



THE ONLY GLOBAL ASSOCIATION OF YOUNG LAWYERS

# **Erin Brockovich turns European : is there an interest for class actions?**

**Litigation/Antitrust/Distribution law Commissions**

**Prague, 2014**

National Report of Poland

Anna Witkowska  
Bartłomiej Jankowski

Wierciński, Kwieciński, Baehr Sp. k.

Polna 11 Street

00-633 Warsaw

T: +48 22 201 00 00

[biuro@wkb.com.pl](mailto:biuro@wkb.com.pl)

General Reporters

<p>Jean-Philippe Arroyo J.P. Karsenty &amp; Associés 30, rue d'Astorg 75008 – Paris – France + 33(0)1.47.63.74.75. <a href="mailto:jpharroyo@jpkarsenty.com">jpharroyo@jpkarsenty.com</a></p>	<p>Joost Fanoy BarentsKrans N.V. Lange Voorhout 3 Postbus 30457 2500 GL Den Haag – The Netherlands +31 (0)70 376 07 50 <a href="mailto:joost.fanoy@barentskrans.nl">joost.fanoy@barentskrans.nl</a></p>
---	---

## **INTRODUCTION**

Class actions are often related and associated to the American legal culture, as it is illustrated by several movies including the famous “Erin Brockovich” picture.

However, the class actions or collective redress actions exist also in other jurisdictions, notably in Europe.

Precisely, the European Commission has recently given an accurate definition of collective redress and of its aim in its communication named “Towards a European Horizontal Framework for Collective Redress”<sup>1</sup>, accompanying its “Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law”<sup>2</sup>:

*“Collective redress is a procedural mechanism that allows, for reasons of procedural economy and/or efficiency of enforcement, many similar legal claims to be bundled into a single court action. Collective redress facilitates access to justice in particular in cases where the individual damage is so low that potential claimants would not think it worth pursuing an individual claim. It also strengthens the negotiating power of potential claimants and contributes to the efficient administration of justice, by avoiding numerous proceedings concerning claims resulting from the same infringement of law.”*

Although collective redress and class actions exist in several jurisdictions in the world, there are some differences arising from different legal and procedural cultures, notably between the Common Law and the Civil Law legal systems.

Thus, the purpose of this questionnaire is to identify such differences as well as the common points between the collective redress and class actions in various jurisdictions.

There is also a particular focus on class actions in the anti-trust field, which is one of the main areas for such actions, as shown by the recent proposal for an EU “Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union”<sup>3</sup>.

---

<sup>1</sup> COM(2013) 401/2

<sup>2</sup> C(2013) 3539/3

<sup>3</sup> COM(2013) 404 final

## 1. Existence and scope of class actions/collective redress actions

- 1.1 In your jurisdiction, is there any specific legislation dealing with class actions/collective redress actions, and is there a specific definition of such actions?

In Poland, the legislation dealing with class actions is the Act dated 17 December 2009 on Group Litigation (the “GLA”). According to Article 1 thereof it pertains to judicial civil procedure in cases where the same type of claims are sought by at least 10 people, provided that all claims have one and the same, or at least the same, factual basis.

- 1.2 Are class actions/collective redress actions applicable to any legal action, irrespective of the legal ground and the area of law, or do they have a scope limited to some fields of law (such as consumer law, competition law, environmental law...)?

The GLA’s applicability is limited to the following types of claims: (i) consumer claims, (ii) product liability claims, (iii) tort claims (with the exclusion of claims for protection of personal rights).

- 1.3 Is there any interplay between several statutes, for instance between competition law and consumer law statutes? Is it allowed to bring a class action / collective redress action on the ground of several statutes, or is it mandatory to ground it on either set of statutes?

Each class action is to be grounded on the GLA. There is no other piece of Polish legislation that would refer to this type of proceedings. Any issues not addressed in the GLA are subject to the standard provisions of the Polish Code of Civil Procedure. Obviously, in terms of substantial law, the plaintiffs may base their claims on every statute (significant in view of the facts of the given case), for example on the Polish Competition and Consumer Protection Act or the Polish Civil Code. Thus, the charges are based on the substantive law and the function of the GLA is merely limited to the modification of the court proceedings.

- 1.4 Is it allowed to initiate summary/emergency proceedings in class actions / collective redress actions?

No, it is not allowed.

1.5 Through class actions/collective redress actions, is it possible to claim cessation of unlawful practices/behaviors (“injunctive relief actions”) and/or to claim compensation for damage suffered (“compensatory relief actions”)?

Yes, in principle, it is possible to claim both, cessation of unlawful practices as well compensation for damage suffered.

1.6 If it is possible to claim compensation, can every type of damage suffered by the victims can be compensated, or only some types of harms (material damages/bodily injuries, death)?

In Clause 1.2 we refer to the types of damages the compensation for which can be sought under the GLA. In every case (assuming it qualifies for the GLA) every type of a damage might be compensated.

1.7 Can the compensation awarded to the victims exceed the compensation that would have been awarded if the claim had been pursued by means of individual actions? More particularly, are punitive damages, leading to overcompensation in favour of the claimant party of the damage suffered, allowed and applied in class actions / collective redress actions?

The GLA does not provide for such measures.

1.8 More particularly in the anti-trust field, how does the ‘passing on’ defence (demonstrating that the claimant passed on the whole or part of the overcharge resulting from the infringement) play a role in your country and have such a defence been successful?

The availability of the ‘passing-on’ defence has yet to be established in the Polish legal system. Currently, there are no Polish law provisions which would expressly admit or preclude a ‘passing-on’ defence. Nor does the Polish law know the notion of an ‘indirect purchaser’, whether as a defence raised in a damages suit, or as a way of reducing the amount of the damages payable. But a similar quantifying effect in relation to damages is achieved by the principle of *compensatio lucri cum damno*. According to this principle, the damages awarded to the harmed party cannot exceed the amount of the loss suffered by the party, which cannot be enriched following the award. Damages have the sole purpose of compensating for the loss and not that of punishing the wrongdoer (in general terms, punitive damages do not exist in the Polish legal system). If the harmed party not only sustained a loss but also obtained some benefits in connection with the loss, the court will take this into account after considering all the circumstances of the case. This approach can be applied where the loss and benefits are natural consequences of the same event, such as overcharging

resulting from a cartel or abuse of a dominant position, if the harmed party passes the excessive price on to another market participant with a profit margin added. In other words, an entity suffering from an overcharge imposed by a cartel or dominant company may reduce its own losses by ‘passing on’ the higher prices to its customers. The entity will suffer losses having been charged excessively, but at the same time it passes on some of its losses to its customers. In consequence, the amount of damages awarded to such entity should reflect the circumstance in which the plaintiff has gained partial compensation by way of charging its customers with excessive prices.

It is also noted that, although the passing on defence and the notion of indirect purchaser are alien to Polish law, there are some conclusions that can be drawn about them by reference to the general rules. As regards the passing on defence: (i) there is no presumption that higher prices have been passed on; and (ii) the burden of proof that the loss has been passed on is on the defendant, i.e. the cartel members or the dominant company. This means that first the harmed party (plaintiff) proves its loss and next the defendant, in response to the plaintiff’s claim, proves that the plaintiff has passed the loss on. As regards the notion of indirect purchaser: (i) there is no presumption that higher prices have been passed on; and (ii) an indirect purchaser can claim damages relying on indirect causation.

With no authority on the matter to date, we are yet to see how the civil courts will tackle the issue of damages claims from indirect purchasers.

## **2. Standing and admissibility to bring class actions/collective redress actions**

2.1 In your jurisdiction, may the class actions / collective redress actions be brought by any group of individuals or legal persons claiming to have been harmed by the same alleged infringement (“collective actions”), and/or can they be brought by an authorized representative entity/ ad hoc certified entity/ public authority on behalf and in the name of two or more individuals or legal persons claiming to be victims of the relevant practice (“representative actions”)?

A class action is brought to court by a group’s representative which may be a person who is a member of the group. A group’s representative can bring group proceedings in which he/she is the only plaintiff, but whose claim serves to represent those of the other group members. In consumer protection cases, a group may elect a Municipal Consumer Ombudsman to fulfil the role of plaintiff. The plaintiff must be represented by a qualified attorney-at-law. In the Polish legal system, a Municipal Consumer Ombudsman is an official appointed by a competent local authority. Under the GLA, representative bodies may not bring a claim.

2.2 Are there any criteria/rules defining the cases where one or another kind of actions referred to in 2.1 could apply?

Not applicable

2.3 In case of representative actions, are there rules defining the requirements for representative entities (for instance: a non-profit character; a relationship between the main objectives of the entity and the rights that are claimed to have been violated; financial/human resources/legal expertise requirements...), and can the representative entities be sanctioned if they do not comply with such requirements?

Not applicable

2.4 Is the admissibility of a class action / collective redress action examined by the courts at an early stage of the proceedings, or is it ruled together with the merits of the case?

The court decides on the admissibility of a group claim and on the admissibility of a group litigation at an early stage of the proceedings. If the requirements for a group litigation have not been fulfilled, the claim is rejected. Parties can appeal the decision on admissibility of a group litigation, as well as the decision rejecting the claim. The same legal consequences to those which follow bringing of a group claim apply to the same claims brought individually by group members within six months from the time when the group claim was rejected.

2.5 Is it possible for third parties to bring actions? If so, are indirect purchasers able to bring actions with respect to antitrust infringements?

It is possible for third parties to bring an action. After the decision on the admissibility of a group litigation has become enforceable, the court issues a decision commencing the litigation. The decision contains information regarding, among other things, the information for potential group members including the announcement that they can join the group by issuing a statement to the group representative within two months from the date of publication of the decision (joining the group after the two months' period has expired is not possible).

The statement on joining the group should contain the claim, the circumstances justifying it, circumstances justifying group membership, and should present evidence.

2.6 How may claims be aggregated? For example, is it possible for multiple plaintiffs to file a complaint jointly?

The GLA concerns judicial civil procedure in cases where the same type of claims are sought by at least 10 people, provided that either of the following requirements is fulfilled:

- 1) claims have the same factual basis; or
- 2) claims have the same legal basis, and the crucial factual conditions justifying the claims are common for all the claims.

It is possible for multiple plaintiffs to file a complaint jointly. However, a class action concerning pecuniary claims is possible only if the amount of the claim of each member of the group has been made equal with the others. This can also be done in sub-groups consisting of minimum 2 group members.

2.7 More generally, what procedural defences are available for defendants short of trial and therefore before the national court decides on the merits of a collective action?

The defendant may contest group membership of any group (or sub-group) member during the time period specified by the court, not shorter than one month.

The claimant, if so requested by the defendant, has to give security for costs. Such a request cannot be made by the defendant later than upon the completion of the first procedural activity.

### **3. “Opt-in” vs “Opt-out” systems and information on the class action/collective redress action**

3.1 In your jurisdiction, is the claimant party/group formed on the basis of express content of the natural or legal persons claiming to have been harmed (“opt-in” principle), or is it composed of all individual belonging to the defined group and claiming to have been harmed by the same of similar practice unless they actively opt out of the group (“opt-out” principle)?

Polish law provides for the “opt-in” principle with respect to the formation of a claimant group in class proceedings. Natural or legal persons claiming to have been harmed may become a member of the claimant group based on a clear statement confirming their intention to join the group stating that they accept the group representative, and that they agree for their claims to be included in the group litigation.

3.2 What are the effects of the judgment on the victims in the “opt-in” or “opt-out” system chosen in your jurisdiction?

The final judgment issued by the court in class action proceedings produces legal effect only with respect to the members of the particular claimant group (*res judicata*). Therefore, any other party which did not decide to join such claimant group, but has the same type of claim as the claim which was subject to given class action proceedings, may still assert its claim in court, i.e. by way of individual proceedings or other class action proceedings.

3.3 May a member of the claimant party be free to leave the claimant party at any time before the final judgment is rendered or the case is otherwise settled, and if he/she/it may, on which conditions?

A member of the claimant group may leave the group based on a respective statement which can be addressed to the court by the time the court makes a final decision on the membership of the group (which decision may be made by the court in a closed-door hearing). After such final decision has been made by the court, no person or entity may join or leave the group anymore.

3.4 May a natural or legal person claiming to have been harmed in the same mass harm situation be able to join the claimant party at any time before the judgment is rendered or the case is otherwise settled?

No, a natural or legal person may join the group only by the time the court makes a final decision on the membership of the group (please refer to our respective answer in Clause 3.3 above).

3.5 Is the defendant informed about the composition of the claimant party, and in which conditions?

The group representative is obligated to make a list of all those who joined the group and deliver it to the court, attaching all the statements of group members (together with the statement of claim). The court delivers such list together with the statement of claim to the defendant. The final decision of the court on the membership of the group (issued after the period of time during which the composition of the group may change) is also delivered to the defendant.



- 3.6 Are there any provisions regulating the way the victims of the practice are informed about a possible or actual class action / collective redress action? More particularly, are there safeguards regarding the protection of the reputation or the company value of the defendant before (and after) its responsibility for the alleged infringement is established by the final judgment?

There are no specific safeguards regarding the protection of the company value of the defendant before (and after) its responsibility for the alleged infringement is established by the final judgment. After the decision on admissibility of the group litigation has become enforceable, the court issues a decision commencing the litigation. Such decision contains, in particular, information for potential group members, including an announcement that they can join the group by issuing a statement to the group representative within two months from the date of publication of the decision. This decision is published in the Court and Commercial Gazette (*Monitor Sądowy i Gospodarczy*), as well as in the press if the court considers it desirable. The publication is not necessary if the circumstances clearly show that all the potential group members already issued statements on joining the group.

- 3.7 Is there any registry of class actions / collective redress actions in your jurisdiction? If there is such a registry, how is it possible to access it?

No, there is no such registry in Poland

#### **4. Interplay of class actions / collective redress actions and public enforcement**

- 4.1 In your jurisdiction, do class actions / collective redress actions have to follow on from infringement decisions adopted by public authorities in regulated policy areas like competition law (“follow-on actions”) or is it possible to start a stand-alone action (ie, without a prior finding of infringement of any applicable antitrust laws by a national court or competent authority)?

In Poland the class action proceedings may apply to the following areas of law / sectors: (i) consumer protection cases; (ii) product liability cases; and (iii) tort cases (including cases resulting from the infringement of the competition law), excluding personal rights protection e.g. defamation. Therefore, if a particular claim may be allocated to one of the areas mentioned above, it may be asserted within the class action proceedings as a stand-alone action or follow-on action (as defined in the question) which may be important in the case of proceedings relating to the infringement of the competition law.

- 4.2 Are such stand-alone and/or follow-on actions available for both bilateral antitrust infringements (eg, a cartel) as well as unilateral antitrust infringements (eg, an abuse of a position of dominance)?

Yes. Such stand-alone and/or follow-on actions are available for both bilateral antitrust infringements and unilateral abuse of a dominant position.

- 4.3 In such cases, are there rules regulating access by claimants to documents obtained or produced by the public authority in the course of the investigation? What kind of devices to obtain evidence are available for plaintiffs? Is, for example, discovery possible in your country?

According to the general rule in Article 73 of the Polish Act on competition and consumer protection, no information obtained in course of antimonopoly proceedings may be used in any other proceedings. The Act allows just a few exceptions to this rule, as follows:

- criminal proceedings commenced at public prosecutor’s initiative or fiscal crime proceedings;
- other proceedings conducted by the Polish Competition Authority (PCA);
- exchange of information with the European Commission and competition authorities of other Member States pursuant to Regulation 1/2003/EC;
- exchange of information with the European Commission and relevant authorities of other Member States pursuant to Regulation 2006/2004/EC;
- provision of information to relevant authorities that suggests violation of other laws.

These exceptions do not include civil proceedings. Therefore, it should be expected that information obtained by PCA in course of antimonopoly proceedings cannot be used for private enforcement of claims arising from competition infringements. Legal scholars argue that Article 73 § 1 of the Act generally forbids provision of any information for the purposes of other proceedings if such information was obtained in course of PCA proceedings. This rule extends to all kinds of information, whatever its nature or the procedure during which it was obtained. But its principal purpose is to provide additional protection and safeguards, on top of those laid down in Article 69 of the Act, against unauthorized access to business secrets (and information protectable under other laws). It will be noted that the Article 73 rule is addressed to the PCA, and not to others (such as the parties in the proceedings).

It is worth noted that Polish law does not recognize a disclosure obligation in the sense recognized by the common law systems. The litigating parties are obliged to disclose only those documents on which they intend to rely. However, the court may, usually at the request of another party, order any party to produce a document to the court. The

requesting party must justify its request by stating the relevance of the document and showing what facts are to be proven thereby.

A refusal to submit the requested document is permissible only if the document contains State secrets or if the person requested could refuse testimony as a witness as to the circumstances contained in the document, or the person requested holds the document on behalf of a third party that would be allowed to withhold the document for the same reasons. However, the foregoing exemptions do not apply if such holder of the document or such third party owe a duty to produce the document to any of the litigating parties, or if the document was issued in the interests of the party requesting the disclosure.

Further, a disclosure may not be refused by a party to the proceedings if the party would sustain a loss in the form of the lost suit due to production of the said evidence. It is worth noting that according to the doctrine a party is obligated to submit requested document even if it results in losing both ongoing proceedings or any other one.

Whenever party to the proceedings makes refusal to produce evidence it is always leave for the court to decide whether such action has justified grounds and whether it may have negative implications.

The GLA does not contain any specific provisions in that respect. Therefore, the general provisions relating to collection of evidence contained in the Polish civil procedure will be applicable. Those provisions allow for a number of ways in accordance with which the evidence to be used in court proceedings may be collected. Under Polish civil procedure there is no obligation to disclose all documentary evidence. The court is entitled to require each party and, if necessary, third parties, to disclose specific documents or groups of documents.

#### 4.4 Are there rules on limitation periods allowing potential claimants to wait with class actions until the public authority takes its decision as regards the infringement?

There are no specific rules on limitation periods contained in the GLA. Therefore, with respect to any claims addressed by way of class action proceedings general rules on prescription periods are applicable.

In general, limitation periods in Poland are set out in the Civil Code. They differ according to the type of action. Unless there is a special rule providing otherwise, the period of limitation shall be ten years, or three years for claims in business/commercial cases.

There are special rules for specific types of action, including damages claims. Pursuant to Article 442(1) § 1 Civil Code the prescribed period of limitation for a claim for remedying damage caused by tort is three years after the day on which the aggrieved party learns of the damage and of the person obliged to remedy it. However, in any case, a damages claim shall expire after the lapse of ten years from the day on which the harmful event occurred.

Claims under the Unfair Competition (Combating) Act also become time-barred within three years. This applies not only to damages claims but also to other types of action resulting from unfair competition practices.

- 4.5 Does a decision of the national competition authority or national court create a rebuttable presumption of proof? For EU jurisdictions, how does the judgment of the Court of Justice EU in *Masterfoods* (20 September 2001, C-344/98) play a role in your country with respect to actions based on cartel damages?

A decision of the national competition authority does not create a rebuttable presumption of proof.

The decisions issued by the Polish Competition Authority (PCA) is treated as fact-finding (the PCA can, for example, declare whether a certain action violated competition law, or whether a certain action was legally valid). Therefore, if a decision of the OCCP President is of a preliminary character (it is conclusively resolves an issue that is crucial for the resolution of some other dispute before a court or arbitral tribunal) it is applied in the sense that its dispositive part is a fact that does not need further proof.

Preliminary character of the final decisions issued by the PCA has been confirmed by the Supreme Court judgment dated back to 2008. Ruling in question expressly reaffirmed when the PCA's decision finding undertaking guilty of abusing its dominant position becomes final, it binds the court with respect to the circumstances of competition law infringement.

As regards the court ruling, according to the Polish civil procedure, the final ruling is binding not only upon the parties and the court that issued it, but also upon other courts, as well as other state bodies and bodies of public administration, and, in the cases provided for by the provisions of law, also upon other persons.

So far, there have been no class actions in cartel damages claims in Poland.

## **5. Funding of the class actions / collective redress actions, attorney's fees**

- 5.1 In your jurisdiction, is it possible to have class actions financed by third parties who are not parties to the proceedings?

A class action can be financed by any person, not necessarily a party to the proceedings. There are no special rules in this regard.

5.2 Is the claimant required to declare to the court, notably at the outset of the proceedings, the origin of the funds that it is going to use to support the legal action?

No, there is no such obligation.

5.3 Can the court stay the proceedings for any reason relating to the funding of the action (for instance: conflict of interest between the financing third party and the claimant and/or its members; the third party has insufficient resources in order to meet its financial commitments to the claimant party; the claimant party has insufficient resources to meet any adverse costs should the collective procedure fail; the fund provider is a competitor of the defendant)?

The court cannot stay the proceedings for reasons relating to the funding of the action, but lack of payment may result in returning or rejecting the claim.

The claimant in a class action must be represented by an attorney or a legal advisor. According to the general civil procedure rules, pleadings filed by an attorney or a legal advisor, which were not duly paid for shall be returned by the presiding judge without a prior request to pay the fee due, provided that such pleadings are subject to fixed charges or charges calculated as a ratio of the value of the matter at issue claimed by the party. A party may make any due payment within one week from the day of delivery of an order to return a pleading. If payment is made in correct amount, he pleading shall become effective as from the date of the initial filing thereof.

As regards the rejection of the claim lease see Clause 5.9 below.

5.4 Do public funds providing financial support for potential claimants in collective redress/ class actions exist in your jurisdiction?

There are no such funds.

5.5 Are contingency or success fees for legal services that cover not only representation, but also preparatory action, gathering evidence and general case management allowed in your jurisdiction?

Pursuant to the GLA, the fee payable to the counsel representing the group can be agreed as the percentage of the award, however it cannot exceed 20% thereof.

The above provision is an exception from the general rule stipulated, stated by the rules of professional conduct for lawyers, according to which the counsel's fee may not be contingent exclusively upon success.

Whether the fee will cover only the representation before court or also other actions (such as gathering evidence, case management etc.) depends only on the agreement between the parties.

- 5.6 Does the losing party of a class action / collective redress action have to reimburse necessary legal costs borne by the winning party (“loser pays principle”), and in which proportion?

General rules of the Polish civil proceedings govern the class action lawsuit. It means that the losing party, at the request of the winning party, has to reimburse legal costs (i.e. court fees, attorneys' fees etc.) borne by the party that was successful. The court fee for a class action is the lesser of 2% of the value of the claim or PLN 100,000 (approximately EUR 25,000).

Where only a part of the claim is granted, the legal costs shall be reciprocally exclusive or adjudicated in proportion to the granted and rejected parts of the claim. However, the court may oblige one of the parties to reimburse all costs if the adverse party lost only a minor part of the claim or where the amount due to the latter party depends on the reciprocal calculation or evaluation by the court.

The costs shall be reimbursed to a defendant despite a complaint being upheld, if the defendant gave no reason to start a case and recognised the complaint at the originating procedural action.

In specially justified circumstances, the court may charge the losing party with only a part of the costs or no costs at all.

- 5.7 More generally, are there any rules and/or safeguards aimed at avoiding incentives to abuse the collective redress systems?

There are no specific rules or safeguards in this regard.

- 5.8 Are the parties to an action able to insure against the cost risks?

Certain insurance companies in Poland offer insurance of legal protection. It provides for the protection against the risk of reimbursing legal costs in case of losing the case.

5.9 Is a defendant able to apply for an order for security of costs? If so, what are the difficulties to obtain such an order?

The claimant, if so requested by the defendant, shall give security for costs. The court shall specify the time for satisfying the request for security for costs, not shorter than one month, as well as the amount of the security deposit, taking into account the probable costs to be incurred by the defendant. The deposit shall be paid in cash. It cannot exceed 20% of the value of the claim.

If the security is not paid, after the expiry of the time period specified by the court, the latter can, upon the request of the defendant, reject the claim or the appeal. The costs shall be apportioned as if the claim has been withdrawn.

5.10 Are there (other) ethical or Bar rules in your country relevant with respect to class actions?

There are no (other) ethical or Bar rules, which will be relevant with respect to class actions.

## **6. Cross-border cases**

6.1 In your jurisdiction, are there specific international private law rules (conflict of law and of jurisdiction rules) applicable to class actions / collective redress actions, or do the general international private law rules apply to such actions?

There are no specific international private law rules applicable to class actions. General rules apply.

6.2 Are there rules prohibiting a single collective action to take place in a single forum?

A single collective action in a single forum is not prevented by any particular rules on admissibility of foreign groups of claimants.

6.3 Can a representative entity designated by a foreign country have legal standing to bring representative actions in your jurisdiction?

Under the GLA, a class action is brought to court by a group representative (see Clause 2.1. above). There are no particular rules that would prohibit representative entities designated by a foreign country to have legal standing to bring an action before Polish court.

In each case, the claimant must be represented by an attorney or a legal advisor (national or foreign – admitted to practice in Poland).

6.4 What are the rules where there are several actions regarding the same facts and practices brought in different jurisdictions? Is it for example possible to bring an action against a company and/or individual domiciled outside of the jurisdiction (e.g., against a parent company domiciled outside of the jurisdiction which has a subsidiary within the jurisdiction)?

The general rules of the Polish Code of Civil Procedure apply. If the same action between the same parties had been previously brought before a foreign court, the Polish court will stay its proceedings. After the commencement of foreign proceedings, the court will decide whether to acknowledge the foreign judgment (the prerequisites for refusal are stipulated in the Polish Code of Civil Procedure, e.g. the judgment will not be acknowledged if the party was deprived of the possibility of defending its rights during the proceedings) or to discontinue the proceedings.

Although the general rule is that the Polish court is competent to hear the case if the defendant is domiciled or has its seat in Poland, there are some exceptions from the above, for instance:

- if a consumer is the plaintiff, the case can be brought before the Polish court also if the consumer is domiciled in Poland, and it is in Poland that he/she performed actions necessary to execute the contract;
- Polish courts are competent for cases relating to (i) obligations resulting from legal action taken or to be taken in the Republic of Poland, (ii) obligations not resulting from legal actions, which arose in the Republic of Poland;
- claims connected with the activity of a Polish branch of foreign entity will also be heard by Polish courts.

## **7. Alternative dispute resolution**

7.1 In your jurisdiction, is there any specific mechanism of collective alternative dispute resolution allowing the settlement of class actions / collective redress actions? If so, are the parties required to engage in alternative dispute resolution prior to trial and are the implications for refusing?



Mediation is available at any stage of class action proceedings. It can be pursued either on the basis of a mediation agreement or in compliance with instructions given by the judge in court proceedings.

According to the GLA, the court can refer the parties to mediation at any stage of the proceedings. However, the general civil proceedings rules (which apply here) stipulate that, after the end of the first scheduled hearing, the court may refer the parties to mediation only subject to a joint petition from such parties.

In no event shall mediation be conducted if a party does not express its consent thereto within one week from the day, on which a decision to refer the case to mediation is announced or served on a party.

7.2 Are the parties encouraged to settle the dispute out of court in any way, and is it a usual practice in your jurisdiction?

Although the courts encourage alternative dispute resolution, the recommendation is usually not followed.

7.3 Are limitation periods applicable to the claims suspended during the period when the parties try and negotiate a settlement through collective alternative dispute resolution mechanisms or any other means?

The general rule is that the limitation periods are interrupted (i) by any act before the court or other authority entitled to hear cases or enforce claims of a given kind or before the court of arbitration, performed directly either to vindicate or to establish, or to satisfy or to secure a claim, (ii) by the acknowledgement of the claim by the person against whom the claim is made (iii) by initiating mediation.

After each interruption of limitation period it shall run anew.

In the case of interruption of limitation period by an act in proceedings before the court or other authority entitled to hear cases or to enforce claims of a given type, or before the court of arbitration, it shall not run anew until the proceedings are concluded.

7.4 Can a seller of a good or any contracting party insulate himself/herself/itself from a class action by including, in the terms of use or in a purchase agreement, a mandatory arbitration clause, thus prohibiting the consumer from bringing a class action in court?

No, it is not allowed. Such provision will be considered by the Polish Court for Consumers and Competition Protection as inadmissible and, consequently, ineffective towards the consumer.

## **8. Enforcement of the court decision**

- 8.1 Are there any provisions regulating the way the victims of the practice are informed about decision rendered in a class action / collective redress action concerning them? If there are such provisions, who is in charge of such information (the court/ an independent entity/ the claimant/the defendant)?

The decision rendered in class action proceedings is announced publicly (in an “open-door” hearing) by the court. Neither the parties to the proceedings nor any other third parties are informed in any other way about the decision.

- 8.2 Are there any provision regulating the way the court order is enforced and the possible compensation paid by the defendant? If there are such provisions, who is in charge of the enforcement, notably of the payment of the damages (a public authority/ an independent entity/ the claimant/the defendant)?

An enforceable judgement has legal effects for all members of the group.

The enforcement order with a writ of execution appended in the case of a pecuniary claim awarded to each member of the group is a judgement specifying such claim, in particular its amount. Each member of the group can initiate execution with respect to the amounts he has been awarded.

As regards cases concerning non-pecuniary claims, the execution of the awarded claim is initiated upon the request of the group representative.

If the awarded non-pecuniary claim has not been satisfied within six months from the time when the judgement became enforceable, and, during this time, the group representative did not request commencement of the execution, each group member can request execution.

- 8.3 In relation to injunctive orders, are there rules ensuring their effective compliance by the losing defendant (for instance: payment of a fixed amount for each day’s delay or any other amount provided)?

There are no particular rules in this regard.

If the losing party does not pay the amount awarded, it will have to additionally pay:  
(i) the interest (if awarded in the injunction) for each day of delay in payment; (ii)  
execution costs (such as the costs of the bailiff).

In case of delay in performing an obligation awarded in a non-pecuniary claim, a fine  
may be imposed on the debtor.