

WT 

Collective Redress  
in CEE & SEE

Slovenia

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## 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 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.



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