

Collective actions in the Czech Republic: a new draft law

There has been intense debate in recent years regarding the need to introduce the possibility of bringing collective (class) actions in the Czech Republic. In relation to a proposed EU regulation, the Czech government and lawmakers have also started to prepare a draft of a new domestic law. If passed by the Parliament, the new draft law will become a significant tool for class actions and will spur many businesses on to renew their internal compliance guidelines.

The new proposed legislation at both the EU level and in the Czech Republic will be briefly considered below. Both new draft laws will bring significant challenges for lawyers and their clients.

European initiative and the new Czech draft law

At the initiative of the Czech European Commissioner Věra Jourová, a proposal for a new directive on representative actions for the protection of the collective interests of consumers (the "**Directive**") was submitted on 11 April 2018. This new Directive aims to introduce the collective protection of consumer rights and was supported by the Member States and the Council of the European Union. The European Parliament is currently discussing its final adoption of the Directive.

In reaction to the Directive, the Czech Ministry of Justice submitted a proposal for its own new regulation of collective actions, now under the name of the Collective Proceedings Act. This proposal triggered a wave of discussions and the draft law is still going through the legislative process.

Interestingly, the European Directive and the Czech draft Collective Proceedings Act differ initially in terms of their respective scopes. While the Directive focuses primarily on consumer protection, the Czech draft law is intended to have a more general impact, regulating for example disputes about compensation for damage under the Business Corporations Act, i.e. collective disputes between businesses. However, the government has recently withdrawn this concept, modified the draft law and limited the proposed law only to consumers, similar to the Directive.

Nevertheless, the draft Collective Proceedings Act is still being discussed and can be significantly modified during the later stages of the legislative process.

Key goal of the new draft law

Most importantly, the new Collective Proceedings Act will enable groups to bring collective civil actions in certain cases, unify regulations that are at present fragmented, and relieve the Czech judicial system from the need to consider the same claims again and again.

The Czech law does not comprehensively regulate collective actions for the enforcement of private claims. Such protection can be found in part in the Civil Code and the Code of Civil Procedure and also to some extent in the Consumer Protection Act, where associations or professional organizations with a legitimate interest in the protection of consumers are entitled to bring an action before a court in certain cases.

Collective action and types of collective proceedings

The essential instrument of the Collective Proceedings Act is a collective action. A wide range of parties will be able to make use of these new



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proceedings, such as a group (i.e. multiple persons with similar rights arising from the same factual or legal event), group members, group representatives, group administrators and interest groups.

The two main types of proceedings defined in the proposed law are opt-in proceedings and opt-out proceedings.

The opt-in proceedings are the basic and universal type of proceedings. To initiate opt-in proceedings, the applicant must satisfy the basic requirement of obtaining the written consent of at least 10 members of the group (therefore, the group must consist of at least 10 members). Furthermore, the collective proceedings must be an economically appropriate way of dealing with the dispute, considering the number of members of the group and the rights and legitimate interests of the members. There also must not be any other collective proceedings on the same matter.

The opt-out proceedings can be used if there is a clearly defined group of persons whose members have negligible claims that cannot be effectively recovered by the members individually. The applicant must provide proof that it has obtained the written consent of at least 100 members of the group for the initiation of the proceedings and, again, there must not be any other collective proceedings on the same matter. The Collective Proceedings Act also defines the solvency condition for opt-out proceedings (applicants need sufficient funds to fulfil their eventual obligations, such as the costs of the collective proceedings).

Proposed procedure under the Collective Proceedings Act

Aside from the conditions mentioned above, only a member of the group or non-profit legal person with the written consent of the group (at least 10

or 100 in the case of the opt-in or opt-out respectively) can initiate the collective proceedings at court. In opt-out proceedings, a non-profit legal person may also bring a collective action. Therefore, apart from the general requirements for court actions regulated under the Code of Civil Procedure, the collective court action has to meet further specific requirements under the Collective Proceedings Act.

The court case is initiated by proceedings on the admissibility of a collective action, in which the court must decide whether the conditions for starting proceedings have been met on the merits of the case. The collective proceedings on the merits will be initiated by publication of a final and conclusive resolution on the admissibility of the collective action in the register of collective actions, which is also to be newly established. The period for submitting an application or a notice of withdrawal, respectively, will begin depending on the type of proceedings; opt-in or opt-out.

The application is a new instrument, within opt-in proceedings stated above. Its main purpose is to enable the person applying to become a member of the group. The applicant is required to keep a list of members and submit it to the court. Upon submission of the list, the court is required to establish a collective proceedings plan that will also be published in the register of collective actions. In the collective proceedings plan, the court sets the dates of hearings, during which the participating group members can express and exercise their rights.

The collective proceedings may be terminated by a settlement between the parties; otherwise, a decision on the merits will be delivered, which will subsequently be published in the register of collective actions. An appeal, as a legal remedy against a decision on the merits, will also be available to the parties to the case.



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New challenges for business; new opportunities for consumers

The forthcoming Collective Proceedings Act could lessen the burden on the strained judicial system and strengthen the collective protection of consumer rights. However, it will also bring a number of difficulties for businesses that will need to prepare for the new legal environment, including its specific challenges.

The new draft law can be changed and modified. Of course, the final version of the Directive may also have an impact on the Czech law. After the draft is passed in the Czech Parliament, it will be necessary to review the issue once more and consider all relevant impacts and risks.

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