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To the ladies and gentlemen members  
of bourgeois parties of the Commission for  
Legal Affairs of the National Council (RK-  
N)

cc: General Secretariats

June 17, 2022

## 21.082 Code of civil procedure. Amendment (collective action and collective settlement).

Dear Ladies and Gentlemen of the National Council

At your meeting on June 24, 2022, you are expected to discuss the above-mentioned bill on class action and collective settlement ("Class Action Bill"). If a large number of people have suffered the same or similar damage, under current law in Switzerland each person must in principle sue for their legal claims individually. The Federal Council has now presented you with a draft for the introduction of a new class action and collective settlement after a long preliminary discussion and without further consultation.

### **NO to the dangerous experiment of class actions**

**The undersigned business associations, representing both large and small businesses in the country, unanimously and strongly recommend that you do not support the class action bill.**

— **Non-systematic collective legal protection brings high risks for the business location**

Class actions lead to a fundamental system change in Swiss law. In Switzerland, civil proceedings are based on the individuality of the plaintiff and the defendant in order to assess the individual case individually and to bring about a just solution. This is a historically established principle in our legal system and in our sense of justice. The decision in favor of class actions would thus be a decision in favor of a comprehensive change in the system. The implications of such an adjustment for Switzerland as a business location, our understanding of the law and our litigation culture are immense and can hardly be overestimated.

— **The disadvantages of class actions cannot be remedied. The "de-Americanization" envisaged in the Federal Council's message is not possible.**

There is no such thing as "class actions light": A look at other European countries shows that the real disadvantages of these instruments cannot be remedied. In all countries where lawsuits against companies are economically worthwhile (including Switzerland), the introduction of class action instruments has directly resulted in the establishment and constant expansion of a professional "lawsuit industry".

— **The Federal Council did not consider essential points in its message.**

These are i) a comparative legal analysis, which also takes into account the negative effects of comparable instruments in the EU, ii) a consideration of the new technological possibilities for the efficient assertion of claims, iii) a serious regulatory impact assessment, and iv) the examination of alternative dispute resolution instruments: Class actions are lucrative only for the litigants. They are inefficient for the injured parties, who at best receive only minor compensation, which is why it is imperative to examine alternatives.

— **According to the will of the Federal Council, the action by associations in civil procedural matters is to be massively expanded**

In its proposal, the Federal Council stipulates that opt-out settlements should also be possible in the future, including all potentially injured parties. Foreign organizations are also permitted to file lawsuits in Switzerland without further ado. Claims from all over the world can thus be brought before a Swiss court in a concentrated manner. In addition, Swiss class actions should be possible in all areas of law. The combination of class actions for damages and class settlements makes it possible to build up massive pressure against targeted companies even before the actual lawsuit is filed. It is not uncommon for such pressure to lead to a corresponding settlement payment. This would provide all the prerequisites for a procedure hitherto known primarily from the USA, namely to force the defendant to accept the settlement by creating high litigation and reputational risks.

There is no urgency. The quality of the Swiss legal system is already above average by international standards. The ongoing and not yet completed revision of the CCP (Business 20.026) will result in a further improvement of access to court (for example, by lowering cost barriers and simplifying procedural coordination). Under current law, affected parties can already assert their claims for compensation for mass or scattered damages, even in the case of small damages. Advances in technology, especially in the area of "legal tech," will expand the possibilities for consumers in this regard.

We thank you for taking our concerns into account. We are at your disposal for further explanations.

Kind regards

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