



Houthoff Class Action Survey: Portugal

The Houthoff Class Action Survey 2024 provides an eye-opening journey into the future of class actions. It includes around 40 interviews with thought leaders from 12 different countries, preceded by an overview of the current class action regime in each jurisdiction. This is the overview for Portugal.

Portugal has a well-established tradition of class actions; they are long since recognised in Article 52(3) of the Constitution in the form of 'Popular Action'. The legal framework is set out in the Class Action Act (Law no. 83/95, of 31 August) and specific laws. Class actions can be brought on an opt-out basis by citizens, individually or through associations or foundations, local authorities or by the Public Prosecutor. They can claim injunctive relief and compensation as well as declaratory relief. This class action regime applies on a subsidiary basis now that the Representative Actions Directive (RAD) has been implemented.

The RAD was transposed by Decree-Law no. 114-A/2023, of 5 December, which entered into force on 6 December 2023 and applies to representative actions initiated on or after that date. The implementing Act created a new opt-out regime for representative actions that fall under the scope of the RAD. Domestic representative actions can be initiated by local authorities and by associations and foundations that meet the requirements provided in Decree-Law no. 114-A/2023. Consumer associations bringing these actions may also be subject to requirements in the Portuguese Consumer Protection Act, but this is a matter of some debate. These organisations do not have to be designated beforehand. However, in cross-border class actions, legal standing is limited to qualified entities designated by the General-Directorate for Consumer Protection. For now, only the Portuguese Public Prosecutor, the General-Directorate for Consumer Protection and two consumer protection associations (DECO and Ius Omnibus) are considered qualified entities for this purpose. In representative actions, claims can be for injunctive and/or redress measures. As in the previous class action regime, beneficiaries can opt out until the end of the evidential stage of proceedings, unless they live outside Portugal in which case they must opt in. A proper certification phase is not available, and the courts often decide on the composition of the class – and, hence, on the material legitimacy – in the final judgment.

Before the RAD's implementation, third party litigation funding (TPLF) lacked regulation. There was no consensus on Portuguese law's stance on TPLF. The implementing Act only regulates the funding of consumer representative actions for redress measures, leaving other action types still under debate. Under Decree-Law no. 114-A/2023, the funding agreement must express the independence of the claimant and the absence of conflicts of interest. It must also include a financial summary of funding sources and a list of the funder's costs and expenses. The claimant submits the funding agreement to the court and – according to general principles – also to the defendant. The possibility for the claimant to omit information as proposed in the initial draft implementation bill has been eliminated.

Whether or not they fall under the RAD, class settlements are not regulated other than by the general requirements set out in the Civil Code of Procedure. The Class Action Act simply states that, in the case of settlement, the Public Prosecutor can replace the claimant in the proceedings under specific circumstances. Out-of-court settlements can be submitted to the court for approval. Beneficiaries are free to opt out until the end of the evidential stage of the proceedings.

Under Decree-Law no. 114-A/2023, unclaimed redress funds may be used to pay all costs and expenses (including third party funder remuneration) incurred by the claimant. Of the remaining compensation, 60% is allocated to the Fund for the Promotion of Consumer Rights and 40% to the Institute for Financial Management and Infrastructures of Justice.

Class actions | Popular action | Representative actions (RAD)

Scope	Class actions: various interests such as the consumption of goods and services, securities actions for non-qualified investors, competition law; representative actions RAD: consumer law as set out in Annex I of the RAD
Access granted to	Class actions: citizens, individually or through associations or foundations, local authorities or by the public prosecutor; representative actions RAD: associations, foundations and local authorities.
Opt-in or opt-out	Class actions: opt-out; representative actions RAD: opt-out, but beneficiaries outside Portugal must opt in.
Declaratory relief or damages	Both.
Frequently used	Increasingly frequently.
Regulatory framework	Class actions: Constitution of the Portuguese Republic (Article 52), Class Action Act (Law no. 83/95, of 31 August), and specific laws such as the Securities Code (Decree-Law no. 486/99 of 13 November), Consumer Protection Act (Law no. 24/96, of 31 July) or the Private Enforcement Law (Law no. 23/2018 of 5 June); representative actions RAD: Decree-Law no. 114-A/2023, of 5 December (entry into force on 6 December 2023).
Alternatives used in practice	Litigating by mandate, assignment of claims, joinder of parties and joinder of actions.

Class settlements

Binding class members after court approval	Yes.
Opt-in or opt-out	Opt-out.

Third party funding

Regulated by law	Class actions: No; representative actions: for damages actions.
Frequently used	No, but frequency is increasing.

Good to know

Portugal has a favourable environment for the filing of class actions, not only because Portuguese courts are not very demanding when assessing claimants' procedural legitimacy but also because claimants in class actions are exempt from paying initial fees and may even be exempted from all court costs in some cases.

In October we organise an interactive seminar where the main results of this research will be presented.

[Read more](#) on our website about this event and [pre-order the Houthoff Class Action Survey 2024](#).

CONTACT

If you have any questions about class actions or the survey, please feel free to contact Albert Knigge or Isabella Wijnberg.



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