

Class Actions

**Dear Ladies and Gentlemen,
Dear Friends and Colleagues,**

In November 2020, the European Union Directive on representative actions for the protection of the collective interests of consumers was adopted (EU 2020/1828). The EU directive is based on the idea that a larger number of consumers who have been harmed in the same way by unfair practices of entrepreneurs must be provided with special legal instruments to take action against such harm.

The national provisions for implementing the EU directive should have been adopted by 25 December 2022 and should have been applied as of 25 June 2023. However, Austria was late in implementing this directive for a long time. In the meantime, this has led to the European Union initiating infringement proceedings against Austria.

Now that in Austria a political agreement has been reached after all, a law about the implementation of the EU Directive on representative actions was published in the Austrian Federal Law Gazette I No. 85/2024 only a few weeks ago.

The EU Directive will be implemented in Austria through two legislative acts. On the one hand, a Federal Act on Qualified Entities for Collective Redress will be enacted, and, on the other hand, the Code of Civil Procedure will be amended by adding a fifth section on collective redress.

The enactment of a Qualified Entities Act (QEG) was necessary because representative actions, often also referred to as class actions or group actions, may only be brought by so-called qualified entities. The QEG now regulates who is a qualified entity, what requirements they must fulfil, what obligations they have and who supervises them. Entities that fulfil the legal requirements can apply for recognition as a qualified entity. Qualified entities by law are the Austrian Federal Economic Chamber, the Federal Chamber of Labour, the Austrian Chamber of Agricultural Workers, the Presidential Conference of the Austrian Chambers of Agriculture, the Austrian Trade Union Federation, the Association for Consumer Information and the Austrian Seniors' Council.

The newly inserted section of the Code of Civil Procedure now regulates two types of representative actions, namely the representative action for injunctive measures on the one hand and the representative action for redress measures on the other.

Common to both representative actions is that the Commercial Court of Vienna has exclusive jurisdiction for such representative actions. In the action, it must be proven that at least 50 consumers are affected by the behaviour of the company described as unlawful. A representative action must assert essentially similar facts from at least 50 consumers.

Once a representative action has been filed, additional consumers can join the lawsuit during the course of the proceedings.

One of the main substantive effects of filing a representative action is that the expiry of the limitation period for all potentially affected consumers is suspended retroactively to the date on which the representative action was filed.

In the context of proceedings concerning a representative action for redress measures, the qualified organisation as the plaintiff can also request an interim declaratory judgement on the existence of a right or legal relationship on which the decision in the legal dispute depends.

Judgements in collective actions for injunctive measures may be published at the expense of the losing party. Judgements in representative actions for redress measures must in any case be published in the official edict website of the Austrian courts.

Settlements that may be concluded between the qualified entity as the plaintiff and the entrepreneur as the defendant in proceedings concerning a representative action for redress measures must be confirmed by the court in order to be valid. A settlement confirmed by the court is then also binding on any consumers who join later.

With the above explanations, we only wanted to give you a very rough overview of the new legal situation. There is already an intensive discussion in the legal community about many of the details of the new legal regulations. It would go beyond the scope of this newsletter to describe them all. If you, as a business and entrepreneur are threatened with a representative action or are already affected by such an action, we will be happy to provide you with legal advice and support you in a litigation.