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**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