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Collective Redress
in CEE & SEE

Austria

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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 serve to protect said interests.

Nevertheless, it is not only these associations that can bring 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 dependent 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.



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