cheese” labelling/composition issues, seeking corrective labelling, replacement, or market withdrawal, and compensatory relief.

In travel tech, Citizens’ Voice brought a claim against Agoda, an online accommodation platform operating in the travel and hospitality services sector, for unilateral cancellations without equivalent alternatives, pleading indicative average direct losses per affected consumer, lost profit ranges, and non pecuniary damages presumed from the cancellation itself.

Healthcare products

Ius Omnibus filed a collective action against eight pharmaceutical companies over oral medicines, alleging misleading advertising, unfair practices and seeking compensation or restitution for Portuguese consumers who purchased the products.

Automotive: renewed Dieselgate style filings

In 2025, emissions related automotive litigation regained momentum. Ius Omnibus brought several actions, including the Volkswagen group case, which seeks a minimum of €4,000 per affected vehicle for alleged defeat device use and the resulting overpayment. The action against BMW was filed and remains at an early stage. For Renault, Dacia and Nissan, the association estimates patrimonial losses at 10-15 percent of the average vehicle price across at least 177,334 cars and adds an annual non pecuniary amount of €102 per vehicle until final judgment, producing an overall range of roughly €540.2 million to €1.08 billion with an element that continues to accrue. For Stellantis, covering Peugeot, Citroën and DS, a similar methodology is used, and the total claim sits between approximately €374 million and €507.5 million. Although the latter case was allocated in early 2026, it is commonly grouped with the 2025 wave.



Defence responses across these filings have focused on threshold issues as well as on merits challenges tailored to each sector. Defendants have contested the standing and representativeness of qualified entities, pressed for narrower class definitions and questioned the suitability of opt-out relief. In data-privacy cases they have invoked lawful bases such as contractual necessity and legitimate interests, argued adequacy of disclosures and parental-consent tools, raised limitation defences and pointed to supervisory-authority competence. On the other hand, in competition and consumer actions they have disputed market power and pro-competitive justifications. Regarding automotive matters they have denied the existence of defeat devices, relied on regulatory compliance and limitation periods, and pressed for individualised proof of loss. The early procedural posture of many 2025 cases means these defences are still crystallising.

Funding and claim values

Third-party funding remained a key catalyst in 2025, and the market continued to deepen, with international funders backing large privacy and automotive claims

and domestic actors exploring portfolio and co-funding structures. Pricing and terms have shown greater sophistication, while courts increasingly require certified copies of funding agreements and disclosures on control, termination and conflicts to test claimant independence. Overall activity has trended upward in volume, and courts are empowered to review funding arrangements at admissibility, with attention to independence, adequacy of representation and alignment of funding terms with class interests under the RAD framework.

Procedural notes and regulatory backdrop

Portugal's post RAD framework, in force since December 2023, continued to shape practice in 2025, with a focus on transparency in litigation funding and on the standardisation of edictal notices within an essentially opt-out model for diffuse and collective consumer interests. The implementing decree law requires disclosure of funding agreements while establishing safeguards to ensure claimant independence and to prevent conflicts of interest.



Spotlight on: Italy



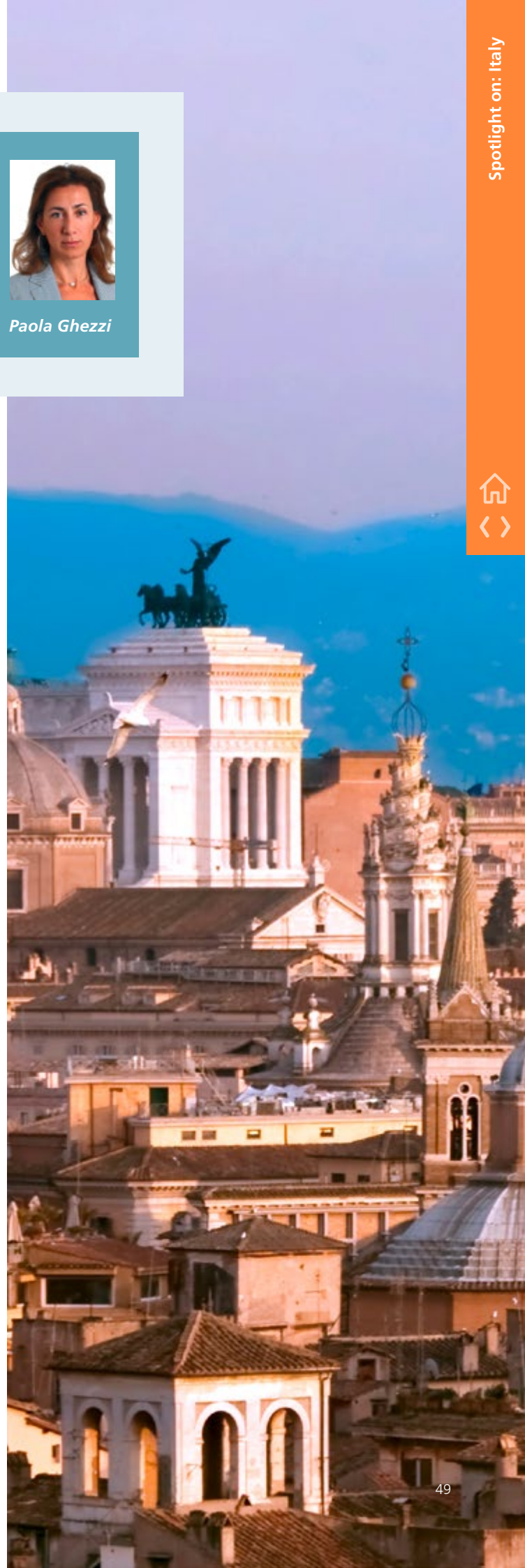
Paola Ghezzi

Although conceived as a procedural instrument of broad application, capable of protecting both consumer interests and the rights of any group of individuals holding homogeneous claims, class actions in Italy have so far been predominantly exploited in sectors such as the automotive and financial services industries.

This phenomenon is probably attributable to the nature of the claims typically arising in these sectors: they involve mass-produced goods or standardised financial products affecting large numbers of consumers in a substantially uniform manner, thereby making collective litigation both economically viable and procedurally efficient.

In February this year, the Court of Turin declared the admissibility of the action brought by a major consumer association against Stellantis N.V., PSA Italia S.p.A. and Opel Automobile GmbH. The action seeks redress on behalf of consumers and drivers who were allegedly prevented from using their vehicles due to inefficiencies attributable to the manufacturers that were unable to promptly replace defective airbags installed in approximately 300,000 vehicles. The claimants also asked the Court to adopt a “stop drive” measure for all vehicles concerned by the recall of the airbags.

In addition, recently, one of the largest class actions brought in Italy has definitively come to an end. 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. On 10 April 2025, a digital platform developed by Altroconsumo, a consumer association active in informing, protecting and representing consumers, has been made available to manage the implementation of the settlement reached in 2024 with the Volkswagen Group. Utilising the platform 46,740 consumers have obtained compensation ranging from 550 to 1,100





euros per single car (further increased by 300 euros in the case of co-owners). This is the most significant result ever achieved in Italy through collective protection action.

Within this framework, consumer associations assume a particularly significant role. Due to their organisational capacity and contractual leverage, such associations can aggregate large groups of consumers and coordinate collective litigation. Associations included in the [official list issued by the Italian Ministry of Justice](#), such as Codacons and Altroconsumo, therefore play a pivotal role in the promotion and management of class actions, facilitating the identification of potential claimants, encouraging participation in collective proceedings, and bringing actions before the competent courts. These organisations also provide legal assistance and oversee the conduct of litigation, typically through dedicated law firms.

In addition, the role of litigation funders, third-party entities that finance legal claims in exchange for a share of any eventual recovery, has recently begun to emerge within the Italian legal landscape. Litigation funding mechanisms may enable claimants who would otherwise lack the necessary financial resources, to pursue complex litigation, while simultaneously transferring part of the economic risk associated with such proceedings to specialised investors.

At present, Italy does not have a dedicated regulatory framework governing litigation funding. There is no specific legislation that either expressly permits or prohibits third-party funding of litigation, resulting in a degree of legal uncertainty. Notably, the Italian Bar Association's Code of Conduct prohibits lawyers from entering into contingency fee arrangements (*pactum de quota litis*), which may indirectly affect the structuring of litigation funding agreements. However, legislative developments at the EU level, including the broader policy discussion on collective redress mechanisms, may prompt the Italian legislature to introduce a more comprehensive regulatory framework for litigation funding in the near future.

Historically, class actions in Italy have been initiated almost exclusively by consumer associations, which remain the primary drivers of collective litigation. The 2019 reform, by extending standing to any holder of homogeneous individual rights and not only to consumers, has opened the door to class actions brought by businesses, professionals and other categories of claimants. In practice, specialised law firms and litigation funders are increasingly playing a proactive role in identifying potential claims, organising groups of affected individuals and initiating proceedings. This evolving landscape suggests that class actions in Italy may gradually move beyond their traditional consumer-focused origins towards a more diversified claimant base.

As far as the procedure is concerned, the model of class action currently in force provides a two-phase structure proceeding. The first phase is aimed at the ascertainment of the admissibility of the claim. If the claim is declared inadmissible the relevant decision can be challenged before the Court of Appeal. On the contrary, if it is considered admissible, the Court orders that the contents of the claim be divulged by the proponent and provides for the trial to continue. Italy has adopted an "opt-in" model: therefore, if the class action is deemed admissible, the judgement only binds the original promoter of the action and the members of the class who opted in the class action within the term set out by the judge, and in any case not later than 150 days from the judge's decision on the admissibility on the action.

In conclusion, despite their potential scope, class actions in Italy remain relatively concentrated in specific sectors. Their limited diffusion reflects, in part, the practical challenges associated with organising large groups of claimants and coordinating collective litigation. Consequently, the future development of class actions in Italy is likely to depend primarily on two factors: first, the continued involvement of consumer associations capable of aggregating and representing large groups of affected individuals; and second, the growing recourse to litigation funding, which may provide the financial resources necessary to support the initiation and management of complex collective proceedings.

Spotlight on: Slovenia

Collective damages actions in Slovenia: certification thresholds under review and litigation risk rising



Maja
Malijanski

Slovenia operates a hybrid collective redress framework, permitting both opt-in and opt-out class action mechanisms, with the court deciding which system to apply on a case-by-case basis.

Although collective damages actions have existed in Slovenia for more than a decade, they have only recently started to gain practical relevance. The first appellate level guidance on certification was issued in 2025 and signals a shift towards a more claimant accessible approach to class actions. From a corporate risk perspective, the key takeaway is clear: Slovenia is transitioning from a dormant to an increasingly active class action jurisdiction, with growing involvement of professional law firms and, potentially, third-party litigation funding, which is expressly permitted and regulated in collective proceedings.

Collective damages actions have been available under Slovenian law since 2017. For many years, however, they were largely theoretical and rarely used. The first collective actions were filed in 2018 and 2019, but these did not generate significant public attention. The landscape began to shift in 2021, when the first wave of consumer related collective damages actions was filed, beginning with a claim against Apple and followed in 2022 by a series of actions targeting major banks.

Only recently have Slovenian courts begun issuing decisions that clarify how strictly the statutory certification requirements (e.g., representativeness of the claimant, reasonableness of the attorney fee arrangement, homogeneity of claims, etc.) will be applied in practice. These decisions are critical for assessing how easily claims can pass the initial admissibility filter, often the decisive hurdle in class action litigation.





In 2023, the Ljubljana District Court issued the first substantive certification decision in a collective damages action brought against Apple. The court refused certification, finding that the claimant organisation did not meet the statutory representativeness requirements.

The court's reasoning suggested a restrictive and defense-friendly approach. In particular, it held that:

- The claimant, an entity with only three founders and a limited number of external collaborators, lacked sufficient financial strength, staffing and internal expertise to represent a large class effectively.
- The claimant's reliance on its law firm for both legal representation and funding (under an arrangement whereby the firm would receive up to 30% of any awarded amount in exchange for bearing all litigation costs) raised concerns that effective control over the litigation rested with counsel rather than the claimant.
- The court questioned the claimant's genuine consumer-protection mission, noting that the decision to file the action appeared to precede any meaningful verification of actual consumer harm.

At the time, this decision was widely seen as reassuring for corporate defendants, as it indicated that Slovenian courts might act as a robust gatekeeper against opportunistic or weakly structured claims. That perception was called into question in 2025, when the Higher Court overturned the first-instance decision.

The appellate ruling rejected most of the restrictive criteria applied by the District Court and remanded the case for fresh proceedings, providing detailed guidance on how the statutory certification requirements should be interpreted.

Key points of the Higher Court's reasoning include:

- Third-party funding, including by law firms, is explicitly permitted under Slovenian law. Requiring claimants to have independent financial resources would undermine access to justice and contradict the statutory framework.
- There is no minimum headcount requirement for representative organisations. A small core team, supplemented by external collaborators, can be sufficient.
- Legal expertise does not need to reside within the claimant organisation itself. Retaining qualified legal counsel satisfies this requirement, a position aligned with EU-level policy recommendations.
- The law expressly allows ad hoc entities formed in direct response to a specific instance of mass harm. Early organisational steps taken before full damage quantification do not undermine standing.
- Allegations that the law firm controlled procedural decision-making were rejected as speculative, particularly since the funding arrangement had not been substantively examined.



Crucially, the Higher Court emphasised that certification must be assessed holistically, balancing the prevention of abusive litigation against the need to ensure effective access to collective redress. It is important to note, however, that the Higher Court did not itself certify the claim – it remanded the case to the District Court for a fresh assessment applying the corrected legal standards.

The practical implications of this appellate ruling are significant. A review of the public register of collective actions reveals that the majority of collective damages actions have been filed by or with the involvement of Zavod Kolektiv 99, the same representative entity that brought the Apple claim, using the same law-firm-funded model. As the appellate guidance endorses this structure, it is expected to have a positive impact for claimants on the majority of pending and future claims employing a similar approach.

More importantly, the public register reflects a clear broadening of the claimant landscape. As of early 2026, collective proceedings in Slovenia have been initiated by five distinct types of representative bodies (being entities that are entitled to file such proceedings pursuant to the Collective Actions Act (ZKoIT)), demonstrating that class actions are no longer driven by a single repeat player. In addition to Zavod Kolektiv 99, claims have now been brought by the Consumer Protection Association, a trade union, an investor protection organisation, and the Minority Shareholders'

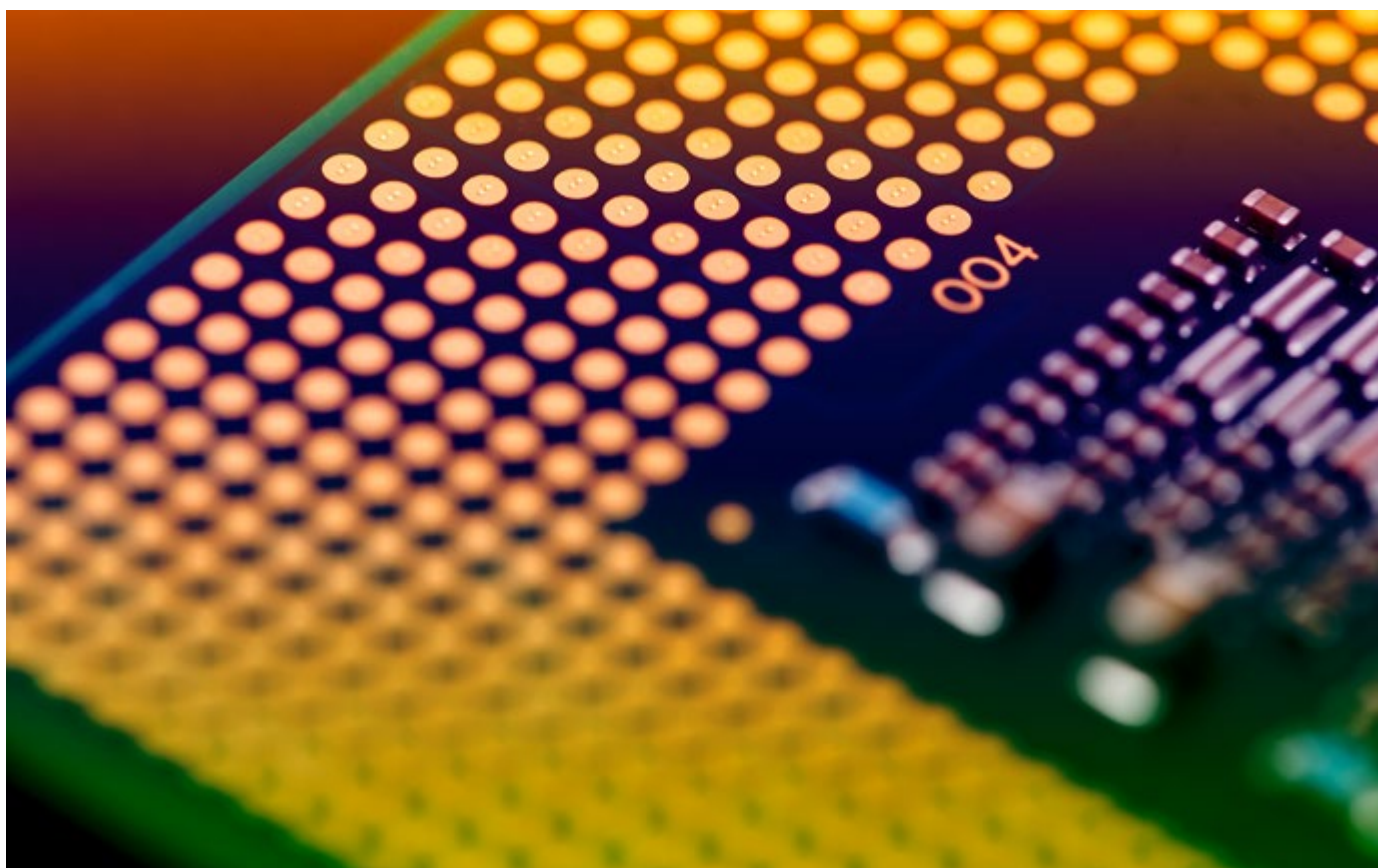
Association, indicating that collective litigation is gaining traction across multiple interest groups and sectors.

The emergence of new claimant organisations suggests growing awareness and willingness to use the collective action mechanism, though the overall number of active organisations remains modest.

The sectors targeted by collective damages actions are also diversifying. While the earliest consumer claims focused on the technology sector and financial services, more recent filings have expanded into telecommunications and energy. This trend indicates that collective litigation risk is broadening across consumer-facing industries.

From a risk-management perspective, Slovenia can no longer be viewed as a low-exposure jurisdiction for collective litigation. The convergence of clarified (and less restrictive) certification standards, judicial endorsement of law-firm funding structures, increased claimant diversity, and expansion into new sectors points towards a growing class action risk, particularly in consumer-facing industries.

For international corporations operating in or targeting the Slovenian market, the likelihood of facing collective damages actions is increasing. Early compliance reviews, documentation discipline, and litigation readiness should be reassessed in light of this evolving enforcement landscape.



Spotlight on: Sweden

KO's class action against DNB



Lisa
Hedbäck

Class actions in Sweden are principally governed by the Group Proceedings Act (Sw. *Lag (2002:599) om grupprättegång*), which entered into force on 1 January 2003.

The Act introduced a new form of legal action in Sweden, namely class actions. A separate consumer-collective regime was later introduced through the Act on Group Actions for the Protection of Consumers' Collective Interests (Sw. *Lag (2023:730) om grupptalan till skydd för konsumenters kollektiva intressen*), which entered into force on 1 January 2024 and implements the Representative Actions Directive, (EU) 2020/1828.

Although Sweden has not traditionally been regarded as a significant venue for class actions, a growing number of such cases in recent years suggests that the situation may be shifting. One notable case, involving the Swedish Consumer Ombudsman (Sw. *Konsumentombudsmannen*, (KO)) and the Norwegian bank DNB Bank ASA (DNB), has recently attracted considerable media attention.

The case concerns approximately 50,000 Swedish consumers who entered into private car leasing agreements with DNB. DNB, together with car dealers, marketed the leasing arrangements as having a fixed monthly cost. However, as interest rates rose from 2022 onwards, DNB relied on a price adjustment clause in the agreements to increase the monthly payments. The Swedish Patent and Market Court found the price adjustment clause to be unfair. KO now argues that the clause is not merely unfair but invalid, and that consumers are accordingly entitled to a refund of the amounts overcharged as a result of the price adjustment. According to news reports, the alleged overcharges are estimated to amount to billions of Swedish kronor.



In late 2025, KO brought the class action before the Swedish National Board for Consumer Disputes (Sw. *Allmänna reklamationsnämnden*, (ARN)) rather than before a general court. ARN is an independent public authority that resolves consumer disputes through a simplified, low-cost procedure. Notably, ARN decisions are recommendations and not legally binding judgments. The use of a class action before ARN was a highly unusual step.

In April 2026, ARN decided not to hear the case. In its decision, ARN stated that its written-only procedure is not suitable for a case of this complexity. ARN also noted that there is a distinction between the market law assessment carried out by the Patent and Market Court and the civil law assessment that ARN would need to undertake on an individual basis. The decision means that the approximately 50,000 affected consumers will not receive any guidance from ARN on their individual claims. KO has not yet communicated what the next step will be, including whether collective action will be initiated before a general court.

Although ARN declined to hear this particular case, broader trends suggest that class actions are likely to become more prevalent in Sweden. Increased regulatory activity and the growing presence of third-party litigation funding are among the factors creating conditions that may favour a rise in class actions in the Swedish market.

In addition to the KO case, other class actions were recorded in Sweden in 2025. These include a shareholder

dispute (Stockholm District Court case no. T 17209-25) concerning minority shareholders' claims for dividends against the regulated securities company Fair Investments Sweden AB, and a case (Svea Court of Appeal case no. T 10235-25) involving members of the housing cooperative Bostadsrättsföreningen Högfjället seeking repayment of allegedly overcharged annual fees.

Third-party litigation funding is not prohibited in Sweden

In the context of collective consumer actions, an approved entity may stipulate that a portion of any compensation awarded to a class member shall go to the funder as a condition for that class member to be included in the action. However, there are some restrictions: an entity bringing a collective action on behalf of consumers must not depend on or compete with the defendant, and it must not influence the procedural decisions made by the entity bringing the action in a way that could harm the common interest of the class members. In light of the implementation of the Representative Actions Directive and the ongoing debate surrounding the regulation of third-party litigation funding, further reform of the Swedish framework cannot be ruled out.

Cases such as the KO action against DNB illustrate this trajectory and suggest that market participants should monitor developments in this area closely.



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From implementation to enforcement



**Anna
Cudna-
Wagner**



**Monika
Wojdynska**

The implementation of the Representative Actions Directive (RAD) has been an important development in the evolution of collective redress across the European Union. Over the past few years, much of the discussion surrounding representative actions has focused on legislative reform and the different approaches adopted by individual Member States. Attention has now shifted to the practical application of the new rules, including the extent to which qualified entities (QEs) are beginning to exercise the powers granted to them under the RAD.

The rise of qualified entities

Under the RAD, QEs are the only entities with standing to the claims. QEs are designated consumer organisations or public bodies empowered to pursue representative actions on behalf of consumers, either in domestic proceedings or, in the case of specially designated entities, across multiple Member States through cross-border actions.

Diverging approaches across Europe

The structure, experience and degree of activity of QEs vary considerably across jurisdictions. In some countries, the role is performed primarily by long-established consumer associations with extensive litigation experience, while in others it has been entrusted to public bodies or newly established organisations created specifically in response to the RAD. Information on QEs authorised to bring cross-border representative actions is published by the European Commission through the [Justice Collaboration Platform](#).



The Commission's register is updated on the basis of notifications submitted by Member States. The information published in the register reveals considerable divergence in the designation of cross-border QEs across the EU. Some Member States have established a broad network of authorised entities,¹ while others have thus far adopted a more limited approach.²

By contrast, information on QEs authorised to bring domestic representative actions is published at national level, in accordance with the mechanisms adopted by individual Member States when implementing the RAD. For example, in Poland, the list of entities authorised to bring representative actions is published by the President of the Office of Competition and Consumer Protection (UOKiK). Significant differences can also be observed in relation to domestic QEs. The number of entities registered as QEs varies considerably between Member States, ranging from only a handful of organisations in some jurisdictions to extensive networks of entities in others. However, the number of registered entities does not necessarily correspond to the level of litigation activity.

Italy appears to have one of the most extensive domestic QE landscapes, with more than twenty organisations registered to bring representative actions. The registered entities include general consumer organisations (Movimento Consumatori, Altroconsumo, Assoutenti, Confconsumatori, Federconsumatori), financial-services focused associations (ADUSBEF, ADICONSUM, ADOC), specialised public-interest organisations (Codacons, ASGI, Spazi Circolari), labour organisations (FILLEA CGIL Nazionale, FIOM CGIL Piemonte) and entities specifically dedicated to collective litigation, such as Class Action Italia.

Austria has adopted one of the most diverse approaches, under which QE status has been obtained not only by traditional consumer organisations (VKI and VSV), but also by labour chambers, trade unions, agricultural organisations and specialised entities operating in areas such as digital rights (Noyb) and financial cybercrime (EFRI). A similarly broad model can be observed in France and Hungary, where a comparatively large number of entities have been registered as QEs, including consumer (ACLC, AFOC, CLCV, UFC-Que Choisir), family (CSF, Familles de France, Familles Rurales, UNAF), housing (CNL, CGL) and transport-user associations (FNAUT), as well as the Public Prosecutor's Office, in France, and consumer organisations alongside public authorities in Hungary (FEOSZ, FOME, the Hungarian Competition Authority and the Hungarian National Bank).

Spain likewise has a relatively broad ecosystem of QEs, including OCU, ADICAE, FACUA and ASUFIN.

By contrast, the number of domestic QEs currently registered in Poland remains limited, with the Financial Ombudsman and the LexCultura Foundation listed as QEs. The differences between Member States are not limited to the number of registered QEs. The composition of domestic QE registers also varies significantly across jurisdictions, reflecting different approaches to consumer enforcement and collective redress.

The sectors most exposed to representative actions

Beyond differences in the number and composition of QEs, the available data also points to an increasing degree of sectoral specialisation. While many entities





continue to operate as broad consumer organisations, others have developed a distinct focus on specific categories of consumer harm, reflecting the changing nature of collective redress across Europe.

Financial services remains one of the most prominent areas represented within the QE landscape. Across a number of Member States, registered QEs focus in particular on banking services, consumer credit, insurance and investment products. This can be observed, for example, in the activities of ADICAE and ASUFIN in Spain, ADUSBEF in Italy, FRANAK in Croatia and the Financial Ombudsman in Poland.

At the same time, the QE landscape reflects a growing focus on digital rights, personal data and online services. An increasing number of registered entities identify data protection, digital platforms, online services and AI-related issues as key areas of activity. Examples include Noyb in Austria, SOMI and SDBN in the Netherlands, as well as the Hungarian Digital Law Knowledge Center and Advocacy Association.

The growing prominence of such organisations may indicate a broader shift in the representative action landscape. Historically, large-scale collective disputes in Europe were often associated with sectors such as banking, insurance or major consumer scandals. The profile of registered QEs suggests that increasing attention may now be directed towards digital markets, online platforms, personal data, AI-related practices and other technology-driven business models.

This development can also be observed in Portugal, where Ius Omnibus has brought representative actions across a wide range of competition, consumer

protection, digital rights and data privacy matters, illustrating the increasingly proactive role that some QEs are beginning to play in the European collective redress landscape. This trend is also reflected in the litigation activity already observed in certain jurisdictions. In Austria, Noyb has announced plans for representative actions concerning the use of personal data for AI training and consumer credit scoring. In Germany, representative actions have targeted several of the largest companies operating in the digital economy, including businesses active in social media, e-commerce, telecommunications and online services.

The independence question: third-party funding under scrutiny

The growing reliance of QEs on third-party litigation funding has now given rise to one of the first significant judicial examinations of the independence requirements under the RAD. In April 2026, the Portuguese Tribunal da Concorrência, Regulação e Supervisão referred a set of preliminary questions to the Court of Justice of the European Union (CJEU). The questions have been registered before the CJEU under case number [C-431/26](#) (*Associação Ius Omnibus v. Abanca Corporación Bancaria*).

The case concerns a representative action brought on behalf of all consumers resident in Portugal who took out a mortgage loan in Portugal between August 2008 and May 2010 and who did not expressly opt-out of being represented. By its action, Ius Omnibus seeks compensation for damage allegedly caused by Abanca as a result of an infringement of Article 101 TFEU. Ius Omnibus – described in the reference as an association

with legal personality under Portuguese law and a qualified entity within the meaning of RAD – entered into a litigation funding agreement with Augusta 016 Limited to finance the proceedings. Under that agreement, the funder’s return may, if permitted by the court, be recovered from undistributed or unclaimed compensation.

The referring court noted that, in 2023, 94.61% of lus Omnibus’s income came from the funder financing the action, and that funding revenues also covered operating expenses, including monthly allowances paid to members of the association’s governing body.

Although the funding agreement provides that the representative entity retains exclusive control over the proceedings, the referring court questioned whether formal decision-making autonomy alone is sufficient to ensure independence within the meaning of Article 10(1) and (2)(a) of RAD.

The reference raises three closely related issues. First, whether an entity whose recorded sources of income derive exclusively from third-party funders can be regarded as sufficiently independent, notwithstanding the fact that it formally retains exclusive control over the proceedings. Second, whether the principle of effectiveness under Article 101 TFEU precludes a funding model under which the funder’s remuneration depends on consumers failing to claim all or part of the compensation awarded. Third, whether that assessment is affected by the specific features of the Portuguese opt-out mechanism, under which represented consumers may be bound by the outcome of the proceedings unless they expressly withdraw from representation and parallel representative actions on behalf of the same group are not permitted.

The outcome of the reference may have significant implications for the broader QE landscape. For QEs that rely on external funding, the Court’s ruling could influence how courts assess financial independence, conflicts of interest and acceptable funding structures in representative actions. A restrictive interpretation of the independence requirement could limit the ability of certain entities to pursue complex representative actions, while a more permissive approach may intensify concerns regarding the alignment of funder and consumer interests. In either case, the judgment is likely to provide important guidance on the operation of funding and governance safeguards within the European collective redress framework.

The growing number and specialisation of QEs is only part of the picture. Their ability to attract funding, develop litigation expertise and pursue complex cross-border claims may ultimately determine how influential they become within the European collective redress landscape.





Opt-out actions in the CAT – ten years on



Kenny
Henderson



Douglas
Campbell

It has been a little over ten years since the collective action regime was introduced.

In those ten years, over 70 collective actions have been filed, seeking damages of tens of billions of pounds. Importantly, six have now concluded, whether by settlement or following trial (or both):

1. ***Merricks v Mastercard***;
2. ***Gutmann v London & South Eastern Railway Limited (and other related cases)***;
3. ***McLaren v MOL***
4. ***Le Patourel v BT***
5. ***Which? v Qualcomm***
6. ***Kent v Apple***

The concluded claims comprise six of the first nine collective actions filed.³ Of the remaining three, the ***Trucks*** collective action – filed before any of the six concluded claims – is still ongoing, while ***Gibson***

v Pride and the ***FX collective proceedings*** both failed at certification. The concluded actions comprise: (i) a range of claim values, from some of the highest to some of the lowest; (ii) a mix of follow-on and standalone cases; (iii) a mix of alleged anticompetitive agreements and abuse of dominance; (iv) affect a range of industries; and (v) are predominantly on behalf of consumers but some include businesses. On that basis, although the data pool is small, it should be broadly representative.

In August 2026, the parties in ***Rodger v Google*** agreed a settlement of £260m. The collective settlement approval hearing is due to take place in September 2026. The timing of this settlement means there is limited information publicly available for the purposes of the analyses below, so we have not treated it as one of the concluded claims in this article.



In its landmark judgment finding that the CAT was wrong initially to refuse to certify the **Merricks** proceedings, the Supreme Court noted that “collective proceedings are a special form of civil procedure for the vindication of private rights, designed to provide access to justice for that purpose where the ordinary forms of individual civil claim have proved inadequate for the purpose”.⁴ Taking a broader perspective, the Tribunal recently noted that the interests of class members in any given case cannot be considered in isolation from the interests of the collective proceedings regime as a whole, and went on to set out six relevant considerations of a regime that is “viable and effective”:⁵

1. Collective proceedings must be adequately funded, which requires lawyers, funders and ATE insurers;
2. Compensation should be available where there is a breach of competition law;
3. The regime must operate primarily for the benefit of class members not other stakeholders;
4. Unmeritorious claims undermine the regime, impose unfair and unjustified costs on defendants and should not be pursued;
5. It is essential that class representatives receive high-quality, independent and realistic advice; and
6. Differing interests of stakeholders must not be manipulated to produce a settlement that is not in the best interests of the class.

Ten years on, does the data show the opt-out regime is working for consumers? Is it a viable and effective system that is achieving what it set out to achieve?

Compensation available

Looking first at the concluded proceedings individually, **Le Patourel v BT** and **Which? v Qualcomm** failed entirely. In **Le Patourel v BT**, the stated value was £1.3bn, but the claim was dismissed and permission to appeal refused. Which? estimated its claim against Qualcomm to be worth £480m but settled on a ‘drop hands’ basis since, by the end of trial, it no longer had a realistic prospect of success. In the three parallel **Boundary Fares** cases, Mr Gutmann settled with one defendant for £25m, but the Tribunal went on to find that none of the conduct alleged constituted an abuse of dominance, and so the claims failed. The total amount sought across the three actions was £170m, meaning a percentage recovery of 15% of the stated claim value.

In **McLaren**, the class representative settled with three of the five defendant groups, going to trial against the remaining two. After the conclusion of trial, the class representative settled with the remaining two defendant groups, recovering a total of £92.75m in the claim as a whole. The total amount sought was £150m, meaning a percentage recovery of 62% of the stated claim value.

In **Merricks**, Mr Merricks settled with Mastercard for £200m after he was unsuccessful in various preliminary issues trials, perhaps most significantly finding that the anticompetitive fees historically applied to transactions between EEA countries did not affect the level of interchange fees that applied to UK domestic transactions. Mr Merricks’ counsel advised that his prospects of success were “probably no more than 40%”, which the CAT described as “optimistic”.





Although £200m is a very large sum of money, it is only c.1.4% of the stated claim value of £14.1bn.

In the ten years since the first opt-out collective action was filed, only **Kent v Apple** has succeeded at trial, with the Tribunal finding that Apple had abused its dominant position by foreclosing competition, tying its payment services to the App Store and charging excessive and unfair prices. As at the date of publication, the damage is still to be quantified, but the Tribunal found that the overcharge is in the region of 12.5% to 20%, with consumers (the class members) having paid around 50% of the overcharge (the remainder having been borne by app developers).⁶ The damages are reportedly around £1.5bn.⁷

Taking all of the concluded actions together, so far, the regime has resulted in approximately £1.817bn of damages and settlement, 10% of the c£18bn of losses claimed. Only two actions, **Kent** and **McLaren**, have recovered more the 50% of the claim value stated at the outset.

Time to resolution

Of the concluded actions, **Le Patourel v BT** was the fastest, lasting 3 years and 11 months between filing and judgment (although, if the settlement is approved, the **Rodger v Google** case may be quicker). At nine years and one month, **Merricks** took the longest to resolve with certification escalated to the Supreme Court and several other issues considered by the Court of Appeal. The average time for resolution was 5 years and 11 months.⁸ The time to resolution may get shorter as the regime continues to develop. For example, in the concluded actions save for **Which? v Qualcomm** and

Kent v Apple, certification was challenged in the Court of Appeal. On the other hand, the CAT's case load is busier than ever.

Costs incurred

A cost-benefit analysis is an important aspect of the CAT's assessment of whether the proceedings should be certified, and the costs should be considered relative to the financial benefit to the class as a whole.⁹ The data on costs incurred in the concluded cases is limited, and there is no single, reliable data point across all cases on which one can definitively measure and compare the costs incurred. In **Merricks**, the class representative incurred costs, fees and disbursements of £45.5m, 22.75% of the £200m recovered. Mr Merricks had £15m of adverse costs cover in place, which could be considered as a proxy for Mastercard's costs. However, by the end of June 2017 alone, Mastercard had incurred costs of almost £2m, and it incurred £10.9m on the causation trial. £15m is likely to be a considerable underestimate, but would mean total costs of £60.5m or over 30% of the sum recovered.¹⁰

In **Boundary Fares**, the class representative incurred costs of over £18.7m across the three actions, to recover up to £25m. The total costs were over £47.3m.¹¹ The class representative's costs were 75% of the maximum amount recovered; total costs were 189%. In **McLaren**, the class representative incurred costs of over £19.0m to recover £92.75m (20%).¹² The defendants' costs in that case are not public, but the class representative had £15m of adverse costs cover in place. Again, this is likely to underestimate of the defendants' costs but would mean total costs

of £34m (37%). In **Le Patourel v BT**, the Class Representative's budget was £22.1m. BT incurred costs of over £26m, meaning the parties incurred costs of over £48.1m to recover nothing for class members.

In **Which? v Qualcomm**, the parties incurred costs of over £77.4m again to recover nothing for class members.¹³

Finally, in **Kent v Apple**, the total funding commitment from the funders was £24.3m.¹⁴ Apple's costs are not public, but the class representative had £10m of ATE insurance in place, which would mean the total costs were £33.3m (2.2% of the damages recovered). This is likely to be a significant underestimate, as the class representative's legal team is likely to have deferred a proportion of their fees, and Apple will have incurred costs greater than the level of adverse costs cover in place at certification.

In total, class representatives in the concluded actions collectively incurred costs totalling £159.5m – 9% of the sums recovered for class members. Total costs were £297.5m – 16% of the sums recovered.

Payment to class members

For individual cases, as the CAT itself noted, success can be measured in different ways, and what is defined as "success" to trigger a funder or claimant firm's entitlement to uplifts is not necessarily a success for the class as a whole.

Much is made of the benefits of the deterrent effect of opt-out claims in the CAT. However, when considering the **Which? v Qualcomm** settlement, the Tribunal observed that *"the primary objective is to obtain compensation for class members."*¹⁵ In that context, it is important to consider whether class members are in fact receiving compensation in those claims that have concluded so far.

So far, only **Boundary Fares** has progressed to distribution. Of the £25m settlement, £9.3m was retained by Stagecoach South Western Trains. Only £216,485 (0.8%) was distributed to the class, meaning the class representative's costs were 72 times higher than money returned to class members. Costs overall were over 400 times higher. The class representative himself was "disappointed" with this outcome and the Tribunal observed that the case *"cannot be considered a success overall"*.¹⁶

When considering the application for the funder's return (on which see below), the Tribunal ordered that £3.78m (£4m less the amount distributed) should be paid to the Access to Justice Foundation.¹⁷

In **Merricks**, of the £200m settlement, £100m has been ring-fenced for payment to class members, to be divided amongst those who claim in the distribution.





Although, when the claim was filed, it was advertised that class members could receive up to £300 of damages,¹⁸ there is a cap of £70 per person, the Tribunal having considered that higher individual payments would be “*excessive in the circumstances*”.¹⁹ Any surplus after distribution and payment of costs, fees and disbursement will be paid to the Access to Justice Foundation. Dividing the full £200m amongst the estimated 44 million class members, each would be entitled to £4.54. Class members are expected to receive a minimum of £45 (ten times the strictly compensatory amount). For these numbers to work, it assumes that fewer than three million people will claim in the distribution which, out of a class of 44 million, would be a take up of only 6.8%.²⁰

In **McLaren**, the settlements included “guaranteed damages” totalling £34m, which will be distributed to the class or an approved charity. At the point of approval of the final settlement, the class representative had not presented a final distribution plan. Distribution will be on a per vehicle rather than per capita basis and the Tribunal has indicated that it expects the distribution plan to focus on major fleet operators to maximise distribution.²¹ The “guaranteed damages” to be distributed or paid to charity amounts to 37% of the settlement sum.

In **Kent**, the judgment is being appealed so distribution has yet to be discussed. The **Kent** claim is on behalf of App Store users, so it ought to be possible for distribution to be by direct credit to users’ accounts, thereby achieving very high levels of distribution. It remains to be seen whether this will be proposed, given competing priorities and the impact direct distribution may have on sums available for lawyers and funders.

Payment to law firms and funders

As there has only been one distribution so far, there is limited data available about the final amounts paid in costs, fees and disbursements. In **Merricks**, the funder received its investment of approximately £45.5m, plus an uplift of 50% – £68.25m in total. The legal team were paid throughout the proceedings so were not entitled to an uplift (but clearly billed significant amounts over the course of the proceedings). Notably, the funder still received a 1.5x return on investment, despite the case having a “poor outcome”.²² The uplift of 50% amounts to over 5% per annum (simple interest) over the 9 years of the proceedings, which some may consider remarkable where the proceedings recovered less than 1.2% of the stated claim value.

In **Boundary Fares**, £5.5m of the final £25m settlement was approved as payment of costs, fees and disbursements.²³ Following distribution, the class representative sought a further £9.98m. In the end, a further £6.2m was paid, meaning the law firms, funder and ATE insurers received £11.7m of the £25m settlement.²⁴ The settling defendant, Stagecoach, retained £9.3m, so of the £15.7m actually paid, over 74% was paid to law firms, funders and insurers.

In **McLaren**, the collective settlements have included sums for costs, fees and disbursements totalling £34m, with a further £2.5m towards the cost of distribution – 39% of the total settlement sum. The Tribunal was not willing to approve payment of the entire amount prior to distribution, but approved payment of £16.3m.²⁵ The class representative estimates costs fees and disbursements to be in excess of £61m.

The wider regime and looking ahead

Interestingly, in ***Trains*** at certification, the cost-benefit analysis “came out slightly against the grant of a CPO” and the Tribunal has since expressed doubt over whether the claim would be certified today, with the benefit of further jurisprudence on certification.²⁶ Now the regime is more mature and there is more clarity around take-up rates, it is likely that greater scrutiny will be applied to distribution at certification. For example, the Tribunal recently declined to certify collective proceedings in the ***Waterside*** collective action, noting the costs and benefits were “of concern”, particularly in light of the proposed legal costs weighed against the anticipated sums returned to the class.²⁷ Distribution and the upfront cost-benefit analysis are likely to be key battlegrounds at certification. As UK distribution data becomes available, it will be increasingly difficult for class representatives to rely on vague and aspirational distribution plans to demonstrate that the certification threshold is met.

Much has been made of the implications of the Supreme Court judgment in ***PACCAR***, with commentators warning that it could have created a notable impediment to access to justice.²⁸ However, 20 opt-out collective actions have been filed since the ***PACCAR*** judgment was handed down. It is true that there has been a slowdown in filings since the initial rush after the Supreme Court clarified the certification threshold in ***Merricks***, but the more likely explanation is that funders had reached the limit of their desired exposure and were awaiting the outcome of cases to which they had committed significant capital. Of the six concluded cases, four were in effect unsuccessful. In those circumstances, the slowdown is more likely caused by the emerging evidence that funders have been asked to invest vast sums of money in fundamentally flawed claims. As more outcomes are known and the regime beds in, it might be that fewer cases are filed, but a higher proportion succeed.





Spain's shift towards an opt-out model: A turning point for collective redress



*Juan Ignacio
Fernández
Aguado*



*Adriana
García*

Spain is on the verge of a significant transformation in its collective redress landscape. Traditionally characterised by limited uptake and procedural fragmentation, the Spanish system is now evolving towards a more structured framework for the adjudication of mass claims.

This shift is primarily driven by the forthcoming transposition of Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers, and, in particular, by the introduction of an opt-out mechanism for damages actions, combined with recent jurisprudence from the Supreme Court (Tribunal Supremo) signalling increasing judicial endorsement of collective litigation. Together, these developments mark a departure from a traditionally cautious approach towards a more ambitious model of consumer protection and procedural efficiency.

A fundamental shift to opt-out

At the core of this transformation lies the proposed adoption of an opt-out model, which would constitute a fundamental departure from the current opt-in regime. Under the existing framework, affected individuals must actively join proceedings by way of positive adhesion, thereby limiting the scope of collective actions and diminishing their practical efficacy. By contrast, the proposed opt-out model would allow injured consumers to be automatically encompassed within the scope of a claim unless they expressly exercise their right to opt-out.



This procedural shift has the potential to significantly expand the reach of collective actions, enabling the efficient resolution of thousands of low-value claims that would otherwise remain un-litigated due to rational disinterest.

New procedural safeguards: judicial certification

The introduction of an opt-out model will be accompanied by new procedural safeguards intended to ensure that only meritorious and viable claims proceed to the merits stage. In particular, the proposed legislation establishes a mandatory judicial certification phase (fase de admisibilidad) at the outset of any collective damages action. During this preliminary stage, the court will assess the admissibility and viability of the claim, verifying the homogeneity of the affected group, the existence of a common harmful event, and the suitability of collective proceedings for the resolution of the dispute. This certification mechanism, inspired by comparable procedures in common law jurisdictions, notably the class certification requirements under Rule 23 of the U.S. Federal Rules of Civil Procedure, aims to strike an appropriate balance between access to justice and the prevention of unmeritorious or abusive claims.

Supreme Court endorsement and the floor clauses case

Recent jurisprudence of the Supreme Court further reinforces this evolving landscape. In its landmark judgment No. 943/2025 (the so-called cláusulas suelo or “floor clauses” case), the Supreme Court upheld for the first time a large-scale collective action brought against more than one hundred financial institutions.

Of particular significance, the Court accepted that claims could be pursued jointly even where the contractual terms at issue were not identical but merely analogous in substance, thereby relaxing earlier interpretations that had required strict uniformity among the affected contracts. This ruling represents a substantial step forward in the practical viability of collective litigation in Spain.

Persistent limitations: the Dieselgate illustration

While these developments point towards a more robust procedural framework, the Spanish experience also underscores the persistent limitations of the current system in dealing with complex, large-scale transnational disputes. The ongoing Dieselgate litigation provides a compelling illustration. Despite affecting hundreds of thousands of consumers in Spain, the collective action brought in connection with the Volkswagen emissions scandal has encountered significant procedural obstacles. In contrast with other jurisdictions, where collective settlements have been reached, the Spanish proceedings have proved protracted, procedurally fragmented and ultimately ineffective in providing timely redress.

In conclusion, while the Spanish system remains in a transitional phase, the direction of travel is clear. The convergence of an opt-out model, judicial certification mechanisms, and a more flexible interpretive approach by the courts may significantly facilitate collective redress in the years ahead, thereby increasing the litigation risk profile for businesses operating in the Spanish market.





ESG & climate litigation: Heating up

Over the last few years, ESG litigation has developed into a cluster of sometimes overlapping behaviours which often brings reputational risk in addition to financial exposure. In the UK and the EU, there is no sign of this trend abating.



*Paul
Benson*



*Jonathan
Gardner*



*Simon
Polkerman*



*Lissa
Boersma*

Companies must grapple with an increasingly complex and ever-changing policy and regulatory environment. Claimants (and their funders) are growing in sophistication and pushing the envelope across different areas of legal risk. Investors are moving beyond traditional engagement to more aggressive tactics, while the investor base itself is increasingly polarised in its objectives and demands. In addition, regulators are baring their teeth, with all the risk that an adverse regulatory decision entails for follow-on and group litigation. Adding yet further complexity, there is an increasing number of NGOs that are willing to fight claims to help achieve their objectives.

In the interests of relative brevity, we set out below two key areas of focus relevant to class actions: (a) supply chain litigation and transnational torts; and (b) climate litigation.

A. Supply chain litigation & transnational torts: global coordination, global risk?

A trickle of novel cases around the new millennium finding an English parent company liable for acts occurring overseas (often by local subsidiaries) has swelled into a steady flow of complex and costly disputes.



While previously viewed as opportunistic nuisance claims, attempts by English parent companies to dispose of claims relating to the acts of their overseas subsidiaries at an early stage have repeatedly been unsuccessful – and have only served to embolden claimants and develop a reasonably settled body of case law.

Innovative lawyering, new regulation, and a growth in both the scale and sophistication of the litigation funding market have created an environment where ESG-related transnational tort claims and supply chain litigation are becoming increasingly common.

By way of example, recent claims have included group actions by:

- 1,826 Zambian claimants against a Zambian-incorporated mine operator and its English parent company in relation to alleged pollution in Zambia of watercourses.²⁹
- 103 Brazilian claimants against two English companies (as the ultimate owners of a Brazilian company which operated the Fazenda Mocó iron ore mine in Mocó, Brazil) in relation to unlawful pollution and environmental damage.³⁰
- 24 Nepali and Bangladeshi migrant workers against Dyson companies in England and Malaysia in relation to the workers' labour in Malaysia at factories owned by third parties, who were contract manufacturers of Dyson components and products.³¹
- More than 42,000 Nigerian individuals living in farming and fishing communities in claims against Shell plc for environmental damage to water sources arising from oil spills from pipelines and infrastructure operated by Shell's Nigerian subsidiary.³²
- More than 600,000 Brazilian claimants against the ultimate parent companies of the BHP Group, in relation to environmental damage as a result of the collapse of the Fundão tailings dam in which a local Brazilian subsidiary of BHP had a 50% joint venture interest.³³
- The families of two deceased Tanzanian individuals against the London Bullion Market Association (LBMA) on the basis that the LBMA had negligently certified gold originating from the North Mara Gold Mine in Tanzania as untainted by human rights abuses when, allegedly, the operator of that mine had engaged in a pattern of human rights abuses which should have been known to the LBMA before the individuals were killed by the mine's security apparatus.³⁴





These claims can be broadly categorised as environmental harms or claims by local workers concerning working conditions in the food production or textile sectors. The fact that the harm alleged occurred exclusively overseas, and that the claim invariably relies on or involves questions of foreign law, does not necessarily bar claims being brought in England against an England-domiciled parent company. Two factors are proving influential in driving this trend:

1. The fact that group-wide policies and procedures relevant to these claims are devised and promulgated in England, with the English headquarters then monitoring, auditing and ensuring compliance with such policies. As the extent of the parent's control over the subsidiary are fundamental issues in these claims they are examined at an early stage if a jurisdiction challenge is filed. Similar approaches may be taken by other European countries in examining HQ companies domiciled in those countries.
2. The argument that English courts should resolve these disputes because of access to justice concerns in the claimants' home jurisdictions. While always being careful to display judicial comity, English judges have attempted to thread the needle when ultimately accepting jurisdiction, by emphasising the relative availability of litigation funding for these claims in England, and the difficulty of retaining counsel in the claimants' home countries with the right expertise on conditional fee terms.

These outcomes are, in part, even more probable now as a result of a Brexit. Until recently, claimants in supply chain litigation and transnational tort cases had relied upon the English parent serving as an anchor defendant, with Article 4 of the Recast Brussels I Regulation effectively precluding the English parent from running *forum non conveniens* arguments to potentially shift the claim to a more appropriate or favourable jurisdiction. This line of authority made transnational tort claims and supply chain litigation in England strategically attractive, as it served to shortcut one of the potential grounds for defendants to challenge the jurisdiction of the English courts.

However, with Brexit, the Recast Brussels I Regulation ceased to apply to claims begun after 31 December 2020. From that date, the 'old' common law position became relevant again and, illustrating how heavily contested these claims can be, the old authorities are receiving renewed attention to disrupt what was a largely settled state of affairs. While on its face the reversion to the common law position is advantageous to defendants, courts are reliably refusing defendant's applications challenging the court's jurisdiction in line with the principles outlined above. As a result, there is now a critical mass of decisions of English courts refusing jurisdiction challenges in transnational torts and supply chain litigation.



This does not mean that all jurisdiction challenges are bound to fail – the analysis is complex and multifaceted. Group actions pursuing transnational tort claims or supply chain litigation through to final judgment remain a rarity. Even though the Court found BHP liable in **Mariana** (with an appeal being refused) in May 2026,³⁵ that is not the end of the matter, as quantum must still be determined. With the quantum trial only set for late 2027 and into 2028, it will therefore be some time before any demands are determined and, in the meantime, the claimants' funders will be coming under increasing pressure to realise a return on investment.

It is likely that claimants and their funders will continue to feel emboldened to pursue claims against English parent companies in the hope of achieving early settlement. To better understand their applicable litigation risks, English headquartered multinationals would be well advised to undertake a review on a legally privileged basis into group-wide decision making, the degree of control exercisable over subsidiaries beyond pure legal ownership and to clearly understand how local laws (such as environmental laws) can impose statutory liability on an overseas parent company.

B. Climate litigation

Climate litigation remains rare albeit the risk is increasing. Claims which would previously have been struck out are proceeding to be assessed on their merits;³⁶ and attribution science (which enables claimants to attribute a proportion of the harm suffered to a company's greenhouse gas emissions) is becoming increasingly developed, enabling claimants to adduce more cogent evidence in support of their claims.³⁷ Causes of action are starting to vary as claimants seek novel avenues of attack, and now encompass, among others, public and private nuisance, civil law tort ('duty

of care'), consumer protection law, planning law, company law and competition law. Increasingly, since the decision of the Court of Justice of the European Union in **Klimaseniorinnen**³⁸ and the International Court of Justice's 2025 Advisory Opinion,³⁹ those causes of action are informed and imbued by human rights arguments.

Climate litigation has to date resulted in a number of 'near misses' for companies, whereby e.g., they have (to date) escaped liability on appeal,⁴⁰ or as a result of specific factual findings which leave the door open to future liability.⁴¹ One or more final, binding judgments against a company (e.g., to reduce its Scope 1-3 emissions, or pay damages for climate harms) would require a fundamental shift to most high-emitting companies' business models, or the ongoing legal, financial and reputational costs of non-compliance. In a sign of the widening reach of climate litigation, one energy company has in the last year alone lost both a greenwashing claim and a claim attacking the absence of Scope 3 emissions in its transition ('vigilance') plan.⁴²

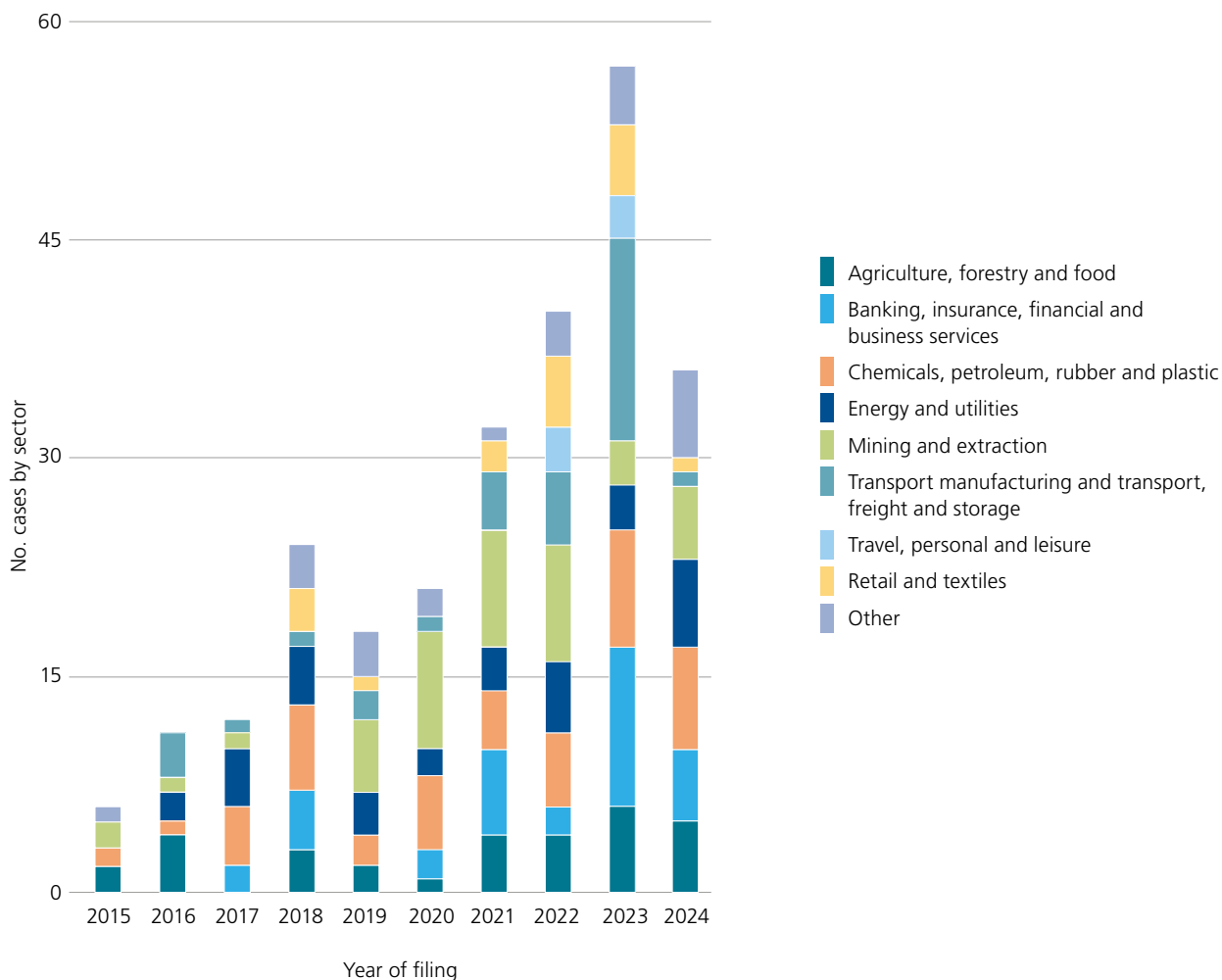
Although NGOs continue to be active litigants, the pool of claimants is widening:

- Claims are increasingly being brought by individuals or affected communities.
- Institutional investors are increasingly willing to litigate or lend their support to litigation, with orthodox shareholder engagement on climate and ESG issues having largely failed to meet their objectives.⁴³
- Corporates have also joined the claimant roster, e.g., with 'green-on-brown' litigation⁴⁴ and the first subrogation claims by insurance companies.⁴⁵

The pool of potential ‘targets’ has also expanded. Partially or wholly state-owned entities (SOEs) and state-owned financial institutions (SOFIs) are increasingly in the firing line, perhaps as a result of the easier application of human rights and international law arguments to those entities.⁴⁶

But more than anything, it is clear that fossil fuel companies are now far from the only defendants. Companies in most sectors have been the subject of litigation – from automotive⁴⁷ to aviation⁴⁸ to agriculture⁴⁹ to cement⁵⁰ to financial services,⁵¹ there are few sectors which remain untouched:

Number of companies targeted globally in strategic climate-aligned cases by sector, 2015-2024 (reproduced with the kind permission of LSE).⁵²



This reflects a broader shift from a focus on companies’ direct operational emissions (which for many companies is only a small proportion of their total emissions pool) to scrutiny of emissions across the entire value chain. That shift is reinforced in certain regulatory trends on both the EU and domestic planes.⁵³

As climate litigation has matured, there has been a predictable policy backlash in some quarters to the role of the courts in this domain.⁵⁴ However, it remains the case that corporate climate liability has crossed a critical threshold. Liability and risk for high-emitting

businesses arise at every turn, from areas as diverse as greenwashing to directors’ duties, with direct implications for corporate strategy, capital allocation and governance. It is therefore imperative that transition planning, disclosure and climate risk management are aligned.

As the “Global Trends” report from LSE’s Grantham Institute puts it: “*Although we may see significant jurisdictional divergence, it appears likely that the question is no longer whether liability [in critical cases] is arguable, but at what stage and on what.*”



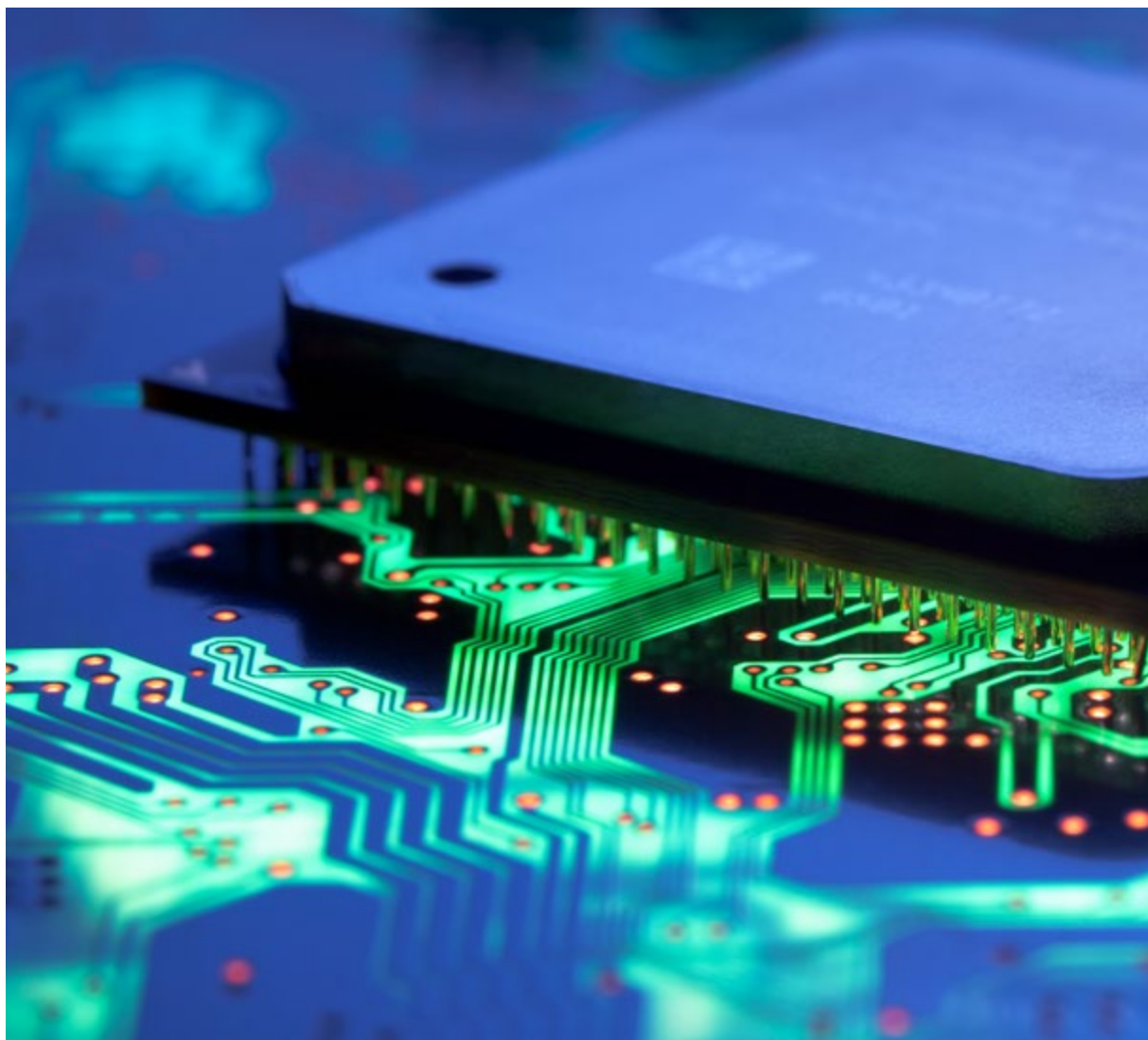
*Simon
Castley*



*Georgina
Swift*

Product liability updates and increased class action risk

As explained in last year's Class Action Report, the EU's product liability landscape is undergoing significant change, driven by new technologies such as AI, the increasingly complex global supply chains, new circular-economy business models, and a growing focus on consumer protection. Recent reforms to the EU Product Liability Directive (PLD), and the progress towards implementation across EU Member States, increase class action risk as we explain below.⁵⁵



1. The new EU PLD: status

The new PLD was published in the Official Journal of the European Union on 18 November 2024 and entered into force on 8 December 2024. Member States have until 9 December 2026 to transpose it into national law, after which it will apply to products placed on the market or put into service. Although it is not an EU Member State, Northern Ireland must also implement the PLD by this date.⁵⁶

Member States must implement the PLD in full and cannot introduce provisions that are more or less stringent.⁵⁷ Although the PLD mandates full harmonisation, some nuanced differences may emerge as it is transposed into national law. Key areas to watch are the approach to disclosure, the way each Member State weaves the revised burden of proof into its

national procedural system, and how psychological harm is interpreted and proven. One area where derogation is permitted is the Development Risks Defence, which individual Member States may choose to maintain, introduce, or amend.⁵⁸

As of early August 2026, Hungary, Croatia and Lithuania are the only Member States to have implemented the PLD into national law. Out of the remaining Member States, some have published draft legislation, and others have begun the first phase of implementation (see section 4 below for more detail). Some Member States, together with Northern Ireland, have not yet set out a timeline for implementation or published any draft legislation.



2. Key changes introduced by the new PLD

As set out in last year's Class Action Report, the new PLD makes a series of changes that significantly expand the scope of product liability and increase the litigation, class action and cost risks for companies doing business in the EU. The most notable changes are:

- Expansion of the definition of "product" to include, for example, software and AI;
- Liability for post-placing on the market/putting into service for some products;
- Increase of the number of potential defendants;
- An expanded definition of damage to include psychological health;
- Changes to the "defect" test;
- Shift of the burden of proof/introduction of rebuttable presumptions of defect and causation;
- Removal of the minimum threshold for property damage;
- Introduction of wide-ranging powers to order potentially burdensome and costly disclosure;
- Extension of the long-stop limitation date for latent injuries to 25 years.

We discuss some of these changes in more detail below.

Expanded definition of "product"

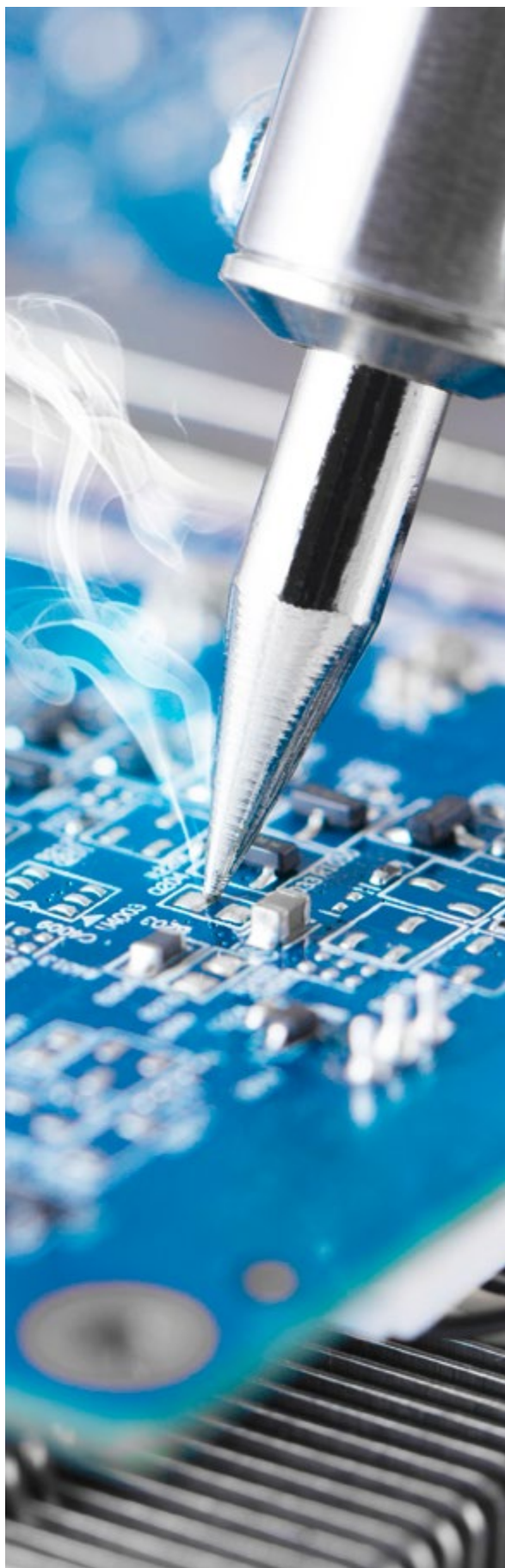
The definition of "product" now covers all movables; components (tangible or intangible), including related services integrated into or inter-connected with a

product; software (including stand-alone and embedded software and AI systems); digital manufacturing files (a digital version or template of a movable); and raw materials. It does not, however, extend to information, services, the mere content of digital files, or software source code, which are not treated as "products". Nor does it apply to free and open-source software developed or supplied outside the course of a commercial activity.

Liability for post-placing on the market/putting into service

Manufacturers may remain liable for defects that arise after a product has been placed on the market where those defects stem from software or related services that remain within the manufacturer's control, such as updates, upgrades and machine learning algorithms. An update is considered to be under the manufacturer's control where either the manufacturer supplies the software update or related service, or the manufacturer authorises the supply by a third party.

The manufacturer is likewise not exempt from liability where a product which remained under its control is defective after it is placed on the market/put into service due to a lack of software updates/upgrades necessary to maintain safety.⁵⁹ A failure to address software vulnerabilities, for example through appropriate updates or patches may therefore trigger manufacturer liability, including for standalone software or digital elements that qualify as products under the new PLD.



Broader pool of liable parties

The new PLD widens the range of economic operators who may be held liable for defective products. Beyond manufacturers and first importers, liability can attach – within defined limits – to EU Authorised Representatives, fulfilment service providers and, in certain circumstances, distributors and online platform providers. For example, where there is no EU-based liable party, or where a distributor does not respond within one month to a request for information about the liable party, a claimant may seek compensation from the distributor itself. Multiple economic operators can be held jointly and severally liable, and liability cannot be limited or excluded by contract.

Changes to the “defect” test

A product is defective if it does not provide the safety a person is entitled to expect, or the safety required under EU or national law. Relevant factors include the product’s presentation, intended use, technical features, labelling, packaging and applicable safety requirements, including cybersecurity. Product recalls and interventions by authorities are also relevant to assessing defectiveness.

Expanded categories of recoverable damages

The new PLD broadens the types of recoverable damages. In addition to death, personal injury, and property damage, it now covers psychological harm (defined as medically recognised and medically certified damage to psychological health) and the destruction or corruption of data not used for professional purposes for example, digital files deleted from a hard drive.⁶⁰ The previous €500 minimum threshold for property damage claims has been removed, opening the door to individualised low-value claims.

New disclosure regime

A significant procedural change for European jurisdictions is the introduction of wide-ranging powers for the court to order disclosure (somewhat akin to ‘discovery’ in the US sense). Defendants can be required to give claimants potentially burdensome and costly disclosure once claimants present “facts and evidence sufficient to support the plausibility” of their claim.⁶¹

This regime could create substantial time and cost burdens, particularly because civil law jurisdictions are unaccustomed to broad disclosure and the courts in different Member States may take inconsistent approaches. Beyond disclosing existing materials, defendants may also have to produce documents created *ex novo* “by compiling or classifying the available evidence.”⁶²



Claimants can also be required to disclose certain relevant evidence, but the test for this to be ordered against them is more stringent, so defendants will likely bear the brunt of the time and cost of complying with any disclosure order.

Shifts in the burden of proof and rebuttable presumptions

The most contentious provisions of the new PLD are the several rebuttable presumptions that ease claimants' burden of proof, which commentators have criticised as unfair to manufacturers and as tilting the landscape too far in claimants' favour. Defectiveness will be presumed where the defendant fails to disclose relevant evidence (discussed above), where there is non-compliance with mandatory safety requirements intended to protect against the type of damage suffered, or where there is an obvious malfunction during foreseeable use. Causation will be presumed where the product is defective and the damage is of a kind typically consistent with that defect.

In addition, the courts will presume defect or causation (or both) where, despite the disclosure of evidence, claimants face 'excessive difficulties' in proving them because of the technical or scientific complexity of the product, provided the claimant can show that a defect or causal link is 'likely'.⁶³ All of these presumptions are rebuttable. In practice, much will turn on how national courts interpret the terms 'likely' and 'excessive difficulties'.

Limitation periods and development risks defence

The long-stop expiry period remains at 10 years but is extended to 25 years for latent personal injuries. Where a product is substantially modified, the 10-year period restarts from the date the modified product is placed on the market. Manufacturers are concerned that this could potentially create an effectively open-ended risk of liability for products that receive, for example, a series of software updates over time. The need to retain documents for the full 25-year period – or risk the rebuttable presumption of defect if they cannot be produced – is also seen as unduly onerous for defendants.

The Development Risks Defence (exemption from liability where the defect could not have been discovered given the state of scientific knowledge at the time) is restricted: it does not apply to defects arising from substantial modifications, software updates, or lack of necessary updates within the manufacturer's control.

Member States may derogate from the Development Risks Defence in their national laws. Based on the draft laws published so far, only Finland and Germany are set to retain their existing derogations (Germany's applying to the field of genetic engineering). Hungary has limited the defence for medicinal products used as instructed. This is covered in more detail in [section 4](#) below.



3. Implications for litigation and class action risk

As indicated in last year's Class Action Report, the new PLD is intended to ensure a high level of consumer protection and is expected to expose businesses to greater and less predictable litigation and class action risk under the legislation transposing the Representative Actions Directive (EU) 2020/1828. The expansion of recoverable damages, the eased burden of proof, the removal of the minimum claim threshold, and the new rebuttable presumptions and broad disclosure obligations are likely to encourage more claims – potentially including high-volume, low-value “nuisance” claims. Defendants may come under significant settlement pressure, given the increased cost of defending claims and the practical difficulty of rebutting presumptions, especially where claims relate to facts and events long in the past. Particular risks arise for defendants where there has been a regulatory breach

or failure to comply with safety standards, giving rise to the risk of ‘follow on’ claims similar to those seen in the antitrust regime (though with claimants still needing to establish the PLD requirements of causation and damage).

The changes introduced by the PLD could also increase the risk of frivolous litigation and forum shopping. The courts may, in addition, become overloaded with disclosure applications, particularly in Member States with limited experience of managing broad disclosure. As class action claims continue to grow, we expect a corresponding rise in product liability claims, particularly in light of the new PLD, and it will be important to monitor how this develops once the legislation takes effect across Member States.



4. Status of implementation of the new EU PLD and the UK position

Implementation status

EU Member States are required to transpose the new PLD into national law within 24 months of its entry into force, by 9 December 2026. As of early August 2026, Hungary, Croatia and Lithuania are the only Member States to have fully implemented the PLD into national law. Of the remaining Member States, ten have published draft legislation and one more, Italy, has begun the first phase of implementation. Other Member States, together with Northern Ireland, have yet to set out an implementation timeline or publish any draft legislation. Where draft legislation is available, Member States generally appear to be aligning closely with the wording of the PLD, although there are a few areas of divergence as explained below.

Areas of divergence

As noted above, Member States may derogate from the Development Risks Defence if they choose. In Finland, the Ministry of Justice's Working Group published a draft law implementing the PLD on 2 February 2026, proposing that Finland will continue not to apply the Development Risks Defence as an exemption of liability in any circumstance. As a result, manufacturers in Finland will retain broad strict liability for product damage, including in respect of unforeseeable safety defects. This reflects a continuation of the existing national position. Similarly, Germany's draft law, published on 25 February 2025, provides that Germany will retain its existing derogation from the Development Risks Defence in the field of genetic engineering, while

the defence will continue to apply in relation to other products. Again, this represents a continuation of the existing national position.

In Hungary, the Development Risks Defence will apply to all products except medicinal products used in accordance with instructions. Accordingly, manufacturers (particularly in the life sciences and healthcare sector) should pay particular attention to these derogations and the circumstances in which strict liability will apply.

One further example of a Member State set to diverge from the PLD in certain respects is Denmark. Denmark's Ministry of Justice published a draft standalone law on 9 January 2026, which proposes to retain its existing rules on distributor liability, which go beyond the provisions of the PLD. Under these rules, once the injured party has proved defect, damage and causal link, the burden of proof shifts to the distributor to prove that the damage was not caused by its fault or negligence in handling the product. In addition, distributors may be held directly liable to the injured party for product damage to the extent that the damage is due to fault or negligence on the part of the manufacturer or previous distributors in the supply chain.

England and Wales

The recent changes introduced by the new EU PLD are likely to widen the divergence between how product liability claims are handled in the UK and the rest of



Europe, and it remains unclear whether the UK will align with the EU's approach or pursue a distinct regime. In July 2025, the Law Commission of England and Wales announced a review of the UK's product liability regime under the Consumer Protection Act 1987 (CPA). Substantive work began in September 2025, with a formal public consultation on reform proposals planned for the second half of 2026. This will be followed by a report setting out recommendations to the UK Government, likely in late 2026 or early 2027.

Although the UK Government retains the flexibility to strike a more balanced approach between consumers and producers than the EU PLD, the extent of any alignment or divergence will become clearer once the Law Commission's recommendations are published. Their assessment covers only England and Wales; we are not aware of any plans for a review by the Scottish Law Commission.

In parallel, the Department for Business and Trade launched a detailed consultation on product safety issues on 31 March 2026, which closed on 23 June 2026. It focuses on perceived problems with online selling and underlines the need for all businesses in the supply chain to be accountable. The consultation sits within the framework of the Product Regulation and Metrology Act 2025, which gives the Secretary of State broad powers to introduce secondary legislation affecting almost every dimension of product safety – including standards for making products available on the market and for their use as well as powers to shape enforcement through both civil and criminal penalties.

Although product safety issues are distinct from civil damages claims under the existing CPA, whatever

product safety regulations the Secretary of State ultimately makes could indirectly affect liability under that legislation. For example, the Secretary of State will have power to regulate technical standards, and a party's non-compliance with those standards may be relevant to the "defect" test under the CPA, since the court takes into account "all the circumstances."

Possible divergence: Northern Ireland

Aside from divergence between the EU and the UK, there is also scope for divergence within the UK. Post-Brexit, Northern Ireland continues to apply a subset of EU rules on product regulation, including product liability. To avoid a hard border on the island of Ireland and to protect the Belfast (Good Friday) Agreement of 10 April 1998, the UK and EU agreed that Northern Ireland would continue to follow certain regulations, directives and rules, including a limited set of EU laws governing the single market for goods.⁶⁴ These rules, set out in Annex 2 to the Ireland/Northern Ireland Protocol (Windsor Framework) (the Protocol), cover a wide range of EU provisions on product safety, consumer protection, conformity assessment, market surveillance, and product liability (including the 1985 EU PLD).

Under Article 13(3) of the Protocol, where an EU measure listed in Annex 2 is "amended or replaced," the updated version applies automatically in Northern Ireland.⁶⁵ As a result, although it is not an EU Member State, Northern Ireland must implement the new PLD by 9 December 2026. As of early August 2026, there has been no draft implementing legislation published, nor an indication of when implementation is expected.



5. AI liability

EU position

The proposed fault-based AI Liability Directive (AILD) (not a strict liability regime like the EU PLD) was intended to complement the EU AI Act and introduce uniform rules to ensure that individuals harmed by AI benefited from protections equivalent to those available in relation to other technologies. In particular, the AILD sought to ease the burden of proof for claimants through rebuttable presumptions of causation and would have enabled national courts to order disclosure of evidence relating to high-risk AI systems.

However, the proposal attracted limited support amongst EU Member States, with increasing debate as to whether the AILD remained necessary given the expanded scope of the new EU PLD. In February 2025, the European Commission withdrew the AILD from its 2025 Work Programme and, on 22 May 2025, the European Parliament's Committee on Internal Market and Consumer Protection (IMCO) published an opinion rejecting its adoption. IMCO considered the AILD to be "premature and unnecessary" in light of the EU AI Act and the new EU PLD, and criticised the European Commission's impact assessment as being largely based on hypothetical scenarios.

As things currently stand, there is no harmonised EU framework providing AI-specific presumptions of causation or disclosure mechanisms for civil liability claims. The European Commission has nevertheless continued work on implementation of the EU AI Act, including launching public consultations and guidance concerning high-risk AI systems. Relatedly, in May 2026, the European Parliament and the Council of the

European Union announced a provisional agreement on a proposal to streamline certain rules regarding AI. Known as the AI Omnibus, this is a package of amendments to the EU AI Act that would, amongst other things, extend implementation deadlines for certain rules governing high-risk AI systems. This allows businesses extra time to familiarise themselves with and implement the new rules.

UK position

In the UK, the Artificial Intelligence (Regulation) Private Members' Bill, which was reintroduced into the House of Lords in March 2025, failed to progress. The Bill had proposed the introduction of a new regulatory body, the "AI Authority," with responsibility for overseeing AI regulation.

The UK has instead continued to favour a sector-led approach to AI regulation, relying on existing regulators to develop sector-specific regulatory guidance that applies their existing regulatory framework to the deployment of AI in their sector.

Similarly, the Government has paused plans for AI-specific liability legislation and is exploring whether existing causes of action, such as negligence and strict liability under the CPA, can adequately address harms caused by AI. The upcoming Law Commission consultation on product liability will consider "the operation of the existing product liability regime, particularly in relation to digital products and emerging technologies such as AI." Courts may therefore play a key role in shaping the liability landscape for AI-related products and services.





Class actions in aviation: Emerging areas of potential exposure



*Karen
Denny*



*Zainab
Hodgson*

The aviation sector has several characteristics that increase its exposure to class action risk. For example, airlines serve very large numbers of consumers on substantially standardised terms and policies, process significant volumes of personal and payment data and generate revenue from ancillary products and services. A single event or commercial practice can, therefore, affect a very large customer population.

That said, scale alone, does not make a viable collective claim. Questions of standing, commonality, causation, loss and quantum can create substantial obstacles to viable class actions.

Recent developments illustrate areas that airlines should have on their radar, particularly data breaches and consumer claims challenging airline baggage charges.



Data breaches: aviation's cyber exposure

Airlines and other businesses within the aviation ecosystem hold substantial quantities of customer information. This can include names and contact information, travel itineraries, passport information, payment details and loyalty programme data. A significant cyber incident can, therefore, affect thousands, or potentially millions, of individuals simultaneously, creating the potential for group litigation as well as regulatory investigations.

Major UK airline data breaches illustrate the risk.

Large scale data breach Group Litigation:

In 2018, a major airline suffered a cyberattack affecting personal data relating to approximately 500,000 customers. The compromised information included names, addresses and payment card details. In 2020, the Information Commissioner's Office (ICO) imposed a £20 million fine on the airline for infringements of the General Data Protection Regulation (EU) 2016/679. Notably, this was significantly lower than the penalty initially proposed by the ICO. The airline was found by the ICO to have failed to process personal data in a manner that ensured appropriate security, as required under Articles 5(1)(f) and 32 of the GDPR. Going forward, a key defence consideration for any organisation in a similar situation will be whether it had appropriate technical and organisational measures

in place before the incident, as required by Articles 5(1)(f) and 32 of the UK GDPR.

Alongside the regulatory investigation, a group action was pursued through a Group Litigation Order, with approximately 16,000 claimants seeking damages on various grounds including for distress, pecuniary loss and loss of control of data. The airline subsequently reached a confidential settlement that included compensation for qualifying claimants, without admitting liability.

These cases demonstrate both the potential scale and the practical difficulties of data breach group litigation. A single cybersecurity incident can produce an enormous and readily identifiable claimant population. However, common exposure to a breach does not necessarily establish common or compensable loss. Questions of causation, whether affected individuals have suffered actionable damage or distress, actual misuse of information and quantum may present significant hurdles to collective claims.

For airlines, the exposure consequently extends beyond the immediate costs of responding to a cyberattack and any regulatory penalty. Incident response planning should also take account of the possibility of follow on civil claims, potentially across multiple jurisdictions, and the extent to which the evidence generated during regulatory investigations may affect subsequent litigation.





Baggage charges: a developing consumer class action risk

A more distinctive recent development concerns collective challenges to airline ancillary charges, particularly charges for cabin baggage. Airline pricing models increasingly allow passengers to select and pay for ancillary services separately from the basic fare. Baggage is one area in which the interaction between that commercial model and EU consumer and aviation law is now attracting collective litigation and regulatory scrutiny.

Ancillary pricing is also subject to broader developments in consumer protection law. In the UK, the Digital Markets, Competition and Consumers Act 2024 strengthens the consumer enforcement regime and includes provisions addressing unfair commercial practices. In August 2026, the Competition and Markets Authority (CMA) opened an investigation into compliance with consumer protection law by Virgin Atlantic Airways Limited. Specifically, the CMA is investigating whether mandatory fees (such as resort fees or local taxes) are included in the total price the consumer sees at the beginning of the purchasing process and whether the consumer is provided with a total price when purchasing a package holiday. Airlines, like other consumer facing businesses, therefore, need to consider not only whether a particular ancillary charge is permissible, but also how prices and charges are presented to consumers.

Consumer organisations have challenged certain airline hand baggage charging practices, contending that such charges are inconsistent with applicable consumer and aviation law. For example, in November 2024 the Spanish Consumer Rights Ministry fined five airlines a total of €179 million in relation to certain practices, including charging for cabin luggage. The fine has been challenged, and the Spanish courts have granted interim suspension of certain sanctions pending judicial review.

Portugal: class actions concerning cabin baggage charges

Portugal provides another particularly interesting example of the use of class actions in this context. A consumer advocacy association, Citizens' Voice, has pursued multiple class actions (known as *ação popular*, under Lei n.º 83/95, de 31 de agosto) concerning cabin baggage practices against several major airlines, including Ryanair and Vueling.

The litigation raises the question of the extent to which airlines may charge separately for cabin baggage under the applicable EU and national legal frameworks, including Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community.



- In the Ryanair proceedings, the claimants seek declarations that carry on luggage within specified dimensions is an essential and foreseeable component of the air transport service and that the airline cannot impose a surcharge where a consumer travels with such baggage. The claimants also rely on Portuguese consumer protection and competition legislation.
- In October 2025, the Portuguese Supreme Court held that the Portuguese courts have international jurisdiction to determine Citizens' Voice's collective action against Ryanair. The decision concerned jurisdiction rather than the substantive legality of the baggage charges, so the merits of the collective claim remain to be determined.
- In September 2024, in unrelated proceedings brought by an individual consumer, the Judicial Court of Braga ruled that Ryanair's practice of charging a passenger for carry on luggage was unlawful. However, that ruling was subsequently set aside on the basis of a procedural defect, because Ryanair had not been duly served with the complaint (citação). Ryanair has also commented that the Braga court did not take into account the ruling of the Court of Justice of the European Union in the **Vueling case**⁶⁶.
- In the Vueling proceedings, in January 2025, the Supreme Court addressed as a preliminary issue the matter of jurisdiction, and determined that the Portuguese courts are competent to hear the claim.

The significance of these cases extends beyond the particular question of baggage charges. Standardised terms and pricing practices may appear susceptible to collective challenges because the same legal issue can arise across a large customer population. The viability and scope of any collective claim will depend on the particular collective redress regime, the terms and practices challenged, the definition of the represented class, and whether individual issues of contract, knowledge, loss or causation remain relevant.

The US perspective

The United States provides a further useful comparison. US airlines, as well as foreign airlines operating in the US, have faced class actions concerning passenger refunds, baggage and other ancillary charges and data and privacy incidents. One recent example before the U.S. District Court, District of New Jersey, concerned TAP Air Portugal and claims arising from flights cancelled during the COVID-19 pandemic. Passengers alleged that TAP had failed to provide full refunds to which they were entitled. The litigation resulted in a class settlement under which eligible passengers could receive their outstanding refund together with an additional payment of 7% of the ticket price. The case illustrates how a standardised practice affecting individual passenger transactions can generate significant aggregate exposure when pursued through the US class action mechanism.



Assessing class action exposure in aviation

Taken together, these developments identify several characteristics that airlines should consider when assessing collective litigation risk.

Scale: Major airlines serve tens of millions of passengers. A single contractual term, pricing policy or cybersecurity incident can therefore affect an exceptionally large population. This can increase the potential aggregate value of a dispute even where individual claims are modest.

Low individual value, potentially significant aggregate exposure: Baggage charges are perhaps the clearest example. Collective redress mechanisms may make claims economically viable that would be unlikely to be pursued individually.

Standardisation: Even where an airline's conduct or contractual terms are standardised, passengers' individual circumstances may not be. Depending on the cause of action, questions concerning contractual terms, knowledge, causation, actual loss and available remedies may differ materially between members of the proposed class. Those differences may affect the viability of the collective mechanism.

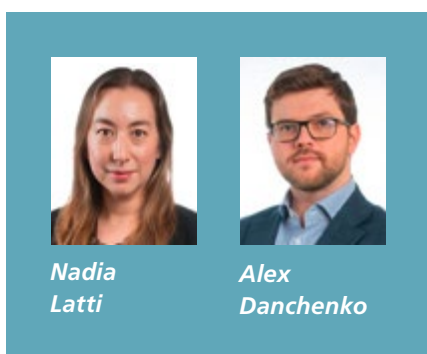
Cross-border complexity: Airlines operate across national borders as a matter of course. This can expose the same or similar commercial practices to different collective redress and consumer enforcement regimes, raising questions of jurisdiction, applicable law and potentially overlapping proceedings.

Insurance: Airlines should also consider how collective and mass claims interact with their insurance programmes, including notification requirements, coverage, aggregation and the coordination of defence strategy across insured and uninsured exposures.

Conclusion: claims on the horizon

For airlines, a key takeaway is that class action risk cannot be assessed simply by reference to the value of an individual claim. Cyber incidents, passenger claims and challenges to standard pricing practices can potentially affect very large populations and attract claimant firms, litigation funders and consumer organisations. But scale should not be confused with liability. Standing, jurisdiction, commonality, class definition, causation and loss remain significant potential obstacles, and collective redress mechanisms differ materially between jurisdictions. Early assessment should therefore consider both the potential population affected and whether the underlying claims are genuinely capable of being determined collectively.

That assessment can inform litigation strategy, regulatory engagement, document preservation, insurance notification and, where appropriate, decisions concerning future contractual or pricing practices.



Group litigation risk in the gaming space

Success attracts attention, and the continued growth and success of the video games industry has attracted both regulatory attention and an increasing number of class actions. It is not difficult to understand why: (i) a large user base of gamers that access the product almost entirely via centralised digital storefronts can equate to a large and easily identifiable potential class, depending on the claim theory; (ii) gaming and stories about the gaming industry tend to draw media attention, which makes book building easier; and (iii) the nature of the gaming industry and its direct exposure to a global consumer base necessarily engage areas of substantive law that often get attention from claimant law firms, such as data protection, consumer law, and competition law.

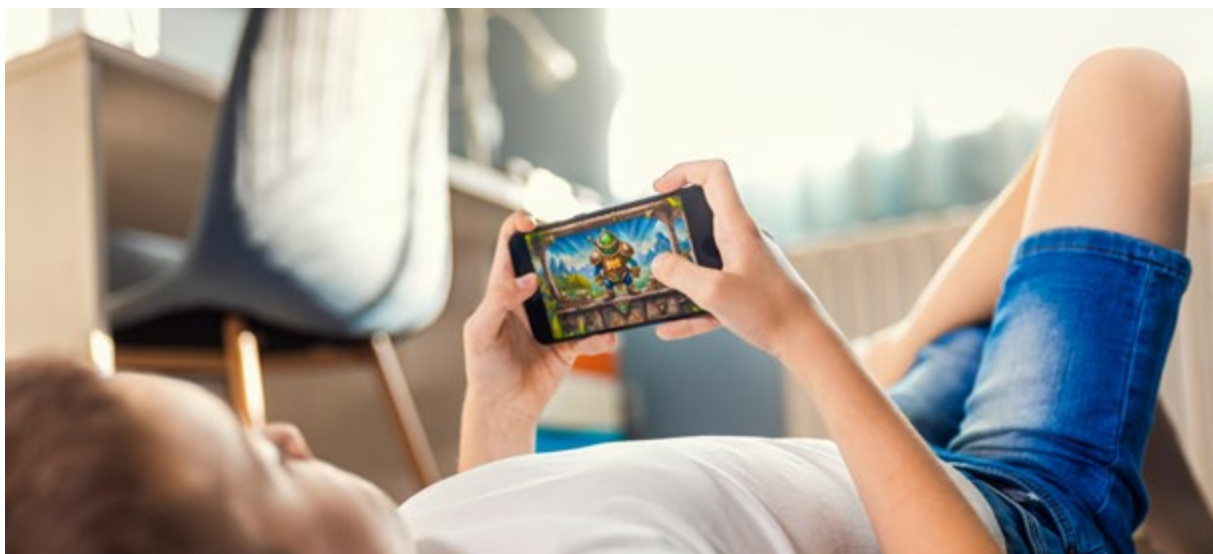
While the gaming community has developed a broader and more mature age profile in recent years (the average gamer in Europe is around 34 years old in 2025), there is a significant proportion of the European player base that is under eighteen, estimated at c. 23% in 2025 by Video Games Europe.

This engages complex questions of duty of care, consent, and allegations of social harms such as gambling and addiction.

Thinking of the kids

Video gaming companies are facing an increasingly complex regulatory environment, with differing approaches in different territories adding further complexities. A significant trend is the movement towards age-gating and age verification. While enforcement action has initially focussed on social media platforms, we are now starting to see greater focus from governments and activists on video games.

For instance, this year the UK Government confirmed its decision to implement a ban on social media platforms offering services to children under 16 years of age. Among other features, the ban and related regulations may require platforms to implement blocks on functions such as livestreaming and communication with strangers for under-16s, which will apply to a wider range of online services, including video gaming platforms.



Restrictions on these functionalities will also apply for 16- and 17-year-olds with a view to preventing a cliff-edge at 16.

The impact on various gaming platforms popular with this demographic is obvious. Virtually any game with an online player element will be impacted by a block on communications with strangers since players routinely use in-game voice and text chat both to effectively play the game as well as to socialise. But the likely impact goes further than this, as the proposed ban will also directly affect social media communities build around games on platforms such as Discord and Twitch.

The implementing legislation for the ban is expected in spring 2027, however it currently remains unclear how it will operate in practice. For example, what would be the scope of “communications” covered – would gameplay with online strangers without any chat function fall within the scope? What about games which allow communications via the use of pre-defined phrases, sometimes applied in the “safe mode” settings of online games popular amongst children?

It is worth noting that online games like Fortnite and Minecraft already have parental controls that allow limitations on who players can interact with, while Roblox has an age-based accounts system that defaults to different levels of communications access for different ages, with the chat function being completely restricted for all ‘self-declared’ users (i.e., where a user’s age is declared by the user without a separate check by Roblox).

The Regulatory wave

Companies must comply with relevant regulations to avoid fines or other penalties, but new regulations also increase litigation and class action risk. Sometimes a regulation, whether at Member State or EU level, will state that there is a direct cause of action. Sometimes, this will not be the case, but the claimant law firm will nevertheless argue that there is a cause of action in any event through horizontal direct effect. Similarly, in the UK, claimant law firms may argue that breach of a statute is directly actionable as breach of statutory duty.

Key relevant legislation and guidance already in force and anticipated includes:

- **The UK Online Safety Act 2023 (OSA)** imposes duties on providers of user-to-user services and search services to protect users (and particularly children) from illegal and harmful content, including through mandatory age verification requirements and through risk assessments and safety duties enforced by Ofcom.
- **The EU Digital Services Act (DSA) and EU Commission guidelines published under it** introduce child-protection and age-assurance measures and encourage a safety-by-design approach to designing digital products, while also providing extensive guidance on the use of so-called addictive design, where product is designed to maximise user engagement. While initial enforcement activity has been directed at social media (e.g., the preliminary adverse finding in respect of Meta published in July 2026), many of the same considerations would apply to online video games which monetise (and necessarily encourage) user engagement.



- Building on that, on 17 September 2026, the European Commission adopted the **EU KIDS ACT**, the stated aim of which is enhancing the online safety of children across the EU. It focusses on four pillars. 1. a social media delay, 2. safety by design principles for digital products, 3. age assurance and parental responsibility and 4. strengthening enforcement. The proposal is specifically stated to apply to online games, app stores, and operating systems. CMS will be closely monitoring the proposal's development and reporting on it in detail in separate publications to follow.
- Another relevant EU initiative currently under preparation is the **Digital Fairness Act**. It is expected to regulate the use of so-called "dark patterns" (user-interface designs that may manipulate or steer users into choices they might not otherwise make e.g., spending more or sharing data), addictive design of digital products, and issues with marketing by influencers.
- The 2025 **"Key principles on in-game virtual currencies" guidance** published by the EU Consumer Protection Cooperation Network is a specific set of non-exhaustive guidelines targeted at video games with in-game currency systems which outlines potential interactions of certain design practices with EU consumer law. While this is not a new set of legal requirements, it could be relied upon by claimant law firms as a set of indicative factors to support case theories and evidence gathering.
- Last but not least, the **EU Product Liability Directive** (see [here](#) for more detail) while still early in its implementation stage, has potentially broad implications for the video games sector as it expands the definition of "product" to include software and broadens recoverable damage to include *"medically recognised damage to psychological health"* and loss or damage to data.

Claimant law firms may seek to "read across" from social media addiction and other claims prevalent in the US to Europe, and then look to the above regulations to support that export process. Early indications are that these claims are already coming to Europe e.g., with Stichting Onderzoek Marktinformatie having filed an opt-in class action in Denmark against Meta on 1 April 2026 (seeking the equivalent of c. US\$3,600 per affected minor).

There are, of course, a range of defences that will go to many factors including the differences between social media and gaming, or on striking the right balance between engaging design and dark patterns. However, regulation and enforcement action is a risk this industry is already grappling with and will continue to do so in an increasing array of forums and jurisdictions. It is stating the obvious to say that initial successes will likely act as a catalyst for further attempts which will need to be dealt with.



Competition risks

In the UK, competition claims have been the first type of truly mass-scale claims against video games platforms to make their way into courts, enabled by the opt-out Collective Proceedings Order (CPO) regime in the CAT.

- The c. £5 billion claim against Sony for alleged abuse of dominant market position in relation to its alleged “walled garden” digital store strategies (including charging a 30% commission) has recently gone through an 8 week trial from March to May 2026, with the judgment reserved.
- A c. £656 million claim against Valve, likely to proceed on similar factual and legal arguments to the above case, is at an early stage of the CAT process, with the trial on all issues listed for 10 weeks to commence in January 2029. Whether the case will survive until then is likely to be highly dependent on the outcome of the Sony claim.
- Another similar claim was brought against Google on behalf of app developers, originally for just over £1 billion, and was due to go to trial in the CAT in September 2026. However, a settlement of £260 million was agreed by the parties and then approved by the CAT on 15 September 2026. Under the terms of the settlement, of the £260 million, only £160 million would be available for the developers, with c. £100 million going to the claimant firms and funders.

— Finally, while for the most part claimant firms in the UK have not had much success in the last few years, with most claims either failing outright or delivering limited returns to their investors, an important exception to that was the case of **Rachael Kent v Apple Inc.** The case used legal theories similar to those in the cases above and, in October 2025, resulted in findings against Apple on all relevant issues including:

- The nature of the “relevant market” (comprising, in effect, Apple’s iOS distribution services and store).
- The dominant nature of Apple’s position in that market.
- Foreclosure of competition in the relevant market.
- Abuse of dominant position and overcharging by way of commission.

With permission to appeal refused, this case is likely to serve as the lodestar to other claimant firms and groups pursuing competition theories in the CAT as well as provide a “proof of concept” for litigation funders seeking to invest into such claims.

That is not to say, however, that the claimant firms will not be facing at least some headwind on their journey. The 17 July 2026 Department for Business and Trade proposals for reform to the CPO regime (the consultation on which closes on 25 September 2026) does not propose (as some had feared earlier) expanding the regime beyond competition claims. The reforms also propose to make certification of claims stricter, and to impose more transparency requirements on litigation funding arrangements.



*Simon Pugh,
DRD
Partnership*

Third party invitation: Comms perspective on class actions

Collective proceedings and the intersection of policy and law

A key question running through public policy discussions and judicial decisions is whether the UK's collective proceedings regime can prove that opt-out claims deliver meaningful benefit to affected consumers. Both forums are narrowing in on distribution as one of the key metrics. It links the policy debate about balancing consumer redress with economic growth to the judicial debate about access to justice and the cost of litigation. For defendants and claimants alike, foreseeing the implications requires an understanding of the pressures driving both sets of discussions and, crucially, how they will affect each other.

The policy debate: balancing consumer protection with economic growth

The public policy debate has evolved significantly in the last three years.

The Supreme Court ruled in **PACCAR** that litigation funding agreements (LFAs) can constitute damages-

based agreements, throwing the viability of litigation funding in the UK into doubt. The uncertainty was not life-ending for collective actions and new claims were still filed, but it undoubtedly shifted the dynamics. A snap general election guillotined the proposed legislation to unravel **PACCAR**, but this was arguably a catalyst for a much more expansive discussion in relation to the Competition Appeals Tribunal regime (the only place to bring an opt-out claim), in which the government asked whether the regime should be expanded to cover non-competition harms.

In July, the government released a document for consultation that set out some of the broad principles that are shaping its thinking. It claims that its proposals "balance providing redress and protecting businesses from unmeritorious claims." Its current policy is to neither restrict nor expand opt-outs because "more time is needed to get the current regime right." The government has acknowledged, for now, it needs more time to bed in and prove itself. This doesn't close the door on the lobbying efforts to widen the scope, which is also under consideration by the Law Commission and



the Scottish Civil Justice Council, but it does place a burden on the claimant side to genuinely prove that claims are being brought in the consumer interest and delivering results. This sets the battle lines for the next few years.

Distribution is at its core. As the government sees it, "success can be measured by returns seen by class members. It is too early to make this assessment... However, there is sufficient evidence to highlight potential for improvement and opportunities to maximise the benefits of the regime in the future." The public policy debate will respond to the ability of the CAT to steward claims that satisfy the benchmark for successful distribution. Albeit no one has put any hard numbers against what a successful distribution looks like.

The judicial discussion: *cui bono*

Distribution has been an important factor in a number of recent hearings and judgments. Class representatives, lawyers, funders and communications professionals are adjusting to additional scrutiny being applied to something that previously was often deprioritised. The **Boundary Fares** settlement with Stagecoach Southwest Trains has been widely criticised for failing to get enough money to eligible individuals; a little over £200,000 of a possible £25m has been paid to consumers. The government says, "the aspiration of the regime must be to achieve a greater rate of returns to class members than was seen in this case."

All eyes are therefore on **Merricks**, which will finally move to distribute the settlement agreed with Mastercard, having seen off a Judicial Review from the litigation funder. This is really the only other example

of a mass consumer claim that we will have to consider. Rachael Kent was successful at trial against Apple, but that is subject to an appeal hearing at the end of the year and so distribution is a way off. Communications clearly have a role to play in driving uptake of damages. Blanket social media advertising or telemarketing will not cut it anymore. Trust is one of the biggest barriers to uptake, and this type of activity is too easily dismissed as a scam. Innovative approaches need consumer research, data modelling and highly targeted media campaigns to reach and, crucially, persuade those eligible for payments.

When is distribution relevant?

Responding to one of its potential vulnerabilities, the CAT is starting to consider distribution at the CPO stage and pressing Class Representatives on the practicalities earlier in the process. This means a much more sophisticated distribution plan needs to be submitted. This requires more investment at an earlier stage, to which funders will need to respond. To not have it not only risks the claim's credentials for certification but exposes a real reputational vulnerability that defendants will exploit.

Other alternative distribution models are starting to gain some traction, including a centralised claims website, possibly administered by the Government or the CAT itself. This would clearly have some merits, but the CAT website is not very consumer-friendly, and the Government generally does not do well on trust, so it is perhaps not a silver bullet to be relied on.

It has also been mooted that defendants could also play a role in distribution where, presumably, they possess data that enables it to communicate with or get money to the class.



This might work in a settlement scenario, where a defendant might volunteer to be involved (or indeed see it as a substantial bargaining chip). Although, from a communications perspective, it might be a difficult line to walk if your settlement is made without an admission of liability, but you are also paying people directly. But, in the event of a judgment against a corporate defendant, could the CAT compel them to participate in distribution or hand over data to a claims management company?

Earlier consideration of distribution is leading to a potentially unbreakable circle. To clear the CPO hurdle requires a more ambitious, yet realistic, prediction of uptake. To achieve a higher uptake requires a much more sophisticated and bespoke communications and distribution plan. Any estimate of uptake requires a credible estimate of what money will be on offer. Quantum is largely a matter to be considered at a full trial, not CPO. How the CAT squares all of this off, whilst actively putting pressure on parties to keep costs at CPO down, seems a difficult question but it is an issue that it is clearly on the CAT's mind. The issue of distribution is inextricably linked to whether the claims have a strong cost benefit ratio. When refusing to certify the class representative in ***Waterside Class Limited v Mowli ASA & Ors*** (the salmon cartel claim) the CAT expressed concern about the potential distribution to the class in comparison to the proposed cost of litigation, making an unfavourable comparison to the methods used in ***Gutmann v SWWT***.

The uptake in ***Gutmann v SWWT*** will be tough for the Claimant side to shake off but, for now, it is the only metric that can be held up as an example.

Defendants will press cost benefit ratio in their legal arguments as well as their reputation management strategy. Class representatives need an ambitious, yet credible, response. You would also expect to see more of this in any lobbying efforts. If distribution levels languish in the low single digit percentages, while cost of litigation and returns to funders sit in the many millions, the regime's Achilles Heel will be there for all to see.

Conclusion: the battle for trust

Communications have a very specific role to play in class actions. Defendants take seriously the prospect of being sued by a group of their customers or former customers; it has significant power to erode trust in a brand. Class representatives on the other side have a duty to engage with the people in whose name they are pursuing a claim. By definition, these are claims fought in the public interest and in the public domain. There is no doubt that this has been more pronounced in the last year as the legal battles bled into the policy space. The CAT, I would argue, has read the mood well. Pressing claimants on issues that go to the core of the access to justice arguments, demonstrates that the CAT and the government seem to be aligned that the regime has more work to do to establish its credentials.

But it is also clear that the government has, at a fundamental level, bought into the idea of opt-out claims. While the door remains ajar to expanding the opt-out regime, we can expect discussions in the court room to be used to advance arguments outside it. Claimants and defendants would be well-advised to prepare for both.



Methodology

Our study 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. We also include mechanisms that clearly facilitate subsequent mass claims, such as the German model declaratory action.

Qualifying claims are captured irrespective of the procedural device used and irrespective of whether the mechanism operates 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 to 2025 inclusive. The overall reported number of class actions filed may change compared with previous years' reports, owing to improvements in our data.

While some countries have central repositories of claims filed, others do not, 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 reviewed at local and central editorial level to ensure it reflects the picture in the local market and to reduce the risk of inaccuracies.

The jurisdictions included in this edition of our report are Austria, Croatia, Czech Republic, England and Wales, France, Germany, Italy, Montenegro, Netherlands, Poland, Portugal, Scotland, Serbia, Slovakia, Slovenia, Spain, Sweden and Ukraine.

Certain major events, such as the Dieselgate claims, have resulted in many thousands of claims being filed, and counting each 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 related series of events to avoid overcounting.

Where a single or related series of events resulted in class actions being filed using different procedures, in different countries or against different defendants, we included them as a single data point per country and a single data point per defendant. Charts relating to defendant sector or claim type are based on claims 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 or percentage distributions are reported, figures may have been rounded up or down as appropriate.

Quantum methodology: in assessing quantum we normally take the figures asserted by the claimant law firm or the claimants as a proxy for true quantum, since very few matters proceed to judgment. Figures are sourced from public information, including court filings, claimant law firm websites, and news reports. For opt-in matters, where the precise figure is unavailable, figures are estimated or inferred, including by multiplying the number of claimants by the asserted per-claimant value. Several very high value data protection representative action claims withdrawn following **Lloyd v Google** are excluded so as not to skew the data. For opt-out claims in the UK Competition Appeal Tribunal we use the figure in the claim as filed. The quantum figures may change compared with the previous years' reports, owing to improvements in our data.

For 2025 claims, we used a GBP to EUR conversion ratio of 1 GBP = 1.16 EUR. This conversion rate was also used when quantum figures in previous years were adjusted to reflect improvements in our data.

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

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Albania



Mirko Daidone

T +355 4 430 2123

E mirko.daidone@cms-aacs.com



Merseda Aliaj

T +355 4 430 2123

E merseda.aliaj@cms-aacs.com

Belgium



Renaud Dupont

T +32 2 743 69 83

E renaud.dupont@cms-db.com



Tom Heremans

T +32 2 743 69 73

E tom.heremans@cms-db.com

Austria



Thomas Böhm

T +43 1 404433650

E thomas.boehm@cms-rrh.com



Daniela Karollus-Bruner

T +43 1 404432550

E daniela.karollus-bruner@cms-rrh.com

Bosnia and Herzegovina

RRH Legal d.o.o. Sarajevo

(member of the CMS network)



Nedžida Salihović-Whalen

T +387 33 944-610

E nedzida.salihovic-whalen@cms-rrh.com



Indir Osmić

T +387 33 94 4617

E indir.osmic@cms-rrh.com

Bulgaria



Assen Georgiev

T +359 2 921 9936

E assen.georgiev@cmslegal.bg



Antonia Kehayova

T +359 2 447 1322

E antonia.kehayova@cmslegal.bg

Croatia



Sandra Lisac

T +385 1 4825 600

E sandra.lisac@bmslegal.hr

Czech Republic



Tomáš Matejovský

T +420 296 798 852

E tomas.matejovsky@cms-cmno.com



Petr Beneš

T +420 296 798 864

E petr.benes@cms-cmno.com

England



Kenny Henderson

T +44 20 7367 3622

E kenny.henderson@cms-cmno.com



Louise Boswell

T +44 20 7367 3725

E louise.boswell@cms-cmno.com

France



Jean-Fabrice Brun

T +33 1 47 38 55 00

E jean-fabrice.brun@cms-fl.com



Anne Renard

T +33 1 47 38 41 93

E anne.renard@cms-fl.com

Germany



Dr. Thomas Lennarz

T +49 711 9764171

E thomas.lennarz@cms-hs.com



Dr. Peter Wende, LL.M.

T +49 711 9764139

E peter.wende@cms-hs.com

Hungary



Dr. Zsolt Okányi

T +36 1 483 4800

E zsolt.okanyi@cms-cmno.com

Italy



Paola Ghezzi

T +39 06 478151

E paola.ghezzi@cms-aacs.com



Laura Opilio

T +39 06 478151

E laura.opilio@cms-aacs.com

Luxembourg



Hugo Arellano
T +352 26 27 53 49
E hugo.arellano@cms-dblux.com



Antoine Laniez
T +352 26 27 53 37
E antoine.laniez@cms-dblux.com

Montenegro



Radivoje Petrić
T +381 11 3208900
E radivoje.petrikic@cms-rrh.com



Nedeljko Velisavljević
T +381 11 3208900
E nedeljko.velisavljevic@cms-rrh.com

Netherlands



Andries Polkerman
T +31 20 301 62 27
E andries.polkerman@cms-dsb.com



Simon Polkerman
T +31 20 301 6223
E simon.polkerman@cms-dsb.com

North Macedonia



Marija Filipovska Jelčić
T +389 2 315 3800
E marija.filipovska-Jelcic@cms-rrh.com

Norway



Steffen Asmundsson
T +47 930 25 490
E steffen.asmundsson@cms-kluge.com

Poland



Anna Cudna-Wagner
T +48 22 520 5529
E anna.cudna-wagner@cms-cmno.com

Portugal



Rita Gouveia
T +351 21 095 8100
E rita.gouveia@cms-rpa.com



Luís Miguel Romão
T +351 210 958 100
E luis.romao@cmsportugal.com

Romania



Horia Draghici
T +40 21 407 3834
E horia.draghici@cms-cmno.com



Laura Capata
T +40 21 407 3832
E laura.capata@cms-cmno.com

Scotland



Colin Hutton
T +44 131 200 7517
E colin.hutton@cms-cmno.com



Serbia



Radivoje Petričić

T +381 11 3208900

E radivoje.petrikic@cms-rrh.com



Nedeljko Velisavljević

T +381 11 3208900

E nedeljko.velisavljevic@cms-rrh.com

Slovakia



Michal Huťan

T +421 940 637 841

E michal.hutan@cms-cmno.com



Martina Gavalec

T +421 2/321 414 14

E martina.gavalec@cms-rrh.com

Slovenia



Maja Malijanski

T +386 1 620 52 10

E maja.malijanski@cms-rrh.com



Sara Mernik Dekleva

T +386 1 620 52 16

E sara.mernik-dekleva@cms-rrh.com

Spain



Juan Ignacio Fernández Aguado

T +34 914 51 92 91

E juanignacio.fernandez@cms-asl.com



Mónica Trigo Esteban

T +34 690 691 593

E monica.trigo@cms-asl.com

Sweden



Jörgen Eklund

T +46 8 50 73 00 17

E jorgen.eklund@cms-wistrand.com

Switzerland



Philipp J. Dickenmann

T +41 44 285 11 11

E philipp.dickenmann@cms-vep.com

Turkey



Dr. Döne Yalçın

T +90 212 401 42 60

E doene.yalcin@cms-rrh.com



Arcan Kemahli

T +90 212 401 42 59

E arcan.kemahli@ybk-av.com

Ukraine



Oleksandr Protsiuk

T +380 44 500 1718

E oleksandr.protsiuk@cms-rrh.com



Olga Shenk

T +380 44 391 3377

E olga.shenk@cms-cmno.com

Endnotes



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

- 1 Italy, Croatia, Austria or the Netherlands.
- 2 Bulgaria, Poland or Sweden.
- 3 **Merricks** was filed in September 2016 and certified in August 2021, having initially had certification refused in July 2017; **Le Patourel** was filed in January 2021 and certified in October 2021;
- 4 [2020] UKSC 51, paragraph 45.
- 5 [2026] CAT 50, paragraph 110-111.
- 6 [2025] CAT 67.
- 7 [Key takeaways from the historic Dr. Kent vs Apple judgment](#) |
- 8 This is based on the time between filing and judgment or making of a collective settlement approval order. It does not take account of the time for distribution or, in the case of **Kent v Apple** any future appeal of the trial judgment, should the Court of Appeal grant permission. [**Merricks** – filed 8 September 2016; CSAO 31 October 2025 – 109 months; **McLaren** – filed 20 February 2020; final CSAO 11 February 2026 – 72 months; **Le Patourel** – filed 15 January 2021; judgment 19 December 2024 – 47 months; **W? v Q** – filed 18 February 2021; CSAO (discontinued) 23 June 2026 – 64 months; **Trains** – filed 27 February 2019, judgment 17 October 2025 – 79 months; **Kent** – filed 11 May 2021, judgment 23 October 2025 – 53 months (complete months).
- 9 See, for example **Spottiswoode v Nexans France SAS** and others [2024] CAT 31 at paragraph 55 and **Waterside Class Limited v Mowi ASA and others** [2026] CAT 32 (“**Waterside certification judgment**”) at paragraphs 47 and 48.
- 10 [2017] CAT 27, paragraph 26; [2024] CAT 57 paragraph 30.
- 11 Comprising £18.79m of class representative’s costs ([2025] CAT 72, paragraph 67) and £28.58m of defendant costs ([2026] CAT 21, paragraph 3).
- 12 [2026] CAT 6, table 7 (sum of rows A, B, D, E, G, H, I, J, K and L).
- 13 Comprising £44.38m of recoverable costs incurred by Qualcomm, £17.73m of costs, fees and disbursements paid by the funder, and £15.26m of deferred fees incurred by the class representative’s legal team ([2026] CAT 50, paragraphs 81 and 98).
- 14 **Kent v Apple**, transcript of consequential hearing on 13 November 2025, page 95, line 18.
- 15 [2026] CAT 50, paragraph 110.
- 16 [2025] CAT 72.
- 17 [2025] CAT 72, paragraph 20.
- 18 [£14bn Mastercard class action gets green light from court | Credit cards | The Guardian](#)
- 19 [2025] CAT 28, paragraph 131.

- 20 Taking the ring-fenced damages of £100m, plus the balance of the settlement sum after payment of the funder's costs and permitted return on investment of 1.5, means £131.75m available for distribution. For class members to get the minimum £45 promised, no more than 2.93 million class members could claim before the pro-rata allocation would be lower than £45 (£131.75m / £45 = 2.93m).
- 21 [2026] CAT 6, paragraph 157. A hearing to consider the distribution plan is listed to take place shortly before this report is published.
- 22 [2025] CAT 28, paragraph 188
- 23 Comprising £4.75m of costs fees and disbursements and £0.75m towards the costs of distribution: Collective settlement approval order of Hodge Malek KC dated 10 May 2024, paragraph 8.
- 24 Order of Hodge Malek KC dated 25 November 2025.
- 25 [2026] CAT 6, paragraph 193.
- 26 **Gutmann v First MTR South Western Trains** [2021] CAT 31.
- 27 **Waterside** certification judgment, paragraphs 16 and 46.
- 28 **R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal** [2023] UKSC 28; see, for example, [Collective actions: Access to justice remains in the balance | Law Gazette](#)
- 29 **Vedanta Resources plc v Lungow** [2019] UKSC 20
- 30 **Da Silva v Brazil Iron Limited** [2025] EWHC 606
- 31 **Limbu v Dyson** [2024] EWCA Civ 1564
- 32 **Okpabi v Royal Dutch Shell Plc** [2021] UKSC 3
- 33 **Município de Mariana v BHP** [2025] EWHC 3001 (TCC)
- 34 **AAA (administrator of the estate of ZZZ (deceased)) & AAB (administrator of the estate of ZZY (deceased)) v The London Bullion Market Association Limited**, Claim No. KB-2022-002066
- 35 [2026] EWCA Civ 502
- 36 See, for example, the Supreme Court of New Zealand's decision to overturn the strike-out of climate tort proceedings brought in public nuisance and a novel tortious duty to "cease materially contributing to climate change": **Smith v Fonterra Co-Operative Group Ltd & others** [2024] NZSC 5.
- 37 Christopher Callahan and Justin Mankin, *Carbon majors and the scientific case for climate liability*' Nature 640 (2025), pages 893-901; Imperial College London, *Polluters on trial: How climate science is rocking the courtroom* (2025)
- 38 **Verein KlimaSeniorinnen Schweiz and others v Switzerland** [GC] App No 53600/20 [European Court of Human Rights, Judgment of 9 April 2024]
- 39 The International Court of Justice, "Obligations of States in respect of Climate Change" (Advisory Opinion dated 23 July 2025)
- 40 Pending further appeal to the Dutch Supreme Court: **Milieudefensie and others v Royal Dutch Shell PLC** [200.302.332/01, Hague Court of Appeal, Judgment of 12 November 2024; C/09/571932, Hague District Court, Judgment of 26 May 2021]
- 41 **Luciana Lliuya v RWE AG** [I-5 U 15/17, Higher Regional Court of Hamm, Judgment of 28 May 2025]
- 42 **Greenpeace France & others v TotalEnergies SE and TotalEnergies Electricité et Gaz France** [RG No. 22/02955, Court of Paris, Judgment of 23 October 2025]; and **Notre Affaire à Tous & others v TotalEnergies SE** [RG No. 22/03403, Court of Paris, Judgment of 25 June 2026]
- 43 **ClientEarth v Shell plc** [2023] EWHC 1897 (Ch); **California State Teachers' Retirement System & others v Boohoo Group plc** [2026] EWHC 335 (Comm); **Church of England Pensions Board and others v Volkswagen AG** [2 W 25/23, Higher Regional Court of Braunschweig, Judgment of 8 May 2023].
- 44 **Iberdrola Energía España, S.A.U. v Repsol Comercializadora de Electricidad y Gas, S.L.U., Repsol S.A. & Repsol comercial de productos petrolíferos S.A.** [No. 12/2025, Santander Commercial Court No. 2, Judgment of 21 February 2025].
- 45 See 'Insurance companies as claimants: commercial logic and its climate implications' in: Joana Setzer and Catherine Higham (LSE Grantham Institute), 'Global trends in climate change litigation: 2026 snapshot', pages 41-42.

- 46 For example, see: **Greenpeace Italy and others. v ENI S.p.A** [Case No 20381/2025, Court of Rome].
- 47 **Deutsche Umwelthilfe (DUH) v Mercedes-Benz AG and DUH v BMW AG** [VI ZR 334/23 and VI ZR 365/23, Federal Court of Justice, Judgment of 23 March 2026; **Kaiser & others v Volkswagen AG** [6 O 3931/21, Regional Court of Braunschweig, Judgment of 14 February 2023]
- 48 **Fossielvrij NL & others v KLM Airlines N.V.** [C/13/719848, Amsterdam District Court, Judgment of 20 March 2024]
- 49 **Smith v Fonterra Co-operative Group Ltd and others** [2024] NZSC 5
- 50 **Asmania & others v Holcim AG** [A1 2023 9, Cantonal Court of Zug, Interim Judgment of 17 December 2025]
- 51 **Notre Affaire à Tous v BNP Paribas** [Court of Paris]; **Milieudefensie v ING Group and ING Bank** [Amsterdam District Court] – both ongoing
- 52 Joana Setzer and Catherine Higham (LSE Grantham Institute), ‘Global trends in climate change litigation: 2026 snapshot’, page 19
- 53 At EU level: see e.g. the EU Corporate Sustainability Due Diligence Directive (CSDDD) and Corporate Sustainability Reporting Directive (CSRD) (notwithstanding their dilution). On the domestic level: see e.g. the German Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz*)
- 54 See e.g.: Reuters, ‘New Zealand plans law change to stop private climate lawsuits (12 May 2026)
- 55 This article reflects the position as of early August 2026.
- 56 Following the UK’s exit from the EU, it was agreed that Northern Ireland would continue to follow certain EU laws in a number of areas (including product liability). This is covered in more detail in section 4.
- 57 See Article 3.
- 58 See Article 18.
- 59 See Article 11(2) and Recital 50.
- 60 Breaches of data protection rules and data leaks are not considered “destruction or corruption of data”; compensation for infringements of Regulation (EU) 2016/679 or Regulation (EU) 2018/1725 of the European Parliament and of the Council (the General Data Protection Regulation and Institutions’ Data Protection Regulation, respectively) or Directive 2002/58/EC or (EU) 2016/680 of the European Parliament and of the Council (the e-privacy Directive and the Data Protection Law Enforcement Directive, respectively) is not affected by the new PLD.
- 61 See Art. 9(1) of the PLD.
- 62 See Recital 42 of the PLD.
- 63 See Recital 48.
- 64 Article 5(4) of the Ireland/Northern Ireland Protocol.
- 65 Additionally, Article 13(4) enables further acts to be added to Annex 2 if the UK and EU so agree in the Withdrawal Agreement Joint Committee.
- 66 See the CJEU’s judgment in Case C-487/12, **Vueling Airlines SA v Instituto Galego de Consumo de la Xunta de Galicia**. The CJEU held that baggage that is not checked in, namely hand baggage must be considered, in principle, as a necessary item for the carriage of passengers. Consequently, the carriage of hand baggage cannot be made subject to a price supplement, provided that it meets reasonable requirements in terms of its weight and dimensions and complies with applicable security requirements. In that regard, the Court observed that there are differences between the service of carrying checked in baggage and that of carrying hand baggage.



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