
CHAMBERS GLOBAL PRACTICE GUIDES

Collective Redress & Class Actions 2024

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**Austria: Law & Practice and
Trends & Developments**

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KNOETZL



AUSTRIA

Law and Practice

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1. Policy Development of Collective Redress/Class Action Mechanisms

1.1 History and Policy Drivers of the Legislative Regime Recently Implemented Collective Redress for Consumers

Historically, Austrian law has not provided for class actions. However, Austria recently implemented the EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers (the “EU Directive” or the “Directive”). Outside of the scope of this new regime, the previous ways to bring collective actions remain intact.

Limited Instruments of Collective Redress So Far

Until recently, there were only very limited opportunities for collective redress in Austria.

Prior to the implementation of Directive (EU) 2020/1828, procedural law only allowed certain associations to bring collective interest litigation through representative actions and sample lawsuits (*Verbandsklagen* according to Sections 28 ff of the Consumer Protection Act and Section 14 of the Unfair Competition Act; *Musterklagen*

according to Section 502, paragraph 5, line 3 of the Code on Civil Procedure).

Nevertheless, Austrian legal practice has been facing the phenomenon of mass claims – ie, many similar individual claims for damages based on the same damaging event against the same defendant. Consumer protection lawyers and associations reacted to this phenomenon by developing a tool for “bundling” individual claims on the basis of then existing procedural and substantive rules (the “Austrian-type mass claim”, *Sammelklage österreichischer Prägung*). Moreover, under specific circumstances, several similar actions arising out of the same set of facts can be brought against the same defendant in one single lawsuit.

Finally, a court before which several separate, yet similar actions against the same defendant are pending, has the possibility to join these proceedings if joining them promotes procedural efficiency (Section 187 of the Code on Civil Procedure).

Latest Developments

In the past, there have been initiatives to strengthen collective redress, but these have fizzled out, without concrete legislative pro-

posals. In recent years, starting with the mass individual investor lawsuits in the wake of the financial crisis and the Volkswagen “Dieselgate” cases, there have been demands for collective legal protection. In the wake of the COVID-19 pandemic, international attention was attracted by the lawsuits filed by numerous tourists who were infected with COVID-19 in the Tyrolean ski resort of Ischgl in February/March 2020. They have sued the Republic of Austria for the allegedly faulty information and the allegedly delayed reaction of the authorities in the spread of COVID-19 at the beginning of the pandemic.

Nevertheless, it was only the pressure from EU legislation that led Austria to finally implement a regime of collective redress. On 18 July 2024, the Act on Qualified Entities for Collective Redress (the “Qualified Entities Act”), along with amendments to the Austrian Code on Civil Procedure, the Consumer Protection Act, the Court Fees’ Act and the Lawyer’s Fees Act entered into force, providing significant changes to collective redress under Austrian law (see **5.1 Policy Development** and **5.2 Legislative Reform**). However, Austria decided to restrict the applicability to consumers, only. For all other claims, as well as in parallel for consumers, the old regime is still available.

1.2 Basis for the Legislative Regime, Including Analogous International Laws Representative Actions

Austrian representative actions are transpositions of EU directives into Austrian national law (see **1.3 Implementation of the EU Collective Redress Regime**).

Sample Lawsuits

The sample lawsuit has been noted by some law professors to be comparable to the German “sample declaratory claim” (Section 606

of the German Code of Civil Procedure). While similarities in the developments of such a legal instrument have been noted in both the Austrian and German legal systems, there is no indication that the Austrian legislature set out to explicitly model their instruments upon Germany’s or other country’s regimes.

Austrian-Type Mass Claim

The Austrian-type mass claim has been developed by Austrian legal practice using specific provisions of Austrian substantive and procedural law. It is therefore an autochthonous tool.

1.3 Implementation of the EU Collective Redress Regime

Representative actions under Sections 28 ff of the Consumer Protection Act and Section 14 of the Unfair Competition Act are transpositions into Austrian law of the EU Directive 98/27/EC on injunctions for the protection of consumers’ interests (repealed by Directive 2009/22/EC).

In 2013, when the European Commission published the non-binding recommendation on the introduction of collective redress measures, the discussion on the introduction of a “group action” (which was already included in a draft of a Civil Procedure Reform Bill in 2007) was relaunched. However, despite working groups being established in the Ministry of Justice, no practical implementation of this instrument took place. At the beginning of 2018, before the European Commission announced the draft directive for collective redress under the “New Deal for Consumers” in March 2018, two Austrian political parties respectively introduced draft legislation for “group proceedings” (*Gruppenverfahren*) and “representative sample declaratory actions” (*Verbandsmusterfeststellungsklage*). These initiatives remained proposals.

With significant delay, Austria has recently implemented Directive (EU) 2020/1828 on representative actions for the protection of collective consumer interests. On 18 July 2024, the Qualified Entities Act, along with amendments to the Austrian Code on Civil Procedure, the Consumer Protection Act, the Court Fees' Act and the Lawyer's Fees Act entered into force, providing a new system of collective redress for consumers. Representative actions under this new regime were implemented in addition to existing instruments. Therefore, representative actions under Sections 28 ff of the Consumer Protection Act and Section 14 of the Unfair Competition Act remain in force. Also, the Austrian-type mass action can still be utilised by consumers.

2. Current Legal Framework and Mechanisms Applicable

2.1 Collective Redress and Class Action Legislation Representative Actions

Under Sections 28 ff of the Consumer Protection Act and Section 14 of the Unfair Competition Act certain legal entities (“associations”, *Verbände*) can bring legal action against unlawful business practices in dealings with consumers and against the use of unlawful general terms and conditions.

However, representative actions brought in accordance with Sections 28 ff of the Consumer Protection Act and Section 14 of the Unfair Competition Act can only be used to seek injunctive relief and removal of the unlawful status (*Unterlassungs- und Beseitigungsanspruch*). They cannot be used to assert claims for damages. Thus, such representative actions can control future conduct but cannot grant damages for past harmful conduct.

Under the newly implemented regime on collective redress, so-called “qualified entities” are entitled to seek injunctive relief against businesses for violations that harm or threaten to harm the collective interests of consumers (Section 5, paragraphs 1 and 3 of the Qualified Entities Act, in conjunction with Sections 619 ff of the Civil Procedure Code).

However, at the heart of Austria's only recently implemented regime on collective redress is the “representative action for redress” (Section 5, paragraphs 2 and 3, line 1, lit b and line 2 of the Qualified Entities Act, in conjunction with Sections 623 ff of the Civil Procedure Code). This is a novelty in Austrian civil procedure law. It aims at providing effective procedural means to not only end unlawful practices threatening or harming the interests of a large number of consumers but also to provide redress in any form. Under the new regime, consumers can participate in a representative action for redress if they actively join it (opt-in). Once at least 50 consumers have joined, the qualified entity can assert claims for all consumers who have joined. Upon a redress decision, the company is obliged to provide redress to the affected consumers, depending on the case, in the form of compensation, repair, replacement, price reduction, contract termination, or reimbursement of the price paid. As a result of such a decision, consumers directly benefit from the redress specified in the decision without having to file a separate lawsuit. (For more on qualified entities, see **1.3 Implementation of the EU Collective Redress Regime**).

Sample Lawsuits

Section 502, paragraph 5, line 3 of the Code on Civil Procedure provides for sample lawsuits, with which certain associations (the same entitled to representative actions) can file a case on behalf of an individual and – irrespective of the

amount in dispute – bring it before the Supreme Court. The prerequisite is that the individual has assigned their claim to the association.

While the judgment only has legal effect regarding the specific case, the lower courts will generally observe the decision of the Supreme Court as a “precedent”.

Austrian-Type Mass Claims

In order to deal with mass claims, legal practice has established “Austrian-type mass claims”. The aim was to create a functional equivalent to class actions.

The Austrian-type mass claim is based on the concept that claims may be assigned for collection (*Inkassoession*) and that a claimant may file a single lawsuit to deal with multiple claims it has against the defendant (Section 227 of the Code on Civil Procedure). Thus, the entity that has been assigned claims from different individuals can raise all these individual claims (as a bundle of claims) against a single defendant with one lawsuit in the same proceeding. However, the entity is not regarded as consumer. Potential claimants who assign their rights to this entity, lose the privileges as consumer.

The bundling of many claims is more cost-efficient than individual lawsuits because the costs are proportionately lower if the amount in dispute is higher. Moreover, a higher amount in dispute facilitates third-party financing (see 4.9 Funding and Costs).

Joinder of Individual Proceedings

Under specific circumstances, several similar actions arising out of the same set of facts can be brought against the same defendant in one single lawsuit. However, for a large number of claimants (several thousands) this tool is simply

impractical. Therefore, in practice, the assignment of claims to one single claimant, who then proceeds to file the lawsuit, is typically the preferred option.

Finally, a court before which several similar, separate actions against the same defendant are pending has the possibility to join these proceedings if joining them promotes procedural efficiency (Section 187 of the Code on Civil Procedure). The effect of the joinder of several legal disputes consists solely of the several cases being heard together and, if the joinder is not rescinded, decided together.

However, the two proceedings retain their independence in substance – ie, the setting aside of the judgment with regard to one claim by the appeal court does not mean a setting aside with regard to the other (joined) claim.

3. Scope and Definitional Aspects of the Legal Framework

3.1 Scope of Areas of Law to Which the Legislation Applies Representative Actions

Under Sections 28 ff of the Consumer Protection Act and Section 14 of the Unfair Competition Act, the right to bring a representative action is available to certain associations, for example the Chamber of Commerce, the Chamber of Labour, the Federation of Trade Unions, the Chamber of Agriculture and the Association for Consumer Information (Section 29 of the Consumer Protection Act, and Section 14 of the Unfair Competition Act). In practice, mainly the Association for Consumer Information and the Chamber of Labour have made use of this tool.

By means of a representative action, the following claims can be asserted:

- claims for injunctive relief against the use of unlawful general terms and conditions;
- claims for injunctive relief against certain unlawful business practices in dealings with consumers; and
- claims for the removal of a situation that is contrary to fair competition – eg, the removal of unlawful general terms and conditions from business premises or the sending of letters to inform affected customers that certain clauses of the terms and conditions do not apply.

However, under Sections 28 ff of the Consumer Protection Act and Section 14 of the Unfair Competition Act no claims for damages can be asserted by means of a representative action.

In contrast to this and as a significant change in Austrian civil procedure law, the only recently implemented new regime on collective redress provides for claims not only for injunctive relief but also for redress. Such actions can only be brought by the qualified entities. The Austrian Federal Economic Chamber, the Federal Chamber of Labour for Domestic and Cross-Border Representative Actions, as well as 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 for Domestic Representative Actions are legally recognised as qualified entities. In addition, legal entities that meet the special requirements can be recognised as qualified entities by the Federal Cartel Prosecutor. Moreover, organisations that are recognised as qualified entities in another member state of the European Union and that are entered

in a list to be published by the European Commission are also entitled to bring actions before Austrian courts.

With an action for redress, a qualified entity asserts claims directly for consumers in a single procedure. The judgment is therefore directly effective for (or against) the consumers involved in the proceedings.

Sample Lawsuits

A sample lawsuit can be brought by the same associations as the representative actions (Section 502, paragraph 5, line 3 of the Code on Civil Procedure, and Section 29 of the Consumer Protection Act).

Since the sample lawsuit is based on assignment, only those claims can be asserted that can be assigned (Austrian Supreme Court 8 Ob 123/09k). Typical civil law actions, such as for damages or warranty, can usually be assigned. A contractually agreed prohibition on assignment that prevents an assignment of consumers to an association for the purpose of legal action under Section 29 of the Consumer Protection Act is considered severely disadvantageous and immoral and, therefore, void (recently Austrian Supreme Court 8 Ob 59/20i).

Furthermore, the assigned claims must fall within the area of responsibility of the association bringing the action – eg, the Association for Consumer Information may bring a sample lawsuit for an individual consumer claim which has been assigned to the Association (Austrian Supreme Court 4 Ob 208/08d, Section 502, paragraph 5, line 3 of the Code on Civil Procedure).

Austrian-Type Mass Claims

Austrian-type mass claims can be used for all kinds of claims that can be assigned. However,

they must fulfil certain procedural requirements (see **4.1 Mechanisms for Bringing Collective Redress/Class Actions**). In practice, they are mainly used by consumer protection organisations. As mentioned above, typical civil law actions, such as for damages or warranty, are generally assignable. A contractual prohibition of assignment that does not concern an assignment under Section 29 of the Consumer Protection Act may be effective if it is not considered to be severely disadvantageous or immoral for other reasons (see recently Austrian Supreme Court 7 Ob 68/21g).

Judicial Joinder of Proceedings

Judicial joinder of proceedings for the purpose of procedural efficiency is, in principle, possible for all types of cases pending at the same court under the same procedural rules (Section 187 of the Code on Civil Procedure).

3.2 Definition of Collective Redress/Class Actions

There is no statutory definition of collective redress/class action in Austrian law.

4. Procedure for Bringing Collective Redress/Class Actions

4.1 Mechanisms for Bringing Collective Redress/Class Actions

Representative and Collective Actions

Claims for injunctive relief and for redress are to be asserted in “normal” contradictory proceedings according to the general rules of the Code on Civil Procedure. The labour and social courts are responsible for representative actions in the field of labour law.

For collective actions brought by a qualified entity under the newly implemented regime on

collective redress, on trial court level, the Commercial Court of Vienna has exclusive jurisdiction regardless of the value of the claim (Sections 620 Code on Civil Procedure). The Commercial Court of Vienna also has exclusive jurisdiction over provisional injunctions in these matters. Changing this court venue by agreement of the parties is not permissible, making this a mandatory court venue.

Entrepreneurs who are domiciled in an EU member state may be sued in Austria pursuant to Article 7(3) of the Brussels I Regulation (Austrian Supreme Court 6 Ob 264/02w).

When seeking injunctive relief, it is highly recommended, yet not obligatory, to request the entrepreneur concerned to acknowledge its obligation to cease and desist and to promise a penalty in the event of a further infringement before filing the lawsuit. If the company makes a corresponding declaration, there is no longer any legal interest in bringing an action. Thus, the claim would have to be dismissed.

Sample Lawsuits

The same procedural rules apply to sample lawsuit as to individual actions. However, it should be noted that the assignment of a consumer claim does not transfer the special jurisdiction for consumers under Article 18 of the Brussels I Regulation (ECJ, C-498/16, Schrems/Facebook), nor do sample lawsuits interrupt time-bar, unless otherwise agreed.

Austrian-Type Mass Claims: Jurisdiction

The jurisdiction for Austrian-type mass claims derives from the jurisdiction for the individual claims bundled in the mass lawsuit. However, the mechanism of bundling individual claims may change jurisdiction with regard to: (i) the

amount in dispute; and (ii) the special jurisdiction for consumer matters.

The amount in dispute

In general, a claim may be brought as part of a “bundle of assigned claims” before the same court only if that court has local jurisdiction over this claim (Article 227, paragraph 1 of the Austrian Court on Civil Procedure). The requirements for jurisdiction are, in this regard, no different than if the assigned claims were asserted by the originally entitled parties (Austrian Supreme Court 2 Ob 130/20m, 2 Ob 21/17b).

A more generous regulation applies with regard to the “value limit jurisdiction”. In general, the district courts have jurisdiction for actions with an amount in dispute of less than EUR15,000. If the amount in dispute exceeds EUR15,000, the regional courts have jurisdiction at trial court level. Similar claims of different creditors that have been assigned to the claimant are not aggregated for the purpose of determining the value limit jurisdiction. However, if one of the assigned claims exceeds EUR15,000 and is therefore subject to the jurisdiction of the regional court, the assigned claims below EUR15,000 can also be included in the mass claim and are processed by the regional court (Section 227, paragraph 2 of the Austrian Code on Civil Procedure).

Special jurisdiction for consumer matters

The Austrian-type mass claim has one significant disadvantage: If consumer claims are assigned to a specific entity, such as the Austrian Association for Consumer Information, the special jurisdiction for consumer claims is not transferred with the assignment (ECJ, C-498/16, Schrems/Facebook). Therefore, the claimant bringing an Austrian-type mass claim for consumers cannot invoke this jurisdiction.

Austrian-Type Mass Claims: Pre-litigation Mechanisms

In order to bring an Austrian-type mass claim, the claimant (eg, the Association for Consumer Information) usually publicly calls on the individuals concerned to assign their claims to the claimant. The assignments are handled via forms on which the individual claims must be specified in the same detail as would be necessary for an individual lawsuit.

4.2 Overview of Procedure

Representative Cease-and-Desist Actions

Representative actions under Sections 28 ff of the Consumer Protection Act and Section 14 of the Unfair Competition Act are to be asserted in “normal” contradictory proceedings according to the general rules of the Code on Civil Procedure.

Some special provisions of the Unfair Competition Act apply, namely:

- special provisions that facilitate the granting of an interim injunction (Section 24 of the Unfair Competition Act);
- special provisions regarding the publication of judgments (Section 25, paragraphs 3-7 of the Unfair Competition Act); and
- the possibility to exclude the public due to endangering business or trade secrets (Section 26 of the Unfair Competition Act).

Collective Redress Under the New Regime

Collective actions brought under the newly implemented regime are also to be asserted in “normal” contradictory proceedings according to the general rules of the Code on Civil Procedure. Additionally, with regard to representative actions for redress, Sections 624 ff Code on Civil Procedure provide as follows.

- In a first step, the court has to decide whether the general and specific requirements for a representative action for redress are met (eg, the number of consumers, Section 626 Code on Civil Procedure). The decision is then published in the Edicts Archive (*Ediktsdatei*). It can be appealed.
- In a potential second step, the court may decide on the motion for a declaratory judgment filed by the qualified entity or the defendant. This decision can also be appealed. The Austrian legislature apparently assumes (or rather hopes) that a final and binding decision will, in practice, lead to a global settlement of all or, at least, a vast majority of all collected claims.
- In a third step, the court has to finally decide on the individual claims of the consumers, possibly based on the decision regarding the declaratory judgment motion.

Sample Lawsuit

The sample action is characterised by the fact that there is no value limit for the admissibility of an appeal to the Supreme Court (see **4.11 Remedies**).

Austrian-Type Mass Claims

The Austrian-type mass claim as a bundle of claims is based on the possibility of the “objective aggregation of claims” (*objektive Klagenhäufung*, Section 227 of the Code on Civil Procedure). Objective aggregation of claims means that the claimant can assert several claims against the same defendant in one action.

According to the wording of Section 227 of the Code on Civil Procedure, claims may be bundled regardless of whether there is a special connection between them. Contrary to this wording, an obiter dictum of the Supreme Court from 2005 indicates that a certain connection is

nevertheless required (Austrian Supreme Court 4 Ob 116/05w obiter; obiter dictum is the court’s expression of opinion uttered in a judgement, but not essential to the decision). Accordingly, all claims must be based on an “essentially similar cause of action” and concern “essentially identical issues of fact or law”. However, the same decision indicates that the connection need not be too close and that only an arbitrary set of claims is to be rejected. Literally, the Supreme Court states that the necessary connection is not fulfilled “in the case of an arbitrary ‘collection’ of completely different claims in one proceeding” (Austrian Supreme Court 4 Ob 116/05w obiter).

After that decision, the Supreme Court has always considered the necessary connection to be given. Famous Austrian law professors therefore predominantly assume that the Supreme Court only wants to prohibit the completely arbitrary bundling of claims.

Nevertheless, defendants may claim lack of admissibility and lack of jurisdiction for individual claims with an amount in dispute lower than EUR15,000 by invoking the decision from 2005. This may lead to long interlocutory disputes on the admissibility of the Austrian-type mass claim.

4.3 Standing

Representative Actions and Sample Lawsuits

Representative actions under Sections 28 ff of the Consumer Protection Act and Section 14 of the Unfair Competition Act and sample lawsuits can only be brought by certain associations, for example: the Chamber of Commerce, the Chamber of Labour, the Federation of Trade Unions, the Chamber of Agriculture or the Association for Consumer Information. In practice, the Association for Consumer Information and the Chamber

of Labour have predominantly made use of the representative action and the sample lawsuit.

Collective Actions Under the New Regime

Collective actions brought under the newly implemented regime on collective redress are to be brought by a “qualified entity”. All Austrian organisations that had been entitled to seek collective redress in the form of injunctive relief in the past are “qualified entities”. In addition, legal entities that meet the special requirements provided by the law can be recognised as “qualified entities” by the Austria Federal Cartel Prosecutor (*Bundeskartellanwalt*).

In addition, organisations that are recognised as “qualified entities” in another member state of the European Union and that are entered in a list to be published by the European Commission may bring an action.

Austrian-Type Mass Claim

Contrary to representative actions and sample lawsuits, an Austrian-type mass claim can theoretically be brought by anyone to whom claims can be assigned under civil law rules. In practice, it is mainly used by the Association for Consumer Information and the Chamber of Labour and certain associations (*Vereine*).

4.4 Class Members, Size and Mechanism – Opting In or Out

Section 624, paragraph 1 Code on Civil Procedure provides for an opt-in model for representative actions for redress, requiring a minimum number of 50 consumers to participate in the initial lawsuit. Hence, qualified entities must represent at least 50 individual consumers at the time of filing the lawsuit in order to pursue redress.

It is possible that more consumers join the action at a later point in time (see 4.5 Joinder).

Consumers must have actively opted in to participate in the proceedings, and their claims must be based on “essentially similar factual circumstances” (Section 5, paragraphs 2 and 3 Qualified Entities Act and Section 624, paragraphs 1 Code on Civil Procedure).

4.5 Joinder

“Joining” a Collective Action for Redress

Consumers can join a representative action for redress if their claim is based on essentially similar factual circumstances and the same legal questions are relevant. Once a representative action for redress is authorised by the court, consumers can join the proceedings (opt-in) within three months by applying to the qualified entity. If the latter agrees for the consumer to join, the qualified entity has to file a submission with the court. The notice must fully specify the legal basis of the claim and assure that the claim has not been and will not be asserted either domestically or abroad.

Once a consumer joins, their claim is considered pending (*lis pendens*), and the court’s decision extends to the consumer’s claim. Joining is not possible if the claim has already been asserted elsewhere. Withdrawal from the joinder is not permitted.

“Joining” an Austrian-Type Mass Claim

“Joining” an Austrian-type mass claim is done prior to the filing of the action by the entitled individuals assigning their claims to the “mass claimant” for collection. With the assignment for collection, however, the assignor does not actually join the action; rather, they assign their claim to the claimant and are not themselves a party to the proceedings. Recent case law clarified that under certain conditions it is also possible that, after filing a lawsuit, further claimholders assign their claims to the claimant and the claimant

asserts these claims by extending its lawsuit. The prerequisite for this is that the extension of the lawsuit avoids further litigation without disproportionately complicating or delaying the ongoing litigation and that the new claims are not yet time-barred at the time of assertion (Austrian Supreme Court 3 Ob 149/21i). For the procedure of assignment see **4.1 Mechanisms for Bringing Collective Redress/Class Actions**.

General Rules on Third-Party Joinders

In general, a third party may join the proceedings on the side of the claimant or defendant if it has a legal interest in the success of the respective party. Legal interest is a given if the decision will have a direct legal effect on the third party's position – eg, an insurer may join proceedings of an insured party against the damaging party.

However, the fact that a potential claim is based on the same facts subject to the pending proceeding does not justify a third-party joinder. For example, if defective products are sold and several persons have been injured as a result, one injured party cannot join the proceedings of another injured party, even though the same preliminary question arises for both as to whether the product was defective.

A “de-facto-joinder” in such a case is only possible through an assignment and an “Austrian-type mass claim”. Moreover, if such claims are pending at the same court, the court may join proceedings to be heard together (for both, see **4.1 Mechanisms for Bringing Collective Redress/Class Actions**).

4.6 Case Management Powers of Courts Interruption of Proceedings due to Other Pending Proceedings

If the decision of a legal dispute depends in whole or in part on a legal relationship that is the

subject of other court proceedings, the deciding court may interrupt the proceedings until a final decision has been rendered in these other proceedings (Section 190 of the Code on Civil Procedure).

This provision primarily refers to the case where another proceeding is pending between the same parties. However, it can also be relevant if many individual claims of the same kind are pending. In these cases, too, the court may, if it appears necessary with regard to procedural efficiency, interrupt a proceeding until another proceeding has been decided.

For example, in the “Dieselgate” cases, many Austrian courts interrupted proceedings until the ECJ had ruled on the question of jurisdiction in one of these proceedings (see – eg, Austrian Supreme Court 4 Ob 119/19g) and subsequently followed the decision of ECJ (see **4.1 Mechanisms for Bringing Collective Redress/Class Actions**).

The interruption in these cases is at the discretion of the court. In its decision, the court has to consider that the interruption should lead to an improvement in procedural efficiency (Regional Court Vienna 44 R 24/10w). The desire to reach decisions that are consistent with each other does not alone justify an interruption (Higher Regional Court Vienna 1 R 73/09a).

An interruption can therefore be envisaged if the other proceedings are likely to be terminated in the near future and extensive and costly hearings of evidence can be avoided in the interrupted proceedings.

Joining of Proceedings by the Court

If several similar actions against the same defendant are pending before the same court,

the court may join these proceedings for a joint hearing if this is likely to simplify or accelerate the decision (Section 187 of the Code on Civil Procedure, see **2.1 Collective Redress and Class Action Legislation**).

Even if the connection objectively serves procedural efficiency, it is usually still associated with additional work for the respective judge. At the Commercial Court of Vienna, certain rules to enhance the attractiveness of this tool relating to =allocation of cases between the judges have been implemented.

4.7 Length and Timetable for Proceedings

Average Duration

Proceedings before Austrian courts are generally efficient. In civil proceedings, most procedural steps are foreseen to be taken within two to four weeks of each other. The average duration of proceedings is one to one-and-a-half years in the first instance and from nine months to one year in the appellate stage.

Complex Duration

Complex disputes may take longer. Especially in more complex cases, the evidence procedure in the first instance can take longer, for example if experts or many witnesses are involved. Additionally, the appellate court proceedings may reveal errors of the lower court proceedings and the case can be remanded to the lower court for repetition and/or completion of the taking of evidence. The judgment rendered in such a remand is also subject to appeal according to the general procedural rules. In such cases, it can take several years before a final, binding judgment is rendered.

4.8 Mechanisms for Changes to Length/Timetable/Disposal of Proceedings

Accelerated procedures are only provided for actions with a small amount in dispute (up to EUR75,000). For these actions, the court issues a decision in favour of the claimant based on the lawsuit alone. This decision becomes final and binding if the defendant does not object to it within four weeks. If they object, “normal proceedings” are initiated.

In order to avoid procedural delays by the parties, the law provides for different consequences of default. For example, a submission that is culpably made only at an advanced moment in the proceedings can be rejected if it would significantly delay the proceedings (Section 179 of the Code on Civil Procedure). In addition, the judge may order the parties to make a specific submission, name witnesses or produce documents within a certain period. If a party fails to comply with such an order in due time without reasonable excuse, the submission may be rejected (Section 180, paragraph 2 of the Code on Civil Procedure).

4.9 Funding and Costs

While third-party funding had already been permitted in the past, the newly implemented regime on collective redress explicitly permits third-party funding of the proceedings (Section 6 Qualified Entities Act). Certain restrictions apply. For example, the third-party funder must not be a competitor of the defendant or economically or legally dependent on the defendant.

In practice, funding by a commercial litigation funder (typically in exchange for a share of the success fee) is the standard case, covering both the costs of litigation and, in the event of an unfavourable outcome, the opposing party’s costs. This allows consumers to assert their claims

without risk. The litigation funder will usually reserve the right to terminate the agreement at any time to prevent covering further costs while bearing the costs already incurred.

If the qualified entity utilises third-party funding for a specific representative action, it must inform the court of this circumstance and the name of the third-party funder. However, it is not required to disclose the litigation funding agreement itself or its contents to the court, but only to present or disclose it to the Federal Cartel Attorney at the latter's request.

Thus, Austria adopts a very liberal approach to litigation financing compared to other EU member states. The design of the contracts is intentionally left to private autonomy, with no limits on success fees and no disclosure obligation for the funding agreement in the proceedings.

4.10 Disclosure and Privilege Representative Actions for Redress

The court may order that evidence held by the defendant or a third party be disclosed, subject to applicable EU and national provisions regarding confidentiality and proportionality.

Otherwise, the same principles with regard to disclosure and privilege that apply to individual actions also govern the Austrian forms of collective redress.

Pre-trial Disclosure

Austrian procedural law does not provide for pre-trial proceedings as known – eg, in Anglo-American jurisdictions.

There are only a few specified applications available which may be decided before the trial takes place, such as request for injunctive relief (to secure future enforcement or to safeguard

evidence) or application to dismiss the claim for lack of jurisdiction.

Trial Disclosure

In civil proceedings, a party may be ordered by the court to produce information/evidence at its disposal, if the court considers such information/evidence material and orders the party on its own initiative to produce the evidence (this rarely occurs) or upon request by the other party (Section 303 of the Code on Civil Procedure).

Under Section 305 of the Code on Civil Procedure, a party ordered to produce a piece of evidence is entitled to object to the order to protect:

- family affairs;
- the party's duty of preserving honour;
- itself or third parties from criminal prosecution;
- legal privilege; or
- business secrets.

However, under Section 304 of the Code on Civil Procedure, the requested party may not refuse to produce the requested evidence if:

- it previously referred to the piece of evidence (mostly documents) in the proceedings;
- substantive law requires the requested party to produce the evidence (this also applies to evidence in the possession of third parties); or
- the evidence is in the form of a document and may be considered to be of joint use with respect to both parties – eg, a contract (this also applies to evidence in the possession of third parties if the piece of evidence is of joint use with respect to the third party and either party to the litigation).

If a party does not comply with the court order, there is no enforcement available. The court will

consider the refusal in its assessment of evidence and adverse inferences may be drawn by the court as finder-of-fact, unless an exemption according to Section 305 applies.

Legal Privilege

Austria recognises the concept of legal privilege. For example, members of legal professions – particularly attorneys-at-law – must refuse to testify with respect to any one of their mandates before any authority unless released by the client. Neither the party nor its counsel can be forced to produce the products of client-attorney work. No adverse inferences may be drawn by the court from such a refusal. Client-attorney correspondence and the products of attorney work are protected by legal privilege irrespective of where such documents are located.

4.11 Remedies

For the Austrian forms of collective redress, the same principles apply with regard to remedies as for individual actions, with one important exception: the admissibility of an appeal to the Supreme Court for sample lawsuits.

Appeal Levels and Principles

In Austrian civil procedure, there are two appeal levels, one to the Court of Appeal and one to the Supreme Court. An appeal to the Supreme Court is limited to matters of significance for the judicial system and depending on the amount in dispute. Parties may appeal first instance decisions to regional courts which hear appeals from decisions of district courts, and to regional appellate courts in cases of appeals from regional court decisions.

The service of the judgment triggers a four-week period during which the partly or entirely unsuccessful party may file an appeal. The opponent may respond thereto within four weeks of ser-

vice with the appeal. These time periods cannot be extended.

The appellant may claim errors of procedural and/or material law, errors of fact and/or nullity (which rarely occurs). The appeal proceedings serve to review the correctness of the judgment in first instance, but not to raise any new facts or bring new claims. The court of appeal must disregard new allegations and new evidence.

The Supreme Court only reviews questions of (material and/or procedural) law. Factual findings are never subject to revision of the Supreme Court. Factual findings and the assessment of the evidence can only be challenged before the courts of appeal.

Admissibility of an Appeal to the Supreme Court

For admissibility of an appeal to the Supreme Court, the following rules apply (Section 502 of the Code on Civil Procedure).

- If the amount in dispute is less than EUR5,000, no appeal to the Supreme Court is admissible.
- If the amount in dispute exceeds EUR5,000, the decision of the Court of Appeal includes a statement on whether its judgment is open to an appeal to the Supreme Court.
- If the amount in dispute is between EUR5,000 and EUR30,000, the Court of Appeal's decision on admission can be contested with a request for amendment. The Court of Appeal (not the Supreme Court) decides on this request and its decision is not appealable.
- If the amount in dispute exceeds EUR30,000, the party seeking further appeal may challenge the Court of Appeal's decision on admissibility and request permission to seek further appeal to the Supreme Court (so-

called extraordinary appeal). In such cases, the challenge must contain: (i) the challenge of the decision of the court of appeal denying further appeal to the Supreme Court; and must also (ii) set forth the actual appeal. The Supreme Court decides on both.

Austrian-Type Mass Claim

The individual claims assigned to the claimant are asserted in one action but, nevertheless, they are considered as individual claims for procedural purposes. For the calculation of the amount in dispute, the individual amounts are not to be added together (see also **4.1 Mechanisms for Bringing Collective Redress/Class Actions**). Therefore, the admissibility of the appeal must be assessed separately for each claim (Austrian Supreme Court 5 Ob 123/12t).

Sample Lawsuit

The sample lawsuit was introduced to allow for the creation of a precedent independent of the admission rules. The entitled associations may file a case on behalf of an individual (a consumer) and bring it before the Supreme Court irrespective of the amount in dispute (Section 502, paragraph 5, line 3 of the Code on Civil Procedure). While the judgment only has legal effect regarding the specific case, the lower courts will generally observe the decision of the Supreme Court as a practical precedent.

4.12 Settlement and ADR Mechanisms Representative Actions

For the Austrian forms of collective action, essentially the same principles apply with regard to settlement and ADR as for individual actions. Accordingly, a distinction must be made between extrajudicial settlements and judicial settlements.

Extrajudicial Settlements

Extrajudicial settlements are concluded without a court being involved and – in order to stop the lawsuit – would require the parties to agree to withdraw the claim or to an indefinite stay of proceedings. This is a common practice.

Judicial Settlements

Judicial settlements are concluded before the court and are immediately enforceable.

They are possible in every moment of the procedure. Judges try to encourage parties to reach a settlement, especially in the first hearing, and often support settlement negotiations.

The parties are not limited by the pending dispute and may also agree on subject matters that have not yet been part of the dispute. This might trigger additional court fees, however. The court will only review if the subject matter in dispute is something capable of being settled (eg, something that is fundamentally within the autonomy of the parties). Some courts also check whether the terms of the settlement are specific enough to be enforced. In practice, courts are open to record a settlement in the form as reached by the parties.

Under the recently implemented regime on class action, the qualified entity and the entrepreneur may jointly propose a settlement to the court regarding remedies for the affected consumers. A settlement can be reached at any stage of the proceedings, but for it to take effect, it must be approved by the court. The court may only confirm a settlement if it does not contradict mandatory provisions of national law and does not contain any terms that are unenforceable. A court-approved settlement is binding on the consumers who have joined the action (Section 631 of the Code on Civil Procedure). If the set-

tlement is not confirmed, the proceedings must continue.

Costs

The conclusion of an extrajudicial settlement agreement triggers a specific settlement tax duty, a concept which is not known in many other jurisdictions. Parties should consult their local lawyer before concluding a settlement under Austrian law.

Judicial settlements are covered by the court fees and do not trigger extra taxes (if the subject of the settlement does not exceed the subject of the proceedings). If the legal dispute is settled in the first hearing, the court fees are halved.

ADR Mechanisms in Austria

ADR and, in particular, mediation are viewed positively in Austria. The Law on Mediation regarding Civil Claims (*Zivilrechts-Mediations-Gesetz*), enacted in 2004, aims to promote and facilitate access to mediation by setting out the basic standards to conduct mediation procedures, defines the qualifications of certified mediators, provides that mediation conducted by a certified mediator prevents the limitation period from expiring, and that certified mediators may not be asked to testify in court proceedings.

ADR as a Voluntary Mechanism

The prevailing opinion in Austria is that parties should engage in ADR proceedings voluntarily. There are only a few situations in which mediation is compulsory by law. These cases mainly relate to disputes between neighbours, tenancy disputes and disputes between members of certain professional groups subject to a code of conduct (eg, architects and lawyers).

Judges increasingly encourage parties to consider ADR, in particular mediation. If mediation

fails because of lack of co-operation of (one of) the parties, there are no adverse consequences.

ADR Institutions

Several organisations offer and promote ADR in Austria, including the Bar association. In international cases, the Vienna International Arbitral Centre of the Federal Economic Chamber (VIAC) is the leading institution.

In January 2021, VIAC revised its ADR rules to offer a flexible procedural framework that optimally caters to clients' needs. To promote understanding and use of ADR, VIAC also published a handbook in 2019 which provides guidance to ADR proceedings under its new mediation rules.

4.13 Judgments and Enforcement of Judgments

Representative Action

The judgment of a representative action pursuant to Sections 28 ff of the Consumer Protection Act and Section 14 of the Unfair Competition Act is binding only inter partes and does not interrupt the limitation period of other claims. Individual consumers cannot directly refer to it in individual subsequent proceedings. In fact, a Supreme Court judgment on a representative action has a guiding function in individual proceedings as well.

The injunction can only be enforced by the claimant (ie, the association). The general enforcement rules apply. Injunctions are enforced with penalties if the obligated party acts contrary to the judgment.

Under the newly implemented regime, consumers benefit from the remedies specified in the judgment without the need to bring a separate action. In addition, the new law has a significant impact on the interruption of the statute of limita-

tions: with the consumer joining a representative action, the statute of limitation is suspended retroactively to the date on which the representative action was brought (Section 635 Code on Civil Procedure). Following the legally binding rejection of a representative action for redress, a consumer who has already joined a claim has an additional period of three months to assert the claim in individual proceedings or by joining a representative action. This allows the consumers to await the outcome of the proceedings before pursuing any subsequent claims.

Sample Lawsuit

The sample lawsuit only has binding effect for the individual case and only interrupts the limitation period for the individual case. Formally, there is no doctrine of precedent in Austrian law; de facto, however, Supreme Court decisions naturally have a guiding effect for further rulings.

Sample lawsuits are subject to the general enforcement rules.

Austrian-Type Mass Claim

The decision on an Austrian-type mass claim is binding inter partes for the assigned claims and only interrupts the limitation period for these claims.

The claimant enforces the decision and transfers to the individuals (part of) the amount corresponding to their individual claim. The general enforcement rules apply.

5. Legislative Reform

5.1 Policy Development

Austria has finally implemented Directive (EU) 2020/1828 on representative actions for the protection of collective consumer interests into national law in summer of 2024.

5.2 Legislative Reform

While the necessity of a legislative reform has been obvious since the very recent implementation of the Directive (EU) 2020/1828, its reform is not to be expected soon. Unless significant changes will be implemented soon, many experts in the field of collective actions fear that the new regime will not be utilised with the desired frequency.

5.3 Impact of Environmental, Social and Governance (ESG) Issues

It remains to be seen whether ESG-related litigation will gain momentum after the implementation of the Directive (EU) 2020/1828 in Austria. Despite low hopes, one of the most significant changes affects the otherwise very high court fees for large amounts in dispute, hindering affordable access to justice in cases without specific interest for litigation funders. The new regime allows for significantly reduced litigation costs. It remains to be seen if, in practice, this new instrument will be utilised to achieve ESG-related goals.

Trends and Developments

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KNOETZL is Austria's first large-scale disputes resolution powerhouse dedicated to high-profile, important and complex cases. The firm's diverse expertise encompasses civil, commercial, sovereign, corporate and fraud litigation, focusing significantly on liability claims; corporate banking – including M&A, financing and joint venture disputes, insurance and financial derivatives cases; investor protection; digital transformation; data protection and social media; business and political crime; asset-tracing and provisional measures, such as freeze orders and

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New Representative Actions

Until recently, Austrian law did not provide an official platform for class actions. There were only limited possibilities of collective redress and Austrian law only allowed certain, specified organisations, such as consumer protection associations, to file actions for declaratory judgment and/or for injunctive relief in the interest of a group of individual claimants. Many changes to General Terms and Conditions, for example in financial or online service products, were forced into effect through this makeshift way of collective redress. However, the available instruments provided for strict limits: even if the organisations were successful, injured parties still had to bring a follow-on damage claim on their own account and were forced to start legal proceedings, unless the defendant preferred to settle the claims out of court.

As this historical avenue of collective redress had been restricted to injunctive relief and did not allow for the filing of damages in the past, legal practice has, over time, devised ways to collect similar damage claims and file those jointly under one single lawsuit. Typically, such actions would be financed by third-party funders, a practice approved by the Austrian Supreme Court. Also, given the most recent implementation of the Directive (EU) 2020/1828, third-party

funding will continue to be a popular way to seek collective redress in Austria.

Ways to Pursue Mass Claims Prior to the Implementation of Directive (EU) 2020/1828

Previous ways to pursue mass claims

Austria recently implemented Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers (the “EU Directive”). Nevertheless, it is anticipated that the previously developed ways to pursue mass claims under a single lawsuit will continue to play their role. In particular, the assignment of individual claims to one single organisation which then files on action, will have its advantages over the new regime.

Assignment of individual claims

Through the assignment of individual claims to one party, as the named claimant, a large number of damaged parties can collectively file one lawsuit. In practice, it is often a consumer protection organisation that files the lawsuit and assumes the role of the claimant.

This system provides certain advantages for the individual holders of the claims in terms of expenditure. Under Austrian law, the loser of a dispute pays the final costs for both parties and the costs (court fees and lawyers’ fees) decrease

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proportionally as the amount in dispute increases. Therefore, the bundling of many claims in one lawsuit means a lower cost risk for the individual holders of the claim than many individual lawsuits. Moreover, litigation funders are more likely to be found in large-amount disputes.

Nevertheless, costs of pursuing claims remain high. For example, in a joint action of 3,200 claimants against an Austrian bank, the amount in dispute was EUR127 million in the aggregate. The court fees alone for the proceedings in first instance (there are three instances up to the Austrian Supreme Court available) were EUR1.5 million. These court fees must be paid upfront when filing the lawsuit. Such burdensome costs often incentivise forum shopping, with parties seeking ways to bring the action(s) in jurisdictions offering a significantly lower cost risk.

Furthermore, there are disadvantages involved in the assignment, including the loss of the possibility for consumers to bring the action at their own place of domicile.

Claims joined in one legal filing

A second way to pursue mass claims is to have all individual claims joined in one legal filing. For this purpose, certain procedural criteria must be satisfied. The Austrian Supreme Court tended to allow such joint actions through a rather generous interpretation of the legal prerequisites. The claimants need to convince the court that their claims are “basically similar” (*im Wesentlichen gleichartig*). This loose wording does not impose a significant hurdle. However, having to deal with a huge number of individual claims without aids provided by law to ease the joint litigation of these claims imposes a significant practical hurdle on the court that has to deal with such a large number of parties. Aside from these administrative burdens, filing such a joint action trig-

gers significant court fees and imposes a huge cost risk on the parties, owing to the way Austria calculates court and lawyer’s fees and “the loser pays system”.

New regime after implementation of the EU Directive

For the Austrian legislature, the implementation of the EU Directive presented a huge political challenge because, traditionally, collective redress, particularly class actions in the “Anglo-American” style, had been seen as contrary to Austrian legal culture and the pressure for the defendant to settle such cumbersome actions seemed disproportionately high. Also, the fear of potential defendants becoming subject to frivolous claims and consequently to unjustified pressure to settle has been significant.

Nevertheless, having been mandated by EU legislation, Austria has recently implemented the EU Directive, albeit with significant delay. On 18 July 2024, the Act on Qualified Entities for Collective Redress (the “Qualified Entities Act”), along with amendments to the Austrian Code on Civil Procedure, the Consumer Protection Act, the Court Fees’ Act and the Lawyer’s Fees Act entered into force, providing a new system of collective redress for consumers. In a nutshell, Austria used the leeway the EU Directive gave the member states as follows.

- Austria has chosen the “opt-in” model.
- Only certain so-called qualified entities are allowed to bring such actions. Those institutions that were already allowed to seek injunctive relief in the past, are included among the entities so qualified.
- A mechanism to reduce the reimbursement of legal fees significantly was introduced.
- The new class action is not restricted to enable redress for specified claims contained in

the catalogue of the EU Directive, but is available for claims based on any legal ground.

It is expected that this new instrument will be utilised in addition to existing instruments. The latter will not vanish completely. Rather, an alternative option for collective redress is now available on the Austrian market. Its main advantages are the clearly reduced legal cost risk, the interruption of the time-bar, and the exclusive jurisdiction of the Commercial Court Vienna. The latter provides for a competent court that will be specialised in handling mass claims, with specially trained law clerks available to handle the practical challenges that mass claims impose on courts. This is certainly a huge advantage.

On the negative side, experts criticise the vast number of vague provisions of the new procedural laws, forcing newcomers to pave the way for established case law, that is currently lacking. The legislature left many politically disputed questions open to development via case law. This imposes a significant risk on potential claimants who will think twice as to whether or not they will utilise this new instrument or revert to more established methods.

It remains to be seen if the new regime will develop into the preferred way to file collective actions. Currently, the legal community watches the legal market developments with high interest. There are more voices who doubt that the new instrument will be utilised in the future with frequency, unless the interruption of the time bar plays a significant role in decision-making. Otherwise, the main question will be whether the attractiveness of the (significantly) reduced cost risk outweighs the disadvantage of legal uncertainties deriving from the too-vague legal provisions.

In particular, due to the structure of the proceedings into two-to-three separate phases, the question if the claims are sufficiently similar to be brought collectively, can be decided at relatively low costs, upfront. This can be a huge advantage for the claimant's side, if the similarity of the individual claims is in question. Overall, claimants' lawyers and litigation funders will have to assess the advantages and disadvantages of the various instruments with due diligence. The defendant, however, will be confronted with the claimant's choice and will have no possibility to opt for a different regime.

Implementation of Directive 2020/1828

Qualified entities

Under the new regime, collective actions can be brought by qualified entities only.

All Austrian organisations that had been entitled to seek collective redress in the form of injunctive relief in the past are qualified entities by law.

Moreover, organisations that are recognised as qualified entities in another member state of the European Union and that are entered in a list to be published by the European Commission may bring an action.

In addition, legal entities that meet the special requirements provided by the law can be recognised as qualified entities by the Austria Federal Cartel Prosecutor (*Bundeskartellanwalt*). It is expected that organisations that have filed collective actions in the past will require about six months to be recognised as qualified entities. As of October 2024, not a single organisation had successfully completed this process.

Injunctive and redress measures

Qualified entities are entitled to bring representative actions before courts or administrative

authorities seeking (i) injunctive measures, and (ii) redress measures.

- Injunctive measures are available in the form of a provisional and a definitive measure to cease a practice or, where appropriate, to prohibit a practice, where that practice constitutes an infringement of European consumer law.
- Redress measures require entrepreneurs to provide affected consumers with remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid.

There have not been significant changes in the existing Austrian law with the implementation of the EU Directive in this respect. The requirement for revision related mainly to the mechanism to seek a money judgment. In practice, no significant changes are expected in the way this kind of matter is litigated.

However, given the suspensive effect of such representative actions, it is per se highly attractive to file a lawsuit under the new regime.

Opt-in as a necessary step for redress actions

The newly implemented regime provides for an opt-in mechanism for redress actions.

While actions for injunctions and declaratory relief are brought by qualified entities on the basis of their own entitlement and no opt-in or opt-out mechanism is necessary, for a collective redress action consumers must opt in to participate in the legal action and to be concerned by its outcome. Consumers who are not part of the initial group which mandated the qualified entity to file the action (at minimum 50 consumers), can join the proceedings within three months

after authorisation of the collective action by the court. In order to take legal effect (*lis pendens*) the qualified entity has to file a formal submission with the court.

Once this has been done, consumers cannot revoke their joinder.

Nevertheless, parallel collective actions by one or more qualified entities are possible. It is expected that large cases, such as the “Dieselmatter” will produce several collective actions in parallel. The consumer will have to choose which action to join. Participation in parallel collective actions by one consumer will only be possible, if the actions are sufficiently different, either regarding the relief sought or concerning the underlying facts, or both.

It is also expected that national qualified entities will compete with qualified entities which are qualified in another EU member state. Whether there will be “run” to establish jurisdiction in Austria is rather unlikely, given the vagueness of the new procedural laws and the (often prohibitively high) court fees in Austria.

Suspension of limitation periods as key advantage

One of the key advantages of the new instrument is the effect of suspending the limitation period for claims of the “consumers concerned”. This is explained in more detail as follows.

- A pending representative action for an injunctive measure has the effect of suspending or interrupting limitation periods in respect of the consumers concerned by that representative action, so that those consumers are not prevented from subsequently bringing an action for redress measures concerning the basis of the claim(s) because the applicable limita-

tion periods expired during the representative action for those injunctive measures.

- A pending collective action for redress has the effect of suspending or interrupting applicable limitation periods in respect of the consumers concerned by that representative action, retrospectively from the date on which the representative action was filed with the court. Following a legally binding rejection of a collective action for redress, a consumer who had joined this lawsuit has an additional period of three months to assert the claim in individual proceedings or by joining another collective action.

This major benefit of the new law for consumers enhances the chances that the new instrument will be developed into the most popular way to pursue claims of a larger number of consumers in Austria.

Binding effect

Redress measures entitle consumers to benefit from the remedies specified in the court decision without the need to bring a separate action.

Allocation of costs and third-party funding

Funding of a representative action by third parties is now explicitly provided for in the Qualified Entities' Act. There is no percentage limit for the share of the third-party funder. There are, however, certain restrictions: (i) the third-party funder must not be a competitor of the defendant company nor must it be economically or legally dependent on the latter; (ii) decisions made by the qualified entity in the proceedings may not be unduly influenced by the third-party funder to the detriment of consumers.

The litigation funding agreement itself or its content does not have to be disclosed to the court,

but only to the Federal Cartel Prosecutor at the latter's request.

It is expected, however, that there will be circumstances when a court might order the production of the litigation funding agreement based on the general (anyway rather restrictive) rules for disclosure of documents.

Disclosure of evidence

Disclosure of evidence has heretofore not been a part of Austria's litigation culture or procedure. Against this background, Austria has decided against the introduction of a discovery procedure when implementing the EU Directive. This means that there is no enforceable obligation for the defendant company to provide evidence to the court. Instead, the normal procedural rules with their rather limited means to force the opponent to produce documents or answer questions apply.

The lawmakers apparently rely on the further development of case law by the Austrian Supreme Court to relax the rules on the burden of proof for claimants who suffer from a detrimental information asymmetry and lack access to the relevant information without fault. This has been a clear trend in recent years and is expected to be further developed in particular in collective actions with fraud aspects involved.

Redress settlements

In the past, Austria did not offer a joint redress mechanism. In practice, however, all "class actions" ended with a settlement, be it in court or out of court. While courts undoubtedly put pressure on the parties to settle, the process itself has always been party driven, only. So far, the court's involvement was limited to "recording" the settlement to which the parties had agreed. The new law requires a redress settlement to be

approved by the court, but does not provide for any special mechanism or any guidance on how to resolve the matter.

Therefore, in practice, no significant changes are to be expected. It will be up to the parties to find a way to resolve the dispute. Often, mediation has been utilised to develop the optimal outcome.

Cross-border representative actions

The new regime provides for cross-border representative actions. “Cross-border representative action” means a representative action brought by a qualified entity in a member state other than that in which the qualified entity was designated (Article 3(7), Directive 2020/1828).

Qualified entities of another member state can bring such representative actions before Austrian courts.

As the EU Directive contained no rules on international jurisdiction for cross-border representative actions, the general rules of the Brussels Ia Regulation (Regulation 2012/1215) apply (Article 2(3), Directive 2020/1828). It is expected that the special jurisdiction for delicts (Article 7(3) Brussels Ia Regulation) will play an important role for cross-border representative actions. It is doubtful whether there will be special “run” on the Austrian courts. The new regime is certainly not Europe’s most claimant friendly, looking at the court fees, the rather short opt-in period, and the lack of effective disclosure rules.

Summarised Outlook

With Austria’s recent implementation of the EU Directive, consumers were provided with an expansive tool to seek redress. It remains to be seen whether or to what extent the possibility of bringing an action for redress will actually be utilised and, above all, to what extent the Austrian courts will be able to meet the objective of the EU Directive to provide an effective and efficient means of protecting the collective interests of consumers.

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