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Austria

CLASS ACTIONS

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This country-specific Q&A provides an overview of class actions laws and regulations applicable in Austria.

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AUSTRIA

CLASS ACTIONS



1. Do you have a class action or collective redress mechanism? If so, please describe the mechanism.

Currently, there are three different class action regimes in Austria:

The first one is the so-called "Austrian-style class action" (*Sammelklage österreichischer Prägung*), in which individuals (not necessarily consumers) assign their claims (e.g., for compensation) to certain associations. Those associations subsequently bundle the claims and bring one lawsuit in their own name on behalf of the consumers.

Secondly, certain associations are entitled to bring a representative action (*Verbandsklage*), which is a claim for omission under the Austrian Consumer Protection Act (*Konsumentenschutzgesetz*, "**KSchG**"). Such associations can request injunctions against companies for using certain general terms and conditions or standard contracts in their course of business with consumers.

Lastly, third-party funded mass litigation is an increasingly common way of collective redress measures in Austria as the Austrian-style class action is not very practicable and involves certain procedural hurdles. The claims in third-party funded mass litigation are brought individually, and the litigation funders receive large portions of the claimed amount.

On 2 May 2024, the Austrian Ministry of Justice has published the draft law which shall transpose the EU Directive on representative actions (Directive EU 2020/1828, "**EU Directive**"). Although this directive came into force on 24 December 2020, it has not yet been implemented into national law. The new class action law will most likely come into force before the end of 2024.

The current draft law for class actions (*Verbandsklagen-Richtlinie-Umsetzungs-Novelle "VRUN"*) introduces many innovations and will probably replace the previous legal instruments (Austrian-style class action and

representative action). Among other things, the draft law provides for the following:

- With the so-called Qualified Entities, the circle of those who will be able to bring class actions in the future will be significantly expanded. Recognition as a Qualified Entity is subject to certain conditions (such as independence) and requires recognition by the competent supervisory authority, which is the Federal Cartel Office.
- Qualified Entities can assert both collective injunctive relief and redress claims for consumers in court. With the redress actions, collective payment claims, which must be based on essentially similar facts, can now also be asserted against the same company. The prerequisite is the participation of at least 50 consumers. Both options are only available for consumer claims and therefore not for those of companies.
- An opt-in model is currently planned, i.e. consumers must expressly join a class action for redress. Withdrawing from a class action is not possible. By joining, the limitation period for the individual claim is suspended; this applies retroactively to the date on which the class action is brought.
- The Commercial Court of Vienna as a three-judge senate has exclusive jurisdiction for class actions according to the VRUN.
- Third-party financing of class actions is expressly permitted. The design of the respective funding agreements is subject to the private autonomy of the contracting parties and thus not specifically regulated.
- The draft law still has to be passed by the Austrian parliament. The Austrian Ministry of Justice plans for it to enter into force before the end of 2024.

2. Who may bring class action or collective

redress proceeding? (e.g. qualified entities, consumers etc)

Status quo: Austrian-style class actions can be brought by anyone whereas in practice such claims have been brought by consumer rights associations or even litigation funding companies. Representative actions under the KSchG can only be brought by certain associations (e.g. Federal Chamber of Labor or Association for Consumer Information, *Verein für Konsumenteninformation*, "VKI").

VRUN: If the planned VRUN becomes law, officially recognized Qualified Entities will be able to bring class actions in the future.

3. Which courts deal with class actions or collective redress proceedings?

Status quo: The Commercial Courts (e.g., Commercial Court in Vienna) are exclusively competent for dealing with a representative action pursuant to Art 51 Para 2 No 10 jurisdictional norm (*Jurisdiktionsnorm*, JN). For an Austrian-style class action and third-party funded mass litigation, jurisdiction depends on the subject matter of the claim. In general, this depends on the seat of the defendant company and the amount in dispute.

VRUN: The Commercial Court of Vienna as a three-judge senate has exclusive jurisdiction for class actions according to the VRUN.

4. What types of conduct and causes of action can be relied upon as the basis for a class action or collective redress mechanism?

Status quo: A representative action can be brought against companies for omission of using unlawful provisions in general terms and conditions or standard contracts or for omission of the violation of certain legal requirements of prohibitions. An Austrian-style class action can be brought for any conduct or causes, but the bundled submission requires claims that are essentially similar.

VRUN: Qualified Entities may bring class actions

- for injunctive relief, i.e. termination and prohibition of any unlawful behavior by a company, if this harms or threatens to harm the collective interests of consumers, and
- for redress (e.g., performance, payment) and, as part of an action for redress, for the interim

determination of rights and legal relationships.

5. Are there any limitations of types of claims that may be brought on a collective basis?

Status quo: A representative action can only be brought for omission and not for performance (e.g., payment). The Austrian-style class action and third-party funded mass litigation follows general principles of civil law, which is why there are no restrictions on certain types of action.

VRUN: Qualified Entities may bring class actions for payment, which must be based on essentially similar facts. The prerequisite is the participation of at least 50 consumers whereas the claims must be based on essentially similar facts.

6. How frequently are class actions brought?

There are no comprehensive annual statistics on the number of Austrian-style class actions available.

However, as a reference, the VKI published in its activity report that in 2022, the VKI conducted 263 proceedings, whereas 17 of those proceedings were Austrian-style class actions.

The number of class actions will likely increase after the VRUN becomes law.

7. What are the top three emerging business risks that are the focus of class action or collective redress litigation?

The most common business risk to date is the use of unlawful general terms and conditions. In addition, incorrect advice on investment products or agreements regarding pricing (e.g. fees, commissions) are frequent reasons for representative actions. Furthermore, defective products or refunds following the violation of mandatory law are the most frequent reasons for Austria-style class actions and mass litigation.

8. Is your jurisdiction an "opt in" or "opt out" jurisdiction?

Austria is an "opt-in" jurisdiction and will remain an "opt-in" jurisdiction also after the implementation of the EU Directive according to the VRUN.

9. What is required (i.e. procedural formalities) in order to start a class action or collective redress claim?

Status quo: There are no specific requirements in place to start a representative action or an Austrian-style class action, except that the plaintiff must pay court fees upfront which depend on the amount in dispute (no cap on the court fees).

VRUN: The Qualified Entity as claimant must be established as such and approved by the Federal Cartel Office.

A class action for redress must be brought on behalf of at least 50 consumers with essentially similar claims. Consumers must pay an admission fee which may not exceed 20% of the individual claim but must not be more than EUR 250.

The court may on its own or upon request assess the admissibility of the class action for redress and issue an order rejecting the claim or admitting it. Individual counterclaims may be suspended for the time being.

10. What remedies are available to claimants in class action or collective redress proceedings?

Status quo: Claimants may bring the general legal remedies available under Austrian civil procedure law. The individual consumer does not have any legal remedies (neither in the representative action nor the Austrian-style class action). In third-party funded mass litigation, the individual brings the claim and thus may bring any legal remedy available under the general rules of Austrian civil procedure.

VRUN: Qualified Entities as claimants may bring the general legal remedies available under Austrian civil procedure law.

11. Are punitive or exemplary damages available for class actions or collective redress proceedings?

No.

12. Are class actions or collective redress proceedings subject to juries? If so, what is the role of juries?

No.

13. What is the measure of damages for class actions or collective redress proceedings?

Status quo: A representative action can only be brought for omission. The calculation of damages for the Austrian-style class action depends on the summarized actual damages each individual consumer that assigned the claim has suffered including statutory default interest.

VRUN: The VRUN will not change the status quo in this regard.

14. Are there any jurisdictional obstacles to class actions or collective redress proceedings?

Status quo: The representative action under the KSchG may only be brought with the competent commercial court if the requirements of the KSchG are met. The Austrian-style class action requires that the court is competent for each claim that has been assigned and the same type of proceedings applies to each individual claim.

VRUN: The Commercial Court of Vienna has exclusive jurisdiction for class actions.

15. Are there any limits on the nationality or domicile of claimants in class actions or collective redress proceedings?

Status quo: A representative action may only be brought by Austrian associations. Austrian-style class actions can be brought by anyone (including claims assigned by any consumer) if the general procedural requirements are met.

VRUN: Qualified Entities established in Austria may be admitted to bring cross-border class actions.

16. Do any international laws (e.g. EU Representative Actions Directive) impact the conduct of class actions or collective redress proceedings? If so, how?

The implementation of the EU Directive will change the Austrian collective redress measure system entirely (cf the answers concerning the VRUN and especially the answer to question 1).

17. Is there any mechanism for the collective settlement of class actions or collective redress proceedings?

Status quo: Currently, there are no specific rules for the settlement of representative actions or Austrian-style class actions. The available draft law implementing the EU Directive requires settlements to be approved by court.

VRUN: Settlements must be confirmed by the court. The court may only confirm a settlement if the settlement does not conflict with mandatory provisions of national law and does not contain any conditions that are not enforceable. It remains to be seen whether, based on the wording of the law ('may'), there could also be other reasons why the court may refuse to confirm the settlement.

The settlement concluded binds the consumers who have joined the proceedings.

18. Is there any judicial oversight for settlements of class actions or collective redress mechanisms?

Status quo: There is no judicial oversight for settlements or other comparable mechanisms. See also the answer to question 17.

VRUN: See answer to question 17.

19. How do class actions or collective redress proceedings typically interact with regulatory enforcement findings? e.g. competition or financial regulators?

Often, Austrian-style class actions or third-party funded mass litigation follows findings by regulatory authorities concerning a company's misconduct (e.g., refund claims against the automotive industry).

Competition or financial regulatory authorities on the other hand are monitoring regularly for non-compliant behaviour. However, misuse of general terms and conditions are not of major interest for those authorities. Misconduct via consumers is relevant with regard to general obligations of the company or credit institutions in question. Civil law proceedings however are to be separated from public and administrative law proceedings.

20. Are class actions or collective redress proceedings being brought for 'ESG' matters? If so, how are those claims being framed?

Status quo: Article 28a KSchG enables the associations under the KSchG to bring representative actions for the violation of information obligations concerning the disclosure obligation of sustainability in accordance with Regulation (EU) No. 2019/2088 (Disclosure Directive).

In 2023, the VKI brought two representative actions against different companies regarding Greenwashing. The legal basis for those lawsuits was in both cases misleading advertising according to the Austrian Unfair Competition Act.

VRUN: Class actions may be brought for any unlawful behaviour including ESG related matters.

21. Is litigation funding for class actions or collective redress proceedings permitted?

Yes (also under the VRUN).

22. Are contingency fee arrangements permissible for the funding of class actions or collective redress proceedings?

Yes, litigation funding companies are allowed to enter into contingency fee arrangements.

Austrian Attorneys are not allowed to enter into contingency fee agreements as those agreements are prohibited under Austrian civil law (prohibition of the "quota litis").

23. Can a court make an 'adverse costs' order against the unsuccessful party in class actions or collective redress proceedings?

According to civil procedural law, the prevailing party can recover the necessary and appropriate costs that incurred, including court fees and other incidental expenses as well as own legal costs.

Courts can make adverse cost decisions within the civil procedure for certain procedural steps.

The VRUN does not include any changes in this regard.

24. Are there any proposals for the reform of class actions or collective redress proceedings? If so, what are those proposals?

The VRUN as the implementation of the EU Directive will make it much easier for consumers to enforce their claims against companies in the future. Some notable novelties were included in the answers 1-23 and reference is made to the overview mentioned in the answer to question 1.

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