

## IN THE CZECH REPUBLIC, CONSUMER CLAIMS CAN NOW BE PURSUED THROUGH CLASS ACTIONS

Following a lengthy legislative process, the Czech legislator has transposed the EU Directive on representative actions for the protection of the collective interests of consumers<sup>1</sup> through the new Class Actions Act.<sup>2</sup> This Act introduces the mechanism of the class action, which is intended to make it easier for consumers to enforce their rights.

The Class Actions Act came into effect on 1 July 2024, a week after its promulgation in the Collection of Laws and International Treaties. Even so, the Czech legislator did not manage to meet the deadline for implementation set by the EU Directive, which expired on 25 June 2023.

The Class Actions Act introduces class actions into Czech law for disputes arising out of consumer relations. The basic idea behind this legislation is that similar claims arising in the same circumstances should be dealt with together. This is intended to strengthen the position of consumers as plaintiffs, who would otherwise have to assert their claims in individual proceedings in which the costs of the action often exceed the possible benefits, thus discouraging consumers from enforcing their rights.

### Key Points

- The Act came into effect on 1 July 2024.
- Among the prerequisites to initiate class action proceedings, there must be a plurality of injured parties and a single procedural entity representing a group of injured parties (e.g. dTest).
- Expert discussion continues to centre on the extended definition of "consumer", as well as the "opt-in" mechanism for actively joining class action proceedings.

### BASIC FEATURES OF CLASS ACTIONS

The basic principles underlying the regulation of class action proceedings include:

- **Applicable disputes:** An important characteristic of the Act is its limited material scope. The Class Actions Act only affects disputes arising out of legal relationships between consumers and entrepreneurs. In other EU countries, a similar regulation also applies to disputes against the state or against employers. It should be noted that the Class Actions Act deviates from the definition of "consumer" introduced by the Czech Civil Code and considers also an entrepreneur to be a consumer if (i) they employ less than 10 persons and at the same time (ii) their annual turnover or annual balance sheet total does not exceed CZK 50 million.
- **Plurality of injured parties:** The basic prerequisite for the admissibility of a class action is that the group of injured parties must have at least 10 members. Their asserted rights or legitimate interests must be based on a similar factual and legal basis.
- **Two parties to the proceedings:** There are only two parties to the proceedings, namely the plaintiff and the defendant. Only a non-profit organisation registered on the list of qualified entities maintained by the Ministry of Industry and Trade (currently only dTest, o.p.s.) or by the European Commission can act as a plaintiff.<sup>3</sup> Such an

<sup>1</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (the "EU Directive")

<sup>2</sup> Act No. 179/2024 Coll., on Collective Civil Court Proceedings (the "Class Actions Act").

<sup>3</sup> A list of Czech qualified entities can be found here: <https://www.mpo.gov.cz/cz/ochrana-spotrebitele/hromadne-rizeni/seznam-opravnnych-osob/hromadne-zaloby-seznam-opravnnych-osob--281743/>

A list of European qualified entities can be found here: <https://representative-actions-collaboration.ec.europa.eu/cross-border-qualified-entities>

organisation must be represented by a lawyer in the proceedings. Accordingly, individual injured parties do not directly participate in the collective proceedings. They are associated in a group of "participating members" and within this group they are guaranteed individual procedural rights, in particular the right to express themselves. In the event of failure, the members of the group are not obliged to pay the costs of the proceedings to the opposing party; this obligation lies solely with the organisation as the plaintiff.

- **Two stages of the proceedings:** In class action proceedings at first instance (before the Municipal Court in Prague), there will be two consecutive stages:
  - **Admissibility procedure:** The court will first deal with the admissibility of a class action. The defendant has the right to make representations about its admissibility and the court may order a hearing. At the end of this stage of the proceedings, the court will make an order as to whether or not the collective action is admissible. However, the admissibility of an action – which is a necessary condition for the proceedings – may also be examined at a later stage in proceedings.
  - **Proceedings on the merits:** The second stage of the proceedings will deal with the merits. Only at this point will the court proceed to the factual and legal assessment of the claims stated in the action.

## WILL THE NEW REGULATION LEAD TO NEW DISPUTES?

In many respects, the Czech regulation of class actions can be seen as conservative:

- In the Class Actions Act, the Czech legislator has opted for an opt-in mechanism. Each injured party (in the words of the Act, a "participating member") must actively submit an application to become a participating member of the group in the class action proceedings. The EU Directive alternatively gives Member States the option to transpose into law an "opt-out" mechanism, where the proceedings would automatically include the entire group of potential plaintiffs, unless they actively express their disagreement. By contrast, the opt-in mechanism provides a degree of protection against mass actions, as it requires the active participation of individual injured parties, which is likely to reduce the number of participants in class action proceedings and thus the potential financial consequences.
- In order to opt in, injured parties must first learn that they are eligible to file an opt-in application (in the spirit of the Czech civil procedural tradition that "rights belong to the vigilant"). In this respect, the plaintiff must publish information about the proceedings on its website (in the manner specified in the order to admit the class action) and the court must also publish information about the class action proceedings in the register of class action proceedings. Proponents of the opt-in mechanism contend that this is a proper application of the Czech civil procedural tradition, which includes the principle that rights belong to the vigilant.
- The fee to which the plaintiff should be entitled can be determined by one of two methods: a lump-sum fee or a percentage fee. The lump-sum fee is capped at CZK 2.5 million, while the percentage fee is capped at 16% of the relief awarded. Nevertheless, where a fee calculated on a percentage basis exceeds CZK 100 million, the court may reduce it by up to half. The type of fee applied under the Act will depend on the nature of the performance (the lump-sum fee applies to non-monetary claims). However, the plaintiff and the defendant are free to agree a fee that deviates from the Act, but the court must approve the form and amount of that fee in its decision to admit the action.

Despite the cautious approach taken in implementation of the Directive, there can be no doubt that the new Class Actions Act introduces a new procedural tool that allows consumers to better pursue collective claims even in the case of low to small claims, which they would not otherwise have any incentive to claim for separately. In this regard, class actions entail lower costs and do not entail the risk that mutually contradictory court decisions will be issued in large numbers of similar consumer cases.

The opt-in mechanism will very likely limit the number of injured parties pursuing their claims, but active injured parties can be expected to buy suitable claims. By extending the definition of "consumer" to include entrepreneurs who have fewer than 10 employees and whose annual turnover or annual balance sheet total does not exceed CZK 50 million, the Act opens up the possibility that class actions will be used in competition contexts.

The Class Actions Act comes at a time when regulatory, transparency and reporting requirements are rapidly increasing (for example, due to sustainability disclosures under the CSRD) and efforts by plaintiffs and injured parties to exploit any errors in compliance cannot be ruled out.<sup>4</sup>

The question of how powerful the instrument will be will have to be answered in practice. Going forward, we will be closely monitoring the evolution of class actions and keeping you informed of the trends.

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<sup>4</sup> Information on pending class actions is available here: <https://hromadnerizeni.justice.cz/>

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