

**International
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Legal Guides**



Class & Group Actions

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1 Class/Group Actions

1.1 Do you have a specific procedure or set of rules for bringing, handling, and/or legally resolving a series or group of related claims? If so, please outline this.

In Austria, there is no distinctive ruleset for initiating group or class actions. *In lieu* of that, Austrian legal practice developed the so-called “Austrian-style class action”, which is a make-shift construct for dealing with masses of similar or comparable claims. Under this regime, the affected parties assign their claims to one lead individual (often an association), which then asserts the assigned claims collectively (“objective accumulation of claims”) in one lawsuit.

The prerequisite for an assignment is a certain connection between the claims, i.e., a similar cause of action and essentially identical issues of law or fact (e.g., investor compensation for the same bond, product liability cases concerning the same product).

Alternatively, the Austrian Code of Civil Procedure also provides the possibility of joining several claimants into one lawsuit, in which all claimants (the number of which can vary) assert their claims as joint litigants. Such joint litigation requires that all asserted claims be based on substantially similar factual grounds (e.g., several injured parties in the same accident) and the court seized has jurisdiction for all asserted claims.

1.2 Do these rules apply to all areas of law or to certain sectors only, e.g., competition law, security/financial services? Please outline any rules relating to specific areas of law.

The “Austrian-style class action” generally applies to all areas of law or claims respectively, which can be pursued in civil courts.

Additional rules exist for consumer protection claims and claims concerning unfair competition practices. In these areas, an association for the representation of the interests of the respective group is (under certain conditions) granted the authority to assert certain claims (without prior assignment), in its own name, if there is a public interest in doing so. Such claims are restricted to injunctive and declaratory relief, i.e., no claims for monetary damages or performance may be asserted under this regime.

1.3 Does the procedure provide for the management of claims by means of class action (where the determination of one claim determines the claims of the class), or by means of a group action where related claims are managed together, but the decision in one claim does not automatically create a binding precedent for the others in the group, or by some other process?

In “Austrian-style class actions”, despite the claims being bundled and asserted to one claimant, the judge is formally still required to individually examine all claims asserted. However, the judge may break down certain elements of the case (which are a prerequisite for all asserted claims) and decide on these elements by way of an interim judgment. The same applies to partial claims that may be decided by a partial judgment (i.e., if a certain fraction of the assigned claims are easier to decide than others).

Due to the absence of a procedural framework for model proceedings, decisions in “model cases” (which are chosen by the parties to be decided first, while the remaining cases are being suspended) by the Supreme Court only have a *de facto* precedent effect, in the sense that the lower courts typically follow the leading decisions of the Supreme Court. However, there is no formal legally binding effect for other proceedings.

1.4 Is the procedure ‘opt-in’ or ‘opt-out’?

The procedure is opt-in. Claimants must explicitly assign their claims to the association in order to participate in Austrian-style class actions.

1.5 Is there a minimum threshold/number of claims that can be managed under the procedure?

There is no minimum threshold of claims. However, if there is only a small number of affected parties, it may prove more efficient to join the individuals as separate claimants into one lawsuit, if the respective prerequisites are given. This eliminates the necessary assignment of claims to the association and the internal administration of claims between the individual affected parties and the association.

1.6 How similar must the claims be and what are the legal requirements for proceeding on a class or group basis? For example, in what circumstances will a class action be certified or a group litigation order made?

For the claims to be asserted jointly in “Austrian-style class actions”, there must be an essentially similar cause of action, but no identity of the facts giving rise to the right. In addition, there must be essentially identical issues of fact or law concerning the main issue or a very relevant preliminary issue of all claims to be assessed.

This is the case, for instance, in mass transit accidents, infections in hotels, excessive lending rates in variable-rate consumer credit agreements, investor compensation, foreign currency loans, etc.

1.7 Who can bring the class/group proceedings, e.g., individuals, group(s) and/or representative bodies?

In principle, there are no restrictions on the assignment of claims for the purpose of bringing an “Austrian-style class action”. In practice, however, such lawsuits are usually brought by associations specifically designated for this purpose. Injunctions in specific consumer and unfair commercial practice matters may only be brought by associations authorised by law to bring such actions.

1.8 Where a class/group action is initiated/approved by the court, must potential claimants be informed of the action? If so, how are they notified? Is advertising of the class/group action – before or after court approval – permitted or required? Are there any restrictions on such advertising?

At present, Austrian law does not require the notification of potential claimants regarding the (intended) initiation of an Austrian-style class action. In practice, the associations (and potential affiliated litigation funders) provide information on their websites and actively search for participants in order to increase the impact of the lawsuit. There are no specific restrictions on such advertising (provided that the general rules on unfair competition are complied with).

1.9 How many group/class actions are commonly brought each year and in what areas of law, e.g., have group/class action procedures been used in the fields of: Product liability; Securities/financial services/shareholder claims; Competition; Consumer fraud; Privacy; Mass tort claims, e.g., Disaster litigation; Environmental; Intellectual property; or Employment law?

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

However, as a reference, the ministry for consumer protection published that in 2022, the association for consumer information conducted 231 proceedings on its behalf focusing on travel, financial services and energy supply in terms of content. The different types of proceedings were split as follows: class actions of associations for injunctive relief in consumer protection law (164); “model-lawsuits” brought by associations (66); “Austrian-style class action” (one).

1.10 What remedies are available where such claims are brought, e.g., monetary compensation and/or injunctive/declaratory relief, and what are the limitations on remedies, if any?

In Austrian-style class actions, the same remedies are available as in any other civil proceedings, including monetary damages for bodily injury, mental damage, damage to property as well as economic loss. The system of procedural remedies is no different than in normal civil proceedings, i.e., judgments can be appealed before the courts of appeal. Under certain limitations (depending on the amount in dispute and the existence of legal questions of general importance), cases may be further appealed before the Austrian Supreme Court in the third and final instance.

In class actions concerning consumer protection claims and claims concerning unfair competition practices, only injunctive and declaratory relief can be sought, i.e., no claims for monetary damages or performance may be asserted. As far as procedural remedies are concerned, the amount in dispute limitation for appeals to the Supreme Court does not apply, i.e., even economically insignificant cases may be decided by the Supreme Court (ensuring that the Supreme Court can fulfil its role as leading court also in such cases).

1.11 Are there any limitations in your jurisdiction on global/cross-border class or group actions, including any limitation on the ability of international claimants to participate in such actions?

The jurisdiction of Austrian courts is not limited to parties that reside in Austria. International claimants can participate in the litigation if the underlying claim is subject to the jurisdiction of Austrian courts and concerns essentially a similar cause of action and identical issues of fact or law of the main issue.

In order to counteract unlawful cross-border business practices, consumer protection bodies in other EU states can also bring such injunctive or associative actions in Austria, if Austrian companies harm the interests of consumers in other EU states.

2 Actions by Representative Bodies

2.1 Do you have a procedure permitting collective actions by representative bodies, e.g., consumer organisations or interest groups?

In particular in consumer protection claims and claims concerning unfair competition practices, associations for the representation of interests are granted the authority under substantive law to assert certain claims (without prior assignment) in its own name, if there is a public interest in doing so.

Examples for such collective actions are lawsuits against unfair terms and conditions, violation of information duties (e.g., concerning rescission rights in online transactions), acts of unfair competition (e.g., misleading advertising or aggressive business practices), etc.

Claims under such collection actions are restricted to injunctive and declaratory relief, i.e., no claims for monetary damages or performance may be asserted under this regime.

2.2 Who is permitted to bring such claims, e.g., public authorities, state-appointed ombudsmen or consumer associations? Must the organisation be approved by the state?

The claim can only be brought by associations listed in the law, such as the Chamber of Commerce, the Chamber of Labor or the Association for Consumer Information.

2.3 In what circumstances may representative actions be brought? Is the procedure only available in respect of certain areas of law, e.g., consumer disputes?

Representative actions are limited to specific areas of law provided for in the law, the most relevant being consumer protection and unfair commercial practices in competition law. The assertion requires a “public interest” consisting in removing unlawful and immoral contractual provisions from commercial circulation (i.e., concerning a larger number of consumers) and effectively enforcing the legal provisions in business practice.

2.4 What remedies are available where such claims are brought, e.g., injunctive/declaratory relief and/or monetary compensation, and what are the limitations on remedies, if any?

The object of protection of such lawsuits is not individual consumer protection in the sense of compensation for the damage suffered by individuals, but rather the prevention of (future) harmful conduct against the overall public. Therefore, no monetary compensation is granted to individuals through such lawsuits. Rather, the action is directed at the (future) injunction of unlawful business clauses and practices.

However, the individual consumers may bring an individual claim following the judgment in the collective action requesting monetary damages. As the defendant is typically prevented from further relying on the unfair clause by the injunction, the defendant is precluded from raising the unlawful clause as a defence in the proceedings, which will typically lead to the claimant prevailing.

Concerning the procedural remedies (i.e., possible appeals), we refer to question 1.10.

3 Court Procedures

3.1 Is the trial by a judge or a jury?

Decisions in civil cases in Austria are made either by single judge (or if expressly requested by a three judges’ senate in first instance in disputes with higher amounts). Second instance decisions are rendered by a three judges’ senate. The Supreme Court decides in five judge panels.

A trial by jury does not exist in Austrian civil law (except in severe criminal cases).

3.2 How are the proceedings managed, e.g., are they dealt with by specialist courts/judges? Is a specialist judge appointed to manage the procedural aspects and/or hear the case?

There are no specialist judges as such for certain areas of civil or commercial law. For Austrian-style class actions, the general rules concerning jurisdiction and court competences apply. Thus, the same judges are competent as compared to individual proceedings.

However, in group actions brought by associations in consumer and unfair competition matters, a specialised division of judges for commercial matters is competent.

3.3 How is the group or class of claims defined, e.g., by certification of a class? Can the court impose a ‘cut-off’ date by which claimants must join the litigation?

The group or class of claims is not defined.

In “Austrian-style class actions”, claims must be assigned to the claimant before the action is brought. If further claims should be assigned and pursued by the association after the filing of the (first) lawsuit, it would have to file another (second) lawsuit (bundling these later received claims in the second proceedings). However, the judge may – upon their discretion – combine the two proceedings later on, if both lawsuits are brought before the same court.

3.4 Do the courts commonly select ‘test’ or ‘model’ cases and try all issues of law and fact in those cases, or do they determine generic or preliminary issues of law or fact, or are both approaches available? If the court can determine preliminary issues, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided? If a judge determines certain preliminary factual issues, are those factual determinations binding on a later jury?

Model or test cases are not selected by a court, but by the parties, who would decide which case to bring as a model case (and to suspend other pending proceedings until the final and binding decision in the model case). In such model cases, typically all questions of fact and law are decided (and it is the parties’ obligation to choose suitable cases that cover all relevant aspects). Please note that these cases are still considered normal civil proceedings, and do not have any more specific rulesets or further reaching effects than other individual cases.

The judge may (be it in model or other cases) break down certain elements of the case (which for instance are a prerequisite for all asserted claims), and decide on these elements by way of an interim judgment. This applies to both questions of fact and law. The same is true for partial claims that may be decided by a partial judgment (i.e., if a certain fraction of the assigned claims are easier to decide than others).

Such interim or partial judgments are binding for the parties in later stages of the proceedings.

As there is no jury trial in civil proceedings in Austria, there is no binding effect in this respect. However, if a defendant is found guilty by a jury (or a judge in less severe cases) in criminal proceedings, the defendant may not contest the conviction and the essential underlying facts having led to the conviction in subsequent civil proceedings themselves (i.e., the criminal conviction has a binding effect on the civil proceedings).

3.5 Are any other case management procedures typically used in the context of class/group litigation?

A tool often used by judges is the combination of proceedings. If several disputes between the same parties are brought before the same court, any of the involved judges may combine several or all proceedings into one (merged) “leading” proceeding. This avoids repetitive tasks and has synergy effects for all proceedings; i.e., the judge only has to obtain one single expert opinion which then applies for all combined proceedings. The same goes for witness testimonies, etc.

Another case management procedure used by judges would be to agree with the parties to suspend less advanced proceedings until a certain outcome in more advanced proceedings (e.g., expert opinion, interim judgment, etc.) is reached and may also be utilised in the suspended proceedings.

Finally, the associations often use ongoing criminal proceedings to lodge their claims in those proceedings, which typically interrupts the limitation period until the termination of the criminal proceedings. By this, the associations may strategically decide when, and to what extent, to pursue the claims in civil proceedings without running the risk of the claims becoming time-barred.

3.6 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

The court typically appoints a court expert to assist in technical matters (if the parties have made a respective request in their briefs), which also applies in class or group action proceedings. The parties have the right to file motions for evidence and to propose experts, however, it lies in the court's discretion to decide to what extent it is actually necessary, and which person to appoint.

Evidence must always be relevant to the specific case and, in principle, correspond to an admissible category of evidence, such as: (i) testimony of parties; (ii) testimony of witnesses; (iii) visual inspection of goods or property; (iv) court expert opinions; and (v) documents. The general procedural rules on requests for evidence must be complied with (e.g., no hear-say evidence etc).

3.7 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

There is no pre-trial deposition under Austrian law.

Witnesses or experts are usually summoned to the hearing and questioned there in person. During the hearing, the parties and the court have the opportunity to ask questions.

Expert reports by court experts are typically shared by the expert in due time before the hearing so that the court and the parties may prepare in advance.

The parties are allowed to also submit expert opinions by private experts (not appointed by the court), which, however, have very limited evidentiary value and are often disregarded as whole by the judge.

3.8 If discovery is permitted, do courts typically phase such discovery, such as bifurcating discovery between class discovery and merits discovery?

There is no (pre-trial) discovery (in the US sense) under Austrian law. In Austrian civil proceedings, there is only a very limited disclosure obligation by the parties, in particular referring to documents that are relevant for the case and fulfil certain criteria (e.g., contracts signed by both parties, etc).

3.9 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

As already outlined, there is no pre-trial discovery process in Austria (please refer to our answer to question 3.8 for details).

3.10 Can the parties challenge the admissibility of expert testimony prior to or after a determination as to whether a claim can proceed on a class or group basis?

As there is no admission system for class or group actions in Austria, there is also no expert testimony on this issue.

In general terms, experts may be rejected by the parties if there are sufficient grounds for questioning the impartiality or competence. If the expert is successfully challenged, they may not be further engaged, and expert opinions that have already been prepared may not be used (although the court must appoint a new expert, who will have to start from the beginning).

3.11 How long does it normally take to get to trial?

There are no statistics showing how long the preparation phase before the filing of the lawsuit usually takes. Speaking from experience, this may range from several weeks or months to even years (depending on the complexity of the case, ongoing settlement negotiations, etc.).

After the lawsuit has been filed, it usually takes one to three months for the first preparatory hearing to take place.

The average duration of civil proceedings resolved in first instance in 2021 was 9.4 months in district courts and 17.3 months in regional courts. About half of the civil cases in the district courts lasted less than seven months. Only 2.2 per cent of civil proceedings lasted longer than three years in first instance.

Appeal proceedings (before the court of appeals or the Supreme Court) are usually decided within six to nine months (again depending on the complexity of the case).

3.12 What appeal options are available, including whether an appeal can be taken immediately of a decision certifying a class or entering a group litigation order?

As there is no admission system for class or group actions in Austria, there is no decision to be challenged in this respect.

4 Time Limits

4.1 Are there any time limits on bringing or issuing court proceedings?

There exist no separate provisions with regards to time limits for bringing class actions in Austria. However, the general statute of limitations applicable to the underlying claims must be considered.

4.2 If so, please explain what these are. Does the age or condition of the claimant affect the calculation of any time limits and does the court have discretion to disapply time limits?

The general statute of limitations period in Austria is 30 years; however, most claims filed within class actions will be subject to the shorter period of three years. This shorter period applies, for example, to damage claims and starts to run from the time the claim could first be raised (i.e., when those entitled to assert a damage claim have or could have gained knowledge of (i) the damage, and (ii) the damaging party).

Notably, courts do not examine whether claims are time barred *ex officio*. An objection thereto must, therefore, be raised by a party. Courts do not have discretion to disapply time limits; only the debtor could waive its right to claim limitation.

The age or condition of claimants does not affect time limits in any way.

4.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

If a claim arises from an intentional criminal act punishable by imprisonment for at least one year under Austrian law, that claim will in any case be subject to the general statute of limitations period of 30 years. Certain qualified cases of fraud fall under this category.

If there already exists a criminal conviction in Austria, this generally has a binding effect for the civil court that is competent to hear the class action. An actual criminal conviction is, however, not necessary for the 30-year statute of limitations period to apply. In the absence of a criminal conviction, the prerequisites for the 30-year statute of limitations period are assessed by the civil court competent for the class action itself.

4.4 Does the filing of a class or group lawsuit toll the limitation period by which any individual who falls within that class or group would have to bring his, her, or its own individual claims?

No, the statute of limitations is always examined for each individual claim. If certain claims which form part of an Austrian-style class action are, however, not filed, the statute of limitations period continues to run for these claims.

5 Remedies

5.1 What types of damage are recoverable, e.g., bodily injury, mental damage, damage to property, economic loss?

In Austrian-style class actions, the same remedies are available as in any other civil proceedings, including damages for bodily injury, mental damage, damage to property as well as economic loss. However, economic loss is only recoverable in case the damaging party acted grossly negligent or with intent (as opposed to slightly negligent behaviour which is sufficient for all other types of damages listed).

5.2 Can damages be recovered in respect of the cost of medical monitoring (e.g., covering the cost of investigations or tests) in circumstances where a product has not yet malfunctioned and caused injury, but it may do so in future?

Damages can only be recovered if (and to the extent that) they have already occurred. It is, however, possible to apply for declaratory relief regarding the defendant's liability for any future damages, which cannot be quantified yet, so that the damage claim does not become time-barred.

5.3 Are punitive damages recoverable? If so, are there any restrictions?

No, punitive damages are not possible under Austrian law.

5.4 Is there a maximum limit on the damages recoverable from one defendant, e.g., for a series of claims arising from one product/incident or accident?

There is no general limit on the recoverability of damages. However, in the context of product liability under the Austrian Product Liability Act, property damages caused by defective products are only recoverable from manufacturers as far as they exceed EUR 500 (as opposed to bodily damages which are fully recoverable).

5.5 How are damages quantified? Are they divided amongst the members of the class/group and, if so, on what basis?

Damages are awarded for each individual claim brought, i.e., each member of a class/group is awarded damages in the amount of the actual loss that member suffered. As a general rule, the extent of compensation and calculation of damages is subject to the degree of fault of the damaging party. In case of slight negligence, only the actual damage (so-called positive damage) is recoverable. In case of gross negligence or intent, lost profits are recoverable in addition to the actual damage (so-called full compensation).

Austrian courts will typically appoint an expert relating to the subject matter to quantify the damages (e.g., doctors, civil engineers, etc.). Special rules apply to the calculation of damages in case of bodily injuries (see Section 1325 Austrian Civil Code).

5.6 Do special rules apply to the settlement of claims/proceedings, e.g., is court approval required? If so, what are those rules?

Currently, Austrian law does not provide for a collective settlement mechanism. Similar to regular civil disputes, settlements can be concluded in Austrian-style class actions at any time, either outside of court (as a private agreement) or in court (as a court-issued protocol of the agreement reached by the parties in front of the judge).

There is no court approval required for either form of settlement. However, certain matters are generally barred from being subject to a settlement, e.g., matrimonial proceedings, or the determination of paternity.

6 Costs

6.1 Can the successful party recover: (a) court fees or other incidental expenses; and/or (b) their own legal costs of bringing the proceedings, from the losing party? Does the 'loser pays' rule apply?

Yes, the "loser pays" rule applies. Generally, the prevailing party can recover the necessary and appropriate costs, which includes: (a) court fees and other incidental expenses, such as fees for experts and interpreters; as well as (b) own legal costs. These are generally determined based on the amount in dispute and the complexity of the case. The recovery of legal costs is capped at the tariffs set out in the Austrian Attorneys' Tariff Act, whereas in practice, the legal fees charged by attorneys are often higher than these tariffs. Therefore, the prevailing party may (most likely) not fully recover its legal costs.

If a party prevails in part, it can recover costs and fees according to the extent it prevails (e.g., a success rate of 70% results in a netting of the success rate of 70% with the 30% success rate of the opposing party, i.e., effectively recovering 40% of own costs).

6.2 How are the costs of litigation shared amongst the members of the group/class? How are the costs common to all claims involved in the action ('common costs') and the costs attributable to each individual claim ('individual costs') allocated?

In principle, this can be freely negotiated between the individual members of a class action. With respect to the opposing party, it should be noted that the individual members who assigned their claims are not themselves party to the proceedings in Austrian-style class actions (instead the litigating entity is party to the proceedings). Thus, courts cannot award costs to individual members or order them to pay the costs of the opposing party.

In addition, third-party funding is becoming increasingly important in Austrian-style class actions. In such a case, the individual members of the group/class typically do not bear any cost risk since all adverse costs are covered by the third-party funder.

6.3 What are the costs consequences, if any, where a member of the group/class discontinues their claim before the conclusion of the group/class action?

If a claim is withdrawn, the claimant must generally reimburse the opposing party for any costs pertaining to the defence against this claim. Consequently, with respect to the internal relationship between the members of a class action, there is typically an agreement to compensate the other members for the costs resulting from such a withdrawal.

6.4 Do the courts manage the costs incurred by the parties, e.g., by limiting the amount of costs recoverable or by imposing a 'cap' on costs? Are costs assessed by the court during and/or at the end of the proceedings?

In general, only necessary and appropriate costs can be recovered from the opposing party. Also, Austrian civil proceedings are governed by the principle of procedural economy, which requires a cost and time-efficient resolution of disputes. Courts will adhere to this principle and parties are obliged to aid in advancing proceedings as efficiently as possible. If parties cause undue delay and unnecessary costs, courts may order that party to bear these (additional) costs.

The costs are assessed at the end of the proceedings. At this point, the parties can request the recovery of their costs from the opposing party, which must be accompanied by a cost schedule. The parties are then given the opportunity to object to (parts of) the costs claimed by the other party.

7 Funding

7.1 Is public funding, e.g., legal aid, available?

Yes, natural and legal persons may apply for legal aid from the Republic of Austria. If granted, the party receiving legal aid may then be exempted from paying court fees, expert fees and any other fees that may be incurred during the respective proceedings for which legal aid is sought. If the complexity of the case so requires or if representation is mandatory due to the type of dispute, legal aid may also include the free representation by an attorney.

7.2 If so, are there any restrictions on the availability of public funding?

Legal aid is generally available if: (i) a party can demonstrate that it is not able to finance the proceedings; and (ii) the intended

proceedings do not appear futile or as an abuse of rights. When applying for legal aid, parties must disclose to the court all their assets, income and expenses.

In practice, claimants in Austrian-style class actions are often financed by third-party funders which pay the costs of the proceedings. It is also common practice in Austria to have legal cost insurance. In any of these cases, claimants will not be entitled to legal aid.

7.3 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

No. Contingency fee arrangements between clients and attorneys are strictly prohibited under Austrian law and, in particular, Austrian Bar rules. However, clients may agree with their attorneys on an additional success fee (i.e., 20% markup on their regular fees in case of success).

7.4 Is third-party funding of claims permitted and, if so, on what basis may funding be provided?

Yes, third-party funding is permitted in Austrian litigation proceedings. Parties are generally not required to disclose the existence of third-party funding to the court or the opposing party. Funding agreements are to be assessed according to the same standards as any other contract, and may be considered void if found to violate mandatory law or good morals.

Third-party funders are not subject to the prohibition of contingency fee arrangements. Hence, they may conclude such arrangements with funded parties (and regularly do so in practice).

8 Other Mechanisms

8.1 Can consumers' claims be assigned to a consumer association or representative body and brought by that body? If so, please outline the procedure.

Yes. Austrian-style class actions are typically brought by representative bodies, such as the Federal Chamber of Labor or the Austrian Consumer Information Association, in their own name after consumers assigned their individual claims to these bodies. This instrument is based on Section 227 Austrian Civil Procedure Code, which allows multiple claims to be jointly brought against the same defendant before the same court in a single lawsuit.

In order to be eligible for an Austrian-style class action, the claims must share:

- the same jurisdiction;
- the same type of proceedings;
- the same cause of action; and
- essentially the same factual and legal issues.

Certain representative institutions that are listed in the Consumer Protection Act benefit from special procedural rules as they are deemed to serve public interests. For example, an appeal to the Austrian Supreme Court is usually admissible only if the amount in dispute exceeds EUR 5,000, but this restriction does not apply if a claim is brought by one of these institutions.

Further, certain institutions may apply for injunctions according to: (i) the Unfair Competition Act in case of unfair business practices; or (ii) the Consumer Protection Act in case of a use of illegitimate standard terms or other illegitimate business practices affecting general consumer interests.

8.2 Can consumers' claims be brought by a professional commercial claimant which purchases the rights to individual claims in return for a share of the proceeds of the action? If so, please outline the procedure.

Yes, there are no specific rules prescribing who may act as claimant, and professional commercial claimants regularly appear in Austrian court proceedings. Typically, consumers assign their claims to the professional commercial claimant, which then conducts the proceedings in its own name. Afterwards, the claims awarded are paid out to the consumers after deducting the professional commercial claimant's share. The risk of such proceedings is entirely born by the professional commercial claimant.

The purchase of individual claims is subject to the general boundaries under Austrian law, and must, in particular, comply with the general prohibition of profiteering (meaning taking advantage of a person in a vulnerable situation). Further, such agreements may be considered as immoral and, thus, invalid if, for example, there is a striking economic imbalance between the parties.

8.3 Can criminal proceedings be used as a means of pursuing civil damages claims on behalf of a group or class?

Yes. Civil claims may be pursued in pending criminal proceedings by way of joinder (*Privatbeteiligtenanschluss*). This is a frequently observed practice with regards to mass claims involving criminal actions as it saves costs compared to civil proceedings (e.g., experts are paid by the public prosecution) while still interrupting the statute of limitations period. In case the criminal court does not award the civil claims, the claimants may subsequently assert their claims before civil courts.

8.4 Are alternative methods of dispute resolution available, e.g., can the matter be referred to an Ombudsperson? Is mediation or arbitration available?

There are a number of voluntary dispute resolution methods, e.g., for certain employment law matters, certain consumer disputes or complaints against financial institutions. A resolution of disputes by way of mediation or arbitration is possible in case there exists a respective agreement between the parties of the dispute.

8.5 Are statutory compensation schemes available, e.g., for small claims?

No, there are no general statutory compensation schemes available under Austrian law.

8.6 What remedies are available where such alternative mechanisms are pursued, e.g., injunctive/declaratory relief and/or monetary compensation?

Whether or not a claim is brought as part of a group or class action does not influence the remedies available. However, the Consumer Protection Act lists a handful of institutions that may only apply for an injunction, in particular with regards to the use of illegitimate standard terms or other illegitimate business practices affecting general consumer interests. In case of a joinder in criminal proceedings, only payment of a certain damage amount can be claimed, but no injunctive or declaratory relief.

9 Other Matters

9.1 Can claims be brought by residents from other jurisdictions? Are there rules to restrict 'forum shopping'?

The jurisdiction of Austrian courts is not limited to parties that reside in Austria. Absent an agreement by the parties to have disputes resolved by Austrian courts, the underlying claim must, however, have a connection to Austria in order to be subject to the jurisdiction of Austrian courts. This is the case, for example, if the defendant is a company registered or seated in Austria, or when damages were suffered in Austria.

9.2 Are there any changes in the law proposed to promote or limit class/group actions in your jurisdiction?

The implementation of the Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers (RAD) will significantly promote and strengthen class/group actions and mass claims in Austria. It should have been transposed into national law by 25 December 2022. However, as of September 2023, there is still no draft legislation available in Austria.



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His practice focuses on national and international dispute resolution before state courts and in arbitration proceedings. In particular, he has extensive experience in the assertion or defence of claims in investment cases, representing stakeholders in corporate disputes and companies from the banking and financial sector, the automotive industry, and the IT and retail sectors. In doing so, he looks back on many years of experience in the successful and efficient handling of mass and class actions and is an expert in the field of (national and international) collective redress.

In addition, he has comprehensive expertise in contract drafting with a focus on consumer protection law and e-commerce issues. In this context, he assists clients in the drafting and design of general terms and conditions, websites and apps, up to and including representation in proceedings against consumer protection associations. A special focus lies on advising on the market launch and offering of new technologies (from the use of artificial intelligence to new payment services and automation solutions, e.g., in the automotive sector).

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Pitkowitz & Partners, based in Vienna, is a leading commercial law firm. The firm's focus is on international arbitration and complex litigation, as well as on real estate and construction law.

Pitkowitz & Partners forms one of the largest dispute resolution teams nationwide and has been recognised as one of the leading disputes practices in Austria for years. The dispute resolution practice group looks back on decades of experience in the areas of litigation, arbitration, and mediation. With its involvement in cases spanning across the globe and through a myriad of industries, including, amongst others, construction, energy, real estate, technology, and media, the firm has acclaimed a stellar international reputation.

The team gained international courtesy, among other things, through the successful representation in two of the largest class action lawsuits ever pending in Austria, as well as in the largest arbitration proceedings ever pending in Vienna. Pitkowitz & Partners is listed in the GAR 100 ranking of the world's leading arbitration firms for the third year in a row.

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