

# Class Action Act comes into force in Slovakia

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On **July 25, 2023**, the Act on Actions for the Protection of the Collective Interests of Consumers (the **Class Action Act**) came into force<sup>1</sup>. It aims to ensure consumer access to justice while also providing adequate safeguards for traders against abusive litigation.

The Class Action Act transposes into the legal framework of the Slovak Republic the EU Class Action Directive<sup>2</sup>, which aims to ensure that consumers have an effective and efficient collective procedural mechanism to enforce their rights and to secure fair economic competition among traders.

### What makes this change significant?

Although the Slovak Consumer Protection Act already allows consumer associations to seek protection for collective consumer interests, the provisions are relatively limited, are rarely applied in practice and do not provide an option for collective damages claims.

The Class Action Act is expected to facilitate collective enforcement of claims, including claims for damages and unjustified enrichment. It expands the scope to cover not only breaches of consumer rights but also anticompetitive conduct.

Slovak companies can face lawsuits involving substantial financial amounts resulting from a large number of consumers with relatively small individual

<sup>1</sup> <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2023/261/20230725.html>

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A32020L1828>

claims. Coordinating a large number of consumers will remain challenging even with the new legal framework. That said, it is expected that the new Act will dramatically simplify this process.

### **What does the Class Action Act introduce into the Slovak legal system?**

The Act introduces a so-called “proceeding for issuing a corrective measure,” which resembles a “class action” or “collective action” proceeding, as they are known in some Western European countries and the USA. Within this proceeding, the court can impose one or more corrective measures on a trader to protect consumer rights. These measures may include, for example:

- Compensation for damage
- Repair or replacement of the product
- Discounts on the purchase price
- Refunding the paid purchase price
- Returning unjustified enrichment
- Termination of the consumer contract
- Settlement of mutual obligations with consumers
- Or (on the other hand) an obligation to continue with performance of a contract that the trader terminated

Additionally, within this proceeding it will be possible to collectively claim compensation for damage resulting from violations of competition law. Thus, the new Act will have implications beyond consumer protection and extend to competition law matters.

Furthermore, the Class Action Act also includes provisions for abstract control proceedings in consumer matters. However, as these provisions have already been established in the Slovak legal system, there is no significant change in this regard. Therefore, we will focus below on the proceeding for issuing corrective measures.

### **Who can bring an action for the protection of the collective interests of consumers?**

An action may be brought by “authorized entities,” a list of which is maintained by the Ministry of Economy of the Slovak Republic and published on its website.

These are legal persons considered qualified to represent consumer interests collectively.

It is expected that consumer associations — which already have significant experience in representing consumer interests in courts — will primarily undertake take the role of filing collective actions. The Act sets out a number of criteria that must be met for qualification as an authorized entity.<sup>3</sup> Actions may also be brought by entities designated in another EU member state as authorized to bring cross-border actions, provided they have been listed among authorized entities by the European Commission.

If the lawsuit is successful, the authorized entity is entitled to a reward, as determined in the “action intention.” To prevent excessively high rewards, the law sets a maximum limit of 20 percent of the amount awarded, or EUR 100,000 if the value of the corrective measure cannot be determined (for example, an obligation to repair or replace a product). In such case the court shall decide on the amount of reward according to the circumstances and complexity of the case (mainly taking into account the extent of the actual or potential injury to the participating consumers, the amount of benefit or potential benefit to the trader etc.), which should be paid by the trader, however it needs to be mentioned that the Act is not entirely clear.

### **What is the position of consumers in the process of bringing an action?**

In proceedings for issuance of corrective measures, the active involvement of consumers is essential. The Slovak Republic has adopted an “opt-in” system, meaning consumer participation in a lawsuit is not automatic; they have an obligation to actively opt in. To join any class action, consumers must pay a one-time fee of €20.<sup>4</sup> At least 20 consumers must join an action intention or the collective action cannot be filed.

The only parties to the court proceedings are the authorized entity and the trader. If the authorized entity is successful in the proceedings, the awarded rights of the participating consumers are

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<sup>3</sup> See also § 6 of the Act on Actions for the Protection of the Collective Interests of Consumers.

<sup>4</sup> The amount of the fee is set out in Decree of the Ministry of Justice of the Slovak Republic No. 289/2023 Coll.

subsequently enforced collectively in one enforcement proceeding.

Participating consumers have a number of restrictions: They cannot be involved in other proceedings (including individual ones) for the issuance of corrective measures concerning the same matter and against the same trader. Similarly, they are not allowed to conclude an out-of-court settlement with the defendant trader, and in the event the trader contacts them for this purpose, they are obliged to immediately inform the authorized entity. They are also obliged to refrain from individually enforcing their claim from the execution title until the expiration of a three-month period, starting from the date of enforceability of the court decision. During this period, only the authorized entity is entitled to file an application for enforcement.

### **What is the procedure for issuing corrective measures?**

First, the authorized entity publishes the action intention in the Commercial Register. Simultaneously, it must enter into an agreement with a notary, who will maintain the list of participating consumers and hold the funds in a designated notarial escrow account for satisfying the claims of participating consumers. If a sufficient number of consumers opt into the action intention within two months from its publication, an action can be filed with the court. Other consumers can opt into the proceeding even after the proceeding has commenced but no later than by the end of the evidence phase in the first-instance court. Within the same period, participating consumers have the option to withdraw from the proceeding (withdrawal is subject to a fee of €10; the €20 fee to join the class action is not refunded).

Once the two-month period has passed (and a sufficient number of participating consumers have joined), the authorized entity then files the class action with the court. The filing in this case is exempt from court fees. If the court grants the class action, it will determine the corrective measures, specify the number of awarded consumers, designate the notary as the place of performance, determine the reward for the authorized entity (or specify individual claims), and issue a list of awarded consumers.

Subsequently, awarded consumers are entitled to the remedy determined by the final decision without having to file separate lawsuits. In case of monetary compensation, the notary will satisfy the claims of awarded consumers promptly upon receipt of the final decision and deposit into the designated account of the monetary compensation from the trader. The court proceedings may also end in other ways, primarily by dismissing the action or through a settlement. If the authorized entity intends to reach a settlement with the trader, it must inform the participating consumers of its intention in advance. Subsequently, participating consumers have the option to withdraw their participation from the action, but the actual conclusion of the settlement does not require their consent.

The final and binding court decision applies to the authorized entity, the trader, and the participating consumers. As previously mentioned, the rights lawfully recognized in the proceedings for the issuance of corrective measures are enforced collectively in one enforcement proceeding.

We are regularly monitoring legislative updates and will keep you informed. Should you have further questions about the new Class Action Act, or wish to know how best to prepare your company in the event of an action intention, don't hesitate to contact us.

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