More rights for consumers - new class-action proceedings

* **Failed purchase, wrong information on packaging, problems with a bank or travel agency - the list of cases that may end in court is a long one.**
* **A new law was introduced that facilities class action proceedings for consumers to pursue their claims.**
* **UOKiK awaits notices from authorised entities, to enter them in the register and support in launching class action lawsuits with courts.**
* **Check when you can expect aid in enforcing your rights and what form that aid can take.**

**[Warsaw, 2 September 2024]** A new path for seeking claims has been open for consumers for a week now - according to the directive it is called **“representative action”**, interchangeably, based on national legislation, with: **“new class action lawsuits”**. This new tool is the epitome of the “strength in numbers” concept. For lawsuit in regard to a claim to be filed, at least 10 consumers are required, who will agree to be represented in a given case. This is all done on an “opt-in” basis - if you are an injured party and wish to accede to the proceedings, you need to express the will to do so. Another new thing is that the party filing the suit and organising the group is the **authorised entity**, i.e. a recognised non-governmental organisation which prepares the lawsuit itself as well as takes care of all other formalities.

 - I trust that these new solutions will improve the current system of pursuing claims. We await notices from authorised entities, to enter them in the register and support in launching class action lawsuits with courts. I hope the lawsuits will be ones where the plaintiffs will have concrete claims against companies to benefit the consumers, i.e. a reimbursement of a given amount of money, replacement of the purchased item, or dissolution of a contract. This may be an additional support for consumers in effective enforcement of the law. I am also curious as to potential suits where the authorised entity will be able to demand that the entrepreneur stop a given practice. In some cases, these may be actions supplementing our own proceedings - explains Tomasz Chróstny, President of UOKiK

**What will consumers gain?**

* **Broad scope.** Class action lawsuits will be filed against companies who use practices infringing the **general interests** of consumers. The list of cases that may end up in court this way is very long. It covers various industries where companies conduct sales or provide services to consumers. These are: carriers, companies providing long distance services, food producers, cosmetics producers, financial institutions and banks, telecom companies, insurers, travel agents, and many more.
* **Claims.** First and foremost, the group does not need to standardise the amount of their claims. Moreover, it can include parties injured due to infringement of the same law, and not just those injured in the same event. In practice, this means that, for example, tourists lodging complaints in regard to failed vacation may demand different amounts of damages in a single lawsuit in connection with a faulty performance of different contracts by the same travel agency.
* **Limited costs.** The consumer is not a party of the proceedings and does not bear the associated costs. The only fee that may be charged is the cost of acceding to the group, collected by the authorised entity. The Act determines the maximum level of that fee, i.e. 5% of the value of the claim. At the same time, no more than PLN 1,000 in cases for non-pecuniary claims and PLN 2,000 in cases for pecuniary claims. If the representative action is filed by the Financial Ombudsman, no such costs will be charged.
* **Various facilitations.** There are no deposits in these lawsuits, and in the case of a settlement, the consumer may declare their withdrawal from the suit if they are not satisfied with the result. If that happens, the settlement is not binding on the consumer and they may file a lawsuit individually or accede to another class action suit. The Act also gives consumers the ability to replace the authorised entity. This may either be an independent decision of the group or a situation where the authorised entity is struck from the register.

**Authorised entities - meaning who?**

Authorised entities that may file lawsuits are all those which UOKiK enters in the [register](https://uokik.gov.pl/bip/rejestr-podmiotow-upowaznionych-do-wytaczania-powodztw-grupowych) it keeps, or which the European Commission enters on the [list](https://representative-actions-collaboration.ec.europa.eu/cross-border-qualified-entities) of organisations that can act in cross-border class action lawsuits. Ex officio, one such entity is the [Financial Ombudsman](https://rf.gov.pl/).

First and foremost, an authorised entity has to conduct a not-for-profit activity in the scope of protecting consumer interests for at least 12 months before applying to UOKiK for entry into the register. Furthermore, it needs to: be a legal person, be engaged in consumer protection based on its charter, and remain independent and not be influenced by other entities.

The authorised entity may demand in the lawsuit recognition of practices infringing general consumer interests. At that point, it files with the court without participation of the consumers. If, however, in the same or separate proceedings it demands specific claims for a company, e.g. reimbursement of a specific amount, it needs to gather a group of at least 10 injured parties.

The suit must pertain to the scope of the entity’s charter-mandated tasks. For example, if it is only engaged in financial services, it cannot file a suit concerning food labels or tourist services. The court will check that in all cases.

The Act gives the ability to seek cross-border claims, which is significant in light of the common market and consumers making purchases throughout the EU. It means that an authorised entity appointed in any EU Member State may file a class action lawsuit with a Polish court and a Polish authorised entity - in any other EU Member State.

**Guarantees for companies**

One very significant element of efficient representative suits is the application of mechanisms of inspecting authorised entity financing. Such actions will be taken by: UOKiK - at the stage of entering new entities in the register, and courts - at any stage of the proceedings. The latter will also check whether an entity’s financing, e.g. by companies, does not affect consumer protection and whether the authorised entity is not financed e.g. by a competitor of the sued company.

In cases concerning the application of practices infringing the general interests of consumers, the authorised entity must call the company to cease and desist such practices, setting a 14-day deadline to do so. If this does not work, it can then file a suit. Additionally, a call or any other letter sent to the company prior to the lawsuit cannot include other demands or claims, in particular a transfer of funds. This solution is to ensure that the companies are not “blackmailed” by authorised entities at the pre-trail stage.

**UOKiK role**

The Authority gains new powers. First and foremost, UOKiK keeps a [register of authorised entities](https://uokik.gov.pl/bip/rejestr-podmiotow-upowaznionych-do-wytaczania-powodztw-grupowych) and verifies whether the entity meets the requirements to be entered into it.

The Authority will keep the authorised entity informed in regard to any significant issues in connection with the accusations to be included in the suit against a given company in the prepared class action. In particular, whether it is conducting proceedings in regard to it concerning the same infringement. This will prevent overlap of activities against the same company and will be a substantive support for the claimants.

Additionally, UOKiK may accede to the class action suit in cases of discontinuation of practices infringing on general consumer interests, as well as potentially present a significant opinion in the case. The Act implements Directive 2020/1828 on representative actions for the protection of the collective interests of consumers.

Learn more: [**Ustawa z dnia 24 lipca 2024 r. o zmianie ustawy o dochodzeniu roszczeń w postępowaniu grupowym oraz niektórych innych ustaw.**](https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20240001237)

**Consumer Support:**

Consumer helpline: 801 440 220 or 222 66 76 76
E-mail: porady@dlakonsumentow.pl
[Consumer Ombudsmen](https://uokik.gov.pl/pomoc.php) – in your town or powiat