

Class Action Developments in France

(August 2016)

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For decades, the introduction of class action procedures in France remained a controversial and extensively debated topic. The matter was addressed by successive governments, endorsed by regulatory bodies, and discussed many times by Parliament. However, until recently, all these attempts remained unsuccessful.

In 2014, France finally adopted a peculiar form of class action procedure in which associations representing claimants and courts play central roles. While class actions were initially only available in connection with breaches of consumer and competition law, the procedure has recently been extended to health-related cases. Moreover, the French Parliament is now considering whether to further expand the scope of class actions to discriminatory practices, environmental damage, and data protection matters.

I. EXISTING CLASS ACTION PROCEDURES

The Act reforming consumer law dated March 2014 (*Loi n° 2014-344 sur la consommation*) introduced class actions in consumer (A) and competition (B) law. Recently, the Act reforming the French health system of January 2016 (*Loi n° 2016-41 de modernisation du système de santé*) extended its application to health-related cases (C).

A. Consumer Law

- *Legal Basis*

Articles [L.623-1 et seq](#) and [R.623-1 et seq](#) of the French Consumer Code (*'Code de la Consommation'*).

- *Scope*

Consumer associations that are representative at the national level can claim compensation for individual damage suffered by consumers placed in similar or identical situations. The loss must result from a breach of statutory or contractual obligations by the defendant(s).

The class action procedure is a multi-stage process:

- First, the court decides on liability on the basis of individual cases brought by the association (Art. L.623-4 *et seq* of Consumer Code). Based on this first analysis, the court circumscribes the scope of defendant's liability, the damage to be compensated and the available remedies. The court determines the criteria that need to be met to be part of the group, specifies the conditions of its advertisement in the media, and sets cut-off dates to join the group. This period can neither be less than 2 months nor exceed 6 months after the end of the advertising period.

- Second, claimants that meet the criteria set down by the court may join the group via an opt-in system (*see below*). In principle, judges do not directly intervene during this compensation phase (they may however intervene if difficulties arise).

- Third, the court terminates the proceeding and addresses any remaining issues linked to the award distribution (Art. L.623-18 *et seq* of Consumer Code).

The regime also provides for a simplified class action procedure (*'action de groupe simplifiée'*) in situations where claimants are clearly identified and their damage is each time identical (Art. L.623-14 *et seq* of Consumer Code). The court may order the defendant to compensate claimants individually and within a fixed timeframe.

- *Standing*

Associations are the only entities entitled to bring collective proceedings. They must be representative at national level, have at least one year of existence, show evidence of effective and public activity with a view to the protection of consumer interests, and have a threshold of individually paid-up members. To this date, 15 associations may start class actions proceedings. Lawyers are not entitled to start class actions from their own motion. However, in practice, representation by lawyer remains mandatory since class actions are necessarily filed in high courts of first instance (*'tribunal de grande instance'*).

High courts of first instance have exclusive jurisdiction over class action procedures. In accordance to French civil procedural rules, the competent court is the one where the defendant is established. However, the Paris High Court of First Instance (*'tribunal de grande instance de Paris'*) has exclusive jurisdiction when the defendant is located outside France.

- *Remedies*

Class actions are restricted to material damage affecting consumers' assets (Art. L.623-2 of Consumer Code). The procedure cannot be used to compensate losses resulting from physical or psychological harm.

- *Opt-in/Opt-out*

The design of the French opt-in mechanism is peculiar since the group is constituted only after the decision on liability has been handed down. Individual claimants have therefore better views on the likely success of their claims and are ultimately less exposed to the risks associated with the litigation. In theory at least, the risks of claimants' rational apathy is therefore limited and claimants are incentivized to participate in the action.

- *Funding/Financing*

Pursuant to Article L. 623-12 of Consumer Code, the court can request the defendant to provide the association with an advance on payment in respect of costs and expenses arising out of the compensation phase. The exact amount is left to the court's discretion, but should reflect the nature and the complexity of the diligences borne by the association.

The current regime does provide for public support.

Noteworthy, private initiatives proposing third-party financing are progressively emerging. However, to date, they still remain limited in practice.

- *Settlement*

The association may settle the case on behalf of claimants through a 'mass settlement agreement' concluded with the defendant(s) (Art. L. 623-2 of Consumer Code). The court must review the content of the agreement and should ensure that it adequately preserves the interests of the claimants.

The settlement agreement must be advertised in the media and parties must specify the membership criteria and cut-off dates to join the group.

- *Case Law/Pending Procedures*

Class actions in consumer law are effective since 1 October 2014

To date, there is no available case law. Several class actions are however pending:

- *Association UFC Que Choisir v. Foncia* (October 2014): the first-ever class action was filed before the Nanterre high court of first instance, and deals with undue fees paid by 318,000 tenants. The association considers that the annual average loss is around €27,60 per individual. In some cases, the losses have extended over several years and have reached hundreds of Euros. The association has issued a guidance document for potential claimants (see [here](#), in French).
- *Association CLCV v. Axia and AGIPI* (October 2014): this class action was filed before the Nanterre high court of first instance. The insurance company Axa and Agipi are suspected of breach of contractual obligations in connection with a life insurance contract guaranteeing a minimum return-rate (additional information is available [here](#), in French).
- *Association Confédération Nationale du Logement (CNL) v. Immobilière 3F* (November 2014): the class action deals with alleged unfair contractual terms in lease contracts. The contentious provision provides for a financial penalty of 2% in case of delayed payments (additional information is available [here](#), in French).
- *Association Confédération Syndicale des Familles v. Paris Habitat-OPH*: this class action dealt with undue charges concerning the installation of telesurveillance systems. The litigation resulted in a €2 million settlement, compensating 100,000 individuals (additional information is available [here](#), in French).
- *Association Familles Rurales v. SFR* (May 2015): the telecommunication operator SFR is suspected of having misled consumers as to the geographic coverage of its 4G network (additional information is available [here](#), in French).
- Finally, it is said that Association Familles Rurales has filed a class action against a camping company (“Manoir de Ker An Poul”). However, this class action cannot be confirmed due to the limited information available.

- *Additional Information*

The Ministry of Justice has issued a non-binding note dated 26 September 2014 that further explains the functioning and rationale of class action procedures in consumer and competition law (in French), see: [Circulaire du 26 septembre 2014 de présentation des dispositions de la loi n° 2014-344](#).

B. Competition Law

Overall, the procedural framework of class actions in competition law is similar to the one applying to class actions in consumer law.

However, two specificities are noteworthy (Art. [L.623-24 et seq](#) of Consumer Code):

- First, competition class actions can only be “follow-on” actions, *i.e.* they must come after a decision of the competition authorities (either national or European) identifying anticompetitive practices/behaviour. This decision should be definitive (*i.e.*, no longer subject to appeal). Hence, the court does not decide on liability, but merely on the scope of the group, the criteria for group membership, and the evaluation of individual damage.

- Second, competition class actions are no longer permissible beyond a period of 5 years starting from the date at which the administrative decision (or the court judgement) has become definitive.

C. Health Law

- *Legal Basis*

Article L.1143-1 *et seq.* of the French Code of Public Health (*‘Code de la santé publique’*).

- *Scope*

The action is brought by accredited associations of users of the healthcare system that are representative at national or regional levels (*i.e.*, around 400 associations). Class actions are permissible for personal injury claims of individuals who are in identical or, at least, similar situations. Damage must be the consequence of a breach of statutory or contractual obligations by a producer, supplier or any entity using healthcare products listed under Art. L. 5311-1 II of the Code of Public Health. The definition of healthcare products is broad and covers, among other things, medicinal products, medical devices, biomaterials or cosmetic products.

The structure of the litigation is similar to the class action in consumer law. The court first determines the principle of liability through the analysis of specific individual cases. Then, it determines the class of claimants by defining the membership criteria and the personal injury covered. The court also sets cut-off dates to join the group, which must necessarily be between 6 months and 5 years (Art. L.1143-4 of the Code of Public Health). The second and third stages are the compensation and award distribution phases.

- *Standing*

The action is brought before civil or administrative courts by accredited associations of users of the healthcare system that are representative at national or regional levels.

- *Remedies*

Class actions for health-related cases may be used to compensate personal injury damage. The type of damage will be specified in the court judgement.

Once the judgement on liability has been issued, claimants can make a request for compensation to the defendant, either directly or through the association. The defendant examines the requests and compensate the claimants accordingly, on an individual basis. The court may intervene if difficulties arise during the compensation phase.

- *Opt-in/Opt-out*

The procedure follows the previously-described opt-in system (*see above*).

- *Funding/Financing*

Pursuant to Article L.1143-5 of the Code of Public Health, the court can request the defendant to provide the association with an advance on payment in respect of costs and expenses arising out of the compensation phase. The exact amount is left to the court's discretion, but should reflect the nature and the complexity of the diligences borne by the association.

- *Settlement*

The regime provides for an alternative dispute resolution of health-related mass disputes (Art. L.1143-6 et seq). If the parties agree, the court may request the intervention of a mediator for a period of three months, renewable once. The terms of the settlement agreement must specify the type of personal injuries covered, the proposed compensation amounts, the cut-off dates to accept the offer and the methods of publicity to inform claimants. The agreement is subject to confirmation by the court.

- *Case Law*

Class actions for health-related cases are effective since 1 July 2016. There is no case law available to this date.

II. CLASS ACTIONS UNDER DISCUSSION

Besides the existing class actions in consumer, competition and health law, discussions are currently on-going to further expand the scope of class actions to other sectors. In particular, the draft legislation on justice modernisation (*Projet de loi de modernisation de la justice du XXI^e siècle*, hereafter 'the draft legislation'), which is currently under parliamentary review, contains draft provisions that broaden the scope of class actions to discriminatory practices and labour law (A), environmental issues (B) and data protection/privacy matters (C). The draft legislation also introduces a general framework for class actions filed before civil and administrative courts (D).¹

A. Discriminatory Practices and Labour Law

The draft legislation (Art. 44) introduces a class action procedure for individuals suffering from similar direct or indirect discriminatory practices committed by the same person.

The procedure can be used to request the court to order the cessation of the unlawful practice, and, as the case may be, to make a claim for damages.

Class actions are filed before administrative or civil courts by (i) properly declared associations that have been exercising their statutory activities in the fields of disability/ fight against discriminations for at least five years, or (ii) declared associations that have been active for at least five years and the purpose of which includes the protection of an interest violated by the discriminatory practice.

¹ Please note that the legislation is still in its draft version. Provisions on class actions might therefore be subject to modifications in the coming months.

In addition, the draft legislation (*Art. 45 and 45 bis*) introduces a class action procedure in case of discriminatory practices at work places. Noteworthy, before starting the procedure, trade union organisations or competent associations must send an initial notice to the employer requesting the cessation of the alleged unlawful discriminatory practice. Within one month, the employer must inform its work's council and the union organisations that represent the employees. Upon request from the work's council or the union organisations, the employer must launch discussions to identify the measures that are necessary to stop the discriminatory practices. The class action cannot be filed prior to six months from the date of the initial notice that requested the cessation of the discriminatory practices.

B. Environment

The draft legislation (*Art. 45 ter*) introduces a class action procedure for natural and/or legal entities placed in a similar situation who suffer from a damage listed under Article L. 142-2 of the environmental Code (this includes damage relating to the protection of nature, the protection of water, air, soils, sites and landscapes, controls of pollution, *etc.*). The damage must result from a breach of statutory or contractual obligations by the same defendant.

The procedure may be used to request the court to order the cessation of the unlawful practice and/or to claim for damages.

Environmental class actions are filed before civil or administrative courts by approved environmental protection associations, or accredited associations whose statutory activities include the protection of personal injury victims or the protection of the economic interests of their members.

C. Data Protection and Privacy

The draft legislation (*Art. 45 quinquies*) introduces a class action procedure for individuals placed in a similar situation who suffer from a damage that results from a breach of statutory obligations by a data controller or a subcontractor (in particular, the French Data Protection Act dated 6 January 1978, as amended).

The procedure may only be used to request the court to order the cessation of the unlawful practice.

Class actions are filed before civil or administrative courts by (i) associations that have been exercising their statutory activities in the field of privacy and data protection for at least five years, (ii) accredited consumer associations that are representative at national level (if the processing of data affects consumers); or (iii) trade unions (if the processing of data affects employees of companies or civil servants).

D. General Framework for Class Actions before Civil and Administrative Courts

Finally, the draft legislation provides for an horizontal framework for class actions filed before civil and administrative courts.