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Litigation & Arbitration

Class Actions
across various
jurisdictions

INDEX

4	Introduction
5	Belgium
8	Croatia
10	Czech Republic
12	Finland
14	France
17	Germany
20	Hungary
22	Italy
24	Liechtenstein
26	Malta
28	North Macedonia
30	Poland
32	Slovakia
34	Spain

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Introduction

The modern economy, based on an international network of producers and global sales of goods and services, increases the risk of harm to a large number of contractors, especially consumers. The COVID-19 pandemic has shown that administrative decisions can give rise to claims by a large number of businesses, such as gym operators. In many European countries, laws have come into force that allow class actions: on the one hand, we have a large number of plaintiffs, and on the other hand, the defendant, which can be another entrepreneur or a public authority. Below, I will describe the specific or general rules for class actions in various European jurisdictions.

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Malta

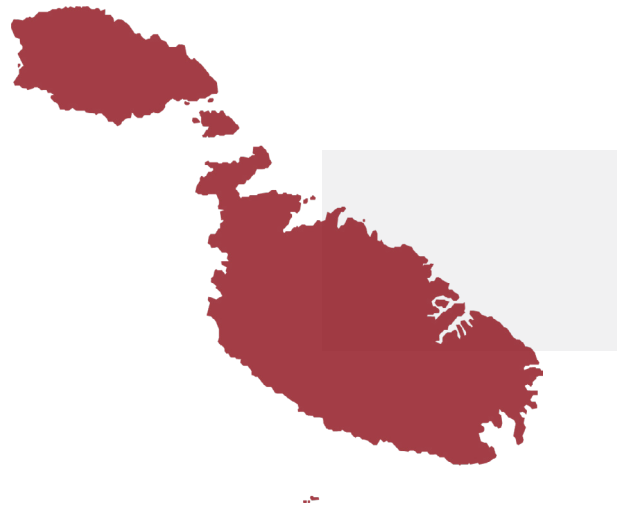
Definition and in which areas it is possible

Maltese law defines a "class" as a group of individuals who are or have been injured and whose claims arise out of common issues. Maltese law draws a distinction between group actions and representative actions. In a group action, the representative claimant must have a personal claim that falls within the class of claims in the proposed collective action. In a representative action, on the other hand, the claimant is a representative entity that does not necessarily have a personal legal interest in the case.

Such actions may be brought in certain areas, in particular consumer law. Thus, a class action is possible where the claimants bring an action against the defendant for allegedly infringing the Consumer Affairs Act, the Product Safety Act and/or the Competition Act, as well as other EU directives and regulations in this field. However, cumulative actions, not necessarily related to consumer law, are also available to claimants in Malta under the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta).

Legal regulation, competent forums and approximate duration of the procedure

Before June 2023, class actions in Malta were exclusively regulated by the Collective Proceedings Act (apart from cumulative actions regulated by Chapter 12 of the Laws of Malta, as mentioned above). In June 2023, Malta implemented the EU Directive on representative actions for the protection



of the collective interests of consumers (the "Representative Actions Directive") by passing the Representative Actions Act. This Act broadens the scope of class actions and creates a more orderly procedural regime for such actions in Malta.

The Representative Actions Act applies to representative actions and therefore to actions filed by qualified entities. To be eligible to bring such an action, an entity must be an organization or public body representing the interests of consumers that has been designated by the Consumer Affairs Council of Malta.

To commence a representative action in Malta, a sworn application must be lodged with the Civil Court (Commercial Section) of Malta. In such a case, the action is filed by the qualified entity on behalf of consumers. Upon filing the application, the court will hold a pre-trial hearing, at which the court will rule whether the action:

- falls under a representative action, and therefore orders the continuation of the proceedings;
- OR
- The action does not fall under the category of a representative action, thereby ordering the dismissal of the proceedings.

If the court decides to proceed with the case, the proceedings will be conducted in the same manner as other ordinary proceedings. Therefore, the expected timeframe will be the same as in other cases. It is important to note, however, that because there are many people involved in the case, the amount of evidence to be presented may be substantial, which could result in certain delays.

Litigation Funding

The Representative Actions Act allows for third party funding of litigation, provided that:

- conflicts of interest are prevented; and
- funding by third parties that have an economic interest in bringing or in the outcome of the representative actions, do not divert the representative action away from the protection of the collective interests of the consumers.

The law puts safeguards in place to ensure that, in the case of third-party funding, the common interest of the class is safeguarded. Amongst other measures, Maltese law establishes that in case of third-party funding:

- an action cannot be brought against a defendant who is a competitor of the third party who is funding the representative action;
- the qualified entity is to submit to the court a financial overview that lists sources of funds used to support the representative action.

If the court considers that these safeguards have been disregarded, it has the power to order the qualified entity to refuse or vary the funding. The court may also decide that the qualified entity does not have legal standing, which does not affect the rights of the consumers involved in the representative action.

Case law

At the time of writing, class actions are not widely used in Malta. This may be due to the lack of a proper legal framework providing a structured procedure for such actions. Since the Representative Actions Act has only recently come into force in Malta, it remains to be seen whether Malta will see an increase in such actions as a result of the introduction of such legislation.



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| Belgium



Definition and in which areas it is possible

Under Belgian law, a class action ("collective redress action") is an action brought by a claimant appointed by law (the class representative) who, on behalf of an unnamed group of persons who have not previously given that claimant a power of attorney, brings an action that results in a decision that precludes subsequent litigation, not only between the defendants and the class representative, but also all class members who have opted in or have not opted out of the proceedings. Only the class representative and the defendants are parties to the case, not the class members. There is no affiliation between the acting representative and the represented individuals. At the outset of the case, the number of class members represented is indeterminate. This is the main type of class action discussed below.

Class actions are different from joined actions and actions for the protection of a collective interest.

Joined actions are legal actions arising from the same or similar events or contracts which are grouped and consolidated in the same proceedings by different claimants who may be represented by the same lawyer. The claims are so closely intertwined that it is appropriate to hear them together so as to avoid inconsistent judgments. The related actions are examined jointly by the court, although they remain individual actions. Joint actions are a very common method of collectively bringing related actions before the Belgian courts.

Actions for the protection of a collective interest may only be brought by organizations that are authorized to do so, either explicitly or generally by law. These include, for example, consumer protection organizations, environmental organizations and legal entities established for the purpose of protecting human rights and fundamental freedoms.

An action for collective redress is only permitted where the claim is based on a breach of contract by a company or of one of the laws or European regulations specifically listed in Article XVII.37 of the Belgian Code of Economic Law. These include consumer rights and protection rules such as product safety and liability, insurance regulation, protection of personal data, the sale of financial products and pharmaceutical regulation, as well as competition law, intellectual property law and the statutes of certain regulated industries such as natural gas and electricity.

Definition and in which areas it is possible

Under Belgian law, collective redress actions may only be brought by one of two entities if they concern the redress of damage suffered by consumers:

- associations for the protection of consumer interests;

- the Consumer Ombudsman, but only with a view to negotiating a collective settlement agreement.

If it concerns the reparation of harm suffered by a group of SMEs, the action for collective redress can only be brought by inter-professional organizations for the protection of SMEs.

Additionally, two types of entities can act for a group of either consumers or SMEs:

- associations that have had legal personality for at least three years, provided they have been recognized by Ministerial Decree;
- entities which (i) are recognized by a Member State of the European Union or the European Economic Area to act as representative bodies, (ii) are charitable in nature, and (iii) have the required capacity to represent multiple claimants, acting in their best interests, but only on the condition that (iv) there is a direct relationship between the objectives of the entity and the rights that are claimed to have been violated.

As a general rule, the Belgian Code of Economic Law leaves the decision of whether an action for collective redress will require potential members of the class to opt in or opt out, up to the court based on the specific circumstances of each case.

A class action in Belgium consists of three main stages:

- admissibility during which the court authorizes (or denies) the group representative to act on behalf of the group. At this stage the court also decides on the type of the proceedings (opt-in or opt-out). This first stage should

be completed within 2 months, but this time limit is not strictly adhered to;

- mandatory negotiation or ‘cooling-off’ period, which should be completed within 3 to 6 months of the decision on the admissibility of the group proceedings; any settlement reached by the parties needs to be sanctioned by the court;
- court proceedings during which the merits of the case are examined.

The transposition of Directive 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers, is still pending in Belgium, but the required adjustments to the current legal framework are minimal.

Given the required additional stages, class actions take longer than normal legal proceedings and will easily take 3 years.

The Brussels Commercial Court and the Brussels Court of Appeal (in appeal) have exclusive jurisdiction to rule on actions for collective redress.

Litigation Funding

Third-party funding is of (very) limited interest because of the legal provisions concerning the distribution of compensation among the consumers or SMEs. The Code of Economic Law provides that a court-appointed administrator must pay compensation to members of the group under the court’s supervision. Therefore, a third-party funder cannot take a share of any proceeds of the action unless it concludes an agreement with the group members before the distribution of the compensation, which is unlikely.

Given the potential influence of third-party funding on an action for collective redress, its existence must be disclosed in the

application initiating proceedings as for the judge to rule on the adequacy of the group representative.

Case law

Since the coming into force of the class action regime in Belgium in September 2014, there have been around a dozen claims for collective redress brought before the courts. Almost all of these actions were brought by the main Belgian consumer protection organization.

These actions concern compensations for delayed or cancelled flights, or trains, the 'Dieselgate', a Belgian telecommunications company introducing a renting formula for its new decoders, websites involved in the resale of concert tickets at exorbitant prices, a marketing company that offers deals and discounts, three Facebook entities within the context of the Cambridge Analytica data scandal, fees charged by energy companies, and Apple with regard to planned obsolescence.

Most class actions were successful, whether through a settlement or a court ruling.



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Croatia



Definition and in which areas it is possible

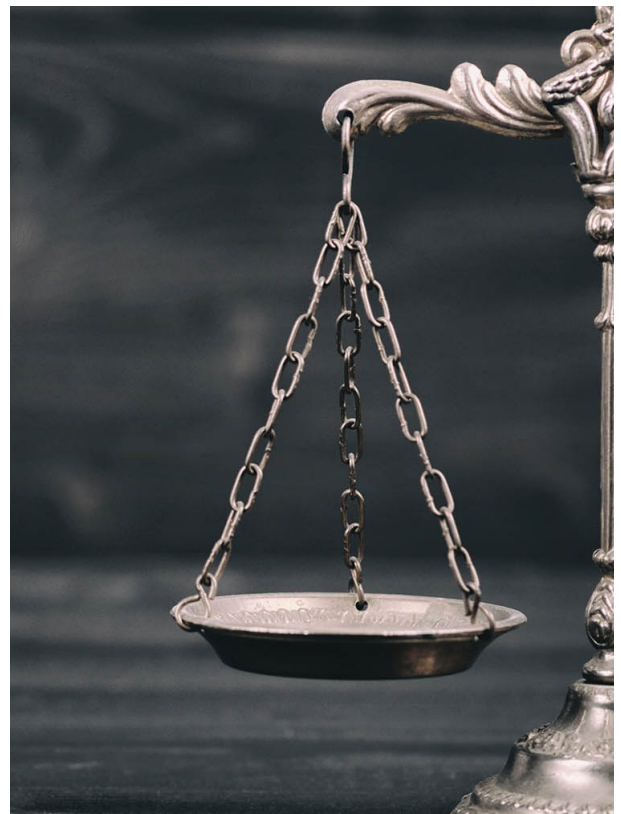
In Croatia, only associations, bodies, institutions, or other organizations dedicated to protecting the collective interests and rights of citizens are entitled to file a lawsuit against a natural or legal person who seriously injures or seriously threatens these collective interests and rights. These interests may relate to various sectors, including environmental, moral, ethical, consumer, anti-discrimination, and other areas.

The aforementioned prosecuting entities must be established in accordance with the law, be registered for activities aimed at protecting statutory collective interests and rights of citizens, and be expressly authorized to bring a class action lawsuit by a specific law. They may bring such actions under conditions prescribed by the same law. Once a judgment that accepts the claims from the class action lawsuit is made, individuals and legal entities may refer to its legal determination in separate lawsuits for damages or payment. In all such cases, the court will be bound by the findings from the class action lawsuit.

Legal Regulation, Competent Forums, and Approximate Duration of the Procedure

Class actions are generally regulated by the Civil Proceedings Act, while specific sectors are governed by various specific Acts. According to the Civil Proceedings Act, the competent forum is the court territorially competent for the defendant or the court of

the place where the action that violated the interests or rights, for the protection of which the lawsuit was filed, occurred. Further rules and exceptions can be found in specific Acts applicable to certain sectors. Regarding the duration of class action lawsuits or proceedings arising from them, there are no special rules prescribed by law, making it difficult to predict the duration. However, in practice, it is unfortunately common for court proceedings to last from several years up to a decade.



Litigation Funding

Litigation funding by a third party is neither prescribed nor prohibited by law, and it is also not commonly found in practice.

Case Law

The most well-known example of a class action lawsuit in Croatia is certainly the so-called "Franak case," where a Croatian consumer association initiated a procedure against eight of the largest Croatian banks regarding loans in Swiss franc currency, specifically concerning the issue of unfair contract terms in consumer credit agreements. This proceeding resulted in tens of thousands of individual lawsuits being filed against banks and has been a topic of interest and controversy within the judicial system and the public for years.



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Czech Republic

Definition and in which areas it is possible

Class actions are primarily an institution of common law. Although they have been implemented in countries with a continental legal system over the years, the Czech legal system does not have specific class action procedures. According to the Code of Civil Procedure, a plaintiff is prohibited from filing a lawsuit if another plaintiff has already initiated a lawsuit. This means that these plaintiffs can only join proceedings that have already commenced.

However, certain areas of Czech law attempt to partially regulate the assertion of collective claims in cases involving a larger number of participants. These areas include consumer law, competition law, copyright law, and certain corporate matters.

Regulation, competent forums, and duration of the procedure

Regulation

There are no general class action procedures in the Czech Republic. The current legislation includes fragmented regulations that resemble class action procedures, especially in consumer and competition law. One of the provisions that currently allows for the assertion of collective claims is Section 25 of the Consumer Protection Act, which permits approved associations established to protect consumers to initiate proceedings for the protection of consumer rights and participate in such proceedings. Similarly, a legal entity authorized to



defend the interests of competitors and customers has the right, under Section 2989 of the Civil Code, to bring a claim demanding that an infringer refrain from unfair competition. Such claims are filed on behalf of all aggrieved persons, but these individuals are not themselves parties to the proceedings as they are represented by group representatives. However, even though these procedures are established in Czech law, they are not commonly used.

In response to the European Union's requirements, particularly the EU Directive 2020/1828 of November 25, 2020, on representative actions for the protection of the collective interests of consumers, the Czech legal system is undergoing significant changes in the area of class actions. Current negotiations are taking place in Parliament to adopt comprehensive legislation on class actions in consumer-entrepreneur disputes. According to this bill, only consumer associations will be able to file class actions. The draft law on class actions has been in preparation for a relatively long period, and even before the government's approval of the draft law, the Ministry of Justice received numerous comments. It remains to be seen in what final form the law will eventually be adopted.

Competent forums

Proceedings initiated to assert collective claims are governed by the same rules as traditional judicial proceedings in the Czech Republic. The court's jurisdiction is determined according to the general criteria outlined in the Code of Civil Procedure, meaning that the competent court is the civil court located where the defendant resides. There is a special rule for disputes related to unfair competition practices, where regional courts, not district courts, have first-instance jurisdiction.

Duration of the procedure

The number of proceedings initiated to assert collective claims each year in the Czech Republic is relatively small. The duration of these proceedings can vary and may take several years, depending on the specifics of each case and the sector in which the proceedings are initiated (such as consumer law, competition law, etc.).

Litigation funding

There is currently no legislation governing third-party funding. The allocation of court proceeding costs is determined by the general rules outlined in the Code of Civil Procedure, where the principle of success on the merits is fundamental.

Case law

In the past, Czech courts have encountered various ways to file actions on behalf of a larger group of participants, resembling class actions under the current legislation. Plaintiffs often used Section 112 of the Code of Civil Procedure, which allows for the joinder of several cases for joint court proceedings to streamline the process. However, courts were reluctant

in this regard, and joining cases under this provision was quite rare.

In summary, any attempts to file a class action without specific legislation governing class action procedures have been unsuccessful thus far.



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Finland

Definition and in which areas it is possible

Class actions have been available in Finland since 2007. According to the definition in the Finnish Class Actions Act, a class action is a suit brought by a claimant on behalf of a class defined in the suit, such that the judgment delivered in the case is binding on all members of the class.

Prior to the most recent reform of the Act on June 25, 2023, only the Consumer Ombudsman could bring a class action under the Class Action Act.

At present, the following entities are also entitled to bring a class action: organizations designated by the Ministry of Justice as qualified entities to which the action relates and which promote the collective interests of consumers, and entities included in the list referred to in Article 5(1) of the Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC.

Legal regulation, competent forums, and approximate duration of the procedure

Class actions in Finland are subject to the Class Actions Act (444/2007). The Act implements the Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers and repealing (Directive 2009/22/EC).



In addition to the provisions of the Class Actions Act, the provisions of the Finnish Civil Procedure Act also apply *mutatis mutandis* to class actions.

The district court competent to hear class actions is the Helsinki District Court, which has jurisdiction over the entire territory of Finland.

Litigation Funding

The Class Action Act restricts the funding of a lawsuit, an issue that has been debated by legal scholars in the context of access to justice. The Act provides that a third-party funder of a class action may not be a competitor of, or dependent on, the defendant in the class action. The funder may not interfere with the decisions of the claimant in the class action to the detriment of the collective interests of consumers.

However, in Finland, there are no rules on third-party funding of legal proceedings. According to the preamble to the Class Action Act, in the absence of a regulation on funding, such funding must be considered generally admissible.

Case law

Although the Act has been in force for over 15 years, no class actions have ever been brought in Finland.

There have been plans to bring class actions on a wide range of issues in recent years. In 2019, the Consumer Ombudsman had a pending class action case against the advertising of fast-fix companies. The Consumer Ombudsman found that there was a causal link between instant loans and gambling problems.

The most recent action was expected in the spring of 2023. It involved price increases by electricity companies. The case was prepared by a law firm at the time, but the law at the time only allowed class actions to be brought by the Consumer Ombudsman. However, pending cases did not go to court and were settled by negotiation between the parties.

The EU Directive on Representative Actions for the Protection of the Collective Interests of Consumers and its repeal have widened the possibility of bringing class actions, which means that class actions can be expected to be brought before Finnish courts in the future.



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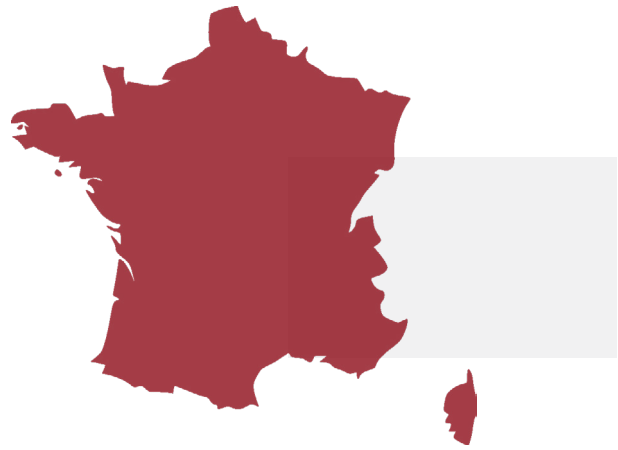


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| France



Definition and in which areas it is possible

Definition

French law does not recognize "class actions" as in common law jurisdictions.

Class actions in France are defined as follows: when a number of individuals in a similar situation sustain damage caused by the same person arising from a breach of the same type of legal or contractual obligation, an association may bring a class action to stop this breach and/or to hold the perpetrator liable and to obtain compensation for the material damage suffered.

Therefore, French class actions are available provided that strict criteria are met, namely: contractual or legal breach by a professional in a sector expressly defined by law and only via a third party called an association strictly defined by law.

Areas

Class actions are allowed in the following areas: consumer law, anti-competitive practices, real estate leasing, public health, anti-discrimination, environmental law and the protection of personal data.

Regulation, competent forum and approximate duration of the procedure

Regulation

Class actions are only possible in France if strictly provided for in a statute. They were introduced into the French legal system in 2014. Since then, several statutes have expanded the areas in which class actions can be brought.

To date, France has not implemented EU Directive 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers in areas such as data protection, financial services, travel and tourism, energy and telecommunications.

However, parliamentary discussions are currently underway. These discussions are also aimed at broadening the scope of collective actions in France (e.g., type of damage suffered, not limited to material damage as is the case today; end of the mandatory requirement to initiate a collective action only through a third-party association), as in practice many consider that the existence and framework of class actions have failed to date.

To date, French group actions can be divided into two distinct frameworks depending on the relevant areas: a general framework relating to public health, anti-discrimination, environmental law and personal data protection, and a specific framework relating to consumer matters.

Conditions

- Existence of a contractual breach or legal violation affecting a group of individuals and similarity of the individual cases presented;
- Actions brought by authorized

associations (approved or duly declared for at least five years, the statutory purpose of which includes the defense of interests that have been infringed in the general context, nationally representative accredited consumer protection association in the specific context).

Purpose

To seek compensation for any material damage suffered. The cessation of the infringement can also be claimed in the general framework.

Judgement

- With respect to actions for damages, the court determines
- the existence of a breach,
- the class of persons in respect of whom liability is incurred, by establishing criteria for inclusion in the class,
- the damages recoverable,
- the period within which individuals meeting the criteria and seeking to rely on the judgment of liability may join the class with a view to securing compensation for their losses. The court may also authorize the class to negotiate with the defendant the compensation for the damages suffered by each member of the class and determine the amount of compensation.

Competent forum

The competent court is the civil court of the defendant's domicile.

However, the French courts have jurisdiction even if the defendant company does not have a branch in France (i.e., the Paris civil court in this hypothetical case).

If there are several defendants, the case may be brought before the court of the domicile of one of them.

Duration

The length of the proceedings depends on the complexity of the dispute and the relevant area. Experience suggests that it takes several years (4 years on average) to reach the first court (longer if an appeal is lodged, bearing in mind that, for some years now, the rule has been that a judgment is not suspended by an appeal, unless the court decides otherwise).

Litigation funding

There is no third-party funding solution available under existing French regulations. Funding comes from the resources of the association, personal contributions from the members of the group, legal aid if eligible, or legal expenses insurance.



Case Law

The implementation of action groups shows very disappointing results. To the best of our knowledge, of the 32 group actions filed in France since 2014, only 3 have been successful. Almost all of these decisions are declarations of inadmissibility or dismissals, including the following:

Supreme Court July 6, 2017 (#16-12599): inadmissibility resulting from the Supreme Court July 6, 2017 (#16-12599): inadmissibility due to lack of evidence to establish a group;

Supreme Court June 19, 2019 (#18-10424): inadmissibility based on the fact that the individual cases submitted were outside the scope of the applicable regulation, according to the claimants;

Supreme Court December 7, 2022 (#21-20369), Supreme Court April 21, 2022 (#20-16512): Dismissal of the claim for damages.



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Germany

Class Actions in Germany

German procedural law offers various possibilities for bringing claims collectively. However, a class action in the true sense of the word has only recently been introduced in the form of what is known as *Abhilfeklage*. The following contribution will focus on the possibilities of collective claims in the area of civil law in Germany.

Class actions in a broader sense

One of the "standard options" for the collective filing of claims in German courts is the *Einfache Streitgenossenschaft*, which allows several claimants to jointly assert their claims against the same defendant if their claims are based on the same agreements or the same damaging event. *Einfache Streitgenossenschaft* is based on considerations of procedural economy and simply means that different disputes are joined in one case. However, the courts will decide each dispute individually, which also means that the court may decide each dispute differently. Therefore, *Einfache Streitgenossenschaft* is not a class action in the true sense of the word.

Another option for collective redress in the broader sense is for claimants to allocate their claims to a collection service provider (*Inkassodienstleister*). These collection service providers can bundle thousands of claims and assert them against the defendant in their own name. A prominent example of this practice is a lawsuit brought by *Financialright*, which bundled 37,000 individual claims against VW in connection



with the diesel emissions scandal. This practice is also common in the context of antitrust litigation and the enforcement of air passenger rights. Such bundled claims are often financed by litigation funders.

Model Declaratory Motion under KapMuG

In 2005, the German Act on Model Proceedings in Capital Market Disputes ("*KapMuG*") came into force to help shareholders and investors claim damages for false, misleading or omitted capital market information. Although *KapMuG* was completely revised in 2012, most experts agree that it remains a toothless tiger. The main reason for this is that proceedings are long and complex and, most importantly, *KapMuG* only provides for a declaratory motion. If the declaratory motion is granted, claimants still have to file individual lawsuits to recover damages. The first *KapMuG* proceedings were instituted against *Deutsche Telekom* in connection with the Company's third IPO. This case dragged on for around 15 years and ended with a settlement. Other notable examples are the *KapMuG* proceedings against *Porsche* and *Volkswagen* in connection with the diesel emissions scandal and against *Wirecard* and

EY. The KapMuG had a fixed term until the end of 2023, but has now been extended until August 31, 2024, and will then be revised.

Class Actions under VDuG

More recently, on October 8, 2023, a new law implementing EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers (*Verbandsklagenrichtlinienumsetzungsgesetz* - "VRUG") was passed. The centerpiece of the VRUG, the *Verbraucherrecht durchsetzungsgesetz* ("VDuG"), amends the existing declaratory action model and allows for class actions. The model declaratory motion had already been established in 2018 and, like the KapMuG, ultimately requires each claimant to assert an individual claim in separate lawsuits. The VRUG now aligns the declaratory motion with the newly implemented *Abhilfeklage*.

The VDuG goes beyond the scope of EU Directive 2020/1828 and covers all civil disputes between consumers (including small businesses with fewer than 10 employees and an annual turnover of less than EUR 2 million) and companies. Class actions may only be brought before the higher regional courts (*Oberlandesgerichte*) by qualified consumer associations.

The VDuG provides for an opt-in mechanism, i.e., affected consumers must register their claim in a special register (*Verbandsklageregister*) to join the collective redress action or declaratory motion. Affected consumers may do so up to three weeks after the end of the oral hearing.

The new redress action is the first "real" class action under German law and is directed at an actual performance (e.g., payment of damages). It is admissible if the consumer association can demonstrate that at least 50

consumers may be affected by the class action. In addition, the claims asserted in the collective action must be essentially the same. The interpretation of this requirement is likely to give rise to some debate.

In most cases, the collective redress procedure is divided into **three stages**:



Although collective redress actions are likely to be complex, the fact that the value of the claim is capped at EUR 300,000 makes collective redress actions unattractive for lawyers, whose fees are based on the value of the claim. Remuneration on an hourly basis is possible, but unlikely, as it is unclear how the consumer association will obtain the funds, as it will have to bear the

amount above the statutory fees, even if the case is won. The VDuG allows third-party funding, but limits the maximum allowable contingency fee to 10% of the proceeds. In addition, litigation funding agreements must be disclosed. Collective redress actions are therefore unlikely to be attractive to litigation funders. They will only become appealing if very large sums are claimed.

The new Abhilfeklage is based on EU Directive 2020/1828, which should have been implemented by all EU member states by now. As a result, companies may be subject to collective redress actions in different jurisdictions.



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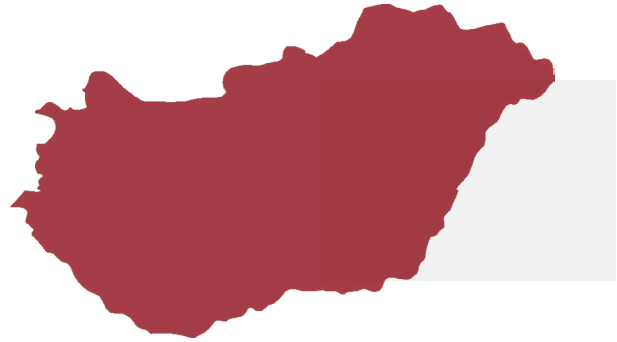


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| Hungary



The need to implement class actions in Hungary has been voiced several times before, but it was only introduced by the Civil Procedure Act CXXX of 2016 ("**Civil Procedure Act**"), which was one of the most significant innovations of the new law. Class actions are procedural means for the enforcement of private rights and obligations, enforceable in civil proceedings, which are justified by reasons of protection of the public interest or litigation efficiency. Currently, the law provides for two types of class actions: public interest actions and collective actions

Public interest actions may only be brought where they are expressly authorized by a specific law. These actions are diverse and the legislator deliberately avoided providing a precise definition of their scope in the Civil Procedure Act. Instead, the scope is regulated by specific laws. The objective of protecting the public interest typically applies to cases involving infringements that impact a wide range of consumers. In certain cases, environmental protection also falls into this category. A public interest action may be brought by various entities designated in the relevant acts, including the public prosecutor, ministers, public authorities, economic and professional chambers, and the Hungarian National Bank, which bears the costs of bringing such an action.

Public interest actions fall under the jurisdiction of the district courts. If the complexity of the case warrants it, the judge presiding over the case may, exceptionally, order a panel of three professional judges to hear the case.

The individuals whose claims are the subject-matter of the action are not treated as parties and may not exercise any rights in the proceedings. However, it would be a restriction of the private autonomy of the individuals concerned if a decision binding on them could be rendered without their participation. Therefore, the legislation allowing public interest actions provides that the right to bring an individual action is not affected by the filing of a public interest action. The person concerned may decide to bring an individual action against the defendant in a separate procedure.

The application must identify the persons concerned by the case. Otherwise, the court will dismiss the application. This is accomplished by presenting relevant facts and circumstances that allow for the identification of individuals within the class. According to judicial practice, this requirement is satisfied if the provisions of the standard terms and conditions that are considered unfair are specified, stating the reasons and the period for which they apply.

The judgment must also specify the facts and circumstances that make it possible to identify the persons concerned and the manner in which they must prove their involvement. If the claim is successful, the defendant is ordered to make payments to all those who have satisfactorily demonstrated that they meet the relevant criteria.

The judgment is binding on eligible individuals who receive written notice from the defendant within 30 days of the judgment and who don't express their intent to retain individual rights within 60 days. The defendant is responsible for providing notice because it has sufficient information about the affected individuals and it is in its interest to identify potential future individual claims. However, the defendant is not required to notify individuals, but in such cases it should be assumed that they retain their right to bring individual actions within the statute of limitations.

In a collective action, the identity of the claimants is well defined and precise. The essence of the procedure is that only one typical claim of the claimants is decided by the court, which significantly enhances procedural efficiency.

To initiate a collective action, at least ten claimants must agree to commence the proceedings. Otherwise, the collective action cannot be filed. In addition, the claims to be adjudicated must be identical for all claimants, including both legal and factual identity.

In many jurisdictions, the parties can avoid a procedure similar to a collective action by agreeing to refer the matter to arbitration. However, a collective action may only be used to enforce a claim arising out of a consumer contract, in employment disputes and for health damages directly caused by man-made environmental pollution for which arbitration is not otherwise available.

If the value of the claim does not exceed 30 million HUF, the district courts have jurisdiction to hear the collective action, and if the value of the claim is higher than 30 million HUF, the jurisdiction is vested

in the metropolitan courts. However, the cumulative value of all individual claims must be taken into account when calculating the aggregate value of the case.

A request for leave to bring a collective action must be included in the application. It must include essential details such as the joint claimants and the representative rights and facts. Legal representation is mandatory in such proceedings. The application must also contain a reference to the joinder agreement, which must be concluded in writing between all claimants. The joinder agreement will specify the designated representative plaintiff who will have exclusive rights to sue, certain rules governing the representative plaintiff's actions, the rules for apportioning the costs of the proceedings, and the proportion of the amount to be adjudicated among the claimants.

If the request for permission is approved the court will rule on the claimants' claims in the collective action as a whole on the basis of the established facts related to the representative right and the representative facts. In its decision, the court may decide in favor of the claimants whose actual proof of joinder has been submitted in a timely manner. The representative claimant will be responsible for the costs of the action, subject to the apportionment set forth in the joinder agreement.



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| Italy

Definition and in which areas it is possible

In Italy, class actions were introduced for the first time in 2007 with the insertion of Article 140 bis in the Italian Consumer Code. Later on, class actions were included in the Code of Civil Procedure in the new Title VIII bis, Articles 840-bis to 840-sexies, to provide them with a systematic regime. These new rules apply to actions occurring after May 19, 2021.

Class actions refer to uniform individual subjective rights. These rights are defined by reference to the subjective legal situations attributed to the members of a class, where the rights of the individuals are different and distinct, but dependent on a common matter of fact or law suitable for a uniform judicial resolution.

The general regime of class actions has been extended to all individuals seeking to protect similar individual rights, regardless of their status as consumers, and without limitation to specific areas.

Notably, Legislative Decree no. 28/2023 transposed into Italian law Directive (EU) 2020/1828 of November 25, 2020 on **representative actions** for the **protection of the collective interests of consumers**.

This instrument is intended to protect the collective interests of consumers in a wide range of specified matters, as opposed to the **"general" class action regulated by the Code of Civil Procedure, which is intended to protect the homogeneous individual rights of the members of a class**. To prevent any possible overlap



between both types of actions, the law expressly provides that qualified entities may not act in the general class action in cases where the rules of representative actions apply.

Legal regulation, competent forums and approximate duration of the procedure

For the purposes of the (general) class action, Italian law provides that a non-profit organisation or association whose statutory objectives include the protection of their respective rights, or each member of the class may bring an action against the perpetrator of the tortious conduct for ascertainment of liability and for an order to pay damages.

Only organisations and associations registered in a public list established at the Ministry of Justice may bring the action.

The action may be brought against companies or against bodies managing public services, in respect of acts and conduct carried in the performance of their activities. In any case, the right to individual action remains available.

The application shall be made by means of an action exclusively before the specialised section on enterprise matters of the tribunal competent for the territory where the defendant has its seat. That action, together with the decree fixing the hearing, must be published, by the tribunal registry, in the public area of the telematic services portal managed by the Italian Ministry of Justice, to ensure the easy availability of the relevant information. After 60 days from such publication, no further class action may be brought against the same defendant for the same facts.

Italian law provides for 4 cases in which the application may be declared inadmissible, namely: a) when the application is manifestly unfounded; b) when there is no homogeneity of the individual rights that can be protected by the class action; c) when the plaintiff has a conflict of interest against the defendant; d) when the plaintiff does not appear to be able to adequately take care of the homogeneous individual rights asserted in the action.

The judgement of acceptance does not deal directly with the claims for compensation and restitution, but is limited to ascertaining the harmfulness of the conduct of the defendant and to declaring the adhesion procedure open with the fixing of a peremptory term, comprised between 60 and 150 days from the publication of the same in the portal of the telematic services of the Ministry, within which also persons having homogeneous individual rights who have not yet done so in the initial phase of the proceedings may adhere to the class action.

Litigation Funding

For the Italian market, third party funding is a new and currently little-used phenomenon that is, however, beginning to take hold.

There is no specific reference legislation. The related litigation funding agreement can be applied in Italy by virtue of the general principle of contractual autonomy set forth in Article 1322 of the Italian Civil Code, this agreement being an atypical contract pursuant to Article 1322(2) of the Civil Code.

Case Law

Despite its potential, the institution in question has not been widely applied in Italy to date. There are, in fact, few cases of recourse to the class action governed by Articles 840 bis et seq. of the Code of Civil Procedure. There are several reasons for this scarce use, including lack of awareness, procedural complexity, and fear of legal expenses. It should also be noted that some of the (few) proposed actions do not pass the admissibility filter and are declared inadmissible by the Italian Courts.



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| Liechtenstein



Definition and in which areas it is possible

Liechtenstein law does not have any specific provisions on class actions. For this reason, there is no legal definition of a class action.

Nor is there any definition of a class action to be found in the published case law of the Liechtenstein courts.

The author is not aware of any class action that has been filed in Liechtenstein.

In principle, however, it should be possible to bring a class action in Liechtenstein based on the Austrian model. This is because the Liechtenstein Code of Civil Procedure was adopted from Austria, and the provisions on which the Austrian-type class action is based were adopted in Liechtenstein.

Since Liechtenstein courts follow the case law and doctrine of the country of adoption when interpreting and applying foreign rules, it is likely that Austrian-type class actions could also be brought in Liechtenstein.

According to Austrian case law, a class action under Austrian law consists of the joint assertion of several claims that have been assigned to the claimant by various creditors by way of a collection assignment by way of an objective accumulation of claims. In principle, this definition also applies in Liechtenstein.

In Austria, class actions were developed to enforce consumer rights that were not economically enforceable in individual proceedings.

Class actions take advantage of the provisions of the Code of Civil Procedure on the objective joinder of claims. These provisions are generally applicable and therefore not limited to certain areas. This also applies to such class actions.

Directive (EU) 2020/1828 of the European Parliament and of the Council of November 25, 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, which provides for "redress measures" in Art. 9, has not yet been implemented in Liechtenstein.

Legal regulation, competent forums and approximate duration of the procedure

As mentioned above, Liechtenstein has no specific rules on class actions.

Class actions are subject to the rules of objective aggregation.

In accordance with the case law of Austrian courts, which should also be considered in Liechtenstein, the joint assertion of several claims by different claimants by way of an assignment for collection by one claimant is admissible if there is an essentially similar cause of action. Identity of the facts giving rise

to the claim is not required. In addition, the facts or issues of law must be substantially identical with respect to the main issue or a highly relevant preliminary issue of all the claims.

In Liechtenstein, the Princely District Court in Vaduz is the court of first instance for all actions. Class actions may therefore be filed with this court.

The expected length of the proceedings does not differ from other court proceedings. The first instance proceedings can be expected to take less than one year, provided that discovery can be conducted expeditiously.

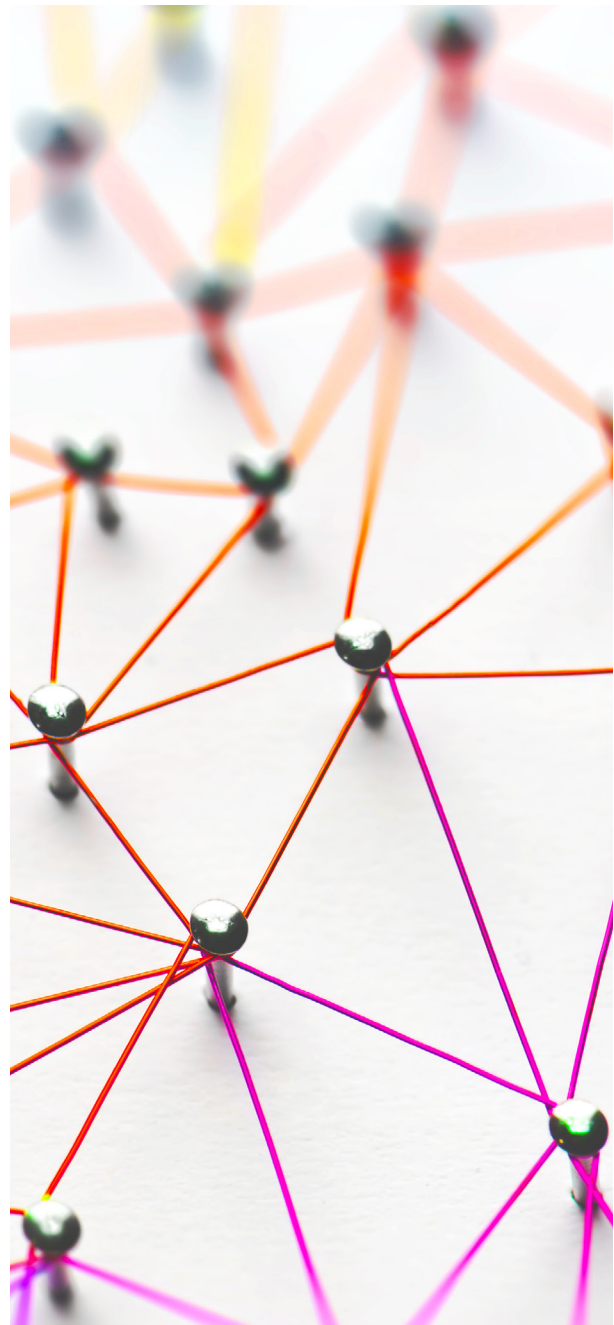
Litigation Funding

Directive (EU) 2020/1828 of the European Parliament and of the Council of November 25, 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, Art. 10, which deals with issues of litigation funding, has not yet been transposed in Liechtenstein.

Case law

The author is not aware of any Liechtenstein case law on class actions.

Reference may be made to the case law of the Austrian courts on "Austrian-style class actions", which must also be taken into account in Liechtenstein.



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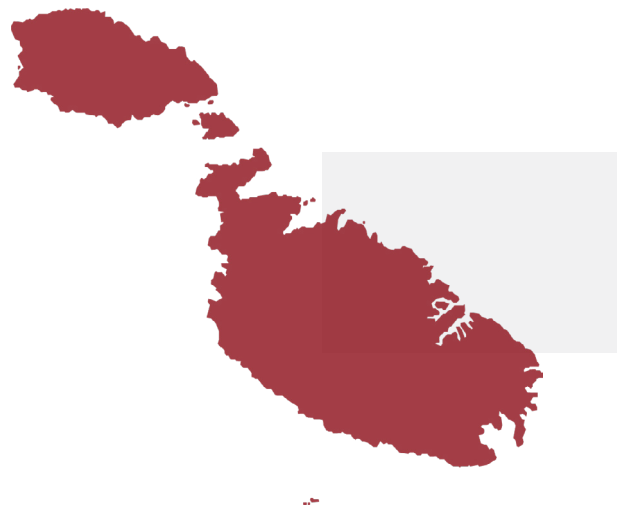
Definition and in which areas it is possible

Maltese law defines a "class" as a group of individuals who are or have been injured and whose claims arise out of common issues. Maltese law draws a distinction between group actions and representative actions. In a group action, the representative claimant must have a personal claim that falls within the class of claims in the proposed collective action. In a representative action, on the other hand, the claimant is a representative entity that does not necessarily have a personal legal interest in the case.

Such actions may be brought in certain areas, in particular consumer law. Thus, a class action is possible where the claimants bring an action against the defendant for allegedly infringing the Consumer Affairs Act, the Product Safety Act and/or the Competition Act, as well as other EU directives and regulations in this field. However, cumulative actions, not necessarily related to consumer law, are also available to claimants in Malta under the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta).

Legal regulation, competent forums and approximate duration of the procedure

Before June 2023, class actions in Malta were exclusively regulated by the Collective Proceedings Act (apart from cumulative actions regulated by Chapter 12 of the Laws of Malta, as mentioned above). In June 2023, Malta implemented the EU Directive on representative actions for the protection



of the collective interests of consumers (the "Representative Actions Directive") by passing the Representative Actions Act. This Act broadens the scope of class actions and creates a more orderly procedural regime for such actions in Malta.

The Representative Actions Act applies to representative actions and therefore to actions filed by qualified entities. To be eligible to bring such an action, an entity must be an organization or public body representing the interests of consumers that has been designated by the Consumer Affairs Council of Malta.

To commence a representative action in Malta, a sworn application must be lodged with the Civil Court (Commercial Section) of Malta. In such a case, the action is filed by the qualified entity on behalf of consumers. Upon filing the application, the court will hold a pre-trial hearing, at which the court will rule whether the action:

- falls under a representative action, and therefore orders the continuation of the proceedings;
- OR
- The action does not fall under the category of a representative action, thereby ordering the dismissal of the proceedings.

If the court decides to proceed with the case, the proceedings will be conducted in the same manner as other ordinary proceedings. Therefore, the expected timeframe will be the same as in other cases. It is important to note, however, that because there are many people involved in the case, the amount of evidence to be presented may be substantial, which could result in certain delays.

Litigation Funding

The Representative Actions Act allows for third party funding of litigation, provided that:

- conflicts of interest are prevented; and
- funding by third parties that have an economic interest in bringing or in the outcome of the representative actions, do not divert the representative action away from the protection of the collective interests of the consumers.

The law puts safeguards in place to ensure that, in the case of third-party funding, the common interest of the class is safeguarded. Amongst other measures, Maltese law establishes that in case of third-party funding:

- an action cannot be brought against a defendant who is a competitor of the third party who is funding the representative action;
- the qualified entity is to submit to the court a financial overview that lists sources of funds used to support the representative action.

If the court considers that these safeguards have been disregarded, it has the power to order the qualified entity to refuse or vary the funding. The court may also decide that the qualified entity does not have legal standing, which does not affect the rights of the consumers involved in the representative action.

Case law

At the time of writing, class actions are not widely used in Malta. This may be due to the lack of a proper legal framework providing a structured procedure for such actions. Since the Representative Actions Act has only recently come into force in Malta, it remains to be seen whether Malta will see an increase in such actions as a result of the introduction of such legislation.



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| North Macedonia

The legal system of North Macedonia does not recognize class action as a unique legal concept providing a protection mechanism for a larger group of individuals. Class actions allow individuals to be part of a group seeking compensation from usually a large corporation, while the concept itself includes procedural safeguards for individuals.

Possible absenteeism, interest, litigation costs, time, etc. are just a few of the many reasons why a particular individual would never bring a claim against a large corporation. The very concept of class action lawsuits eliminates these concerns because the case is brought on behalf of the class as a whole, not a particular individual. A class action can bind someone to its outcome without that person ever receiving notice of the lawsuit, contrary to the typical requirements of due process.

In Northern Macedonia, collective claims are still regulated by the basic legal institution of co-litigation. Though co-litigation is similar to class actions in terms of the number of people who can take part in the litigation, it is completely different from class actions from a legal point of view and in terms of its legal implications.

Co-litigation involves the possibility of having co-litigants whenever they bring their claim on the same legal basis and/or the same harmful event. However, the co-litigation will proceed with these joint litigants, but each would still be a separate party with its own procedural rights and opportunities. Each co-litigant will bear the burden of proof to establish its own claim and right to a remedy.



As a result, the courts will decide on the merits of each dispute brought by a particular co-defendant, which means that the court may decide differently with respect to the co-defendants. This is completely at odds with the fundamental nature of class actions, which is based on a single court decision.

Pursuant to Section 14 of the North Macedonian Litigation Act, which regulates "Co-Litigation", co-litigants are regarded as several individuals who may file and pursue a single lawsuit, or may be sued under a single lawsuit, if:

- they form a legal community with respect to the subject matter of the dispute, or if their rights and/or obligations arise from the same factual and legal basis,
- the controversy involves claims or obligations of the same nature, based on substantially the same factual and legal basis, although the same court has actual and local jurisdiction over each claim and each defendant, and

The person who claims a certain right, in whole or in part, for which a lawsuit is pending between other persons, has the

ability to sue both parties jointly in a single lawsuit before the court in which the lawsuit is pending, until the lawsuit is resolved in a legally valid manner.

Therefore, if according to the law or the nature of the legal relationship, the dispute can be settled in the same manner against all co-litigants (single co-litigants), they shall be treated as a single party to the dispute. As a result, if single co-litigants fail to fulfill certain litigation actions, any litigation actions performed by the other co-litigants will be extended to those who have failed to perform such actions.

If the deadlines for completing certain litigation procedures expire at different times for certain individual co-litigants, such litigation procedures may be completed by all co-litigants until the deadline for completing an activity expires for at least one of them. Each co-litigant has the right to submit proposals related to the conduct of the litigation.

If the petition relating to several co-litigants has reached the final decision stage based on the admission or rejection of one of the co-litigants, or if one of several petitions relating to different co-litigants has reached the final decision stage based on the admission or rejection of one of the co-litigants, the court is required to make a partial decision only in respect of the co-litigant to whom it relates

According to the Litigation Act, the co-litigants shall bear the costs of the case in equal parts. If there is a significant difference between the co-litigants' portions of the subject of the dispute, the court shall direct the co-litigants to bear the costs according to their respective shares. The co-litigants who are jointly responsible for the main issue shall be jointly and severally liable for the

costs awarded against the opposing party. The other co-litigants shall not be liable for the costs caused by special litigation activities of separate co-litigants.

The rules on co-litigation do not limit the areas of law or rights that may be subject to the possibility of initiating and conducting co-litigation. Thus, as long as the procedural and substantive requirements are met, the litigation may be conducted as co-litigation irrespective of the legal basis.



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| Poland

Definition and in which areas it is possible

A class action is a special type of a lawsuit in which a group of people act together against the same defendant. Unlike in a traditional lawsuit, an essential element of a class action is that there is a group of parties on the plaintiff's side.

In the Polish legal system, class actions may be brought in cases involving claims for liability for damage caused by a hazardous product, unlawful acts, non-performance or undue performance of a contractual obligation or unjust enrichment, and - with regard to consumer protection claims - also in other cases (e.g. lease, sale, credit, loan and transport contracts).

Legal regulation, competent forums and approximate duration of the procedure

In Poland, class actions are governed by the Act of 17 December 2009 on asserting claims in class action lawsuits. Class actions can apply to civil cases. In a class action, claims of one type having the same factual basis may be asserted. A class action is possible when there are at least 10 parties on the plaintiff side.

Class action lawsuits cannot be brought to assert claims for protection of personal rights, with the exception of claims arising from personal injury or health detriment, including claims pursued by members of immediate family of the injured party who died as a result of personal injury or detriment to health.



A class action is brought in the District Court and recognized by three professional judges in civil proceedings. The proceedings are conducted according to the Polish Code of Civil Procedure. In addition to the standard requirements for a statement of claim, a request for the case to be heard as a class action needs to indicate the circumstances justifying the class action, the value of the claim and a statement by the claimant that he or she is acting as a representative of the class.

It is characteristic of a class action that the plaintiffs act through a representative. The action is brought by the representative. The class representative conducts the proceedings in his or her own name on behalf of all class members. The plaintiff is to be represented by a lawyer unless the plaintiff is a lawyer. New members may join the proceedings on the basis of a separate declaration.

In Poland, due to the complexity of the procedure and the subject matter of cases, class actions take between 2 and 6 years to resolve.

Litigation Funding

In principle, external funding of class actions is almost non-existent in the Polish legal

order. Polish regulations do not refer to this issue - there are no specific regulations in Polish law in this respect, but at the same time the regulations do not prohibit such financing. The trading of claims itself is possible under the rules of the Civil Code, but this does not affect the proceedings themselves.

According to the regulations, the fee for a class action is half of the fee required for traditional proceedings. Undoubtedly, a class action is a cheaper form of enforcement. Interestingly, the regulations allow for a success fee of up to 20% to be awarded to the attorney in a class action. No success fee is allowed in a traditional lawsuit.

Case Law

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The institution of class actions is not particularly popular in Poland. There are no significant judgments handed down in class actions.

Recently, a class lawsuit has been brought by the Economic Chamber of the Polish Food Service Sector. It was connected with the measures taken by the State during COVID-19 pandemic. The demand was to establish the liability of the State Treasury for damage caused by unlawful acts and omissions in the exercise of public authority during the time of epidemic emergency and epidemics. The class action, which was filed on 8 November 2021, applies to damage sustained during the periods of 13.03.2020 to 18.05.2020 and 24.10.2020 to 27.05.2021.

The class action was brought in response to restrictions imposed on the operation of restaurants or venues, which - according

to the food service sector representatives - were unfair. The lawsuit is still far from being resolved, but its circumstances indicate that the judgment will be of great practical significance.



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Slovakia

Definition and in which areas it is possible

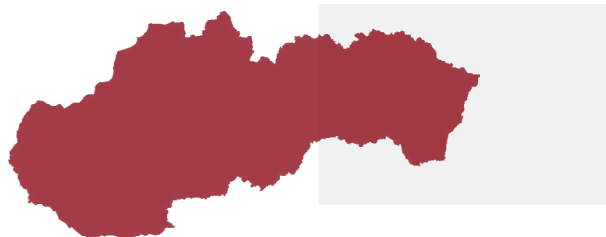
Class actions are a topic of occasional discussion among Slovak civil litigation scholars. Class actions have been defined as either "the collective exercise of rights" or "the exercise of collective rights". Pursuant to the Act on Actions for the Protection of the Collective Interests of Consumers (the "Act"), the term "collective exercise of rights" is more commonly used in Slovakia in the area of consumer rights. However, it is also used (partially) in the area of compensation for damages in competition law and protection against discrimination. The filing of these actions is regulated in the area of consumer protection and "competition" protection. In matters of protection against discrimination there is no specific regulation in this respect.

Please note, that individual submission of actions is not excluded.

Legal regulation, competent forums and approximate duration of the procedure

Consumer protection

The Act lays down rules for the filing of class action lawsuits within the framework of the implementation of the relevant EU Directive. Authorized persons, who are entitled to file a class action, must fulfill certain criteria and be registered with the relevant authority. The authorized person may represent consumers for the purpose of filing a domestic action or a cross-border action.



The Act regulates 2 types of class actions:

1. actions seeking one or more remedies against a particular trader, in particular damages, the repair or replacement of a product, a discount on the purchase price, an obligation of the trader to terminate a contractual obligation or to settle mutual claims with the consumer arising from a contractual obligation, etc.; the Act expressly excludes claims for appropriate financial compensation (in this case, the consumer must file an individual action). The court's decision is binding on consumers - claimants, traders and authorized persons.
2. actions seeking an abstract review in consumer matters, irrespective of the circumstances of the individual case, that:
 - a contractual term in a consumer contract is unfair,
 - a commercial practice is unfair, or
 - a trader has infringed consumer law.

The decision of the court is binding. An action may be brought by an authorized person, a supervisory authority or a self-regulatory body under a special regulation.

Competent courts: the Municipal court Bratislava IV, District court Banska Bystrica, Municipal court Kosice (for respective territory).

Protection of competition

The provisions on remedies under the Act on Certain Rules for the Enforcement of Claims for Damages Caused by Infringement of Competition Law apply to the proceedings on class actions for damages caused by infringement of competition law.

Individuals may claim compensation for damages caused by:

- abuse of a dominant position, or
- an agreement violating competition under follow-on actions pursuant to the terms of the Act.

Competent court: Municipal court Bratislava III.

Protection against discrimination

Class actions for violation of the principle of equal treatment and protection against discrimination may be filed by the designated body (currently the Slovak National Center for Human Rights). This body may represent a larger or an indefinite number of individuals whose rights, legally protected interests or freedoms may be infringed by a violation of the principle of equal treatment or where such a violation may otherwise seriously harm the public interest. This body is not entitled to claim non-pecuniary damages (the victim of discrimination must bring an individual action in such a case).

Competent court: the defendant's court.

Litigation Funding

- Consumer protection: The claimant pays no court fee. The authorized person's fee is capped to 20% of the recovered amount (please note, that other restrictions apply to this remuneration). Attorney's fees are granted only occasionally.
- Protection of competition law: court

fee max EUR 331,50. Unlike in other common cases, there is no special rule on attorney's fees.

- Protection against discrimination: court fee depends on the situation if monetary non-pecuniary damage is claimed or not. Unlike in other common cases, there is no special rule on attorney's fees.

Case Law

There is no relevant case law to report.



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| Spain

Definition and in which areas it is possible

Class actions, as such actions are understood in common law, are not very well established in Spanish legal system. In fact, they do not yet have an ad hoc regulation that allows claims to be brought in an effective and efficient manner.

The Draft Law on Collective Actions is currently in legislative process, the aim of which is to transpose into Spanish law Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers, which will become the mechanism for the collective protection of the interests of consumers and users.

Until the law is finally passed, which is expected to be in 2024, procedural legislation currently in force devotes few articles to actions for the protection of the common interests of consumers and users.

There is no specific limitation as to the sectors to which such actions apply, although the largest number of cases have occurred in the consumer sector and, above all, financial industry.

Legal regulation, competent forums and approximate duration of the procedure

Spanish Law granted legal standing to corporations, associations, and groups for the defence of the general interests of consumers and users who are perfectly



determined or easily determinable and who have been affected by a harmful event. When the affected there are not easily determinable, the legal standing belongs only to consumer and user associations which, in accordance with the law, are representative.

As a consequence of the above, the only persons who can benefit from the procedural regime of class actions are those who meet the legal requirements to be considered as a "consumer" or "user", i.e. to be the final recipient of goods or services which do not form part of a further transformation or commercialization.

Actions may be brought (i) to declare the nullity of a general term that affects a collective, (ii) to seek compensation for damage resulting from, for example, the annulment of an unfair term or (iii) the declaration of an act of unfair competition or unlawful advertising.

Compensation can be obtained by bringing a class action, provided that it is brought after the annulment of the unfair term or the declaration of unfairness of the act or the unlawfulness of the advertising has been obtained in a court of law.

Class actions can be brought to obtain

compensation for all types of damages. Unlike what happens in Common Law regime of class actions, under Spanish law it is possible to bring a class action to obtain compensation for pecuniary or personal damages, including moral damages. There is no a quantitative limit for the exercise of a class action, either higher or lower. Thus, whatever the amount of damages claimed, it is in principle possible to bring a class action.

Nevertheless, compensations are not economically relevant as they require a very demanding level of proof and under Spanish law it is not possible to claim punitive damages.

A mechanism is established to public the claims so that those potentially affected can join them.

Judgments rendered as a result of actions brought by consumer or user associations are subject to the following rules:

- It is required that a separate and explicit ruling on the claims for damages brought in the proceedings.
- If the judgment is of a condemnatory nature and it is possible to identify all those concerned, they must be identified in the judgment.
- The individual determination of the compensation will depend on the greater or lesser concreteness of the identification of the injured parties.
- A judgment given in a class action does not produce the effect of *res judicata* in respect of claims for damages which may be brought individually by the consumers or users concerned.

Given the mandatory stages in the class actions proceedings they last longer than ordinary proceedings, will easily take 2,5 years.

Civil or commercial courts, depending on the merits of the claim, are the one who handle these sorts of actions. The competent court is the court of the place where the defendant resides. Regarding joined action, territorial jurisdiction belong to the court who has jurisdiction over the action which forms the basis of the other actions. Failing the former, the court having jurisdiction over the largest number of joined actions and, lastly, the place corresponding to the action which is quantitatively most important.

Litigation Funding

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Bearing in mind that Spanish courts do not recognise large awards in this type of proceedings, at the moment litigation funds are not quite interesting in funding this kind of proceedings. Despite the above, there is no material restriction or limitation for funding this kind of actions.

It is possible that with the new regulation of this class of actions, interest of the funds will rise. However, the draft law limits the decision-making power of these funds in settlements and the distribution of compensation.

Case law

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Judgment of the Supreme Court 408/2020, of 7 July 202, rules on the scope of the abstract control of transparency in collective actions, qualifying the previous doctrine and stating that the same rules for assessing the transparency of financial provisions cannot be automatically applied to other general conditions in which it is necessary to take



into account the specific circumstances of the case, both objective and subjective.

This judgment is relevant because it stops the incessant trickle of rulings declaring the nullity of clauses in mortgage loan contracts, requesting that the study of a possible nullity must be done on a case-by-case basis, which limits the possibility of doing so in a generalized manner through n collective actions.

There have been several rulings on the res judicata effects of class actions.

The first relevant was Judgment of the Supreme Court 123/2017 of 24 February 2017, which ruled out that Judgments rendered in class actions relating to financial clauses does not produce res judicata effect with respect to an individual action for nullity and restitution based on the same financial clause.

Further case law set out the following rules:

- A rulings (upholding or rejecting the claim) contained in a final judgment handed down in a proceeding arising from a class action do not produce the effects of res judicata with respect to consumers who were not parties to the proceeding or -in the case of a proceeding for the defence of collective interests- who were not individually determined in the judgment itself.
- The absence of res judicata does not prevent the judgment upholding a class action from producing binding effects with respect to the proceedings arising from an individual action seeking the annulment of the clause being tried in the class action. The judge must, as a general

rule, assess the unfairness of the clause for the reasons set out in the collective action judgment, so that, exceptionally and by means of the assessment of the particular circumstances of the case, the validity of the clause may be declared.

- The assessment of these particular circumstances that make possible to assess the validity of a clause (in opposition to what was assessed in a class action) should be carried out in individual proceedings.



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