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## Class Actions Q&A

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### LEGAL FRAMEWORK

#### **Is there a dedicated class action regime in your jurisdiction? If not, how is collective action typically brought?**

Austria does not have a codified regime for US-style class actions or group actions. There are only very specific mechanisms for authorised associations to initiate proceedings in the interests of consumers (eg, to challenge general terms and conditions in contracts with consumers).

In the early 2000s, a mechanism to bring collective actions was developed in Austrian case law that has since become known as the 'Austrian-style class action'. There has been a noticeable increase in such actions in recent years.

The Austrian-style class action is based on Section 227 of the Code on Civil Procedure, which allows multiple claims to be jointly brought between the same parties before the same court in a single lawsuit. To use this instrument for class action-style proceedings, multiple persons assign their claim to a single (legal or natural) person, which then brings the claims in its own name jointly against the defendant.

Based on Austrian case law, the assigned claims for Austrian-style class actions must share:

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

In practice, claims are often assigned to an association that acts as claimant. Usually, the costs of Austrian-style class actions are advanced by a third-party funder that will receive a share of the proceeds in case of success.

#### **Do any special regimes apply in specific sectors?**

The Act on Consumer Protection allows specific institutions to seek an injunction against companies making use of unlawful and immoral provisions in terms and conditions. The applicable provisions contain a list of specific types of contracts or matters that fall under the scope of such injunction proceedings; they include, for example, package tours, consumer credit and claims for phone charges.

#### **Are the courts in your jurisdiction generally considered sympathetic to class actions?**

Austrian law does not assign jurisdiction for class actions to specialised courts; the ‘general’ civil courts will deal with Austrian-style class actions. Cases are assigned to judges based on different predetermined mechanisms, so as to not allow for any undue influence in the allocation of cases. Due to this distribution of Austrian-style class actions to different courts and judges, it is difficult to give a general assessment of their attitude towards such proceedings. Therefore, even in similar cases, courts may take different approaches and render different decisions.

## **PARTIES**

### **Who has standing to bring a class action in your jurisdiction?**

The Austrian-style class action is, in principle, open to any natural or legal person to which claims are assigned.

In practice, the person bringing the claim is usually a legal person in the form of an association that is founded to pursue consumer interests.

### **Can representative bodies bring class actions in your jurisdiction? If so, which bodies may do so and what is the applicable procedure?**

The Act on Consumer Protection lists a handful of institutions that have standing to seek an injunction in particular regarding the use of unlawful and immoral terms and conditions (Section 29). They include the likes of:

- the Federal Chamber of Commerce;
- the Federal Chamber of Labour; and
- the Association for Consumer Information.

The named institutions benefit from certain procedural benefits 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 €5,000 – a restriction that does not apply in such cases.

Similarly, the Act on Unfair Competition allows specific institutions – some also named in the Act on Consumer Protection – to seek an injunction in case of prohibited business practices.

### **Can parties outside the jurisdiction be members of a class action? What requirements and restrictions apply in this regard?**

The jurisdiction of the Austrian courts is not limited to parties that reside in Austria. The underlying claim must, however, be subject to the jurisdiction of the courts, which requires a connection to Austria. This may be the case if the defendant is a company registered or seated in Austria or where damages were suffered in Austria.

### **Which parties may be the target of a class action? Can parties outside the jurisdiction be the target of a class action? What requirements and restrictions apply in this regard?**

In accordance with the requirements of the Austrian-style class action, the target of such a lawsuit may be any person faced with multiple claims of similar nature based on similar facts and concerning similar questions of fact and/or law.

In practice, the targets are large corporations that regularly conclude (similar) contracts with numerous persons (eg, purchase contracts, investment contracts).

The jurisdiction of the Austrian courts is not dependent on the defendant being registered or seated in Austria. The advanced claims must, however, have a connection to Austria to establish the jurisdiction of the Austrian courts.

In the case of damage claims, it is therefore possible, for example, to target a defendant outside of Austria if the damage occurred in Austria.

### **Do class actions proceed on an opt-in or opt-out basis?**

Austrian-style class actions are based on assignments of claims, which can thus be compared to an opt-in approach. Therefore, any rulings on such claims will not be binding on persons that have not assigned their claims.

## **FORUM**

### **In what forum(s) are class actions heard in your jurisdiction?**

There are no courts specialised in Austrian-style class actions and therefore these claims are subject to the jurisdiction of the general civil courts. Depending on the amount in dispute, the courts of first instance are either:

- the district courts, for claims of up to €15,000; or
- the regional courts, for claims exceeding €15,000.

The amount in dispute is determined for each individual claim and not calculated as the sum of all claims accumulated in one class action. Nevertheless, claims that do not reach the threshold can jointly be brought with claims that do exceed the threshold at the court competent for the higher amount in dispute.

### **Who hears class actions in your jurisdiction (e.g., judges or juries)?**

First-instance civil cases in Austria are always heard by judges. In first-instance proceedings, the case will generally be heard by a single judge. Depending on the amount in dispute, this will be a judge at:

- a district court (where the amount in dispute is up to €15,000); or
- a regional court (where the amount in dispute exceeds €15,000).

Austrian law does not provide for juries in civil proceedings.

### **Is there any opportunity for class action forum shopping in your jurisdiction? If so, what are the implications?**

The jurisdiction of the courts is generally determined by the underlying claim.

While consumers usually have the benefit of filing a claim with the court that is competent at their place of residence, this forum is not available if the claim is assigned.

## BRINGING A CLASS ACTION

### **What is the limitation period for bringing a class action in your jurisdiction? What requirements and restrictions apply in this regard?**

There are no separate provisions regarding the time limits for bringing class actions in Austria. The general statute of limitations applicable to the underlying claims therefore applies.

The general statute of limitations in Austria is 30 years; however, most claims subject to Austrian-style class actions will be subject to the shorter limitation period of three years. This shorter limitation period applies, for example, to damage claims and starts to run from the time the claim could first have been brought.

Notably, the court does not examine whether a claim is time barred *ex officio*. Any such objections must be raised by a party.

### **Do collective actions require certification? If so, what requirements must be met to obtain certification?**

No.

### **What are the formal requirements for bringing a class action?**

Austrian-style class actions have no special formal requirements deviating from other civil actions.

### **What are the procedural and substantive requirements for bringing a class action? Do any minimum thresholds apply in this regard?**

The requirements for Austrian-style class actions are based on Section 227 of the Code on Civil Procedure and were further developed by Austrian case law.

Based on Austrian case law, the assigned claims for Austrian-style class actions must share:

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

As the Austrian-style class action is an institute based on the assignment of claims, in practice, these assignments will often be scrutinised by the defendant. To prove the claimant's capacity to sue, the validity of the assignments must thus be proven.

**How are potential class members notified of the proceedings? Is there a deadline by which they must join the class action?**

There are no mechanisms aimed at notifying potential class members. The (potential) claimant usually resorts to marketing measures to make potential class members aware of the intention to file an Austrian-style class action. Austrian-style class actions are based on assignments of claims, which can thus be compared to an opt-in approach. Therefore, any rulings on such claims will not be binding on persons that have not assigned their claims.

Claims must be brought before they are time barred (see question 4.1).

**How is jurisdiction over the class action determined?**

The general provisions of jurisdiction apply and are determined based on the underlying claim(s).

In general, the international jurisdiction of Austrian courts in civil matters is governed by EU law, international treaties and domestic provisions. Despite numerous exceptions, the primary approach of these provisions is to establish international jurisdiction based on the domicile of the defendant. Within the European Union, the main source is EU Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. If jurisdiction is not established by international treaties or EU law, the Austrian Law on Jurisdiction applies.

Once the international jurisdiction of the Austrian courts has been determined, the competent court based on the subject matter and location will be determined (see also questions 3.1 and 3.2.)

**How is the applicable law determined?**

Parties are generally free to agree on the law applicable to their dispute under the Austrian and European provisions on the conflict of laws. Absent such party agreement – which is very restricted when consumers are involved – the EU Rome I Regulation (applicable to civil and commercial matters) and Rome II Regulation (applicable to non-contractual obligations), and subsidiarily the Austrian Act on International Private Law, will determine the applicable law on the merits. For these laws to apply, the dispute must have some connection to a different country.

**Under what circumstances (if any) must security for costs be provided?**

The deposit of a security for costs is generally an exception in Austria and possible only in the case of foreign claimants residing outside of the European Union if no international treaty stipulates otherwise. In such cases, the defendant may apply for the court to order the claimant to provide security for costs.

**DISCLOSURE AND PRIVILEGE**

**What rules apply to disclosure in your jurisdiction? Do any exceptions apply?**

There is no (pre-)trial discovery in Austria and disclosure of documents is mandatory only in very limited instances. The general rule in Austria is that each party bears the burden of proof regarding its own submissions.

However, a party can generally apply to the court to order specific documents to be disclosed by another party. The opposing party must produce a specific document if:

- the opposing party relies on the document to prove its position;
- the opposing party is obliged by certain provisions of civil law to produce the document; or
- the requested document is qualified as a joint document (eg, the contract in dispute).

In other cases, the opposing party may refuse to produce the document and state reasons as to why the production of the document is refused – for example, if the document contains business secrets. It is ultimately up to the court to determine whether there is sufficient reason not to produce the document in question and whether to order production of the same.

If a court order to produce a document is not followed, the court may draw adverse inferences under the principle of free assessment of evidence. While a party to proceedings thus cannot be forced to produce a document, refusal to do so will likely lead to an unfavourable assessment by the court.

#### **What rules on third-party disclosure apply in your jurisdiction? Do any exceptions apply?**

The reasons a third party may be obliged to disclose a document are similar to those for disclosure by the parties (see question 5.1). Hence, a third party must produce a document that is deemed to be in its possession if:

- the third party is obliged by certain provisions of civil law to produce the document; or
- the requested document is qualified as a joint document between the applicant and the third party.

The court may order the production of a document from a third party. Unlike an order to submit a document to a party, such an order made to a third party is enforceable (see question 5.1).

#### **What rules on privilege apply in your jurisdiction? Do any exceptions apply?**

Austrian law contains various provisions that exempt certain persons (eg, family members) or professionals (eg, attorneys) from obligations to give evidence or testify before court.

#### **What are the specific implications of the rules on disclosure and privilege in class action proceedings?**

There are no specific implications of disclosure or privilege on class actions. The general rules on disclosure and privilege will apply.

## EVIDENCE

### **What types of evidence are permissible in your jurisdiction? Is expert evidence accepted?**

The Code on Civil Procedure specifically addresses five types of evidence:

- documents;
- witnesses;
- expert witnesses;
- judicial inspection; and
- examination of the parties.

This is not considered an exhaustive list, but rather sets out the usual and most relevant types of evidence of the 19<sup>th</sup> century – the time the law was enacted. The court is free to admit any type of evidence as long as the general rules for the taking of evidence are complied with.

These general rules prohibit the taking of evidence from persons with diminished capacity or clergymen, as well as posing questions regarding specific topics.

### **What is the applicable standard of proof in your jurisdiction?**

The Austrian courts are held to a high standard of proof. In some cases, statutory provisions lower the standard of proof and merely require a predominant likelihood or even allow for *prima facie* evidence. This is often the case in procedural respects – for example, when challenging a judge or arguing imminent danger when requesting interim measures.

### **On whom does the burden of proof rest in class action proceedings?**

There is no particular rule on the burden of proof for Austrian-style class actions and the regular procedural rules apply. The general principle followed is that every party bears the burden of proof for its respective position. For example, as a rule, regarding damages claims, the injured party must prove that the damaging party was at fault. The burden of proof, however, is reversed in contractual relationships. In such cases, the damaging party must prove that it was not at fault.

Also, the burden of proof is reversed in relation to warranty claims. The warranty period for movable objects is generally two years and starts with the handover of the product. Section 928 of the Civil Code provides for an assumption that a defect that becomes apparent within six months of the handover was present at the time of the handover. Thus, the selling company must prove the opposite.

Pursuant to Section 11 of the Warranty Act, the assumption that a product was defective at the time of handover is extended to a year if the receiving party is a consumer.

### **What are the specific implications of the rules on evidence in class action proceedings?**

Austrian-style class actions regularly deal with (damage) claims of individuals against large corporations based on a contractual relationship. Thus, the reversal of the burden of proof for contracts has the effect that the corporation will usually bear the burden of proof regarding any breaches (see question 6.3).

## SETTLEMENT

**Can the class action proceedings be discontinued without a full trial? If so, how, and what are the implications?**

Proceedings may be discontinued without a full trial if the parties settle. A settlement in court will *ipso iure* lead to termination of the proceedings if the entire matter of the dispute has been resolved by the settlement. Proceedings may also be suspended to provide time for settlement negotiations.

**While a claimant may also withdraw its claim, which leads to the termination of the proceedings, this will entail a waiver of the underlying claim if it is done at an advance stage of the proceedings. Is court approval of the settlement required? If so, what factors will the court consider in this regard?**

No.

## COURT PROCEEDINGS

**Are court proceedings in your jurisdiction public or private? If the former, are any options available to the parties to keep the proceedings or related information confidential?**

It is a fundamental principle of Austrian law that civil proceedings must be public. Exceptions and limitations exist, however. While it is therefore permitted for the general public to attend hearings, filming, live streaming and taking photographs during a hearing are not permitted.

Furthermore, the judge may – and in some cases must – exclude the public. For example, the court must exclude the public if it is suspected that there will be disruptions to the proceedings.

Any party may also request the exclusion of the public from (parts of) the hearing if, for example, business secrets are discussed.

The exclusion of the public and thus the restriction of a fundamental procedural principle cannot be taken lightly, so the unjustified exclusion of the public is grounds for annulment of a judgment.

**What approaches do the courts typically take to class action proceedings? Are preliminary issues commonly tried first, or are test cases commonly heard? What are the implications of these different approaches for the proceedings?**

Procedural law requires the court to discuss the factual and legal questions it regards as relevant in the case with the parties at the first hearing. This primarily ensures that the court does not render a surprising decision without the parties having had the opportunity to



argue their case. The court will usually set a schedule for the proceedings laying out which issues will be discussed and addressed first, as well as which evidence will be taken in what order.

As proceedings should be conducted in a cost and time-efficient manner, the court will address preliminary issues first. This will usually include any objections raised by the defendant, such as objections regarding:

- the court's jurisdiction;
- the validity of an assignment of the claims; or
- the claims being time barred.

Addressing preliminary issues first is not specific to class actions.

So-called 'test cases' are not determined by the court. An association (or special purpose vehicle) that has been assigned multiple claims will have to determine test cases which will be filed with the court(s) and which should be representative for the other assigned claims.

One benefit for test cases being filed with the courts is that the court fees are determined based on the amount in dispute. For large classes, the court fees may require a significant upfront investment from the claimant (often financed through a third-party funder). While judgments rendered in test cases are not binding on other members of the class, such decisions allow the claimant to collect valuable information to better assess the prospects of success for the claims of the rest of the class.

One point of caution for such test cases is the thresholds for appeals. If the amount in dispute does not exceed €5,000, there is no possibility to appeal to the Supreme Court against decisions of the court of second instance.

### **How do class action proceedings unfold in your jurisdiction?**

Austrian-style class actions are subject to the same procedural steps as any civil lawsuit in Austria.

Proceedings are initiated by filing a statement of claim. The court will then perform a cursory assessment of its jurisdiction and, if deemed competent to hear the dispute, will serve the statement of claim on the defendant. In proceedings before the regional courts, the defendant will simultaneously be ordered to file its statement of defence within four weeks.

The court then schedules a preparatory hearing. The first hearing follows the same steps and involves:

- dealing with any objections (eg, regarding the court's jurisdiction, the validity of assignments, time limitations);
- the recital of the parties' submissions (usually by way of referring to the written submissions);
- a mandatory attempt at settlement; and

- preparation of the further programme of the proceedings, which in a non-binding way outlines how the proceedings will be conducted (eg, when specific matters will be discussed or when certain evidence will be taken).

From this point onwards, proceedings will vary; but they will usually involve various hearings and the taking of witness and documentary evidence, as well as expert evidence. Once the court is satisfied that it has sufficiently examined the matter and is ready to render its decision, it will close the proceedings.

### **What is the typical timeframe for class action proceedings?**

No specific data is available in relation to the duration of Austrian-style class actions. Reference may be made to the median duration of civil proceedings available for 2016: district court proceedings had a median duration of six months (ie, 50% of approximately 45,300 cases were decided in less than six months). At the regional courts, the median duration was 13 months. Only 2.3% of all contentious civil proceedings had a duration of more than three years.

As Austrian-style class actions deal with a multitude of claims and often complex issues, there is a tendency for such proceedings to go beyond the usual duration of civil proceedings.

### **Is the decision issued in class action proceedings binding on all members of the class?**

Judgments of the Austrian courts are generally binding only between the parties to the proceedings and thus do not have a direct legal effect on the other members of the class. However, the same court will generally not render a different ruling if the claim is based on the same (or similar) facts. Also, judgments of higher courts may set some kind of precedent for similar cases (although they are only legally binding between the parties to the proceedings).

## **REMEDIES**

### **What remedies are available in class actions in your jurisdiction?**

The specific provisions on class actions by authorised associations set out in the Act on Consumer Protection are aimed at securing an injunction only.

In contrast, in Austrian-style class actions, the same remedies are available as in any other civil proceedings. These are:

- performance;
- injunction;
- declaratory relief; and
- shaping of rights.

In practice, Austrian-style class actions are typically aimed securing at performance (eg, payment of damages) and/or declaratory relief.

## **Are punitive damages awarded in your jurisdiction?**

No.

## **What factors will the courts consider in deciding on the quantum of damages?**

In calculating damages, the courts will often appoint a court-certified expert of the respective subject matter of the proceedings. The calculation of damages is particularly challenging in investor proceedings, which are often subject to Austrian-style class actions. The factors to be considered by the court include whether the investor would have made the same investment were it not for the lack of information and/or poor advice provided. Also, any impact of so-called 'market risk' will be borne by the investor. 'Market risk' refers to price losses which are not related to advisory errors or price manipulation, but are due to general changes in market prices.

## **9.4 How are damages allocated among the members of the class?**

Damages are awarded for each individual claim brought. How much an individual member of an Austrian-style class action receives will very much depend on whether a third-party funder has financed the proceedings. In this case, the costs of the proceedings for all cases brought will usually be shared by the members of the class and a success fee will be allocated to the third-party funder.

## **APPEALS**

### **Can the court's decision in the class action be appealed? If so, on what grounds and what is the process for doing so?**

In Austrian-style class actions, the general rules for civil proceedings apply. First-instance decisions of the district courts may be appealed before the regional courts. The grounds for challenge are limited to incorrect legal assessment and nullity if the amount in dispute does not exceed €2,700. First-instance decisions of the regional courts may be appealed before the higher regional courts.

Appellate court decisions may in principle be appealed to the Supreme Court. However, this is subject to restrictions. If the amount in dispute does not exceed €5,000, an appeal to the Supreme Court is not permitted. If the amount in dispute is between €5,000 and €30,000, an appeal to the Supreme Court is subject to the appellate court granting leave to appeal. In general, an appeal to the Supreme Court is admissible only if the decision depends on the solution of a question of substantive or procedural law which is of considerable importance to maintain or establish legal uniformity, legal certainty or legal development.

The term for filing an appeal depends on the type of the decision by the court. For decisions on the merits, the parties have four weeks to appeal. For other decisions of the court on procedural matters which are rendered as court orders, the term for filing an appeal is generally 14 days.

## **COSTS AND FEES**

## **What costs and fees are incurred when litigating in your jurisdiction? Can the winning party recover its costs?**

The costs that are incurred in Austrian court proceedings include:

- legal fees;
- court fees;
- fees of expert witnesses; and
- other miscellaneous costs, such as costs of translators.

Regarding the recovery of costs, Austrian law follows the 'costs follow the event' approach. Hence, the successful party will usually be awarded the recovery of its costs corresponding to its rate of success (eg, success rate of 70% = recovery of 70% of own costs and bearing 30% of the opposing party's costs, effectively recovering 40% of own costs).

The recovery of legal fees is regulated by the Statutory Act on Lawyers' Tariffs. Only costs for necessary acts of legal representation are recoverable; they are determined based on the amount in dispute and the complexity of the case. While only these costs may be recoverable, the parties are free to enter into deviating fee arrangements with their legal counsel. This autonomy is, however, subject to statutory constraints such as the prohibition on contingency fee arrangements.

## **How are the costs and fees allocated among the members of the class?**

In Austrian-style class actions, the individual members who assigned their claims are not party to the proceedings. Thus, they cannot be awarded costs by the court or ordered to pay the costs of the opposing party. It is up to the claimant to reach agreement with the members of the class that assigned their claims on the issue of costs.

As the issue of costs is central to most proceedings, the agreement between the claimant and the assignors will usually contain specific provisions on this issue. Moreover, if third-party funders are financing the proceedings, such an agreement will also be included in an underlying funding agreement. The funder will usually bear the costs of the proceedings but will demand reimbursement in case of success (plus a success fee).

## **What happens if the claim of a class member is withdrawn before the proceedings have terminated?**

If a claim is withdrawn, the claimant must reimburse the opposing party for the costs pertaining to this claim, unless a binding decision stating otherwise has been issued.

## **Do the courts manage costs during the proceedings?**

Austrian civil proceedings are governed by the principle of the economy of the proceedings, which requires the cost and time-efficient resolution of disputes. The court will act following this principle and the parties are held to aid the court in advancing proceedings as efficiently as possible.

If parties cause undue delay to the proceedings, the court may order the delaying party to bear the costs incurred due to any such delays.

### **How do the courts assess the costs and fees at the end of the proceedings?**

The parties can request the recovery of their costs, which must be accompanied by a schedule of these costs. The opposing party then is given the opportunity to object to the requested costs.

## **FUNDING**

### **Is legal aid available for class actions in your jurisdiction? If so, what requirements and restrictions apply in this regard?**

Legal aid is generally available to natural and legal persons in Austria if a party is unable to bear the costs of the proceedings. In such cases, the party must disclose to the court all its assets, income and expenses. Depending on the application of the party, it may then be exempted from paying court fees, expert fees and any other fees that may be incurred during the proceedings. If the complexity of the case so requires or if representation is mandatory due to the type of proceedings, the party granted legal aid will also be appointed a lawyer. Lawyers are generally not compensated for legal aid work.

In practice, claimants in Austrian-style class actions are usually financed by a third-party funder which pledges to pay the costs of the proceedings. In this case, the claimant will not be entitled to legal aid.

### **Are contingency fees and similar arrangements permitted in your jurisdiction? If so, what requirements and restrictions apply in this regard?**

No. Contingency fee arrangements are not permissible under Austrian law and, in particular, Austrian bar rules. Clients can agree with their lawyers on an additional success fee in case of success in the proceedings and a reasonable reduced lawyers' fee to be paid irrespective of the outcome of the proceedings.

### **Is third-party funding permitted in your jurisdiction? If so, what requirements and restrictions apply in this regard?**

In general, parties may use the services of a third-party funder for proceedings in Austria.

Funding agreements are held to the same standard as any other contract and are void if found to be against the law or against good morals. In Austria, attorneys are prohibited from concluding contingency fee arrangements, which has sparked some debate as to whether the same should apply to third-party funders. A third-party funder that does not have an active role in proceedings (ie, that does not represent a party or provide legal advice) will generally not fall under this prohibition.

Furthermore, the Supreme Court has recently confirmed – in an *obiter dictum* – that third-party funding is permissible.

The funder as a third party will not be liable to an opposing party in the proceedings for costs incurred by the opposing party.

### **What are the specific implications of such various funding arrangements in class action proceedings?**

Austrian-style class actions are usually brought after obtaining the services of a third-party funder, as they require significant resources to administer the proceedings and underlying assignments, as well as the often very complex legal and factual questions that form the basis of the dispute.

Usually, the costs of Austrian-style class actions will be advanced by a third-party funder that will be reimbursed and receive a share of the proceeds in case of success. The third-party funder's claim will often be secured by the assignment of claims or by concluding priorities agreements. The third-party funder will usually be approached by the (future) claimant to which the members of the class have individually assigned their claims.

## **TRENDS AND PREDICTIONS**

### **In which areas are class actions most commonly brought? Have there been any major cases of note in recent years?**

The first Austrian-style class action to be filed concerned package travel deals. Since then, major Austrian-style class actions have been filed:

- in the technology sector, against social network Facebook for alleged breaches regarding user data;
- in the automobile sector, against Volkswagen regarding the diesel emissions scandal; and
- in the finance sector, against Immofinanz by investors.

### **How would you describe the current class action landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?**

Following a noticeable increase in the popularity of Austrian-style class actions in recent years, a major development on the legislative front is rapidly approaching. After the European Union enacted the Directive on Representative Actions for the Protection of the Collective Interests of Consumers (2020/1828), the Austrian legislature must implement the directive into national law by 25 December 2022. Its provisions will then enter into force on 25 June 2023.

The directive aims to harmonise representative actions across EU member states and in particular enable such actions to be initiated by so-called 'qualified entities' which are certified to act in the interests of consumers.

## **TIPS AND TRAPS**

**What would be your recommendations for the smooth progress of class actions in your jurisdiction and what potential pitfalls would you highlight?**

As Austrian-style class actions are brought based on the assignment of multiple claims to a single person or entity, these underlying assignments are regularly scrutinised in the proceedings. It is therefore advisable to pay close attention to these assignments and corresponding documents. As there are no so-called 'test cases' and a court's ruling generally will not be binding on other members of the class whose claims have not (yet) been filed, the short limitation period can be a potential pitfall.