

Class actions

A draft law on class actions will enter the legislative process, which aims to enrich the Czech legal system with the institution of class actions, which has its roots in Anglo-Saxon legal culture. The draft law transposes Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of consumers' collective interests, the deadline for implementation of which expired on 25 December 2022. This is the second legislative proposal for a law on collective proceedings; the previous government came up with a draft law that reached the first reading in the Chamber of Deputies, but its consideration was suspended due to the end of the term of office of the previous cabinet.

The principle of class actions is that if a large number of persons are affected by an unlawful act or condition, all of the persons so affected can apply to a court by means of a class action, and the claims of all the victims will be decided in one proceeding, thus avoiding a situation where the courts have to deal with countless factually and legally similar cases. The proposal also stipulates that only disputes arising out of the legal relationship between a business and a consumer are to be heard in collective proceedings. The main feature is thus to group weaker individuals together in order to reduce the information and financial asymmetry that is typical of disputes between consumers and large businesses. The law can help, in particular, in cases where separate litigation is not worthwhile for consumers because of the minor amounts involved and the fact that they would not pursue their claims on their own.

There have been calls for the introduction of class actions into the Czech legal system more and more frequently in recent years, and it is worth mentioning the case of the clients of the bankrupt Bohemia Energy, who found themselves as a supplier of last resort, from which they suffered damages.

The current version of the proposal is more concise than the previous one and does not attempt to go beyond the Directive. The main change from the previous proposal is the pure opt-in principle. The opt-in principle gives all victims who wish to pursue the same claim against one defendant the opportunity to actively opt-in to protect their rights. The previous proposal included, in addition to the opt-in version, an opt-out version, which was based on the fact that it replaced the autonomy of the individual will, and all of the persons concerned were automatically considered as claimants unless they opted out. This has been criticized for denying fundamental private law principles such as the autonomy of the individual will, the principle of *vigilantibus iura* or Article 36(1) of the Charter of Fundamental Rights and Freedoms, which bases the possibility of claiming a right on the active action of the individual concerned.

A group will have to consist of at least 20 persons and will have to be represented in the proceedings by a non-profit entity. A non-profit entity is a legal entity, registered on a list maintained by the European Commission, which is entitled to bring class actions, including in other EU Member States. The non-profit entity will thus act as a plaintiff in the collective proceedings and represent individual claims on its own behalf.

Non-profit entities will also assume the entire liability of the legal proceedings. In the event of unsuccessful proceedings, they will pay all the costs of the opposing party. In the event of success, they will be awarded a fee from the amount awarded. Here the proposal faces some criticism for not sufficiently valuing non-profit-making persons who take all the risk, cannot generate a profit themselves and thus operate with limited resources. In addition, the proposal contains two options for capping the percentage of the non-profit person's remuneration, namely 5% and 25%. In the case of a 5% cap on the

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remuneration awarded, the non-profit entity will in many cases be barely able to cover the management costs and risk involved.

The funding of non-profit entities will also be subject to review. The entity that provided the funding should not be dependent on the defendant, nor be a competitor of the defendant. If the funds are provided by a legal entity, its beneficial owner is also verified.

Class actions will be a novelty in the Czech legal system, dealing with situations that until now could only be dealt with through individual actions. The roots of class actions go back to Anglo-Saxon law, so it is also a novelty in terms of its gradual introduction into Continental law. The adoption of the draft law is expected this year.

The article has been prepared by Barbora Urbancová, Partner, Director for the Czech Republic Leader of Litigation and Insolvency. No information contained in this article should be considered or interpreted in any manner as legal advice and/or the provision of legal services. This article has been prepared for the purposes of general information only. PETERKA & PARTNERS does not accept any responsibility for any omission and/or action undertaken by you and/or by any third party on the basis of the information contained herein.