

Summary

Remit

In accordance with the remit, the evaluation undertaken of the Group Proceedings Act (2002:599) aims to clarify whether the objectives behind the introduction of the Act – notably strengthening individuals' actual access to the judicial system – have been achieved. The effects of the Group Proceedings Act's introduction on companies have also been examined. The memorandum drawn up by the Ministry of Justice containing the remit to evaluate the Group Proceedings Act can be found in Annex 1.

The inquiry chair's task was to propose legislative amendments, in as far as the inquiry concluded that any were necessary. Proposals for amendments to the Group Proceedings Act are made in Chapter 2, Legislative Proposals.

A description of the matter, from the Class Action Suits Inquiry's proposals onwards, can be found in Chapter 3.

Various actions have been undertaken to fulfil the evaluation remit, including: a review of cases dealt with in some respect under the Group Proceedings Act, a survey sent out to 677 law firms specialising in company law, consultative meetings with business and consumer interest representatives etc, a hearing with legal representatives who have acted for parties in class action suits, a meeting discussing the Act with judges who have handled class action suits and a number of individual meetings with authorities, organisations and individuals.

Evaluation

Case review

Enquiries were made during the autumn of 2007 of all land courts and environmental courts, i.e. those courts that can handle class action suits, to gather information on the extent to which such cases have arisen. Files were then gathered from all bodies where such cases have arisen. Information concerning the cases that have arisen and on instances where class action has been cited as an alternative was also searched for on the Internet. A thorough review of the ten class action proceedings initiated so far in general courts can be found in Annex 2. The way in which different issues were handled in the individual cases is also presented in the special subject chapters 6–11.

Survey

In an attempt to determine, in particular, whether there has been any kind of 'legal blackmail' outside of court (i.e. undue pressure intended to force unjust settlements) and whether corporate willingness to invest in Sweden has been affected by the introduction of the Group Proceedings Act, a survey was sent to 677 legal firms specialising in company law. The firms to receive the survey were chosen by the Swedish Bar Association, which also helped by providing addresses. Questions were also asked in the survey concerning what, if any, experience the firms had of the

Group Proceedings Act and their impressions of the effect the Act has had. An overview of the survey can be found in Annex 3.

Meetings

Four major meetings have been held as part of this evaluation.

Business representatives and others were invited to participate in a consultative meeting on 16 January 2008. Representatives of 13 organisations responded to the invitation. Participants in the meeting reported on their organisations' experiences of the effects of the Group Proceedings Act and gave their views on the design of the Act.

Representatives of consumer organisations, trade unions, anti-discrimination authorities etc. were invited to a consultative meeting on 23 January 2008. Seven representatives attended and shared their experiences and opinions.

Everyone who has represented a party in a class action suit was invited to a hearing held in Stockholm on 6 February 2008. Thirteen representatives responded, including seven members of the Swedish Bar Association. Representatives of the Office of the Chancellor of Justice and the Consumer Ombudsman also attended.

A discussion meeting was held on 4 March with judges who have handled class action suits. The six judges present at the meeting presented their experience of handling class action suits and gave various views *de lege ferenda*.

Separate meetings have been held with the Consumer Agency/Consumer Ombudsman, the Competition Authority, the Swedish Insurance Federation, the Swedish Bar Association, Professor Per Henrik Lindblom and Professor Jan Kleineman. Professor Lindblom kindly gave the inquiry chair access to drafts of his upcoming book on the subject, "Class actions in Sweden. Background and commentary on the Group Proceedings Act", published by Norstedts Juridik. Professor Heuman allowed the inquiry chair to see the text of an essay in *Svensk Juristtidning JT* no 4 2007/2008 entitled "Should the rules on class action be changed?"

The Legal Aid Board of Appeal and the National Legal Aid Authority have helped by answering a number of questions via email. A list of meetings can be found in Annex 4.

International outlook

Although it was not included in the remit, certain international aspects were taken into account in the evaluation. Major changes have taken place in Nordic legislation and class action suits are the subject of lively debate in Europe.

A law on class action suits was introduced in Finland on 1 October 2007. Norway and Denmark have also subsequently introduced legislation allowing class action suits from the beginning of 2008.

There is fairly extensive EU activity in the areas of consumer law and competition law. A conference on representative actions was held in Lisbon under the Portuguese Presidency, attended by the inquiry chair.

An international conference was held in Oxford from 12–14 December 2007 with participants from the academic world as well as judges and lawyers.

An international outlook – which, although not expressly included in the remit, was deemed necessary – was also prepared. The current legislation on class action suits in other Nordic countries and a description of developments in the EU in this area can be found in Chapter 4. The Finnish, Norwegian and Danish legislation on class action suits is presented in Annexes 5–7.

Results

General considerations

Chapter 5 contains a general evaluation of the Group Proceedings Act. It seeks to determine whether the hopes and/or fears expressed in connection with the Act's introduction have been realised.

The evaluation was undertaken at an early stage and the material in terms of cases was not particularly comprehensive. For this reason, it is in many respects too early to draw any definite conclusions. However, no information has emerged to suggest that the fears expressed by companies have been realised. The Act appears not to have been misused with a view to forcing unjust settlements out of court. Furthermore, there is no evidence that the Act has negatively influenced willingness to invest in Sweden. It must be considered that the Group Proceedings Act has increased individuals' access to the judicial system. A number of class action suits are currently pursuing claims which the individuals concerned would otherwise probably not have been able to pursue. On these grounds, the option of recourse to class action suits can be seen as a positive addition to Swedish procedural law. However, the Act cannot so far be said to have fulfilled hopes concerning effectiveness. This particularly applies to the handling of the special preconditions for proceedings, which have proved somewhat difficult to apply.

Proposals

One of the problems that has emerged is that the examination of whether there are impediments to proceedings under Section 8 of the Group Proceedings Act tends to be complicated and drawn-out. Because of this, certain adjustments are proposed to the wording of the special preconditions for proceedings. These adjustments include increasing to some extent the requirements concerning similarity of claims within the group, and the introduction of a requirement that it must be possible for the case to be processed effectively and appropriately in order for it to be admitted. However, the most important change proposed is a requirement that the court must always rule on the admissibility of a class action suit in a decision stating the scale of the class action suit, the definition of the group and requirements for membership of the group. If it is not already clear from the content of the application that it should be dismissed, the court, according to the proposal, should call upon the defendant to comment on impediments to proceedings, and subsequently decide whether the class action suit should be admitted or dismissed. If the class action suit is admitted, the framework of the proceedings should be determined in the court's admissibility decision.

No amendments are proposed to the fact that a person must give notice in order to become a member of the group. However, it is proposed that the requirements for such notice could be made more comprehensive by court order, as details of each group member's specific claims, their concrete grounds and any circumstances of significance to the group's division into sub-groups could be demanded. It is proposed that the court should have the option to allow the plaintiff to manage the notification of the class action suit to the group. The plaintiff would subsequently have to report the results of the proceedings in accordance with the court's instructions.

In order to increase the Act's impact and effectiveness, the possibility of spreading the plaintiff's responsibility for litigation costs so that the group representative does not bear the entire risk alone has been re-examined. This re-examination has led to a proposal to increase the possibility of risk-sharing by allowing 'contingency fee agreements' in certain circumstances. Furthermore, a review of legal aid is proposed with the aim of increasing the financial means threshold and increasing the number of compensated hours for class action suits.

It has been necessary to limit the analysis to those issues deemed most central. Some areas, such as class action suits under the Environmental Code, have not been included in the evaluation

because of a lack of time and resources. For the same reason other parts, such as class action suits in competition law and in discrimination matters, have only been touched on very superficially.

Separate evaluations have been carried out in those areas where the general evaluation showed particular reason for further analysis of the Act's provisions. The special evaluations of the definition of the group, notification procedures, special preconditions for proceedings, obligatory authorisation procedures and litigation costs can be found in chapters 6–10 respectively. These chapters are all structured in the same way. The first part, Present Arrangements, presents current legislation and the main reasoning behind it. The second part, Evaluation, reports the findings of the case review, survey and meetings and, in some cases, the provisions applied in other Nordic legislation. The third and final part, Considerations and Proposals, gives an assessment of the area in question. This is the key part of the report, and readers who wish to focus their reading can therefore concentrate on the parts containing the considerations and proposals. The preparatory materials for the Group Proceedings Act and the debate held in connection with its introduction are presented in various parts throughout. The idea is to increase understanding of current thinking and to ensure that the reader does not necessarily need to have access to or study the extensive material in the report, the notes from consultative meetings, the ministry memorandum, two rounds of comments and opinions from the Council on Legislation.

General thoughts on certain other issues, such as choice of forum in class action suits in competition cases and class action suits in discrimination matters, are presented in Chapter 11.

Chapter 12 contains comments on the legislative proposals made.