Collective Redress
in CEE & SEE

Wolf Theiss

Collective Redress in CEE & SEE

Foreword

Welcome to this Guide on Collective Redress across the Wolf Theiss region (CEE and SEE). A range of collective redress mechanisms can be found in each of the jurisdictions covered by our offices. While some countries already have well-developed collective redress mechanisms in place, other countries are only just beginning to implement comprehensive collective redress regimes.

Partly due pressures from the European Union, important steps have been taken in recent years throughout the region to protect collective consumer interests. For example, the Representative Actions Directive (EU) 2020/1828 established a harmonised framework for collective redress in all EU Member States. This directive aims to strengthen consumer rights by making it easier to bring collective actions before the courts, such as in cases of data protection violations and infringements of consumer protection law by companies. The directive has supported a trend towards a greater adoption and pursuit of collective actions in CEE and SEE.

There are clear signs of increased activity in collective redress in CEE and SEE going forward. Several factors suggest that collective redress will become more important in the coming years and will likely continue to expand, supported by new regulations, developing interest in consumer protection and technological innovations. Collective redress mechanisms will further develop, and more harmonised rules of procedure will emerge. At the same time, countries with less established collective redress systems are catching up.

Whether you are business owner facing collective legal action, an investor evaluating legal exposure in light of consumer protection activism in particular jurisdictions, or an inhouse counsel trying to best protect your companies interests ahead of time, this Guide serves as a valuable map to navigate you through the complexities of the various collective redress mechanisms available across the Wolf Theiss region.

Sincerely yours,

Authors of the Wolf Theiss Collective Redress Client Guide

Disclaimer

This Wolf Theiss Collective Redress Client Guide is intended to serve as a practical overview of the general principles and features of collective redress mechanisms in the countries included in the publication.

While every effort has been made to ensure that the content is accurate at the time of its completion, it should be used only as a general reference guide and should not be relied upon definitively when planning or making definitive legal decisions. This Guide cannot substitute dedicated legal advice on specific matters. In these rapidly changing legal markets, laws and regulations are frequently revised, either by amending legislation or by statutory interpretation. Neither Wolf Theiss nor any of the authors accept any kind of liability for the accuracy and completeness of the content of this Guide. Therefore, any kind of liability on the part of Wolf Theiss or the authors is explicitly excluded.

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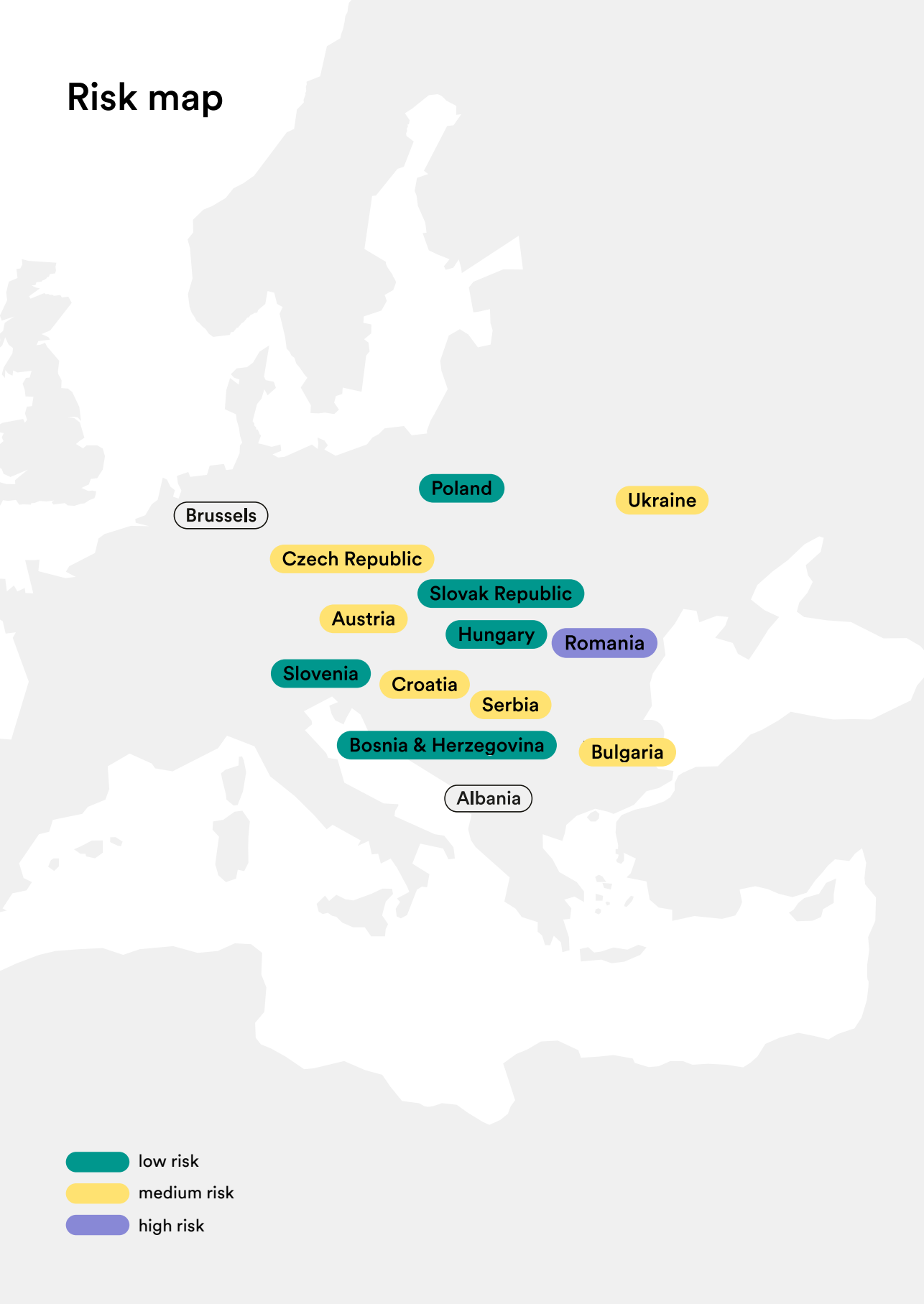
Risk map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Collective Redress
in CEE & SEE

Austria

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in Austria?**

  Austrian law provides for several collective redress mechanisms.

  In the Representative Actions Directive Implementation Act (*Verbandsklagen-Richtlinie-Umsetzungs-Novelle;* the **"Austrian Implementation Act"**), the Austrian legislator transposed the Representative Actions Directive (EU) 2020/1828 into national law on 11 July 2024. Through the newly introduced mechanism of representation actions, qualified entities can now bring actions against companies on behalf of claimholders (consumers) not only to seek declaratory judgments or injunctive measures, but also to seek redress measures (**"Representative Action for Redress"**).

  In addition to the collective redress mechanisms provided for in statute, the Austrian Supreme Court has also established the so-called **"Austrian-Style Collective Action"** (*Sammelklage österreichischer Prägung*). Under this regime, claimholders (consumers and/or companies) can assign their claims to an individual or legal entity (a consumer protection association or a special claims vehicle). The individual or entity then asserts these assigned claims collectively in its own name. Even though the assigned claims are bundled within one action brought by a single party, every claim will be assessed individually on its merits during the proceedings.

  As an alternative, the Austrian Code of Civil Procedure also offers the option of consolidating multiple claimants and their claims into a joint action (*Streitgenossenschaft*). This form of joint litigation necessitates that all asserted claims stem from substantially similar facts (such as multiple injured parties in the same accident) and that the court seised has jurisdiction over all such claims.

  In addition, the Austrian Consumer Protection Act and the Austrian Act Against Unfair Competition stipulate elements for collective protection. Both legislative acts confer a distinct substantive right upon associations to take legal actions where there is a public interest (*Verbandsklage*). However, this right is limited to challenging unfair or unlawful terms and conditions in contracts, and/or unlawful business practices.

  For the purposes of this Guide, the focus will primarily lie in Representative Actions for Redress (under the Austrian Implementation Act) and Austrian-Style Collective Actions, as these are the relevant collective redress mechanisms when it comes to claims for damages.

b) Key features of collective action in Austria

- **Is collective redress available in all areas of law or only in certain sectors?**

  Representative Actions for Redress, Austrian-Style Collective Actions and joint actions are available in all areas of law and in all claims that can be pursued before the civil courts. On the other hand, legal actions brought under the Austrian Consumer Protection Act and the Austrian Act Against Unfair Competition are restricted to the respective areas of law regulated by those Acts.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  The right to initiate legal actions under the Austrian Implementation Act, the Austrian Consumer Protection Act and the Austrian Act Against Unfair Competition is restricted to certain associations determined in those laws. The entities recognised in all three of these Acts are essentially the same, with the Association for Consumer Information being the most relevant in practice. Under the Austrian Implementation Act, it is possible for further entities to be recognised as qualified entities. Among the requirements for qualification, an entity must have been publicly active in the protection of consumer interests for at least twelve months and must serves to protect said interests.

  Nevertheless, it is not only these associations that can bringing Austrian-Style Collective Actions. In practice, Austrian-Style Collective Actions can be initiated by named *ad hoc* associations or entities (special claims vehicles explicitly established for this purpose).

- **What mechanism applies - opt-in, opt-out, or both?**

  All collective redress mechanisms are based on the opt-in model.

  To join a Representative Action for Redress, the claimholder must lodge a declaration of accession. The qualified entity must present the claimholder's accession both to the court and to the defendants in a written pleading.

  Claimholders who want to join an Austrian-Style Collective Action must actively assign their claims to the lead individual or legal entity.

  Claimholders who have not acceded or assigned their claims will not be affected by the collective action and the resulting judgment will not have any binding effect on them. They can, however, assert their claims individually, even in parallel to a pending collective action.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  The Representative Action for Redress requires that a minimum of 50 claimholders have declared their accession. Further, the claims must be based on essentially similar facts asserted against the same company.

  For an Austrian-Style Collective Action to be permissible, the court must have seised (local and factual) jurisdiction over all claims, and the same type of procedure must apply. The assigned claims do not have to be identical, but all claims must be connected (essentially share a similar basis). The court proceedings must assess the same issues of fact or law pertaining to a main issue or a significant preliminary question common to all claims. There is no minimum threshold for claims.

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  Representative Actions for Redress and Austrian-Style Collective Actions both facilitate the pursuit of claims for performance, including claims for damages. On the other hand, the regimes provided for in the Austrian Consumer Protection Act and the Austrian Act Against Unfair Competition restrict claims to injunctive and declaratory relief.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  In general, all asserted claims are dealt with individually. The determination of one claim does not determine the remaining claims. Thus, both Representative Actions for Redress and Austrian-Style Collective Actions require loss to be established and proven on an individual basis.

- **What types of damages are recoverable (*e.g.* economic loss, damage to property)?**

  Representative Actions for Redress and Austrian-Style Collective Actions provide remedies for monetary damage resulting from bodily injury, damage to property, immaterial damage and economic loss. Austrian civil law does not recognise the concept of punitive damages.

- **How are damages quantified? On what basis are damages divided among class members?**

  Damages are typically assessed based on the specific circumstances of the case, including the extent of harm suffered by each individual class member. This also means that each class member is awarded redress equal to the actual damage suffered. Redress should primarily be through restitution in kind. The objective is to place the injured party in an

equal or similar situation to that which they would have been in if the damaging event had not occurred. If this is not possible or feasible, payment of monetary damages is permitted. The extent of the redress depends on the degree of the tortfeasor's fault. In the case of slight negligence, the tortfeasor must only compensate the actual loss and not loss of profits. In case of gross negligence or intent, the tortfeasor may also have to compensate loss of profits.

- **What is the settlement structure, if any?**

  No standardised settlement framework exists for collective redress. Settlements may be reached at any juncture, either extrajudicially through private agreements or within the courtroom, resulting in a court-issued protocol of the agreement formulated by the parties before the judge. Court approval is not required for Austrian-Style Collective Actions. For settlements of Representative Actions for Redress to be binding, they must be confirmed by the court.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures in the context of collective redress?**

  Representative Actions for Redress must first be heard and decided by the court as to whether the general and special requirements (*e.g.* number of claimholders, claims based on similar facts *etc.*) are met. If these requirements are met, the court publishes the decision to proceed. This triggers a three-month period during which additional consumers can join. Following this, the court may proceed with a motion for an interim declaratory judgment. Such a motion will most likely concern the merits of the case which all acceded claims have in common. Finally, the court decides the individual claims for performance of all claimholders participating in the proceedings. There is no difference between "standard" litigation under the rules of the Austrian Code of Civil Procedure and the final step of a Representative Action for Redress.

  In an Austrian-Style Collective Action, the first step is to assess whether the claimant has met the prerequisites to initiate such a collective action. This is determined on a case-by-case basis. Further proceedings are governed by the rules of the Austrian Code of Civil Procedure. There is no difference between "standard" litigation and an Austrian-Style Collective Action.

- **Is there a deadline by which claimholders must join proceedings?**

  Claimholders can join proceedings up to three months after the publication of the decision to initiate a Representative Action for Redress.

  In an Austrian-Style Collective Action, claimholders must assign their claims to the individual or legal entity (future claimant) before the Austrian-Style Collective Action is lodged with the court. Additional or further claims would have to be pursued in another (second) lawsuit. These two proceedings can later be consolidated if both actions are heard by the same court.

- **Are there any time limits on initiating court proceedings?**

  Since there are no specific or separate provisions regarding Austrian-Style Collective Actions, the statute of limitations under the Austrian Civil Code applies. The general limitation period is 30 years. In practical terms, however, the shorter limitation period of only three years is more relevant. Claims for damages must be brought before the courts within three years of both the damage and the tortfeasor becoming known. The courts examine whether each individual claim bundled within an Austrian-Style Collective Action is time-barred.

  Notably, a collective action for injunctive measures will suspend the limitation period for all affected claimholders in respect of their claims against the defendant in connection with the subject matter of the collective action. In the case of a Representative Action for Redress, the joining of a claimholder will also suspend the limitation period for the claim being asserted. This is particularly relevant in the event that the general and special requirements of a Representative Action for Redress are not met (*e.g.* minimum of 50 claimholders) and the collective action is rejected by the court. In this case, the claimholder is granted a further three-month period during which to pursue his or her claim individually.

- **Is pre-trial discovery available?**

  The Austrian Code of Civil Procedure does not provide for a pre-trial discovery process akin to that in common law jurisdictions like the United States. Austrian civil procedure typically involves the exchange of evidence during the proceedings, with parties submitting relevant documents and information to the court as part of their pleadings and during the trial phase. However, in the course of civil proceedings, courts – at the request of a party – can, under certain conditions, order the opposing party or third parties to disclose certain documents and information.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the "loser pays" principle apply?**

  The "loser pays" principle applies, with the unsuccessful party required to bear the prevailing party's costs of the proceedings. Consequently, the successful party is entitled to recover necessary and appropriate costs, encompassing court fees, other incidental expenses and their own legal costs. Legal fees are calculated under the Austrian Lawyers' Tariff Act, whereas court fees are calculated under the Austrian Court Fees Act. If the parties win only in part, the legal costs are divided between the parties on a *pro rata* basis.

- **How are the costs of proceedings shared among class members?**

  As claimholders are not parties to the proceedings, they are not directly liable to reimburse the costs established under the Austrian Lawyers' Tariff Act and the Austrian Court Fees Act. However, a cost-sharing arrangement can of course be concluded between the claimholders and the qualified entity or the special claims vehicle. With respect to Austrian-Style Collective Actions, a third party generally assumes the cost risk of proceedings by providing litigation funding. Consequently, members of the class do not bear the costs if they lose. It can be assumed that a similar arrangement will exist for the newly introduced Representative Action for Redress, for which there is not yet any practical experience to draw from.

- **Is third-party litigation funding permitted in Austria?**

  Third-party litigation funding is permitted in Austria. With respect to Austrian-Style Collective Actions, the Austrian Supreme Court has stated that third-party litigation funding does not constitute a breach of the prohibition of contingency fees (*quota litis*) stipulated in the Austrian Civil Code, as the litigation funder is not considered a "legal representative" (*e.g.* an attorney) to whom the prohibition applies. By contrast, the Austrian Implementation Act explicitly permits third-party funding for Representative Actions for Redress.

- **Are there any restrictions on third-party litigation funding?**

  The Austrian Implementation Act stipulates that the third-party funder must neither be a competitor of the defendant nor economically or legally depended on the defendant. Further, the qualified entity must avoid any conflict of interest and ensure that consumer protection is always at the centre of its decisions.

- **Are contingency fees permitted in Austria?**

  Under Austrian law, contingency fee arrangements between clients and attorneys are not permitted. However, an additional success fee may be negotiated. This may involve agreeing a certain markup on the attorney's regular fees in the event of success.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  In the context of cross-border litigation, there are limitations placed on the international jurisdiction of Austrian courts by national, international and European procedural law (*e.g.* Brussels I Regulation (recast)). For example, consumers assigning their claims to other individuals or legal entities lose international jurisdiction according to Art 17 Brussels I Regulation (recast). Regarding the realm of tort, litigation is frequently required to be initiated in the country of origin: specifically, where the harm occurred.

- **Can claims be brought by residents from other jurisdictions?**

  The Austrian-Style Collective Action is not limited to parties residing in Austria. However, the limitations of international jurisdiction in cross-border cases require that, in the absence of a jurisdiction agreement between the parties, a connection must exist with the jurisdiction of the Austrian courts. Such a connection arises, for example, when the place of damage is in Austria or when a company is seated or registered in Austria.

  The Austrian Implementation Act does not directly address this question. Although the Court for Commercial Matters in Vienna (*Handelsgericht Wien*) has exclusive jurisdiction for Representative Actions for Redress, it can be assumed that the international jurisdiction of the court is yet to be established.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  On 11 July 2024, the Austrian Parliament enacted the Austrian Implementation Act transposing the Representative Actions Directive (EU) 2020/1828 into national law. The Act came into force on 18 July 2024. An initial assessment shows that the Representative Action for Redress is unlikely to replace the Austrian-Style Collective Action, but rather it will simply supplement it.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

  There are no published annual statistics on the number of collective actions brought before the Austrian courts. However, the number of collective actions has increased over recent years and they are now being brought more frequently, especially by consumer protection associations. Collective actions are mainly focused on product liability, data protection infringements, cartel damage and flight delays.

- **Based on the information provided above, is the risk of facing collective actions as a company high / medium / low?**

  Medium risk.

Stephan Kugler
Counsel
E stephan.kugler@wolftheiss.com
T +43 1 51510 5754

Eva Spiegel
Partner
E eva.spiegel@wolftheiss.com
T +43 1 51510 5120

Roland Marko
Partner
E roland.marko@wolftheiss.com
T +43 1 51510 5880

Dominik Szerencsics
Associate
E dominik.szerencsics@wolftheiss.com
T +43 1 51510 5128

Collective Redress
in CEE & SEE

Bosnia & Herzegovina

Wolf Theiss

The State of Bosnia and Herzegovina ("**BiH**") consists of two separate entities – the Federation of Bosnia and Herzegovina ("**FBiH**") and Republika Srpska ("**RS**") – as well as an autonomous district under the direct sovereignty of the State – Brcko District of BiH ("**BDBiH**"). Separate legal regimes are essentially applicable in each of these entities and in the BDBiH, although certain matters are regulated by State-wide laws. Unless otherwise indicated, the answers provided below apply to the entire territory of BiH.

a) Current collective redress regime

- **What forms of collective redress are available in Bosnia and Herzegovina?**

The entities (FBiH and RS) and the BDBiH each have their own Law on Civil Proceedings (together the "**Laws on Civil Proceedings**")[1], which set out rules regulating special civil procedures for the protection of collective rights and interests. These rules provide that associations, bodies, institutions and other organisations established under the terms of the statute may file an action for the protection of collective interests and rights against any natural or legal person who, through certain activities or generally through their actions or omissions, severely violates or seriously endangers such collective interests and rights. The registered or legally prescribed activities of the entity bringing the claim must include the protection of legally established collective interests and rights of citizens, and such authorisation must be explicitly provided for by a special law and under the conditions prescribed by statute.

The Laws on Civil Proceedings also regulate the matter of co-litigants.

In addition, the BiH Consumer Protection Act[2], adopted at a State-wide level, also provides for a collective redress mechanism. Under the BiH Consumer Protection Act, many administrative bodies, in addition to consumer associations and a specialised Ombudsman for Consumer Protection, have the right to initiate legal proceedings before the competent court(s).

Another collective redress mechanism for consumers is provided by the BiH Competition Act[3], which is also adopted at a State-wide level. Under this Act, consumer associations can initiate procedures for consumer protection before the BiH Competition Council, which is the authority competent to take measures against distorted market competition. If these associations are not satisfied with the BiH Competition Council's ruling, they can bring an administrative dispute against the ruling before the courts of BiH.

1 Law on Civil Proceedings ("*Official Gazette of FBiH*", Nos. 53/03, 73/05, 19/06 and 98/15); Law on Civil Proceedings ("*Official Gazette of RS*", Nos. 58/03, 85/03, 74/05, 63/07, 105/08, 45/09, 49/09, 61/13, 9/2021 and 27/24); Law on Civil Proceedings of BDBiH ("*Official Gazette of BDBiH*", Nos. 28/18 and 6/21).

2 BiH Consumer Protection Act ("*Official Gazette of BiH*", Nos. 25/06 and 88/15).

3 BiH Competition Act ("*Official Gazette of BiH*", Nos. 48/05, 76/07 and 80/09).

b) Key features of collective redress in Bosnia and Herzegovina

- **Is collective redress available in all areas of law or only in certain sectors?**

  The collective redress mechanism and joint litigants, as defined in the Laws on Civil Proceedings, are permitted in all areas of law and in all claims that can be pursued before the civil courts. The Laws on Civil Proceedings explicitly provide that collective redress is available for the protection of interests that concern the environmental, moral, ethnic, consumer, anti-discrimination and any other interests that are guaranteed by law and that are violated or endangered in an egregious manner by the actions of the person against whom the action is filed.

  On the other hand, legal actions brought under the BiH Consumer Protection Act and the BiH Competition Act are restricted to those particular areas of law.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  Individuals are entitled to file individual claims. However, collective actions can be brought by institutions, bodies and associations that are authorised by special laws to file for collective redress on condition that their registered or legally determined duties include the protection of legal interests.

  For example, under the BiH Consumer Protection Act, a right to bring an action before the court lies with the BiH Ombudsman for Consumer Protection, consumer protection associations and other authorised institutions and interested parties.

  Furthermore, under the BiH Competition Act, consumer associations can initiate consumer protection procedures before the BiH Competition Council. In addition, the BiH Competition Council is entitled to initiate these proceedings *ex officio*.

- **Which mechanism applies – opt-in, opt-out or both?**

  The Laws on Civil Proceedings are silent on whether collective proceedings should follow the "opt-in" or "opt-out" principle. Considering the restrictive wording of the law, it should be assumed that the legislator has followed the "opt-in" approach. However, the law has not defined how consumers should opt into collective proceedings, how they will be informed or what kind of effects judgments will have on consumers who have not opted in, all of which would be valuable to enable the functioning of this mechanism in practice. The lack of court practice relating to collective redress, as well as limited analysis of this matter in legal theory, gives rise to uncertainties over how these issues will be addressed in the future.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  Under the Laws on Civil Proceedings, associations, bodies, institutions and other organisations can file for collective redress where they meet the following conditions: (i) they are authorised by special laws to file for collective redress; (ii) their registered or legally determined duties include the protection of legally established collective interests and the rights of citizens; (iii) there is a serious infringement of a collective interest or a serious threat of infringement. There is no minimum threshold for claims.

  Joint litigation is permissible if (i) joint litigants are legally united regarding the subject matter of the dispute or if their rights or obligations arise from the same factual and legal basis (material joint litigants), or (ii) the subject of the dispute involves claims or obligations of the same type and which are based on essentially the same factual and legal basis, and if the same court has both subject-matter and territorial jurisdiction for each claim (formal joint litigants); or (ii) if so specified by another law.

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  The collective redress measures available to consumers under the Laws on Civil Proceedings include: (i) declaratory relief determining that consumers' rights have been violated; (ii) prohibition of certain actions that violate or infringe upon consumers' rights or interests, including prohibition of the use of certain contractual provisions or business practices; (iii) condemnatory relief ordering the performance of actions to mitigate damage or to prevent further damage; and (iv) the publication of the judgment in the media. In addition, an injunction may be sought before or during the proceedings.

  The Laws on Civil Proceedings exclude the possibility of filing collective claims for damages. In fact, the law explicitly stipulates that only individual claims for damages may be filed. In this sense, the findings issued in the judgments on collective actions (*i.e.* that consumers' rights have been violated) have a binding effect only for future individual claims for damages. However, this does not exclude the right of multiple individuals / entities to file a joint claim provided that the statutory conditions for joint litigants are met.

  Collective claims for damages are, however, permitted under the BiH Consumer Protection Act, although this Act does not further specify how the damage to the collective interest of the consumers should be calculated. Due to the legal gaps preventing this mechanism from being implemented and the exclusion of collective claims for damages as an available remedy for collective redress under the Laws on Civil Proceedings, the provisions on collective claims for damages under the BiH Consumer Protection Act currently seem to be unachievable. The lack of court practice relating to collective redress, as well as limited analysis of this matter in legal theory, give rise to uncertainties over how these issues will be addressed in the future.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  In general, all damage needs to be determined and proven on a case-by-case basis. Indeed, the determination of one claim does not determine the remaining claims but could be used as material evidence in other proceedings based on similar factual and legal circumstances.

- **What types of damage is recoverable (*e.g.* economic loss, damage to property)?**

  General rules on compensation of damage apply in this respect. In this sense, damage is defined as a reduction of property (direct damage) and/or a prevention of an increase of property (loss of profit), as well as the infliction of physical or psychological pain or fear on another person (non-material damage).

- **How are damages quantified? On what basis are damages divided among claimholders?**

  Damages are typically assessed based on the specific circumstances of the case, including the extent of harm suffered by each individual claimant (in the case of joint litigants). This also means that each plaintiff is awarded redress equal to the actual damage suffered. The objective is to place the injured party in an equal or similar situation to that which he or she would have been in if the damaging event had not occurred.

- **What is the settlement structure, if any?**

  No standardised settlement framework exists for collective redress. Settlements may be reached at any juncture, either extrajudicially through private agreements or within the courtroom, resulting in a court-issued protocol of the agreement formulated by the parties before the judge. However, court approval is not required.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  Where a collective action is brought before a competent court, the general rules relating to litigation in that court apply.

  In cases of collective redress, the company against whom the collective action has been filed may, under the Laws on Civil Proceedings, file a claim for: (i) declaratory relief determining that consumers' rights have not been violated; (ii) damages from both the organisation filing the collective action and/or the alleged victims in whose name the action has been filed; and (iii) the publication of the judgment in the media.

The company/alleged perpetrator may also file a claim for compensation of "special damage", which will be quantified at the court's discretion if the collective action is found to be "obviously unfounded" and if, because of the proceedings and the media coverage, the reputation and business interests of the relevant company have been seriously harmed.

- **Is there a deadline by which claimholders must join proceedings?**

  Claimholders can join proceedings until the end of the preliminary hearing phase. If the request to join proceedings is submitted after the defendant has entered a response to the action, the defendant's consent will be required.

- **Are there any time limits on initiating court proceedings?**

  There is no time limit for bringing collective actions. However, general statutes of limitations apply and are observed by the courts where the defendant raises a statute of limitations objection (since the courts do not apply statutes of limitations *ex officio*).

  The limitation period depends on the type of claim. However, the general limitation period is five years in FBiH and BDBiH, and ten years in RS, from the moment the claim arose.

  For damages claims (individual claims or collective claims for damages), the limitation period is three years from the moment the damaging act, the perpetrator and the damage itself were discovered (subjective limitation period) and five years from the moment the damage occurred (objective limitation period).

- **Is pre-trial discovery available?**

  The Laws on Civil Proceedings do not provide for a pre-trial discovery process akin to that in common law jurisdictions like the United States. Civil judicial procedure in BiH typically involves the exchange of evidence during the proceedings, with parties submitting relevant documents and information to the court as part of their pleadings and during the preliminary hearing. However, during civil proceedings, the courts – at the request of a party – can order the opposing party or third parties to disclose certain documents.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the "loser pays" principle apply?**

  The "loser pays" principle applies, with the unsuccessful party required to bear the prevailing party's costs of the proceedings. Consequently, the successful party is entitled to recover necessary and appropriate costs, encompassing court fees, other incidental expenses and their own legal costs based on the lawyer's tariff (in FBiH, the attorney fees recoverable from the opposing party cannot exceed the average net monthly salary in FBiH per legal action, valid at the time the action was performed). If the parties only win in part, the legal costs are divided between the parties on a *pro rata* basis.

- **How are the costs of proceedings shared among class members?**

  As a general rule, the costs of proceedings are borne by the co-litigants in equal shares. If there is a significant difference in the co-litigants' shares in the subject matter of the dispute, the court will determine the share of the costs that each co-litigant will bear according to their proportionate share. Co-litigants are not liable for the costs caused by the special litigation actions of individual co-litigants.

- **Is third-party litigation funding permitted in Bosnia and Herzegovina?**

  Although not explicitly regulated, third-party litigation funding is generally permitted in BiH.

- **Are there any restrictions on third-party litigation funding?**

  As there are no special rules regulating third party funding, there are no prescribed restrictions that would apply.

- **Are contingency fees permitted in Bosnia and Herzegovina?**

  In general, contingency fee arrangements between clients and attorneys are not permitted. However, an additional success fee may be negotiated. This may involve agreeing to a certain markup on the attorney's regular fees in the event of success.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  The BiH Consumer Protection Act provides that where a contract has been concluded in BiH between a domestic consumer and a foreign trader, there is an obligatory prorogation of jurisdiction in favour of the BiH court. Any clause that is contrary to this provision is deemed null and void under the BiH Consumer Protection Act. Any contract between a domestic consumer and a foreign legal or natural person or any contract on distance sales, regardless of the merchant's headquarters, will be considered a contract concluded in BiH.

  This provision suggests that BiH courts have exclusive jurisdiction over every consumer contract concluded in BiH, and that every contract concluded with a consumer that is a national of BiH is considered a contract concluded in BiH. However, it remains unclear if this obligatory prorogation of jurisdiction in favour of the BiH court applies only to individual consumer claims or also to actions for collective redress filed by associations or institutions for the purpose consumer protection. As far as we are aware, there are no published legal precedents on this matter.

- **Can claims be brought by residents of other jurisdictions?**

  Generally speaking, the international jurisdiction of BiH courts is not limited to parties residing in BiH. However, the limitations of international jurisdiction in cross-border cases require that, in the absence of a jurisdiction agreement between the parties, a connection must exist with the jurisdiction of the BiH courts. Such a connection arises, for example, when the place of damage is in BiH or when a company against which the claim is filed is seated or registered in BiH.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  The Representative Actions Directive (EU) 2020/1828 requires further reforms in BiH, especially with regard to introducing collective claims for damages, which, in turn, will likely enhance the effectiveness of the collective redress mechanism in BiH. It is unclear, however, when these reforms will be implemented in BiH.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

  Collective redress is rarely sought in BiH. Currently, they are most often seen in the area of public utility services (telecommunications, electricity supplies and heating) and the banking sector, and their popularity is growing in activities related to environmental protection.

  However, given that collective redress has only been regulated by civil procedure legislation for a few years, we can expect these types of claims to increase in the future.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

  Low risk.

Key Contact / Authors

Naida Čustović
Attorney at Law
in cooperation with Wolf Theiss
naida.custovic@lawoffice-custovic.com
T +387 33 953 460

Ilma Kasumagić
Attorney at Law
in cooperation with Wolf Theiss
E ilma.kasumagic@lawoffice-kasumagic.com
T +387 33 953 458

Law Office Naida Čustović, cooperating law office of Wolf Theiss
Zmaja od Bosne 7, 71000 Sarajevo, Bosnia and Herzegovina
T +387 33 953 444 **E** sarajevo@wolftheiss.com

Collective Redress
in CEE & SEE

Bulgaria

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in Bulgaria?**

  Currently, the Bulgarian Code of Civil Procedure establishes the main statutory framework for collective redress in Bulgaria by laying down rules for consolidating multiple claimants and their claims into a collective action (*производство по колективни искове*). With this form of collective action, claims are brought on behalf of claimholders who have all been harmed by the same infringement.

  Elements of collective consumer protection are also provided in the **Bulgarian Consumer Protection Act.** This legislation confers the right on certain administrative bodies and associations to bring a collective action aimed at protecting consumers' rights. Collective actions can seek the suspension or prohibition of actions or business practices that infringe upon the collective interests of consumers. The redress awarded by the competent court in a collective action are not intended to compensate the damage suffered by each individual, but rather aim to eliminate the actions or practices that harm the collective interest.

  For the purposes of this Guide, the focus will primarily lie in collective actions under the Bulgarian Code of Civil Procedure, which are the collective redress mechanisms relevant for damages claims.

  As a preliminary note, Bulgaria has not yet implemented the provisions of the Representative Actions Directive (EU) 2020/1828. However, several legislative draft bills have been drafted and tabled in the Parliament in this respect. In the coming months, the provisions of the Directive are expected to be implemented into Bulgarian law, which will fundamentally usher in a new Bulgarian collective redress regime.

b) Key features of collective redress in Bulgaria

- **Is collective redress available in all areas of law or only in certain sectors?**

  Collective actions under the Bulgarian Code of Civil Procedure are available in all areas of law and in all claims that can be pursued in the civil courts.

  Collective actions under the Bulgarian Consumer Protection Act are limited to actions seeking the protection of consumers' rights.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  A collective action under the Bulgarian Code of Civil Procedure can be initiated by any interested party. In practice, such actions are usually initiated by entities explicitly established for this purpose.

  A collective action may legally be brought by: (i) multiple individuals or entities that are not organised as a special claims vehicle, who claim that their collective interest has been harmed or threatened; (ii) an *ad hoc* special claims vehicle established for the purpose of protecting the harmed or threatened collective interest or for protection against a specific type of infringement; (iii) both options together (*i.e.* individuals/entities and a special claims vehicle both participate as claimants in the collective action).

  The right to bring actions under the Bulgarian Consumer Protection Act is restricted to certain administrative bodies and non-profit associations.

- **Which mechanism applies – opt-in, opt-out or both?**

  The Bulgarian Code of Civil Procedure provides for an "opt-in" procedure when it comes to participation in collective actions. In general, the claimants in proceedings may be individuals harmed by an infringement and/or legal entities acting as "procedural substitutes" for the claimholders.

  In the initial statement of claim *(Искова молба),* the claimants must specify the common collective legal interest at the base of the collective action. More specifically, they must outline the common specific characteristics of the infringement. Usually, the common specific characteristics of the infringement relate to the spatial or qualitative dimensions of the violation affecting the injured individuals/entities, which could stem from tort or contract liability on the part of the defendant.

  The general rule in such proceedings is that claimholders are not determined by name or other individual features, but rather are identifiable by common specific characteristics. In order to join a collective action, claimholders that are entitled to participate in the collective action must explicitly request to participate in a collective action that has already been initiated.

  Upon initiation of collective redress proceedings, the court orders the case to be disseminated in the mass media. The court also sets a deadline by which all individuals/entities may request to join the collective action. This possibility is indicative of the opt-in principal, where anyone who meets the common specific characteristics of the infringement can participate in the collective action by filing a request.

However, the Bulgarian Code of Civil Procedure grants all claimants (who have been granted that status by explicit ruling of the court) the right to request their own exclusion from the collective action and to separately and independently pursue an individual action against the respondent in parallel court proceedings (these proceedings will be different in scope, involving the defence of the claimant's individual interest rather than the collective interest of the whole group of individuals/entities sharing the common specific characteristics of the infringement).

In a public hearing, the court renders a ruling in which it (i) accepts individuals/entities as claimants (where they have submitted their request within the deadline) and (ii) excludes individuals/entities that have requested their own exclusion with the intention of independently pursuing an action in defence of their individual rights and legal interests.

Nevertheless, if the court upholds a collective action, both the individuals/entities that opted in and those that requested to be excluded can benefit from the court's decision and the factual circumstances established in that decision to bring forward an individual claim. Because of the decision, the claimholder will face a lower burden of proof and will only need to prove the harm and the causal link between the defendant's wrongdoing and the harm suffered.

Under the Bulgarian Consumer Protection Act, on the other hand, the opt-in mechanism is the sole applicable procedure, with individuals required to actively assign their claims to the Bulgarian Consumer Protection Commission or other non-profit entity engaged in the collective action. In such cases, individuals can also assert their claims individually, in parallel to the collective action.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  For a collective action to be admissible, claims must be brought on behalf of claimholders who have suffered harm resulting from the same infringement. There is no specific requirement for the claims in a collective action to be identical, but there must be a particular connection between all claims (*i.e.* they must have a similar factual basis). There is no minimum threshold for bringing an action either under the Bulgarian Code of Civil Procedure or the Bulgarian Consumer Protection Act.

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  The remedies available under the Bulgarian Code of Civil Procedure are (i) injunctive measures aimed at the cessation of the infringement, (ii) redress measures, including orders to undertake certain actions or refrain from undertaking certain actions, and (iii) monetary compensation for damage caused as a result of an infringement. In the case of monetary compensation, this is awarded to the claimant (consumer associations, special claims vehicle, etc) and must, therefore, be further divided between the claimholders.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  The main aim of collective proceedings is to achieve the declaratory effect of the court's decision and to eliminate the source causing the harm, rather than the effective recovery of the damage suffered. Hence, members of a collective action cannot recover their individual losses through the collective action. The claimed damages must be collectively established by the claimant and differs from the individual damage suffered by claimholders, which are not the subject of the collective action. Individual damages must be claimed in separate court proceedings against the same defendant. In those proceedings, the claimant may rely on the merits of the positive decision rendered the collective action to support his or her individual claim.

- **What types of damage is recoverable (*e.g.* economic loss, damage to property)?**

  The Bulgarian Code of Civil Procedure does not provide specific types of remedies that can be claimed in collective proceedings. Thus, the general civil-law principles in this respect apply (*i.e.* that both pecuniary and non-pecuniary damage may be compensated, including actual loss and loss of profit). Bulgarian law, however, does not allow the award of punitive damages.

- **How are damages quantified? On what basis are the damages divided among class members?**

  Damages are assessed based on the specific circumstances of the case, taking into consideration the actual loss or loss of profit suffered by the collective and not by each individual involved in the collective action. The objective is to place the injured party in an equal or similar situation to that which he or she would have been in if the damaging event had not occurred. Compensation should cover all direct and immediate damage causally linked to the infringement but should not include indirect or remote damage. Damage that could not have been predicted at the time of the infringement can be included in compensation only in the event of bad faith on the part of the tortfeasor.

  Since compensation is meant to compensate the collective interest, Bulgarian law enables the court to order damages to be paid into special joint accounts of the claimants, or to take measures for the appropriate allocation of these funds.

- **What is the settlement structure, if any?**

  No specific rules exist regarding the settlement of collective actions. However, the court has an obligation to recommend that parties enter into extra-judicial settlement negotiations. Settlements may be reached at any time, either extrajudicially through private agreements or within the court proceedings, resulting in a court-issued protocol of the agreement formulated by the parties before the judge. The settlement agreement takes effect upon its approval by the court.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  As a first step, it is necessary to assess whether the claimants have met the prerequisites. This is determined on a case-by-case basis. The course of further proceedings is governed by the rules of the Bulgarian Code of Civil Procedure. There are no major differences between "standard" litigation and collective actions.

- **Is there a deadline by which claimholders must join proceedings?**

  Once proceedings are initiated, claimholders must file a request for participation, which, if granted, will allow them to join independently as claimants or to assign their claims to the individual or legal entity (as claimant) within the reasonable time period decided by the court of first instance during the first court hearing. During the same period, individuals who do not wish to take part in the proceedings may inform the court accordingly. The court then decides whether or not to grant permission to other injured claimholders and *ad hoc* organisations that have filed a request to join the proceedings, and decides whether to exclude those claimholders that have so requested. Additional or further claims would have to be pursued in another (second) lawsuit. These two proceedings may later be consolidated if both actions are heard by the same court.

- **Are there any time limits on initiating court proceedings?**

  Since there are no specific or separate provisions regarding collective actions, the statute of limitations according to the Bulgarian Obligations and Contracts Act apply. Thus, the general limitation period is five years. However, there is a shorter limitation period of only three years in the case of claims for remuneration of labour, rent, interest and other periodic payments, and claims for damages and penalties due to non-performance of contractual obligations.

- **Is pre-trial discovery available?**

  The Bulgarian Code of Civil Procedure does not provide for a pre-trial discovery process akin to that in common law jurisdictions. Bulgarian civil procedure typically involves the exchange of evidence during the proceedings, with parties submitting relevant documents and information to the court as part of their pleadings and during the trial phase. However, in the course of civil proceedings, courts – at the request of a party – can order the opposing party or third parties to disclose certain documents and information. Such requests, however, should be precise and concern very specific documents.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the fees / legal fees? Does the "loser pays" principle apply?**

  The "loser pays" principle generally applies, with the unsuccessful party required to bear the prevailing party's costs of the proceedings. Consequently, the successful party is entitled to recover part or the entirety of its costs, including court fees, other incidental expenses (*e.g.* expert reports, translation costs, *etc.*) and their own legal costs. The Bulgarian Tariff only regulates the lower limit of lawyers' fees but no upper limit. However, the legal fees awarded may be reduced at the discretion of the Court (in practice, this rarely happens if evidence is provided that the claimed fees have actually been paid). Court fees are calculated on the basis of the Bulgarian Code of Civil Procedure at a general fixed rate (4% of the damages that were sought from the court). If the parties only win in part, the legal costs are divided between the parties on a *pro rata* basis.

- **How are the costs of proceedings shared among class members?**

  In general, this is subject to agreement between the claimant and the claimholders. The court may also provide for a specific splitting of costs in its judgment.

- **Is third-party litigation funding permitted in Bulgaria?**

  Third-party litigation funding is not explicitly regulated by Bulgarian law. Therefore, there is no barrier to third-party funding of collective actions. However, such funding arrangements are not common in Bulgaria.

- **Are there any restrictions on third-party litigation funding?**

  There are no specific restrictions on third-party litigation funding under Bulgarian law.

- **Are contingency fees permitted in Bulgaria?**

  In general, contingency fee agreements are permissible.

  The Bulgarian Lawyer's Ethics Code, however, prohibits attorneys from reaching agreement with a client prior to the conclusion of a case in which the attorney's fee is decided exclusively as a percentage of the material interest in the case that the attorney is defending.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  There are no specific limitations on collective actions in terms of the international jurisdiction of Bulgarian courts. In the context of cross-border litigations, the international jurisdiction of Bulgarian courts is limited by international rules on competence (*e.g.* Brussels I Regulation (recast)). Therefore, consumers assigning their claims to other individuals or legal entities lose international jurisdiction according to Art 17 Brussels I Regulation (recast).

- **Can claims be brought by residents from other jurisdictions?**

  Overall, the international jurisdiction of Bulgarian courts is not limited to parties residing in Bulgaria. However, the limitations of international jurisdiction in cross-border cases necessitate that, in the absence of a parties' jurisdiction agreement, a connection must exist with the jurisdiction of the Bulgarian courts. Such a connection arises, for example, when the place of damage is in Bulgaria or when the infringer or harmed person is a resident or is registered in Bulgaria.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  The Representative Actions Directive (EU) 2020/1828 has not yet been transposed into Bulgarian law (although it should have been applicable from 25 June 2023). However, the Parliament has already prepared and voted on two bills for the adoption of the Bulgarian Law on Collective Actions for the Protection of Consumers' Collective Interest. Both bills were rejected for different reasons. The adoption of this legislation, which is expected by the end of 2024, should provide the basis for a far-reaching reform of the collective redress system in Bulgaria and should build on the present legal framework, which already complies with the main elements of the Representative Actions Directive (EU) 2020/1828.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

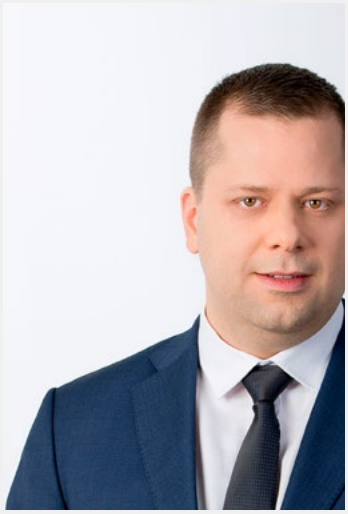
  The Bulgarian collective redress regime is not frequently used. Therefore, only a small number of collective redress cases have ended in a final court decision since the legislative framework came into force.

  Based on available statistical data, the bulk of collective actions relate to consumer protection and therefore have been brought by the Bulgarian Consumer Protection Commission. In addition, case law indicates that individuals and entities would rather pursue individual claims for compensation than bring a collective action to seek the protection of a collective interest.

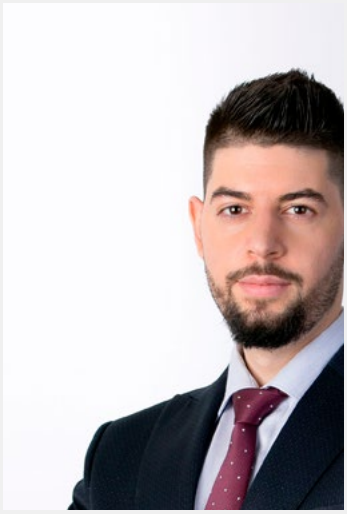
- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

  Medium risk.

Key Contact / Authors



Oleg Temnikov
Partner
E oleg.temnikov@wolftheiss.com
T +359 2 8613 700



Teodor Toshev
Associate
E teodor.toshev@wolftheiss.com
T +359 2 8613728

Collective Redress
in CEE & SEE

Croatia

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in Croatia?**

Croatian law provides a framework for consumer collective redress under the Representative Actions for the Protection of Collective Interests and Consumer Rights Act (*Zakon o predstavničkim tužbama za zaštitu kolektivnih interesa i prava potrošača*) ("**Croatian Representative Actions Act**"), which came into force in June 2023. This legislation supplements the collective redress mechanism that was already in place under Croatian law. The Croatian Representative Actions Act transposes the Representative Actions Directive (EU) 2020/1828 into Croatian law and, for the first time in Croatia, introduces a mechanism that allows consumers to directly seek compensation for damages in collective redress proceedings initiated by a qualified claimant.

Three types of representative actions exist under the Croatian Representative Actions Act: (i) actions for declaratory relief, to determine that the defendant acted in breach of consumer protection regulations (*predstavnička tužba za utvrđenje*); (ii) actions for injunctive relief, to prohibit further infringements by the tortfeasor (*predstavnička tužba za zabranu postupanja*) and; (iii) actions for compensation of damage and/or unjust enrichment of the tortfeasor (*predstavnička tužba za naknadu štete).* This chapter primarily focuses on the recently enacted general type of collective redress actions (actions for compensation).

Under Croatian law, there are additional sectoral rules governing special types of collective actions, such as the Croatian Trade Act (*Zakon o trgovini*), which provides for group actions for injunctions and redress for unfair trading practices, and the Croatian Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*), which regulates joint actions for protection against discrimination.

b) Key features of collective redress in Croatia

- **Is collective redress available in all areas of law or only in certain sectors?**

Representative actions may only be filed against companies that infringe upon the provisions of EU legislation listed in Annex I of the Croatian Representative Actions Act, including provisions as transposed into national law. This list is identical to Annex I of the Representative Actions Directive (EU) 2020/1828 and enumerates 66 provisions of EU law relating to various areas of consumer participation, such as product liability, digital services, financial services, medicinal devices and transportation.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  Representative actions may only be filed by qualified claimants, which include (i) domestic associations authorised and designated by the Croatian Ministry of Economy, (ii) entities previously designated in another EU member state for representative claims and (iii) specifically qualified domestic public authorities, provided there is no conflict of interest.

  To qualify to file representative actions and to be included in the Official List of qualified claimants, domestic associations must meet several criteria. For instance, they must be established for the purpose of protecting one or more consumer rights eligible for protection through a representative action. They must have been in operation for at least twelve months prior to filing the action. They must maintain transparency in their financial operations and comply with all contractual and tax obligations. No criminal proceedings should be pending against them or their representatives. And they must prove the independence of their operations, that they are solvent and transparent, and that they have adequate resources to carry out their activities.

  On an exceptional basis, the competent courts have the power to grant procedural capacity and legal standing to file a domestic representative action in a single case to associations that meet the criteria for qualified entities specified above, but which are not listed in the official list of qualified claimants.

- **Which mechanism applies – opt-in, opt-out or both?**

  The Croatian Representative Actions Act introduced an opt-in mechanism concerning representative actions for damages. For a claim to be included in an action, the claimholder must expressly declare in writing his or her intention to be represented by the qualified claimant. Representative actions for damages must include a list of claimholders, along with their declarations of intent for representation, as well as the amount of redress they are claiming. In representative actions for declaratory and injunctive relief, qualified claimants bring claims against tortfeasor companies without claimholders having to give consent to be represented. Claimholders may use a final and binding declaratory judgment issued in a representative action as evidence in all other – individual or collective – claims for redress against the same company for the same infringement.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  Before initiating an action for declaratory or injunctive relief, the qualified claimant must first issue a written warning to the defendant(s). The action must not be filed until at least 30 days after the defendant has received the warning.

Representative actions may be brought against individual companies or groups of companies, chambers or trade associations that promote illegal behaviour, and so-called Code-owners, (*i.e.* entities responsible for formulating and revising traders' Codes of Conduct).

There is no minimum claims threshold.

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  The claimant may seek one or more remedies. Available remedies include:

  – declaratory relief (a declaration determining that the defendant acted in violation of the regulations stipulated in Annex I of the Croatian Representative Actions Act);

  – injunctive relief (an order for the defendant to cease the infringement and, if possible, the adoption of measures necessary to eliminate the harmful consequences caused by the unlawful behaviour and to prohibit the defendant from engaging in the same or similar behaviour); and

  – damages (an order for the defendant to compensate both pecuniary and non-pecuniary damage caused by a violation of the regulations stipulated in Annex I of the Croatian Representative Actions Act and ordering the defendant to pay compensation for unjust enrichment resulting from the infringement.

  The court may also order the judgment to be publicised in the press or by other adequate means.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  Individual proof of damage is required, and each claimholder must provide a declaration specifying the extent of the damage they have suffered and proof that other prerequisites for compensation are met.

- **What types of damages are recoverable (*e.g.* economic loss, damage to property)?**

  The Croatian Representative Actions Act provides options to recover both pecuniary damage (actual loss in the form of a reduction of the claimholder's property and loss of profits) and non-pecuniary loss. Additionally, it provides an option to seek damages for the unjust enrichment of the defendant resulting from an infringement of consumer protection regulations.

- **How are damages quantified? On what basis are damages divided among class members?**

  The quantification of damages follows general civil-law principles. The division of damages is based on the actual damage incurred by each claimholder. Exceptionally, if the court finds that injured parties are entitled to compensation, but the exact amount cannot be determined, the court has discretionary powers – to a certain extent – to independently assess the amount of the damage.

- **What is the settlement structure, if any?**

  In recent years, Croatia has made strides to promote alternative dispute resolution, including mediation, both before and during litigation proceedings. These means are also available in representative actions. One of the court's tasks is to inform the parties about mediation and court settlement options and encourage such dispute resolution whenever possible.

  The parties may reach a court settlement at any time during first-instance proceedings and even before the second-instance court prior to the appellate decision being made. The settlement agreement can cover the entire claim or any part of it. The court is not authorised to amend the contents of the settlement, but can only dismiss it if its provisions are unfair or contrary to mandatory regulations or rules of public morality.

  Private settlements can also be used to settle a dispute. However, such agreements do not automatically terminate ongoing litigation. Therefore, the parties should agree in their private settlement how the proceedings should be concluded (*e.g.* the claimant withdraws the claim, the defendant admits the claimant's claim, *etc.*).

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  The general rules of civil procedure before the commercial courts apply. Proceedings in representative actions are classified as urgent. In actions for declaratory and injunctive relief, a preparatory hearing should be held within 30 days of the response to the action. In the event of an appeal against the first-instance ruling, the appellate court should render its decision within 30 days. The courts are also authorised to issue interim measures to prohibit unlawful actions and prevent harm or irreparable damage, either on their own initiative or at the request of the claimant.

- **Is there a deadline by which claimholders must join proceedings?**

  While not tested in practice, the claimant should be permitted to amend its representative action for damages and to include claims from new claimholders up until the conclusion of the main hearing.

- **Are there any time limits on initiating court proceedings?**

  There are no specific or separate provisions regarding time limits in the Croatian Representative Actions Act, so the general rules on statutes of limitations apply. The general limitation period is five years, with several exceptions. For instance, claims for damages must be brought before the courts within three years of the claimholder becoming aware of the damage and of the tortfeasor.

- **Is pre-trial discovery available?**

  Croatian law does not provide for a pre-trial discovery process akin to that found in common law jurisdictions like the United States. However, if one party refers to evidence that is in the possession of the other party or third parties, and which is necessary to establish the underlying facts of the case, the courts can order the opposing party or third parties to disclose such evidence. Otherwise, the exchange of evidence occurs during the course of the proceedings, with the parties submitting relevant documents and information to the court as part of their pleadings and during the hearings.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the "loser pays" principle apply?**

  The "loser pays" principle applies to legal fees and other reasonable costs incurred by the parties in the course of, or in relation to, the proceedings. Legal fees are calculated based on the Croatian Lawyers' Tariff Act. If the parties win only in part, the legal costs are divided between the parties on a *pro rata* basis. Qualified claimants are exempt from paying court fees.

- **How are the costs of proceedings shared among class members?**

  Qualified claimants must bear the costs of the proceedings. They may request a symbolic fee from claimholders who have expressed their intention to be represented in a collective redress action. However, this fee must not exceed 5% of the value of the respective claimholder's claim, and in any case, it must not be higher than EUR 70.

- **Is third-party litigation funding permitted in Croatia?**

  Third-party litigation funding is permitted in Croatia.

- **Are there any restrictions on third-party litigation funding?**

  There are restrictions on third-party litigation funding to prevent conflicts of interest. Primarily, it is prohibited for a claimant to receive funding for a collective redress action from a competitor of the defendant or any person dependent on the defendant. Since collective actions protect consumer interests, it is necessary to ensure that third-party funders cannot influence the claimant's decisions or the protection of collective consumer interests during the proceedings. The court monitors potential violations of the claimant's financial independence either on its own initiative or at the request of the defendant. Additionally, the court may order the claimant to provide a financial overview with a list of sources of funds used to support the collective redress action.

- **Are contingency fees permitted in Croatia?**

  Contingency fees are – in general and with certain restrictions – permitted in civil-law cases. Lawyers can reach agreement with the client on a reward for their work in proportion to the success of the proceedings. However, the contingency fee must not exceed 30% of the amount awarded.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  In general, proceedings for cross-border representative actions do not differ from those for domestic actions. Regulations on private international law and jurisdiction might have an impact.

- **Can claims be brought by residents of other jurisdictions?**

  Only qualified claimants previously designated in other EU member states are permitted to file cross-border representative actions before the Croatian courts. Such a cross-border action in Croatia can also be filed jointly by several qualified claimants from different EU member states.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  Currently, there are no expected legislative reforms regarding the collective redress mechanism in Croatia. Since the Croatian Representative Actions Act has not yet been applied before the courts, it is expected that any further developments will primarily evolve through jurisprudence.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

  Collective actions are rarely used in Croatia. One of the reasons is the legal framework, which before the enactment of the Croatian Representative Actions Act provided collective consumer protection through a lengthy two-step process. In the first step, qualified claimants could only obtain declaratory and injunctive rmelief for infringements, whereas monetary compensation could only be sought in separate follow-on actions by the injured parties. The only prominent collective action case for the protection of consumer interests has been the long-standing litigation regarding the determination of unfair and null and void contractual terms in bank loan agreements in Swiss francs.

- **Based on the information provided above, is the risk of facing collective actions as a company high / medium / low?**

  Medium risk.

Key Contact / Authors

Ira Perić Ostojić
Counsel
E ira.peric@wolftheiss.com

Borna Dejanović
Senior Associate
E borna.dejanovic@wolftheiss.com

Wolf Theiss Ivana Lučića 2a/19th, 10 000 Zagreb, Croatia
T +385 1 4925 400 **E** zagreb@wolftheiss.com

Collective Redress
in CEE & SEE

Czech Republic

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in the Czech Republic?**

  The Czech Act on Collective Redress No. 179/2024 Coll. (*zákon o hromadném občanském řízení soudním*) ("**Czech Collective Redress Act**") implements the Representative Actions Directive (EU) 2020/1828. It came into effect on 1 July 2024.

  The new legislation enables the collective enforcement of consumers' and small companies' claims against traders, which until now has been very limited in the Czech Republic.

  As an alternative, the Czech Code of Civil Procedure also permits multiple subjects to participate in proceedings where common rights or obligations are at dispute. In these disputes, the court's judgment binds all participants appearing on the same side, and the actions of any one participant are binding on all participants. However, certain actions (*e.g.* modifying or withdrawing an action, recognising a claim, agreeing a settlement) require the consent of all participants.

  Finally, the Czech Consumer Protection Act and the Czech Code of Civil Procedure also provide elements for collective protection through an action to protect the collective interest of consumers. This legislation allows consumers (represented by a registered consumer protection organisation) to request that traders refrain from conduct that infringes on consumers' rights (but does not allow the recovery of damages).

b) Key features of collective redress in the Czech Republic

- **Is collective redress available in all areas of law or in only certain sectors?**

  Under Czech law, collective actions can be filed by consumers and small companies to collectively assert their claims in all areas of law.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  Collective actions may only be filed by registered non-profit organisations that have been active in consumers' rights protection for at least twelve months. These organisations must be independent of any entity that has an economic interest in the filing of a collective action.

  In the collective proceedings, the claimant acts in its own name but in the interests of a class of (i) consumers and/or (ii) small companies employing less than ten employees and with an annual turnover or annual balance sheet sum not exceeding CZK 50 million (approx. EUR 2 million). Therefore, small companies can also collectively bring claims against traders.

- **Which mechanism applies – opt-in, opt-out or both?**

  Individuals and small companies can opt in to a collective action by submitting an application. The class must have at least ten members.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  Collective claims arising from consumer-company relationships must share a similar factual and legal basis and must apply to claims arising after 24 November 2020 (the effective date of the Representative Actions Directive (EU) 2020/1828 implemented by the Czech Collective Redress Act).

  Consumers can join a class by filing an application with the court within a set period following the registration of the claim or on the basis of prior consent. The Ministry of Justice will publish an application form that consumers can use to easily join a class in proceedings, irrespective of their location. A class must have at least ten members.

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  All types of remedies are available. Collective actions can be used to seek the performance of an obligation (*e.g.* an obligation to compensate damage, to repair or replace a product, to grant a discount on a purchase price, to refund a purchase price paid, to compensate unjust enrichment, to terminate a contractual obligation, to settle mutual claims with consumers or, conversely, to continue performing an obligation that the trader has ceased to perform or to prohibit certain conduct that is considered unfair) or to determine whether a specific relationship or right exists. As part of these proceedings, the claimant can also seek injunctive relief.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  Individual proof is required. In their opt-in applications, consumers must include facts and evidence certifying that they meet the criteria for membership of the class (the claims or legitimate interests of the class must have a similar factual and legal basis).

- **Which types of damages are recoverable (*e.g.* economic loss, damage to property)?**

  Collective actions can provide redress for pecuniary loss caused by bodily harm, damage to property, immaterial damage and economic loss. Punitive and exemplary damages are not recognised under Czech law.

- **How are damages quantified? On what basis are damages divided among class members?**

  Damages are typically quantified by assessing the specific circumstances of each case, including the extent of the harm suffered by each individual class member.

  The collective action must make clear what is being sought by the claimant on behalf of the claimholders. If the claimant seeks monetary payment or the performance of another comparable obligation, the collective action must state the amount to which each claimholder is entitled or at least the method by which that amount can be determined, by no later than the date of the court's decision on the merits.

  Where the court orders a defendant to pay monetary compensation, it must quantify the individual claims of each claimholder who has joined the action.

- **What is the settlement structure, if any?**

  The participants in a collective action can reach judicial settlement.

  If the parties submit a proposal for a judicial settlement to the court, the court will publish it in the register of collective proceedings without undue delay, unless the parties have agreed otherwise in the settlement proposal. The court will then assess whether the proposed settlement serves the interests of the claimholders, whether the claimant represented the claimholders' best interests, and whether the settlement is fair, taking into account factors such as costs, risks and length of proceedings.

  The court will not accept a settlement proposal if it is unfair towards the interests of the claimholders.

  Any claimholder can submit objections against a settlement proposal within 15 days of its publication in the register. Subsequently, the court will order a hearing for discussion of the settlement proposal and of any objections.

  The approved settlement will have the effect of a final judgment.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  Once the collective action has been filed with the Municipal Court in Prague (which is the only court competent for collective actions), the court will consider its admissibility by determining whether the statutory requirements under Sections 15 and 16 of the Czech Collective Redress Act are met. The first step in collective proceedings is to assess whether the claimant has fulfilled the prerequisites to initiate proceedings. The claimant must be represented in the collective action by an attorney-at-law.

If the collective action has been legally admitted, the court will publish the collective action and its resolution admitting the action, without undue delay, in the register of collective proceedings.

Once the deadline for the defendant's application and statement has expired, the court will promptly publish a plan for the collective proceedings in the register of collective proceedings. The plan may be modified, again by way of publication.

- **Is there a deadline by which claimholders must join proceedings?**

  A claimholder can file an application to join a collective action from the start of the proceedings until the application deadline expires. This deadline must be stated on the commencement notice of collective redress proceedings published by the claimant.

- **Are there any time limits on initiating court proceedings?**

  Given the absence of specific or separate provisions concerning collective actions, the general statute of limitations under the Czech Civil Code applies. Consequently, the general limitation period is three years.

  The limitation period for a claim is suspended once a claimholder opts into a collective action. This takes effect the moment the collective action is filed with the court.

  If a claimholder withdraws an application or if the court excludes a claimholder from the list of participating claimholders, of if it discontinues the collective proceedings or rejects the collective action, the claimholder's right will expire no earlier than six months from the date of withdrawal or from the date the court's decision became final.

- **Is pre-trial discovery available?**

  The Czech Code of Civil Procedure does not normally provide for a pre-trial discovery process akin to that in common law jurisdictions like the United States.

  However, the Czech Collective Redress Act does recognise a new rule on discovery. On the motion of a participant in proceedings who has offered reasonably available evidence in support of their claim and has determined evidence under the control of the opposing party, the court may order the opposing party to provide such evidence under their control.

  This discovery obligation is without prejudice to the obligation of confidentiality.

If a party that is required to provide evidence to counter an allegation fails to do so without giving a justifiable reason, the court may deem the allegations against that party as proven.

The court can also impose a fine of up to CZK 5,000,000 (approx. EUR 200,000) on anyone who fails to comply with their obligations under the Czech Collective Redress Act, particularly in terms of failing to publish information about the commencement and conduct of collective proceedings or by failing to submit evidence. In quantifying the fine, the court will take into account the significance of the obligation breached, and the extent and gravity of the breach.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the "loser pays" principle apply?**

  The "loser pays" principle applies, with the unsuccessful party required to bear the successful party's costs of the proceedings.

  Consequently, the successful party is entitled to recover necessary and appropriate costs, encompassing not only court fees and legal fees, but also purposeful costs relating to receiving applications and keeping the list of participating claimholders, publishing information about collective proceedings, and the presentation of evidence. If a party is only partially successful, the legal costs are divided between the parties on a *pro rata* basis.

  Court fees are calculated according to the Czech Court Fees Act, and legal fees are calculated based on the Czech Attorney Fees Decree.

  The claimant, if successful – and in addition to being awarded any costs, including legal fees – is entitled to receive a fee for bringing the collective action. The claimant's fee must be quantified at an amount that appears reasonable, particularly in consideration of the expected complexity and length of the collective proceedings; however, the fee cannot exceed 16% of the damages awarded or CZK 2,500,000 in case of a flat fee.

- **How are the costs of court proceedings shared among class members?**

  The costs of collective proceedings are borne by the claimant or a third-party funder. Claimholders can only be required to cover costs they have culpably caused.

- **Is third-party litigation funding permitted in the Czech Republic?**

  The Czech Collective Redress Act allows third-party litigation funding.

- **Are there any restrictions on third-party litigation funding?**

  The court may require the claimant to provide an overview of funding and its origin. This is aimed at mitigating conflicts of interest and the risk of a collective action being brought by a competitor.

- **Are contingency fees permitted in the Czech Republic?**

  Under Czech law, contingency fee arrangements are permitted to a reasonable extent. Fees exceeding 25% will be considered unreasonable.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  In cross-border litigation, there are limitations placed on the international jurisdiction of the Czech courts by international and European procedural law (*e.g.* the Brussels I Regulation (recast)). Legal action is frequently required to be initiated in the country where the damage occurred.

- **Can claims be brought by residents of other jurisdictions?**

  In general, the international jurisdiction of the Czech courts is not limited to parties residing in the Czech Republic. However, the limitations of international jurisdiction in cross-border cases necessitate that, in the absence of a jurisdiction agreement between the parties, there must be a connection to the jurisdiction of the Czech courts. Such a connection arises, for example, when the place where the damage occurred is in the Czech Republic or when a company is seated or registered in the Czech Republic.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  From a practical standpoint, no consumer organisations have yet been registered and no collective actions have been filed. It will be interesting to monitor whether collective actions will make a breakthrough in the Czech Republic.

g) Risk assessment

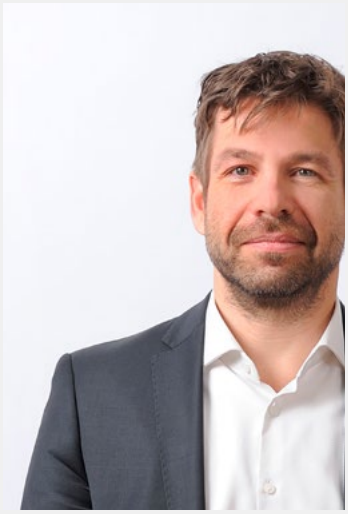
- **How frequently are collective actions brought each year and in what areas are they most common?**

  Given that the legislation on collective redress is relatively new, no collective actions have yet been brought.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

  Medium risk.

Key Contact / Authors



Robert Pelikán
Partner
E robert.pelikan@wolftheiss.com
T +420 234 765 111

Kateřina Mikulová
Senior Associate
E katerina.mikulova@wolftheiss.com
T +420 234 765 111

Tereza Mrázková
Associate
E tereza.mrazkova@wolftheiss.com
T +420 234 765 260

Wolf Theiss Pobřežní 12, 186 00 Prague 8, Czech Republic
T +385 1 4925 400 E praha@wolftheiss.com

Collective Redress
in CEE & SEE

Hungary

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in Hungary?**

  Before the new Civil Procedural Code came into effect in 2018, Hungary lacked a unified system for collective redress, with relevant rules scattered across various sectoral regulations. However, this changed with the introduction of Act CXXX of 2016 on the Code of Civil Procedure (the "**Hungarian CCP**").

  The Hungarian CCP differentiates between two types of collective redress mechanisms: actions brought in the public interest (Chapter XLII) and collective actions (Chapter XLIII). Chapter XLII consolidates the procedural rules for public interest actions (*actio popularis*) – which were previously dispersed and uncoordinated across different laws – into a single, coherent framework. The cases in which such public interest actions can be brought are determined in different substantive acts. Meanwhile, a separate chapter outlines the rules for the newly introduced collective actions, which serve as a mechanism for enforcing aggregated private interests. The Hungarian CCP distinguishes between these two forms of collective redress mechanisms by noting that collective actions are intended for situations where individual claims are numerous and similar but the public interest does not warrant the involvement of public authorities (*e.g.* prosecutors, regulatory agencies), making collective action a more efficient approach.

  Nevertheless, certain sectoral (substantive) laws continue to provide for forms of collective redress where the new Hungarian CCP does not serve as the governing framework. In these traditional actions, typically classified as *actio popularis*, the legislation does not reference the application of the Hungarian CCP's general rules for public interest actions. This is likely because, in these cases, the substantive rights holders are either not identifiable or the claim is not (directly) intended to benefit them, which aligns more closely with the structure under Chapter XLII of the Hungarian CCP. Consequently, there will be instances of public interest actions where the provisions of the Hungarian CCP do not apply, and the specific sectoral rules will take precedence.

  Additionally, there are forms of claims vindication that result in multiple parties or additional persons on either the claimant or the defendant side (joinder or intervention). However, these do not fall within the scope of collective redress as defined by Hungarian law.

  The collective redress options for which the Hungarian CCP functions as a common background are therefore examined below.

b) Key features of collective redress in Hungary

- **Is collective redress available in all areas of law or only in certain sectors?**

  In Hungary, collective redress has traditionally been sector-specific, and this has remained the case even after the Hungarian CCP came into force. The ability to bring actions in the public interest is primarily concentrated in areas such as consumer protection, competition law and the challenging of general contract terms.

  The same sectoral focus applies to the collective actions introduced by the Hungarian CCP. A collective action can only be brought to vindicate claims related to consumer contracts or labour disputes, as well as claims for damages resulting from health impairments directly caused by unforeseeable environmental pollution due to human activities or negligence.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  In an action brought in the public interest, the claimant is the person or entity authorised to initiate the action. Claimants commonly include the public prosecutor, the consumer protection authority, the Hungarian Competition Authority, the Hungarian National Bank and organisations that meet the statutory requirements. Under the Hungarian CCP, individual claimholders are excluded from being parties to the action.

  Collective actions, on the other hand, require groups of at least ten individuals who have suffered similar harm.

- **Which mechanism applies – opt-in, opt-out or both?**

  Hungary has implemented a mixed system for collective redress.

  Public interest actions primarily operate on an opt-out basis, meaning that individuals are automatically included unless they choose to opt out. However, there are exceptions to this rule. For instance, in representative actions, consumers who do not reside in Hungary would have to explicitly opt in.

  In contrast, collective actions are generally opt-in, requiring the consent of the individual claimholders before the action can proceed.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  In public interest actions, in addition to meeting the general procedural requirements, the statement of claim should indicate the beneficiaries of the action and the means for such beneficiaries to prove that they belong to the specific group of beneficiaries,

so that they receive a share of the judgment award and/or so that the judgment can be applicable to them. The beneficiaries concerned should be defined by presenting facts and circumstances which enable the group of beneficiaries to be identified or, in any case, from which the involvement of beneficiaries on common grounds can be established. Public interest actions also require the entity bringing the action to be authorised to do so and to serve the public interest.

To bring a collective action, there must be at least 10 claimholders and they must have representative rights and representative facts. The collective action must be authorised by the court. An application for authorisation of a collective action must be presented in the statement of claim. The application must contain several specific elements laid down in the Hungarian CCP.

In an action for condemnation, the claimants' claims must be indicated separately.

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  In public interest actions, the provisions of the Hungarian CCP apply with the exceptions set out in sector-specific substantive legislation. Substantive law may, therefore, establish particular causes of action. For instance, in public interest actions, claimants may initiate measures to halt the infringement and remedy the harm. However, in general, any type of action under the Hungarian CCP may be brought in public interest cases, including actions for the condemnation or reformation of rights. Additionally, a motion for declaratory relief may be filed when uniform condemnation is not feasible due to varying amounts being awarded to beneficiaries or when the underlying facts differ even though the right being asserted remains the same.

  Similarly, in collective actions, any type of claim under the Hungarian CCP may be pursued on condition that the claimants meet the other statutory conditions for the right asserted. In actions for condemnation, the claims of each claimant must be individually specified.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  In public interest actions, uniform condemnation is possible. Based on this judgment, the rightful claimants can directly initiate enforcement proceedings. However, as mentioned above, if the amount of the condemnation and the underlying facts differ among claimants, a declaratory judgment may be sought instead. In such cases, claimholders may bring individual actions if they have expressly indicated their intention to do so within the legally prescribed time limit.

In collective actions, the resulting judgment binds the parties with respect to representative law and facts. However, the uniform decision does not preclude discrepancies on issues that are not central to the case. Minor differences, such as variations in the amount awarded, which do not affect the substance of the case, may persist. The legislator intended for judgments on common legal and factual questions to apply to the entire class of claimholders, though in many cases, the judgment may only resolve the legal basis, requiring further individual actions to determine specific amounts.

- **Which types of damages are recoverable (*e.g.* economic loss, damage to property)?**

  There is no general limitation on the types of damage that can be claimed; both pecuniary and non-pecuniary damages may be pursued. Sectoral rules and the specific claims made may influence this.

- **How are damages quantified? On what basis are the damages divided among class members?**

  There is no specific provision regarding differences in the amounts claimed within a group. However, as mentioned above, if the claims are not uniform, individual actions may be brought after the collective redress claim has been made, provided the other legal conditions are met.

- **What is the settlement structure, if any?**

  There are no limitations on settlement in public interest actions.

  For collective actions, the collective action agreement must include provisions for either an absolute ban on settlement or explicit authorisation to negotiate a settlement. Where settlement is authorised, the agreement must specify the minimum sum and other terms that must be included in the settlement. The parties may also require that their consent be obtained for any potential settlement agreement after they have received a copy of it in draft form.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  Collective redress actions are handled in civil proceedings in accordance with the specific rules outlined in Chapters XLII and XLIII of the Hungarian CCP. In particularly complex public interest actions, the case may be referred to a panel of three professional judges. For collective actions, referral to such a panel is only possible if the case falls within the jurisdiction of the general court and is justified by its complexity or significant societal importance.

- **Is there a deadline by which claimholders must join proceedings?**

  This question is relevant to collective actions under Hungarian law.

  The collective action agreement must specify the rules on allowing additional parties to join the agreement after the collective action has been initiated and on whether the parties to the agreement may individually withdraw from the agreement.

  If permitted by the collective action agreement, joining a collective action as a new claimholder or withdrawing from it is allowed only during the case initiation stage, subject to court approval. A request to join or withdraw may be submitted to the court by the designated claimholder in a single submission. The court will grant permission only if the joinders and withdrawals do not alter the circumstances affecting the decision to authorise the class action, which would require earlier case initiation acts to be repeated or significantly modified. Proof of joining and withdrawal must include a statement of consent to join the collective redress agreement from a new claimholder and a notice of withdrawal from a withdrawing claimholder.

- **Are there any time limits on initiating court proceedings?**

  Sectoral rules may include specific provisions on this matter. Where no specific provision exists, the general limitation period applies, which is five years. It is important to note that when a public interest action is initiated, this is considered an enforcement of the claims on behalf of the beneficiaries involved, in accordance with the limitation rules in the Hungarian Civil Code. If the claim is then dismissed, the limitation period is suspended from the time the action was brought until it is dismissed in respect of any beneficiary who retains the right to bring an individual action.

- **Is pre-trial discovery available?**

  There are no specific rules governing this aspect. US-style pre-trial discovery is not available in Hungary. However, legal representatives may attempt to obtain evidence in cooperation with other persons; such activities must comply with the ethical rules for attorneys. If the evidence is obtained in an unlawful manner, the court may disregard its assessment. In fact, in the case of collective action, some kind of discovery activity is justified, as this is the only way to conclude a collective action agreement before litigation. Nevertheless, such discovery activity is rather soft, usually limited to the preliminary hearing of individuals or to obtaining their written statements in order to decide whether or not they should be heard as witnesses later in the proceedings. In some cases, private expert opinions may be obtained prior to litigation.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the "loser pays" principle apply?**

  In public interest actions, the claimant bears the court costs if unsuccessful, and is entitled to recover them if successful. Because the action is brought on behalf of beneficiaries without their authorisation, they are not required to advance or bear the costs. The claimant cannot be ordered to pay costs advanced by the State, even if the claimant is unsuccessful.

  In collective actions, the "loser pays" principle generally applies. If the action is rejected, the class pays the defendant's costs, including the legal fees. The sharing of costs between the members of the class is governed by the collective action agreement.

- **How are the costs of proceedings shared among class members?**

  As mentioned above, in public interest actions the actual claimholders are not considered parties and the costs of proceedings are borne by the claimant authorised to bring the action. The claimant is also entitled to recover costs on proceedings in case of success.

  In collective actions, the collective action agreement must outline provisions for the expenses incurred during the formation of the agreement and during the preparation and filing of the action, as well as provisions on the sharing and bearing of costs of proceedings.

- **Is third-party litigation funding permitted in Hungary?**

  Third-party funding is not generally regulated or prohibited under Hungarian law, except in one case where it is explicitly allowed and regulated. Hungarian regulations on collective actions provide for the possibility of third-party funding in public interest actions, a unique feature in Hungarian law. However, third-party funding may influence proceedings, particularly if it comes from parties with an economic interest in the outcome. To mitigate this, qualified entities must submit a financial overview to the Minister responsible for consumer protection, who may review and require them to refuse or change the financing. The Minister may even revoke the entity's right to bring an action.

- **Are there any restrictions on third-party litigation funding?**

  As noted, third-party funding is regulated only for collective actions.

- **Are contingency fees permitted in Hungary?**

  Although not inherently prohibited, attorney's fees made subject to the success of a legal act cannot be enforced before the court to the extent that the contingency fee exceeds two-thirds of the total attorney's fee. Although contingency fee agreements are not inherently prohibited, any portion exceeding two-thirds is unenforceable in court.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  The Hungarian CCP does not impose any restrictions. General rules on jurisdiction and the nature of sectoral regulation can be a barrier, but in principle sectoral rules do not create barriers. The Hungarian Consumer Protection Act contains explicit provisions on cross-border collective actions.

- **Can claims be brought by residents of other jurisdictions?**

  The Hungarian CCP does not impose any restrictions on cross-border collective actions. General rules on jurisdiction and sectoral regulations might create barriers but, typically, sectoral rules do not. The Hungarian Consumer Protection Act contains explicit provisions on cross-border collective actions, allowing qualified entities from other EU Member States to bring such actions before Hungarian courts. It also states that where an individual consumer is not a resident of Hungary, the judgment in a public interest action will only apply to that consumer if they have explicitly requested representation in that action.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  There is no indication that the legislator plans any changes to the current system of collective redress in the near future.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

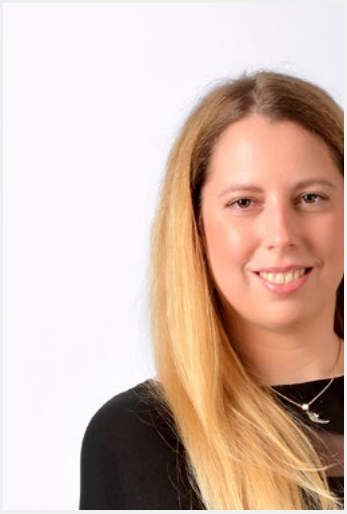
  Precise statistics are not available, but practice shows that while public interest actions are more common, they are still not frequent. Collective actions, introduced only a few years ago, remain relatively rare in Hungary.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

  Low risk.

Key Contact / Authors

Zoltan Faludi
Partner
E zoltan.faludi@wolftheiss.com
T +36 1 4848 800



Timea Csajagi
Associate
E timea.csajagi@wolftheiss.com
T +36 1 4848 821

Collective Redress
in CEE & SEE

Poland

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in Poland?**

  Polish law provides for the statutory collective redress regime set forth in the Enforcement of Claims in Group Proceedings Act of 17 December 2009 (*Ustawa o dochodzeniu roszczeń w postępowaniu grupowym*) (the "**Polish Group Proceedings Act**").

  Under the Polish Group Proceedings Act, a group of at least ten individuals and/or legal entities can initiate collective proceedings where their claims are based on the same factual basis and fall within the categories of claims that can be pursued in these types of proceedings.

  Following the implementation of the Representative Actions Directive (EU) 2020/1828, an amendment to the Polish Group Proceedings Act entered into force on 29 August 2024. This amendment introduced a new type of group procedure: an action for declaratory relief (a determination that a practice infringes upon the general interest of consumers) and for related redress measures ("**consumer representative collective action**"). The Polish Group Proceedings Act specifies distinctive requirements to initiate this type of action, as compared to the general requirements regarding group proceedings.

b) Key features of collective redress in Poland

- **Is collective redress available in all areas of law or only in certain sectors?**

  The Polish Group Proceedings Act specifies the types of claims that can be pursued in group proceedings. These include: (i) liability claims for damage caused by a dangerous product; (ii) claims for damages; (iii) liability claims for non-performance or improper performance of a contractual obligation; (iv) claims for unjust enrichment; (v) claims in other cases relating to consumer protection; and (vi) claims arising out of bodily injury or health disorders (with the exclusion of any other claims for the protection of personal interests).

  For pecuniary claims arising out of bodily injury or health disorders, including pecuniary claims of immediate family members of an injured person who has died as a result of bodily injury or a health disorder, the Polish Group Proceedings Act permits only actions to establish the liability of the defendant (*i.e.* excludes the quantification of damages).

Since 29 August 2024, the new consumer representative collective action allows claimants to bring claims for declaratory and injunctive relief (for the court to determine that the practice of a trader infringes upon the general interest of consumers and to order the cessation of that practice) as well as related claims (*e.g.* claims for damages, statutory warranty claims, *etc.*) in group proceedings.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  Group actions are brought on behalf of the group by a group representative. The representative can be (i) a group member; (ii) a district/municipal consumer ombudsman (in claims related to the scope of his/her competences); or (iii) the financial ombudsman (in claims of clients of financial market entities and claims arising from a contract for services or activities to an individual by a financial institution).

  The group representative acts in the group proceedings in his or her own name, but on behalf of all group members.

  In group proceedings, the claimant must be represented by an attorney-at-law (unless the claimant is an attorney-at-law or the action is brought by the financial ombudsman).

  Consumer representative collective actions can be pursued by a qualified entity – a non-profit consumer organisation registered in (i) the register of entities qualified to bring domestic proceedings, maintained by the President of the Office of Competition and Consumer Protection, or (ii) the register of entities qualified to bring cross-border proceedings, maintained by the European Commission.

- **Which mechanism applies – opt-in, opt-out or both?**

  The Polish Group Proceedings Act provides for an opt-in mechanism.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  Generally, the requirements for initiating group proceedings are as follows: (i) a group action must be brought by a minimum of ten claimholders; (ii) all claims in the action must fall within the catalogue of claims that are admissible in group proceedings (see above); (iii) all claims in the action must be based on the same factual basis; and (iv) if the action concerns pecuniary claims, the claims must also be standardised in terms of groups/subgroups.

  However, the Polish Group Proceedings Act provides for some exclusions in relation to these requirements when it comes to consumer representative collective actions. For instance, the requirement for a group to comprise a minimum of ten members does not apply. And the claims in the action need only be based on the same legal basis (the requirement for claims to be based on the same factual basis is waived).

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  The Polish Group Proceedings Act does not specify the types of remedies that are available in group proceedings. The wording of the Polish Group Proceedings Act refers to two types of remedies: monetary compensation and declaration of the defendant's liability.

  Redress measures are generally excluded in group proceedings, as the Polish Group Proceedings Act does not permit claims for the protection of personal rights to be pursued in group proceedings. The only type of personal rights claim that is permitted under the Polish Group Proceedings Act are pecuniary claims arising out of bodily injury or health disorders. In these cases, however, only a declaratory judgment determining the defendant's liability can be issued. Thus, redress based on this judgment must be pursued in a separate, individual legal action.

  Consumer representative collective actions offer a distinctive type of remedy: a judgment for declaratory and injunctive relief, which declares a trader's practice to be an infringement of the general interest of consumers and orders the cessation of this practice. The remedies arising from these infringements can be pursued in the same proceedings.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  The Group Proceedings Act requires the amount of pecuniary claims to be standardised within each group or subgroup.

  The standardisation of claims means that all members of the group (or subgroup) must agree to compensation in the form of equal lump-sums (*i.e.* a standardised amount, thus waiving the possibility to pursue their claim individually and to be compensated in full - see below for specific rules on limitation periods). Standardisation is aimed at simplifying and expediting group proceedings.

  Subgroups can be formed if the circumstances of individual group members are so different that the claims of all group members cannot be standardised. In such cases, the lump-sum compensation due to the group members should be determined in subgroups (*i.e.* groups of claimholders smaller than the whole group, with a minimum of two members per subgroup).

  The damage, causation and amount of the standardised claim sought must be established with regard to each of the claimholders.

- **Which types of damages are recoverable (*e.g.* economic loss, damage to property)?**

  The pecuniary damage recoverable in group proceedings are determined in accordance with general civil-law principles. The claimant can seek redress for actual damage and/or for loss of profit. Actual damage must be redressed primarily by restitution in kind. The objective is to place the injured party in an equal or similar situation to that which they would have been in if the damaging event had not occurred. If this is not possible or feasible, the damage is compensated by its monetary equivalent.

  Polish law does not recognise the concept of punitive damages.

- **How are damages quantified? On what basis are the damages divided among class members?**

  The quantification of damages is impacted by the principle of standardisation. The court is bound by the damages claimed by the group or by each subgroup.

  Damages are typically assessed based on the specific circumstances of the case, including the extent of damage sustained by each individual group member. This means that the amount sought must be reflected in the actual damage suffered by each claimholder. This also means that each group member can be awarded compensation equal to the actual loss and the loss of profit suffered. Actual loss is calculated based on the market price at the time the compensation was determined.

  Under the Polish Group Proceedings Act a supplementary rule for the quantification of damages applies, as provided in Art 322 of the Polish Code of Civil Procedure. Under this rule, if it is not possible or feasible to determine the exact amount of the damage, the court can award the amount it finds appropriate according to its own assessment, after having considered all circumstances of the case. In such cases, the court must hear the positions of both parties regarding the amounts which should be awarded to the members of the group/subgroups.

- **What is the settlement structure, if any?**

  The Polish Group Proceedings Act does not provide for any specific settlement structure. However, under the Act, concluding a settlement requires the consent of more than half of the group members. Moreover, the contents of the settlement are subject to the scrutiny of the court. The court examines whether the reaching of a settlement is admissible (*i.e.* not contrary to the law or good practices) or is aimed at circumventing the law or grossly violating the interests of the members of the group.

In consumer representative collective actions, the Polish Group Proceedings Act allows class members to opt out if the qualified entity concludes a settlement. If the terms of the settlement are unsatisfactory, the consumer can opt out within 2 weeks from the date notified of the settlement.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  Under the Polish Group Proceedings Act, group proceedings consist of three phases.

  In the first phase, the court determines whether or not the requirements for pursuing the claims in group proceedings are met. This phase ends in the court issuing a decision to hear the case in group proceedings or rejecting the action outright.

  Following a decision to hear the case in group proceedings, the court orders that an announcement to commence group proceedings be published in a manner that is most suited to the specific case (for example, on the websites of the parties or their attorneys or in a nationwide newspaper).

  Within the deadline set in the announcement (a maximum of three months), individuals who were not the original claimholders but meet the criteria to join the group, can file a written declaration to join the group proceedings with the court. The declaration must include the claim, the circumstances justifying the claim and inclusion in the group and supporting evidence. Following this, the court sets a deadline (a minimum of one month) for the defendant to formulate objections against the inclusion of members in the group or particular subgroups.

  After the court decides on the defendant's objections, it issues a decision on the composition of the group. This ends the second phase of group proceedings.

  In the third phase, the merits of the case are examined. This phase ends in the court issuing its judgment on the merits of the case. The judgment must enumerate all members of the group (and subgroups, if applicable) and, if the case concerns pecuniary claims, the amount awarded to each of the group (subgroup) members.

- **Is there a deadline by which claimholders must join proceedings?**

  The deadline to join group proceedings is established in the announcement. The deadline cannot be more than three months after the date of the announcement.

- **Are there any time limits on initiating court proceedings?**

  The general rules on statute of limitations apply. The Polish Group Proceedings Act does not provide for additional time limits on initiating court proceedings.

  The general limitation period under Polish law is six years from the date the claim arises. The Polish Civil Code provides a number of specific limitation periods, which diverge from this general rule. These include: (i) three years for claims relating to periodic/recurring payments (*e.g.* rent, loan interest); (ii) for tort claims, three years from the day the injured party became aware of the damage and of the liable party, but not longer than ten years from the date the tort occurred; (iii) three years for claims arising from commercial activities; and (iv) for claims arising from statutory warranty, one year from the date the defect was disclosed (in addition, however, the limitation period cannot lapse before two years have passed since the handover of a sold good, extending to five years for an immoveable item).

- **Is pre-trial discovery available?**

  Pre-trial discovery measures are available only in consumer representative collective actions. The qualified entity can request the court to order the defendant or a third party to disclose or hand over evidence.

  Under the current regime, measures for pre-trial discovery are not available in other types of group proceedings. Under the general rules of civil procedure, the court – typically at the request of the other party – can order the opposing party or third parties to provide certain documents. However, such an order has a diminished effect in the sense that, unlike the pre-trial discovery in representative collective consumer actions, this type of court order is not subject to judicial enforcement.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the "loser pays" principle apply?**

  The "loser pays" principle generally applies to the costs of proceedings. All justified costs of proceedings are reimbursed by the losing party, and include the filing fee, the costs of legal representation (which do not reflect the actual legal fees, but are awarded as a lump sum and calculated in accordance with the rates provided in the regulation issued by the Minister of Justice), costs of expert opinions, sworn translations, costs related to appearing before the court, etc.

  If a party prevails only in part, the costs of the proceedings are allocated on a *pro rata* basis.

- **How are the costs of proceedings shared among class members?**

  There are no specific provisions under Polish law on litigation costs in collective redress proceedings, other than that claimants cannot be exempted from paying court fees. Cost sharing depends, as a rule, on the agreement among class members. Where third-party litigation funding is in place, the funder assumes the costs of the proceedings.

- **Is third-party litigation funding permitted in Poland?**

  Polish law does not explicitly regulate the issue of third-party litigation funding (with the exception of consumer representative collective actions, as described below). Therefore, it is generally seen as permitted.

- **Are there any restrictions on third-party litigation funding?**

  Polish law does not provide any general restrictions on third-party litigation funding. However, some specific rules apply in consumer representative collective actions – where third-party funding is subject to court scrutiny – so as to mitigate conflict-of-interest situations. The source of third-party funding must be disclosed at the stage of filing the action and can later be examined by the court at any stage of the proceedings. If the court determines that the third-party funding of a specific action negatively impacts the protection of consumer interests, it can order the qualified entity to take specific action. If such an order proves ineffective, the court may even dismiss the action.

- **Are contingency fees permitted in Poland?**

  The Polish Code of Conduct does not allow attorneys-at-law to be paid in the form of contingency fees. However, a success fee additional to the main attorney fee is allowed. The Polish Group Proceedings Act caps the success fee for attorneys-at-law at 20% of the awarded amount.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  The Polish Group Proceedings Act does not provide any specific limitations concerning cross-border collective actions.

  General rules of court jurisdiction apply, meaning that the provisions of the Polish Code of Civil Procedure on the jurisdiction of Polish courts, as well as European procedural law (Brussels I Regulation (recast)) apply. The nature of the claim (tort, contract, *etc.*) will be decisive in determining its admissibility with regard to the jurisdiction of Polish courts.

- **Can claims be brought by residents of other jurisdictions?**

  Polish procedural law does not provide limitations on foreigners bringing claims. The general rules of court jurisdiction apply.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  An amendment to the Polish Group Proceedings Act entered into force on 29 August 2024, which implemented the Representative Actions Directive (EU) 2020/1828 and introduced the consumer representative collective action.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

  According to the statistical data published by the Polish Ministry of Justice, the numbers of group civil lawsuits in the last five year is as follows: 16 in 2019; 19 in 2020; 28 in 2021; 17 in 2022; 12 in 2023. In that time, only one commercial group action was brought before the court. Proceedings are likely to increase following the implementation of the Representative Actions Directive (EU) 2020/1828.

  From our observations, group actions in the Polish courts are most commonly brought against banks and insurance companies.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

  Low risk.

Key Contact / Authors

Marcin Rudnik
Counsel
E marcin.rudnik@wolftheiss.com
T +48 22 3788 948

Olga Gerlich
Senior Associate
E olga.gerlich@wolftheiss.com
T +48 22 3788 986

Wolf Theiss ul. Marszałkowska 107, 00-110 Warsaw, Poland
T +48 22 378 8900 **E** warszawa@wolftheiss.com

Collective Redress
in CEE & SEE

Romania

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in Romania?**

  On 21 December 2023, the Romanian legislator transposed the Representative Actions Directive (EU) 2020/1828 into national law by means of Act No 414/2023 on the conduct of representative actions for the protection of the collective interests of consumers (the "**Romanian Transposing Act**"). The Romanian Transposing Act provides a framework that allows qualified entities to bring collective actions on behalf of claimholders (consumers) before the national courts. The collective actions brought before the Romanian courts are settled according to the rules of the Romanian Code of Civil Procedure.

  Alternatively, Art 59 of the Romanian Code of Civil Procedure also provides that multiple claimants or defendants may act together before the court if the subject matter of the proceedings is a common right or obligation, or if their rights or obligations have the same cause or if there is a close connection between them.

  Moreover, Art 202 of the Romanian Code of Civil Procedure provides that in cases of multiple claimants or defendants, in order to ensure the normal conduct of court proceedings, the judge may request that the multiple claimants or defendants choose a common attorney. If the multiple claimants or defendants cannot agree on a common attorney, the judge may designate an attorney from a list provided by the Bar Association.

b) Key features of collective redress in Romania

- **Is collective redress available in all areas of law or only in certain sectors?**

  The provisions of the Romanian Transposing Act apply only to the areas of law covered by the national or European Union legislation expressly designated in the List annexed to the Transposing Act. However, actions brought under Art 59 or Art 202 of the Romanian Code of Civil Procedure may generally apply to all areas of civil law, if not provided otherwise.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  Under the Romanian Transposing Act, the right to initiate a collective action is granted to the qualified entities designated for those purposes by the national authorities or by EU member states. Qualified entities should meet certain criteria (they should be non-profit entities that are acting in the interests of consumers or should be authorities or bodies providing public services in the areas of law referred to in the List annexed to the Transposing Act).

- **Which mechanism applies – opt-in, opt-out or both?**

  The Romanian Transposing Act provides for an opt-in mechanism for redress measures. Therefore, within 30 days from the filing of a collective action for redress measures, the qualified entities should request the written consent of the claimholders concerned by the collective action. However, qualified entities are not obligated to so if they are only filing a collective action for injunctive measures (*i.e.* seeking the cessation of an infringement of consumers' rights).

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  A collective action can be brought against companies (*profesioniști*) that infringe upon the provisions of the national or EU legislation indicated in the List annexed to the Romanian Transposing Act. The Act does not provide for a minimum threshold for claims or claimholders.

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  The Romanian Transposing Act provides for two main types of remedies: injunctive measures and redress measures.

  With respect to injunctive measures, the court can: (i) order the company to cease the infringing action(s); (ii) establish that a certain practice constitutes an infringement; (iii) order the company to publish the court decision establishing the trader's infringement; and/or (iv) order the company to publish a corrective statement.

  In terms of redress measures, a company might be obligated to offer consumers remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as may be appropriate and as available under the legal provisions.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  The Romanian Transposing Act does not make special provisions regarding the determination of the loss suffered by the consumers. Therefore, the provisions of the Romanian Civil Code apply, implying that each loss should be established and proven on an individual basis.

- **Which types of damages are recoverable (*e.g.* economic loss, damage to property)?**

  Under the Romanian Civil Code, a claimholder (a consumer under the Romanian Transposing Act) is entitled to full compensation of damage suffered. This includes actual loss suffered as well as loss of profit Moreover, compensation for non-pecuniary damages is possible. Romanian law does not recognise the concept of punitive damages.

- **How are damages quantified? On what basis are damages divided among class members?**

  Damages are normally quantified based on the circumstances of each case and, in particular, on the evidence proving the harm suffered by each consumer affected by the collective action. If the actual damage cannot be determined with certainty, this may be quantified by the court.

  Based on the above, each consumer affected by the collective action is entitled to compensation equal to the damage suffered.

- **What is the settlement structure, if any?**

  Under the Romanian Transposing Act, the qualified entity and the company can propose a settlement to the national court on the redress for the consumers affected. The national court may also invite the qualified entity and the defendant to reach a settlement on redress.

  The settlement is subject to the scrutiny of the national court, which may either approve or refuse such an agreement on the grounds that it is unfair, contrary to mandatory provisions of law or that it includes conditions that cannot be enforced, after having considered the rights and interests of all parties and in particular those of the consumers affected.

  Once approved by the court, a settlement becomes binding upon the qualified entity, the defendant and the individual consumers affected.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  Collective redress proceedings are managed according to the generally applicable provisions of the Romanian Code of Civil Procedure. Additionally, a qualified entity should provide the court with a financial overview of the sources of funds used to support its collective action.

- **Is there a deadline by which claimholders must join proceedings?**

  Under the Romanian Transposing Act, the qualified entity must request the written consent of the consumers affected by the collective action within 30 days of initiating an action for redress measures. Consumers then have 30 days to express their consent from the communication of the qualified entity's request. However, the latest a consumer can express its consent to be represented by a qualified entity is the date of the closing arguments on the merits of the case.

- **Are there any time limits on initiating court proceedings?**

  The Romanian Transposing Act does not make specific provision on the statute of limitations for bringing collective actions. Therefore, the general limitation period of three years provided for by the Romanian Civil Code will also apply to these actions. Exceptionally, a limitation period of one year (for attorney's fees), two years (for insurance fees) or ten years (for pecuniary/moral damage caused by violence) may apply.

  Moreover, under the Romanian Transposing Act, consumers can benefit from the redress measures ordered by a court within three years from the date of the final decision granting them such measures.

- **Is pre-trial discovery available?**

  The Romanian Code of Civil Procedure does not provide for a pre-trial discovery procedure. However, it stipulates that if a person has a justified interest in the urgent administration of certain evidence (*i.e.* evidence that might disappear), it may request the court to administer such evidence both before and during the trial.

  Under the Romanian Code of Civil Procedure, each party must substantiate its claims/defences by means of evidence. The judge may order the opposing party, on its own initiative or at a party's request, to disclose certain evidence.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the fees / legal fees? Does the "loser pays" principle apply?**

  The Romanian Code of Civil Procedure provides that the "loser pays" principle applies if the prevailing party has made such a request to the court. Therefore, the prevailing party is entitled to recover the court fees, attorney's fees, expert's fees and any other necessary costs incurred, in accordance with its private agreements (with an attorney/expert).

However, the judge may, on its own initiative or at the request of the opposing party, suppress the attorney's and/or the expert's fees awarded to the prevailing party, taking into account the necessity and appropriateness of that cost in relation to the value and complexity of the case. This measure will not affect the contractual relationship between the attorney or expert and the prevailing party in any way.

The Romanian Transposing Act provides a special rule exempting the individual consumers affected by a collective action from paying the costs of collective redress proceedings. Only in exceptional circumstances (*i.e.* intentional or neglectful conduct) can an individual consumer be ordered to pay the costs of such proceedings.

Moreover, under the Romanian Transposing Act, qualified entities are exempt from payment of the court fees.

- **How are the costs of proceedings shared among class members?**

  Under the Romanian Transposing Act, individual consumers are in principle exempt from payment of the costs of the proceedings. If, in exceptional circumstances, the individual consumers are ordered to pay the costs of the proceedings, those costs may be shared equally, on a *pro rata* basis, or jointly and severally according to their position in the proceedings or the nature of the legal relationship between them.

- **Is third-party litigation funding permitted in Romania?**

  Third-party litigation funding is not prohibited in Romania. The Romanian Transposing Act expressly provides that third-party litigation funding is permitted, provided there are no conflicts of interests.

- **Are there any restrictions on third-party litigation funding?**

  The restrictions on third-party litigation funding consist of measures to prevent of conflicts of interests. The qualified entity's decisions should not be unduly influenced by a third-party funder in a manner detrimental to the interests of the individual consumers. A third-party cannot fund a collective action brought against its competitor or against a defendant on which the funder is dependent. Accordingly, the qualified entity must disclose to the national courts the sources of funds used to support the collective action.

- **Are contingency fees permitted in Romania?**

  Under Romanian law, contingency fees are prohibited between clients and attorneys. However, the parties to the legal service agreement are allowed to negotiate a combination of fixed, hourly and success fees. The success fee is conditional on achieving a certain result.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  Under the Romanian Transposing Act, cross-border collective actions can be initiated only by the qualified entities designated by EU Member States for that purpose.

- **Can claims be brought by residents of other jurisdictions?**

  Individual consumers who are not resident in Romania but are included in a collective action brought before a Romanian court must express their consent in writing in order for the outcome of the collective action to be binding on those consumers.

  Similarly, if a collective action is brought before a court in another EU Member State, the consumers affected by the collective action that are resident in Romania must express their consent in writing in order for the outcome of the collective action to be binding on those consumers.

  Consumers who gave their consent to be represented in a collective action cannot be represented in another collective action with the same subject matter and against the same company, nor can they individually bring an action with the same subject matter or against the same company.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  Although the Romanian Transposing Act was adopted on 23 December 2023, the Romanian legislator is still expected to communicate to the European Commission the list of the qualified entities that are designated for the purpose of bringing cross-border collective actions.

  However, under the Romanian Transposing Act, an entity may be designated on an *ad hoc* basis as a qualified entity for the purpose of initiating a domestic collective action in certain conditions.

g) Risk assessment

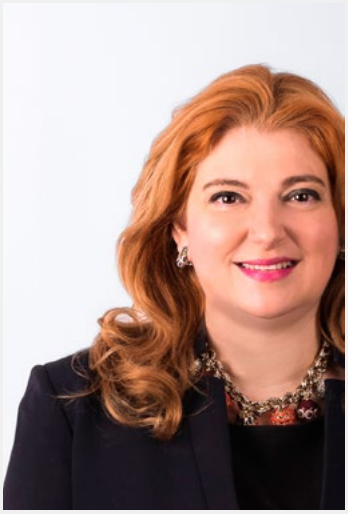
- **How frequently are collective actions brought each year and in what areas are they most common?**

  There are no available statistics on the frequency of the collective actions brought before the Romanian courts. However, their number is expected to rise considering the legal framework established by the Romanian Transposing Act. In practice, the target domains of collective actions include financial services (credit institutions, insurance), e-commerce, retailers, telecoms, energy suppliers, transporters, healthcare and digital services.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

  High risk.

Key Contact / Authors



Ligia Popescu
Partner
E ligia.popescu@wolftheiss.com
T +40 21 308 81 00

Dumitru Colcer
Associate
E dumitru.colcer@wolftheiss.com
T +40 21 3088 140

Collective Redress
in CEE & SEE

Serbia

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in Serbia?**

  A collective redress mechanism as provided for in the Collective Actions Directive (EU) 2020/1828 has not yet been implemented in the Serbian legal system. Nevertheless, the collective redress rules contained in the Serbian Consumer Protection Act 2021 – aimed at ceasing and prohibiting infringements harmful to the collective consumer interest – are largely compliant with the now-repealed Directive 2009/22/EC. Administrative proceedings can be initiated against tortfeasors in the form of "proceedings for protection of the collective consumer interest", conducted exclusively before the Serbian Ministry of Internal and External Trade (the "**Ministry of Trade**").

  While the Serbian Code of Civil Procedure 2011 contained rules on specific court proceedings for collective redress (*i.e.* proceedings initiated by collective actions), such provisions were rendered unconstitutional in 2013 by the Serbian Constitutional Court.

  Finally, aside from the administrative proceedings for collective redress conducted before the Ministry of Trade, it is also possible to consolidate multiple claims into a single court proceedings (*suparničarstvo*) under the Serbian Code of Civil Procedure in the following cases: (i) the claimants share a legal interest in the subject matter of the dispute or their rights or obligations arise from the same factual and legal basis; (ii) the subject matter of the dispute involves similar claims or obligations that are based on substantially similar factual and legal grounds and the same court has jurisdiction over each such claim and defendant; or (iii) in other cases specifically prescribed in the law.

b) Key features of collective redress in Serbia

- **Is collective redress available in all areas of law or only in certain sectors?**

  Under Serbian law, collective redress is currently limited to consumer protection (*i.e.* the administrative regime for protection of the collective consumer interest). Legal entities do not qualify as consumers and collective redress is not available to consumers of financial services.

  The consolidation of proceedings under the Serbian Code of Civil Procedure is feasible in all areas of law, provided that the procedural requirements for such consolidation are met.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  Under the Serbian Consumer Protection Act, proceedings for protection of the collective consumer interest may be instigated by the Ministry of Trade on its own initiative or by request of a qualified entity registered with the Ministry (*i.e.* associations and unions responsible for educating, counselling and providing legal assistance to consumers, conducting research in the area of consumer protection and quality control, *etc.*).

  The Ministry of Trade instigates these proceedings if there are indications that an act or omission by a company, including the use of an unfair contractual provision, endangers or threatens to endanger the collective consumer interest. In that respect, while individual consumers cannot directly instigate said procedure, they may still submit initiatives for its instigation.

- **Which mechanism applies – opt-in, opt-out or both?**

  The Serbian Consumer Protection Act does not define the collective redress regime under that Act as either an opt-in or opt-out mechanism. The rights and interests of consumers are protected without their active involvement in the proceedings. However, these proceedings do not prevent consumers from claiming damages individually before the competent court in "consumer disputes" (*potrošački sporovi*), which may run in parallel to the pending administrative proceedings.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  There is no minimum threshold under the Serbian Consumer Protection Act.

  Collective redress under the Serbian Consumer Protection Act is triggered by the infringement of a collective consumer interest. Such an infringement exists if: (i) a company violates the rights of at least ten consumers guaranteed under the Act, either through identical actions or in an identical manner; or (ii) unfair provisions are contracted in consumer contracts.

  Where the rights of fewer than ten consumers are violated, an infringement of the collective consumer interest is also be deemed to exist if the Ministry of Trade determines the existence of said infringement, particularly taking into account the duration and frequency of the trader's actions and whether those actions have adverse effects on each consumer in the situation at hand.

- **Which remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  Upon determining an infringement of the collective consumer interest, the Ministry of Trade may impose certain protective measures against the company, which may include an obligation to: (i) stop the behaviour that endangers the collective consumer interest and refrain from employing that behaviour in future; (ii) remedy the infringement determined; and (iii) immediately cease contracting unfair contractual provisions.

  If there is a risk of adverse consequences affecting the rights and interests of consumers, the Ministry of Trade may also, upon request of the relevant consumer association, impose certain interim measures aimed at eliminating or preventing the occurrence of such adverse consequences.

  In addition, the company against whom the collective redress proceedings have been instigated may also be liable for a misdemeanour if: (i) an infringement of the collective consumer interest is determined; and/or (ii) it breaches any protective measures imposed by the Ministry of Trade. Such liability leads to a monetary fine between RSD 300,000 (approx. EUR 2,500) and RSD 2,000,000 (approx. EUR 17,000).

  Claims for damages cannot be asserted under this regime. Therefore, consumers must instigate individual civil court proceedings (*i.e.* consumer disputes) to claim any damages against the company that breached the relevant legal provisions.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  While a decision by the Ministry of Trade determining an infringement of the collective consumer interest may be referenced by consumers in civil court proceedings to support their claim that their interests were indeed violated, the consideration of such a claim and the determination of the amount of any damage sustained as a result of the infringement would need to be proven before the competent court in those proceedings.

- **What types of damages are recoverable (*e.g.* economic loss, damage to property)?**

  Under Serbian law, an injured party is generally entitled to claim both material and immaterial damages. Material damage may take the form of actual damage or loss of profits, while immaterial damage includes physical or psychological pain or fear suffered.

- **How are damages quantified? On what basis are damages divided among class members?**

  As no damages can be awarded under the collective redress regime conducted through administrative proceedings, no specific rules regulating the quantification and/or division of such damages exist under Serbian law. In civil court proceedings, each claimant may be awarded compensation corresponding to the amount of the damage proven to be sustained by the claimant.

- **What is the settlement structure, if any?**

  No standard settlement framework exists for the collective redress regime under the Serbian Consumer Protection Act. However, the Act provides that a company against which proceedings are conducted may, during the course of proceedings, propose to undertake certain obligations to remedy the infringement (*korektivna izjava*). The timely fulfilment of those obligations would lead to the suspension of the administrative proceedings against the company.

  On the other hand, settlements can be reached with individual consumers both extrajudicially or before the competent court during the course of civil court proceedings.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  Administrative collective redress proceedings are conducted by the Ministry of Trade, which simultaneously collects evidence relating to the infringement of the collective consumer interest by a trader or association of traders. However, these proceedings retain certain adversarial elements when instigated on the request of a registered consumer association, which is then considered a party to the proceedings and may exercise certain procedural rights (*e.g.* propose evidence).

  In addition to the collective redress proceedings before the Ministry of Trade, multiple individual claims can also be consolidated into a single court proceedings (*suparničarstvo*) in accordance with the Serbian Code of Civil Procedure, subject to the legal requirements for the consolidation of claims being met.

- **Is there a deadline by which claimholders must join proceedings?**

  Under the Serbian Consumer Protection Act, only a registered consumer association is entitled to represent consumer interests in proceedings to determine the existence of an infringement of the collective consumer interest. Individual consumers cannot directly take part in such proceedings.

  With respect to individual court proceedings pursued under the Serbian Code of Civil Procedure, it is a general rule that a new claimant may join the existing claimant(s) up to and until the moment the main hearing phase is concluded in the proceedings, on condition that they accept the then-current state of those proceedings.

- **Are there any time limits on initiating court proceedings?**

  The Serbian Consumer Protection Act does not provide any specific deadline for initiating collective redress proceedings under that Act.

  As regards the instigation of individual court proceedings, claims for damages must be lodged within three years of the damage and the tortfeasor becoming known, but no later than five years after the date the damage occurred. However, the Serbian Consumer Protection Act prescribes a longer limitation period if the damage was caused by a defective product, with claims for damages becoming time-barred after ten years from the date the manufacturer put the defective product on the market.

- **Is pre-trial discovery available?**

  The Serbian legal system does not define the legal concept of pre-trial discovery as provided for in common law.

  However, evidence can be secured and scrutinised prior to the instigation of both administrative and civil court proceedings under the Serbian legal framework where there is a justified fear (*i.e.* danger) that certain evidence may become unavailable or difficult to examine at a later date.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the "loser pays" principle apply?**

  The "loser pays" principle generally applies in both administrative proceedings for protection of the collective consumer interest, as well as in individual court proceedings for damages, with the losing party required, upon the request of the prevailing party, to reimburse any

costs sustained by the prevailing party during the course of the proceedings. If the parties are only partially successful, the costs are divided between them on a *pro rata* basis. However, in individual court proceedings, the court may also order each party to bear its own costs related to the proceedings.

Attorneys' fees are calculated on the basis of the Serbian Attorney Tariff on Fees and Expenses, whereas administrative and court fees are calculated on the basis of the Serbian Administrative Fees Act. In consumer disputes, consumers are exempt from court fees for actions and judgments where the value of the dispute does not exceed RSD 500,000 (approx. EUR 4,250).

- **How are the costs of proceedings shared among class members?**

  In civil court proceedings, parties acting on the same side (*suparničari*) bear the procedural costs equally. Where there is a significant difference between the parties' shares of the dispute, the court may order the costs to be borne on a *pro rata* basis. If the parties acting on the same side are found to be jointly and severally liable *in meritum* towards the other party in the dispute, they will also be jointly and severally liable for the procedural costs.

- **Is third-party litigation funding permitted in Serbia?**

  Serbian law does not expressly regulate third-party litigation funding and there is no precedent in case law that would resolve the ongoing debate as to whether such a mechanism would be permissible.

- **Are there any restrictions on third-party litigation funding?**

  While no specific restrictions are provided under Serbian law, the general permissibility of third-party litigation funding, as well as its scope and mechanism, are still the subject of broad debate in Serbia.

- **Are contingency fees permitted in Serbia?**

  Contingency fee arrangements between clients and attorneys are not permitted. However, it is possible to negotiate a separate success fee, in addition to the fee determined based on the Serbian Attorney Tariff on Fees and Expenses, in proportion to (*i.e.* as a percentage of) the success achieved in the proceedings. However, that percentage must not exceed 30%.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  The Serbian Consumer Protection Act and its provisions regulating the procedure for protection of the collective consumer interest apply only to consumer-company relations in the Serbian market (excluding those related to financial services). The procedure is under the exclusive jurisdiction of the Ministry of Trade.

- **Can claims be brought by residents of other jurisdictions?**

  The instigation of collective redress proceedings under the Serbian Consumer Protection Act may only be requested by a registered consumer association. Therefore, these proceedings cannot be instigated by individual consumers, regardless of their place of residence.

  As regards civil court proceedings, non-residents may claim damages before Serbian courts where the conditions are met to establish the jurisdiction of the Serbian courts (*e.g.* the defendant has its registered seat in Serbia, *etc.*).

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  Ever since it was removed by the Serbian Constitutional Court in 2013, and especially due to the recent rise in collective action cases before the Serbian courts over the course of the last decade, there have been requests for the reintroduction of the judicial procedure for collective redress (*i.e.* collective actions) into the Serbian legal framework.

  In addition, bearing in mind that Serbia, as an EU candidate country, is working to harmonise its national laws with EU legislation, it is reasonable to expect certain reforms in this area, especially considering that EU member states are already in the process of transposing the provisions of the Collective Actions Directive (EU) 2020/1828 into their national legislations.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

  There are no published annual statistics on the number of proceedings for protection of the collective consumer interest instigated before the Ministry of Trade. However, sources indicate that, in practice, this form of collective redress has become more common, with the adoption of 25 decisions determining an infringement of the collective consumer interest between 2015 and 2021, mostly against companies that provide services of general economic interest (*e.g.* telecommunication companies).

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

  Medium risk.

Key Contact / Authors

Nataša Lalović Marić
Partner
E natasa.lalovic@wolftheiss.com
T +381 11 330 2900

Aleksandar Ristić
Partner
E aleksandar.ristic@wolftheiss.com
T +381 11 3302 926

Stefan Šilobad
Associate
E stefan.silobad@wolftheiss.com
T +381 11 3302 905

Wolf Theiss Bulevar Mihajla Pupina 6/18, 11000 Belgrade, Serbia
T +381 11 3302 900 **E** beograd@wolftheiss.com

Collective Redress
in CEE & SEE

Slovak Republic

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in the Slovak Republic?**

  On 25 July 2023, Act No 261/2023 Coll. on actions for the protection of collective interests of consumers (the "**Slovak Collective Redress Act**") came into force, providing a statutory framework for collective redress. The Act introduces a procedure for redress in which the court can impose one or more remedies on a company in protection of the rights of consumers ("**Procedure for Redress Measures**"). It also reforms the "abstract control" procedure in consumer matters; in this procedure, the court is asked to examine the fairness of contractual terms stipulated in a consumer contract or other related document, without taking into account the circumstances of a particular consumer's case (the "**Abstract Control Procedure**").

  In addition to the Procedure for Redress Measures and the Abstract Control Procedure provided for in the Slovak Collective Redress Act, the Slovak Code of Civil Procedure also provides the option to consolidate multiple claimants and their claims into a joint action. However, joint-action proceedings generally do not differ from ordinary proceedings under the Slovak Code of Civil Procedure and, therefore, they apply to all claims that can be pursued in civil courts.

  This chapter focuses primarily on the recently enacted Slovak Collective Redress Act.

b) Key features of collective action in the Slovak Republic

- **Are collective actions available in all areas of law or only in certain sectors?**

  The Procedure for Redress Measures and the Abstract Control Procedure apply to infringements of consumer protection law, as well as to compensation for damage caused by infringements of competition law.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  The Procedure for Redress Measures and the Abstract Control Procedure can only be initiated by qualified entities or a supervisory authority ("**qualified entity**").

- **Which mechanism applies – opt-in, opt-out or both?**

  The Procedure for Redress Measures requires the active involvement of consumers. Consumers are not automatically involved in proceedings, but to actively participate they must opt into the notice of action (an opt-in mechanism applies). To opt into the action, the consumer must pay a lump-sum fee of EUR 20.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  The main requirement is that a group must be comprised of at least 20 consumers, with a qualified entity acting on their behalf.

  At least two months before bringing an action to initiate a Procedure for Redress Measures, the qualified entity must publish a notice of action in the Commercial Gazette and invite consumers to join the action. Two months after the notice of action has been published in the Commercial Gazette, and once a minimum of 20 consumers have joined the action, the qualified entity may bring the action against the tortfeasor under the Procedure for Redress Measure. Consumers who have opted in cannot be involved in other collective or individual proceedings concerning the same matter and against the same defendant.

  Before initiating an Abstract Control Procedure, the qualified entity must enter into consultation with the tortfeasor about the infringement. If the tortfeasor does not cease the infringement within 14 days of receiving the request for consultation, the qualified entity may bring the action. Individual consumers do not need to participate in Abstract Control Proceedings.

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  In the Procedure for Redress Measures, remedies such as monetary compensation from the tortfeasor and other redress measures are available.

  In the Abstract Control Procedure, the court may prohibit the tortfeasor from using a contractual term, or any term with a similar meaning which the court finds unfair, in any consumer contract or other related contractual documents. Alternatively, the court may prohibit the tortfeasor from engaging in unfair business practices or violating consumer protection laws. The court's ruling in an Abstract Control Procedure is binding not only on the parties at dispute (*inter partes*) but also on all parties (*erga omnes*).

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  In a Procedure for Redress Measures, individual proof is required. Each consumer must specify, among other things, the facts and legal basis supporting their claim and must include the contract with the company in question in their application to join the collective action. If the court orders the tortfeasor to pay monetary compensation, it will quantify the individual claims of each consumer that has opted into the procedure.

- **What types of damages are recoverable (*e.g.* economic loss, damage to property)?**

  The Procedure for Redress Measures provides for remedies for pecuniary damage resulting from bodily injury, damage to property, immaterial damage and economic loss. Slovak civil law does not recognise the concept of punitive damages.

- **How are damages quantified? On what basis are damages divided among class members?**

  Damages are typically determined based on the specific circumstances of the case, including the extent of harm suffered by each individual class member. This process ensures that each class member is awarded redress equal to the actual damage actually suffered. If the qualified entity is successful in the Procedure for Redress Measures, the decision can subsequently be enforced jointly in a single enforcement proceeding.

- **What is the settlement structure, if any?**

  In Procedures for Redress Measures, the qualified entity can reach a settlement with the tortfeasor. The qualified entity must notify each opted-in consumer of its intention to enter into a settlement at least 15 days before its conclusion. If an opted-in consumer does not agree to the settlement, that consumer may withdraw their opt-in notice within ten days of receiving notification of the intention to enter into a settlement. The settlement is subject to court approval; the court examines the settlement and must approve it unless it is contrary to generally applicable law or good morals.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  The first step in a Procedure for Redress Measures is to assess whether the qualified entity meets the prerequisites to initiate the process. The general provisions of the Slovak Code of Civil Procedure apply in Procedures for Redress Measures and Abstract Control Procedures.

The peculiarity of the Procedure for Redress Measures lies in the fact that the court must order pre-trial discovery before the first hearing.

Meanwhile, a special feature of the Abstract Control Procedures is that no oral hearing needs to be convened.

- **Is there a deadline by which claimholders must join proceedings?**

  Individual consumers can participate in Procedures for Redress Measures by opting into the notice of action. They may do so even after the court proceedings have commenced, but no later than the closing date for the admission of evidence with the court of first instance.

- **Are there any time limits on initiating court proceedings?**

  Since there are no specific or separate provisions concerning the Procedure for Redress Measures or the Abstract Control Procedure, the general statute of limitations under the Slovak Civil Code applies. Consequently, the general limitation period is three years from the moment the right could first be exercised.

- **Is pre-trial discovery available?**

  The Slovak Code of Civil Procedure does not provide for a pre-trial discovery process akin to that which is found in common law jurisdictions like the United States. Slovak civil procedure typically involves the exchange of evidence during the proceedings, with parties submitting relevant documents and information to the court as part of their pleadings and during the trial phase. However, during civil proceedings, courts – at the request of a party – can order the opposing party or third parties to disclose certain documents and information.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the "loser pays" principle apply?**

  The "loser pays" principle applies, with the unsuccessful party required to bear the prevailing party's costs of the proceedings. Consequently, the successful party is entitled to recover necessary and appropriate costs, encompassing court fees, other incidental expenses and their own legal costs. Legal fees are calculated based on the Slovak Lawyers' Tariff Decree, whereas court fees are calculated according to the Slovak Court Fees Act. If a party is only partially successful, the legal costs are divided between the parties on a *pro rata* basis.

Only the qualified entity and the company are deemed to be parties to the Procedure for Redress Measures and the Abstract Control Procedure. In general, a consumer who has opted into a Procedure for Redress Measures cannot bear any fees other than the application fee to opt into a notice of action and the fee for withdrawing an opt-in application.

- **How are the costs of proceedings shared among class members?**

  The costs of the Procedure for Redress Measures are borne only by the qualified entity or a third party funding the litigation. Opted-in consumers may only be charged the fee for joining the notice of action (EUR 20) and the fee for withdrawing consent to join the notice of action (EUR 10). On an exceptional basis, an opted-in consumer may be ordered to pay costs incurred as a result of their own fault or negligence.

- **Is third-party litigation funding permitted in the Slovak Republic?**

  The costs of the Procedure for Redress Measures may be funded by a third party.

- **Are there any restrictions on third-party litigation funding?**

  The qualified entity must not be influenced by a third party such to harm the collective interests of the consumers affected by the action. Additionally, an action must not be brought against a defendant who is a competitor of the third party funding the litigation or against a defendant on whom the third party is dependent. In the event of an infringement relating to the conduct or position of a third party, the court must order the qualified entity to refuse or alter the funding of the action. If the qualified entity fails to comply with these requirements, the court must dismiss the action.

- **Are contingency fees permitted in the Slovak Republic?**

  Contingency fee arrangements between clients and attorneys are permitted by Slovak law.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  In the context of cross-border litigations, limitations are placed on the international jurisdiction of Slovak courts under both international and European procedural law (*e.g.* Brussels I Regulation (recast)). Actions are frequently required to be initiated in the country of origin: specifically, where the harm occurred.

- **Can claims be brought by residents from other jurisdictions?**

  In general, the international jurisdiction of Slovak courts is not limited to parties residing in Slovakia. However, the limitations of international jurisdiction in cross-border cases necessitate that, in the absence of a jurisdiction agreement between the parties, a connection must exist with the jurisdiction of the Slovak courts. Such a connection arises, for example, when the place of damage is in Slovakia or when a company is seated or registered in Slovakia.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  The first qualified entities have been registered for the purposes of the Procedure for Redress Measures; however, up to 1 June 2024 no actions had yet been lodged. The main reason why this procedure has not been used in practice is likely the significant administrative requirements for initiating and joining Procedures for Redress Measures. It will be interesting to monitor whether the Slovak legislator take steps to streamline these demands.

g) Risk assessment

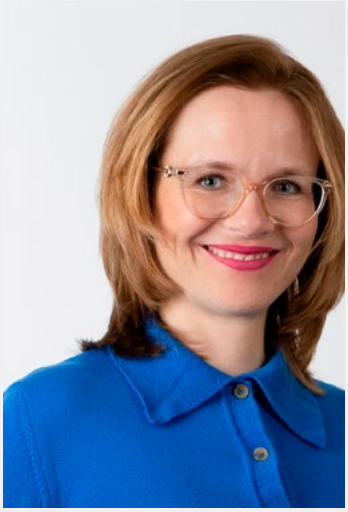
- **How frequently are collective actions brought each year and in what areas are they most common?**

  There are no published annual statistics on the number of collective actions brought before Slovak courts under the Slovak Code of Civil Procedure. As for the Procedure for Redress Measures, no collective claims have yet been brought.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

  Low risk.

Key Contact / Authors



Katarína Matulníková
Partner
E katarina.matulnikova@wolftheiss.com
T +421 2 591 012 69

Marko Ernek
Senior Associate
E marko.ernek@wolftheiss.com
T +421 2 591 012 38

Collective Redress
in CEE & SEE

Slovenia

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in Slovenia?**

The Slovenian Collective Actions Act (*Zakon o kolektivnih tožbah*) was enacted in 2017 and entered into force in April 2018. It introduced collective actions into the Slovenian legal system, providing for collective settlements and collective actions in certain areas of the law where mass damages are most common. An amendment to the Slovenian Collective Actions Act was enacted on 27 December 2023 and entered into force on 26 January 2024. The amendment implemented the Collective Actions Directive (EU) 2020/1828 and introduced some of its novelties into the Slovenian legal system.

In addition to the dedicated collective actions regime, the Slovenian Civil Procedure Act (*Zakon o pravdnem postopku*) contains other ancillary mechanisms that have historically been used by a larger number of individuals to pursue the same or similar interests or in response to the same harmful event, such as joinders and model case procedures.

Additionally, the regimes under the Slovenian Code of Obligations (*Obligacijski zakonik*) and the Slovenian Environmental Protection Act (*Zakon o varstvu okolja*) allow actions for the collective protection of a healthy living environment. Under the Slovenian Environmental Protection Act, the right to a healthy living environment can be exercised by requiring an entity to cease any environmental intervention that causes (or threatens to cause) excessive negative effects on the environment or imminent danger to human life or health. The cessation of such an intervention can be sought in the courts by a non-governmental organisation or a civil initiative, or by individuals.

This chapter focuses exclusively on the Slovenian Collective Actions Act, as amended.

b) Key features of collective redress in Slovenia

- **Is collective redress available in all areas of law or only in certain areas?**

The Slovenian Collective Actions Act provides for collective actions and collective settlements in areas of law where mass damages are most common, namely: (i) consumer protection claims arising from contractual relationships with companies or infringements of other rights; (ii) claims for breach of the provisions prohibiting restrictive practices in accordance with Slovenian Prevention of the Restriction of Competition Act (*Zakon o preprečevanju omejevanja konkurence*); (iii) claims for breach of of rules on trading in organised markets and prohibited actions of market abuse; (iv) claims by employees whose rights would otherwise have to be enforced through individual actions in individual labour disputes; and (v) claims regarding liability in relation to environmental incidents.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  A collective action can only be brought by a qualified entity. This can be either (i) a representative non-profit private legal entity with a direct link between its primary objectives and the rights allegedly infringed upon, or (ii) the State Attorney's Office of the Republic of Slovenia.

  The State Attorney's Office of the Republic of Slovenia cannot file a claim against the Republic of Slovenia.

- **Which mechanism applies – opt-in, opt-out or both?**

  Claimants are required to apply to the court with a proposal to proceed on either an opt-in or an opt-out basis. The court is not bound by the proposal and may exercise its own discretion. In making its decision, the court must consider all the circumstances of the specific case, including (i) the value of each group member's claim and (ii) the circumstances that are decisive for the approval of a collective action for damages.

  The opt-in system is obligatory if (i) at least one of the claims in the collective action relates to compensation for non-pecuniary damage; or (ii) according to the assessment contained in the action, at least 10% of group members are each seeking payment in excess of EUR 2,000. The opt-in system also applies to all claimholders who do not have a permanent residence or registered office in Slovenia at the time the decision approving a collective action is rendered.

  At the end of this stage, the court forms a list of all the members of the collective action, which is served on both parties in the proceedings.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  The collective action can be certified if the claims (i) are of the same type; (ii) are brought on behalf of an identifiable group of individuals; (iii) concern the same, similar, or related factual or legal issues; (iv) relate to the same case of mass harm; and (v) are suitable for consideration in a collective procedure.

  Further, the following conditions must be satisfied:

  – Legal and factual issues common to the entire group prevail over issues that relate only to individual members of the group;

  – The group is so numerous that asserting claims through separate actions or a different form of association of its members (*e.g.* joinder or consolidation of proceedings) would be less effective than bringing a collective action;

- The filing entity meets the representativity requirements;
- The claim is not manifestly unfounded;
- The requirements for agreement on costs are met;
- The agreement on contingency fees (if applicable) is reasonable.

These criteria are tested by the court in the certification stage of proceedings.

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  Under the Slovenian Collective Actions Act, compensation (damages) and injunctive relief are available.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  Depending on the specificities of the case (*e.g.* the size of the class), there are two possible schemes for establishing damages: individual compensation and collective compensation (establishment of loss). These schemes are outlined below.

- **What types of damages are recoverable (*e.g.* economic loss, damage to property)?**

  The Slovenian Collective Actions Act provides remedies for pecuniary damage resulting from bodily injury, damage to property and economic loss. No punitive or exemplary damages can be awarded.

- **How are damages quantified? On what basis are damages divided among class members?**

  The Slovenian Collective Actions Act gives priority to the individual allocation of compensation. If all members of the class are known and it is possible to determine the claims, they are entitled to without disproportionately complicating the proceedings, the court specifies all members of the collective action, conducts a lengthy hearing on issues relating to individual claimholders and determines the amount of those claims.

  The court only agrees to conduct collective compensation when individual compensation is not possible – for example, where this would disproportionately burden the collective proceedings. In this case, compensation is apportioned individually by a designated compensation administrator (a notary), who performs specific tasks such as compiling a preliminary list of individuals entitled to damages and distributing the compensation awarded among the members of the class.

- **What is the settlement structure, if any?**

  The Slovenian Collective Actions Act prescribes a defined settlement structure. Each collective settlement must include, among other things, (i) details of the parties to the collective settlement, (ii) a description of the mass damage, (iii) a description of the group; (iv) an estimate of the number of members in the group, (v) whether the collective settlement is concluded under an opt-in or opt-out scheme, and (vi) the aggregate compensation including an explanation of how this was calculated.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  Collective proceedings in actions for compensation and injunctive relief both divided into several different stages.

  Pre-trial stage (actions for injunctive relief only): prior to filing a collective action for injunctive relief, the qualified entity must notify the prospective defendant in writing about its intention to file the collective action if the defendant does not cease the alleged infringements.

  Admissibility stage: the court establishes whether the action contains all necessary elements, whether it has been filed by an entity with legal standing, and whether it falls within the scope of the Slovenian Collective Actions Act.

  Certification stage: the court tests whether the claim is suitable for a collective proceeding (this is outlined in more detail above).

  Opt-in/Opt-out stage (actions for monetary compensatory only): individuals have the opportunity to identify themselves as, or exclude themselves from being, members of the class (as applicable). This stage can last between 30 to 90 days.

  Merits stage: the members of the class have the right to submit written statements and be heard in court (provided the court receives prior notification),

  Allocation of compensation (action for monetary compensation only). Compensation is allocated in the manner outlined above (see answer on establishment for loss).

- **Is there a deadline by which claimholders must join proceedings?**

  During a period of 30 to 90 days, individuals may identify themselves as, or exclude themselves from being, members of a collective action.

- **Are there any time limits on initiating court proceedings?**

  Since there are no specific or separate provisions regarding the initiation of court proceedings, the statute of limitations under the Slovenian Civil Code applies. With respect to damages, a shorter limitation period of three years applies. Claims for damages must be brought before the courts within three years of the damage and the tortfeasor becoming known. The general limitation period is five years. Each individual claim bundled within a Collective Action is subject to examination as to whether the claim is already time-barred.

- **Is pre-trial discovery available?**

  The Slovenian Collective Actions Act does not provide for a pre-trial discovery process akin to that found in common law jurisdictions like the United States. The Slovenian Collective Actions Act provides for the exchange of evidence during the proceedings, with parties submitting relevant documents and information to the court as part of their pleadings (merits stage). However, during merit stage proceedings, the courts – at the request of a party – can order the opposing party or third parties to disclose certain documents and information.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the "loser pays" principle apply?**

  The "loser pays" principle applies, with the unsuccessful party required to bear the prevailing party's costs of the proceedings. However, the obligation on the losing party is limited by statutory provisions on maximum recoverable amounts, with specific rules in place to determine the amount in dispute. This amount is set at 20% of a claim for aggregate damages or 20% of the estimated value of all claimholders' claims, as applicable.

  In collective proceedings for injunctive relief, the estimated value of the dispute cannot exceed EUR 10,0000, regardless of its economic value.

- **How are the costs of proceedings shared among class members?**

  In general, this is subject to agreement of the class members. In most cases, a third party assumes the cost risk of the proceedings by providing litigation funding. Consequently, members of the class do not bear the costs in the event of losing.

- **Is third-party litigation funding permitted in Slovenia?**

  Third-party litigation funding is explicitly permitted and regulated.

- **Are there any restrictions on third-party litigation funding?**

  The claimant must publicly disclose and report to the court the origin of the funds used to finance the collective action. The court then assesses whether such funding is permissible. The court can deny funding if, among other things, (i) there is a conflict of interest between the third party and the claimant, (ii) the defendant is a competitor of the third party or the third party is financially dependent on the defendant, or (iii) the third party does not have sufficient resources to meet its financial obligations towards the claimant.

- **Are contingency fees permitted in Slovenia?**

  Contingency fee arrangements between clients and attorneys are permitted. An attorney may agree with the claimant to be paid more than the lawyers' tariff, however this can be no more than 15% of the awarded amount. Any agreement on lawyer-funded litigation must be approved by the court during the certification stage, in which the court considers if the agreed success fee is reasonable.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  In the context of cross-border litigation, additional rules apply for filing consumer collective actions. Parties eligible to file a consumer collective action in another EU Member State include legal entities governed by private law, entities having their registered office in the Republic of Slovenia and entities entered on the list of claimholders that are eligible to file a consumer collective action. To be entered on that list, entities must fulfil specific conditions.

- **Can claims be brought by residents of other jurisdictions?**

  In general, the international jurisdiction of Slovenian courts is not limited to parties residing in Slovenia. The competent courts for collective actions are the general district courts in Ljubljana, Maribor, Celje and Koper.

In this regard, the opt-out system cannot be used for claimholders who do not have a permanent place of residence or a registered office in Slovenia at the time the decision approving a collective action is rendered.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  An amendment to the Slovenian Collective Actions Act was enacted on 27 December 2023 and entered into force on 26 January 2024. The amendment implemented the Representative Actions Directive (EU) 2020/1828 and introduced other amendments and novelties. No other developments or reforms are expected in the near future.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

  Up to 2024, a total of 22 collective actions have been filed. One of the first collective actions was filed against Apple Inc. A few others were filed against various Slovenian banks in relation to the non-application of negative EURIBOR interest rates in consumer loans with variable interest rates, and against telecom providers.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

  Low risk.

Key Contact / Authors

Žiga Dolhar
Counsel
E ziga.dolhar@wolftheiss.com
T +386 1 438 0013

Klara Matić
Associate
E klara.matic@wolftheiss.com
T +386 1 438 00 09

Wolf Theiss Gosposvetska cesta 11, 1000 Ljubljana, Slovenia
T +386 1 438 00 00 **E** ljubljana@wolftheiss.com

Collective Redress
in CEE & SEE

Ukraine

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in Ukraine?**

  Ukrainian law does not provide for a statutory framework on collective redress. However, the following types of claims may be regarded, in certain aspects, as resembling collective actions:

  Under the Ukrainian Consumer Protection Act, collective consumer claims may be filed by associations of consumers or State consumer protection bodies against tortfeasors. Once the court adjudicates against the tortfeasor, the affected consumers can turn to the relevant court in order to obtain a court order entitling them to specific compensation. Further, Ukrainian courts have accepted and adjudicated on a very limited number of environmental claims for damages filed by associations established by individuals suffering from the negative results of environmental infringements. In addition, trade unions have the right to represent employees as a means of safeguarding their collective rights and interests.

  In addition, the Ukrainian Codes on Civil, Administrative and Commercial Procedure also offer the option of consolidating multiple claimants and their claims into a joint action. This form of joint litigation applies to most types of cases and necessitates that all asserted claims stem from substantially similar factual bases (such as multiple injured parties in the same accident) and that the court has seised has jurisdiction over all such claims. The general provisions of the relevant procedural codes apply to joint litigation proceedings. In essence, these types of cases can be treated in all substantive respects as standard litigation, except for the fact that multiple parties are involved.

  Finally, administrative law provides for a specific collective proceedings mechanism. If one or more administrative courts are handling multiple similar administrative cases, and if the number of such cases warrants a model decision, the court handling one or more of these cases can refer one of them to the Supreme Court, which is to be considered the court of first instance. A Supreme Court decision in a model case must be adhered to by lower courts in similar cases. Once the Supreme Court publishes an official notification regarding its consideration of the model case on its website, all interested parties are considered duly notified of the proceedings.

  For this Guide, the focus will primarily lie in collective actions under the Ukrainian Consumer Protection Act as well as the Ukrainian Codes on Civil, Administrative and Commercial Procedure, as these are the relevant collective redress mechanisms when it comes to claims for damages. If no explicit differentiation is made below, then the information outlined applies to both types of collective actions.

b) Key features of collective redress in Ukraine

- **Is collective redress available in all areas of law or only in certain sectors?**

  Currently, it mostly applies to environmental damage, consumer protection claims and claims by trade unions.

- **Who is entitled to bring an action (*e.g.* individuals, groups, qualified entities)?**

  Under the Ukrainian Consumer Protection Act, associations of consumers or consumer protection authorities are entitled to file a claim in consumer rights protection cases. Environmental protection claims, as a matter of practice (although not stipulated by law), are filed by various non-governmental associations or entities that are explicitly established for this purpose (claims vehicles). Claims can also be filed by relevant trade unions.

  Under the Ukrainian Codes on Civil, Administrative and Commercial Procedure, any individual or entity with legal standing may file a claim before the relevant court. If there are multiple claims filed, the court may, at its discretion or upon the request of the parties, consolidate these claims into a single proceeding if they involve the same subject matter and respondent.

- **Which mechanism applies – opt-in, opt-out or both?**

  The mechanism used in collective actions in Ukraine (under the Ukrainian Consumer Protection Act and the Ukrainian Codes on Civil, Administrative and Commercial Procedure) can be roughly described as an opt-in mechanism, even though Ukrainian law does not explicitly use this or a similar term. The bottom line is that an individual who has suffered harm must report their claim to the relevant court or to the claims vehicle in order to receive compensation. An assignment of claims is not necessary.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

  For a consolidation of claims under the Ukrainian Codes on Civil, Administrative and Commercial Procedure to be permissible, the court hearing the case must have jurisdiction over all claims and the same type of procedure must apply. The claims do not have to be identical but a particular connection must exist between all claims (essentially similar basis).

  In claims filed by claims vehicles (*e.g.* consumer protection claims) it should be demonstrated that the claims vehicle represents a substantial number of individuals holding a right of claim (potential claimholders), even though this is not expressly regulated by the law.

  There is no minimum threshold for claims.

- **What remedies are available (*e.g.* monetary compensation, injunctive measures, redress measures)?**

  Under the Ukrainian Consumer Protection Act, claims are restricted to injunctive and declaratory relief, given that the primary purpose of these actions is to protect collective public interests. Individual claimants may subsequently file claims seeking specific damages based on the decision made in the collective claim.

  The law does not specify the available remedies for other types of collective actions (*i.e.* under the Ukrainian Codes on Civil, Administrative and Commercial Procedure); therefore, the general provisions of Ukrainian law apply (*i.e.* monetary compensation, injunctive relief and various types of specific performance may be sought).

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

  Under the Ukrainian Consumer Protection Act, if a consumer association wins a collective consumer claim, individual claimholders must nevertheless proceed to file separate claims and provide specific proof of their losses in order to receive a court decision entitling them to compensation.

  The law does not establish clear rules for proving losses in other types of collective actions (*i.e.* under the Ukrainian Codes on Civil, Administrative and Commercial Procedure). Consequently, the method for establishing losses will depend on the nature of the claims and the legal strategy employed by the claimant's counsel, whether through a claim vehicle or the aggregation of individual claims or otherwise.

- **What types of damages are recoverable (*e.g.* economic loss, damage to property)?**

  In the absence of specific legislation governing collective actions, the default provisions of Ukrainian law regarding types of damages apply. These provisions entitle a claimant to recover real damages (*i.e.* losses incurred by a person due to the destruction or damage of property, as well as expenses that the person has incurred or must incur to restore their infringed rights), lost profits and compensation for moral loss.

  Fines payable to the State exchequer are also applicable in consumer rights protection cases and environmental cases.

- **How are damages quantified? On what basis are the damages divided among class members?**

  Damages are quantified on a case-by-case basis. Usually, expert reports and other evidence provided by parties are taken into consideration by the court when quantifying damages.

There is no statutory mechanism for dividing damages among class members. In consumer rights cases, damages are awarded based on the individual claims in an individual action from each relevant consumer, after a consumer association has won the collective claim. With regard to environmental cases, although few in number, damages have been awarded to claims vehicles. However, the court's decisions did not specify the procedure for distributing these damages, implying that claims vehicles should handle the division of damages according to their own internal procedures. In consolidated proceedings, damages are awarded based on the claims of each individual claimant.

- **What is the settlement structure, if any?**

  There is no statutory settlement structure specifically for collective actions in Ukraine. Consequently, the general provisions of procedural law regarding amicable settlements in court proceedings apply. The parties involved in court proceedings may resolve their dispute at any stage of the proceedings through a settlement agreement approved by the court.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

  There is no special procedure for collective actions in Ukraine. Court proceedings are conducted in accordance with the general provisions of the Ukrainian Code of Civil Procedure.

  In terms of model cases in administrative proceedings, the special procedure prescribed by the Code of Administrative Procedure of Ukraine would apply.

- **Is there a deadline by which claimholders must join proceedings?**

  There is no statutory deadline for joining collective actions. However, according to the general procedural rules, all parties to the proceedings (including claimholders) should be established by the time the preparatory stage of the proceedings is completed.

- **Are there any time limits on initiating court proceedings?**

  Court proceedings should be initiated within the statutory limitation period, which is three years for most claims.

- **Is pre-trial discovery available?**

  Pre-trial discovery is not available in Ukraine. However, parties may submit substantiated requests to the courts to compel the other party or third parties to provide evidence in their possession. Additionally, all parties to court proceedings are expected to provide exhaustive evidence supporting their position prior to the close of the preparatory stage.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the "loser pays" principle apply?**

  The "loser pays" principle applies, with the unsuccessful party required to bear the prevailing party's costs of the proceedings. Costs are to be calculated based on the proven reasonable expenditures of the winning party. Court fees are distributed among the parties in proportion to their success in obtaining different reliefs. In consolidation-of-cases proceedings, and in administrative model-case proceedings, each claimant bears his or her own court and legal expenses. Apart from that, no statutory regulation related to the costs of collective actions apply.

- **How are the costs of proceedings shared among class members?**

  This matter is not regulated by law in Ukraine. Consequently, individual claimants may pool funds to cover legal fees, claims vehicles may use their own funds or a success fee may be applied (among other arrangements).

- **Is third-party litigation funding permitted in Ukraine?**

  Third party funding is currently unregulated in Ukraine and, consequently, is not used in practice for domestic litigations.

- **Are there any restrictions on third-party litigation funding?**

  There are no explicit restrictions or prohibitions on funding claims in proceedings before Ukrainian courts. However, as noted above, this arrangement is not known to be used for domestic litigation.

- **Are contingency fees permitted in Ukraine?**

  Contingency fees are not prohibited. Clients and attorneys are generally free to agree on legal fees, including contingency arrangements.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

  This aspect is not expressly regulated by Ukrainian law when it comes to collective actions. However, in cases of cross-border collective action, the general provisions of Ukrainian law concerning international jurisdiction (*i.e.* exclusive competence of Ukrainian courts, choice of court agreements) and enforceability of foreign judgments, among others, would apply.

- **Can claims be brought by residents of other jurisdictions?**

  There is no limitation for non-residents with regard to bringing collective actions in Ukrainian courts, provided claimants have proper standing under applicable law and all jurisdictional requirements of Ukrainian procedural law are met (*i.e.* the court has both subject-matter and personal jurisdiction).

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

  Under the newly adopted Ukrainian Consumer Protection Act, which is due to become effective once the martial law regime is lifted in Ukraine, collective actions by consumer associations (claims vehicles) will be exempt from court fees. This should make it easier for such associations to pursue collective actions.

  Several legislative bills concerning collective actions in various legal areas have been introduced in the Ukrainian Parliament in recent years. However, none of these bills has been passed, and there is currently no clarity on when this might happen.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

  Due to the absence of a clear legal framework, collective actions are rare in Ukraine. There are no published annual statistics on the number of collective actions brought before the Ukrainian courts. According to media reports, collective actions are most commonly initiated by small groups of fewer than five claimholders. Collective actions are most popular in the areas of consumer protection and environmental protection, where actions are filed by consumer associations and environmental associations respectively.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

  Medium risk.

Key Contact / Authors

Taras Dumych
Partner
E taras.dumych@wolftheiss.com
T ++38 044 3 777 500

Sergii Zheka
Senior Associate
E sergii.zheka@wolftheiss.com
T +38 044 3 777 500

Wolf Theiss 5A/10 Ihorivska St., 04070 Kyiv, Ukraine
T +38 044 3 777 500 **E** kyiv@wolftheiss.com

Our Offices

Law at first sight.

Albania
Murat Toptani Street
Eurocol Business Center
1001 Tirana
T +355 4 2274 521
E tirana@wolftheiss.com

Austria
Schubertring 6
1010 Vienna
T + 43 1 51510
E wien@wolftheiss.com

Bosnia and Herzegovina
Zmaja od Bosne 7
71000 Sarajevo
T +387 33 953 444
E sarajevo@wolftheiss.com

Brussels
Bastion Tower
Place du Champ de Mars 5
1050 Brussels, Belgium
T +32 2 550 3888
E brussels@wolftheiss.com

Bulgaria
Expo 2000, Phase IV
55 Nikola Vaptsarov Blvd.
1407 Sofia
T +359 2 8613 700
E sofia@wolftheiss.com

Croatia
Ivana Lučića 2a/19th
10 000 Zagreb
T +385 1 4925 400
E zagreb@wolftheiss.com

Czech Republic
Pobřežní 12
186 00 Prague 8
T +420 234 765 111
E praha@wolftheiss.com

Hungary
Kálvin tér 12–13
1085 Budapest
T +36 1 484 8800
E budapest@wolftheiss.com

Poland
ul. Marszałkowska 107
00 - 110 Warsaw, Poland
T +48 22 378 8900
E warszawa@wolftheiss.com

Romania
4 Vasile Alecsandri Street
The Landmark, Building A
011062 Bucharest
T +40 21 308 81 00
E bucuresti@wolftheiss.com

Serbia
Bulevar Mihajla Pupina 6/18
11000 Belgrade
T +381 11 3302 900
E beograd@wolftheiss.com

Slovak Republic
Aupark Tower, Einsteinova 24
851 01 Bratislava
T +421 2 591 012 40
E bratislava@wolftheiss.com

Slovenia
Gosposvetska cesta 11
1000 Ljubljana
T +386 1 438 00 00
E ljubljana@wolftheiss.com

Ukraine
5A/10 Ihorivska St.
04070 Kyiv
T +38 044 3 777 500
E kyiv@wolftheiss.com

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