

WT 

Collective Redress  
in CEE & SEE

Croatia

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## 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 relief 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.



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