

FRANCE

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OVERVIEW OF CLASS/COLLECTIVE ACTIONS AND CURRENT TRENDS

1. WHAT IS THE DEFINITION OF CLASS/COLLECTIVE ACTIONS IN YOUR JURISDICTION? ARE THEY POPULAR AND WHAT ARE THE CURRENT TRENDS?

Definition of class/collective actions

The types of collective action addressed in this Q&A are class actions which were implemented only recently on 1 October 2014.

In a ministerial circular dated 26 September 2014 presenting the provisions of the law of 17 March 2014 which introduced class actions in France, the French Minister of Justice defines class actions as a right of action of a particular nature granted by the law to certain identified persons who have sole standing, under certain conditions, to initiate such action in the domains of consumer and competition law.

Only nationally representative and accredited consumer associations are entitled to represent consumers and bring a class action to seek recovery for material damages sustained by these consumers as a result of one or more professional's breach of its/their legal or contractual obligations or infringement of competition law.

Use of class/collective actions

Given their very recent introduction in French law, no specific use of class actions or general trends can yet be identified. To date, five class actions have been brought in France against:

- Foncia, a property management group, on the basis of a claim that Foncia illicitly charged its renters for sending them monthly rent payment receipts.
- Axa and Agipi, insurance companies, for an alleged breach of their contractual obligations guaranteeing a minimum return rate on life-insurance placements.
- Paris Habitat, a public housing group, on the basis of a claim that Paris Habitat has illicitly charged its tenants for installing remote monitoring equipment.
- 3F, a public housing group, for the alleged abusive nature of a clause providing for a financial penalty in case of delayed rent payments.
- SFR, a telecommunication company, for allegedly misleading consumers on the coverage of its 4G network.

The class action against Paris Habitat was settled on 19 May 2015 for an amount of EUR2 million.

Current trends

See above, *Use of class/collective actions*.

 REGULATORY FRAMEWORK

2. WHAT ARE THE PRINCIPAL SOURCES OF LAW AND REGULATIONS RELATING TO CLASS/COLLECTIVE ACTIONS? WHAT ARE THE DIFFERENT MECHANISMS FOR BRINGING A CLASS/COLLECTIVE ACTION?

Principal sources of law

Class actions were introduced by the “*Loi Hamon*” No. 2014-344 of 17 March 2014 which was enacted by the decree No.2014-1081 of 24 September 2014. The law entered into force on 1 October 2014.

The provisions of this law and its implementing decree are provided in the Consumer Code (*Articles L. 423-1 et seq. and R. 423-1 et seq.*).

Apart from specific provisions set out in the law and the decree, class actions are governed by the general French rules on tort liability and civil procedure.

Principal institutions

French civil courts (*Tribunaux de Grande Instance*)(TGI) have sole jurisdiction over class action claims. The competent TGI is the TGI located where the defendant is established. For defendants not located in France, the TGI of Paris has jurisdiction.

Different mechanisms

Class actions are tort liability claims brought on the basis of Article 1382 of the Civil Code. The Civil Code provides that any act by an undertaking or person which causes damage to another undertaking or person must be repaired by the one who caused the damage.

There are two different procedures for class actions:

- **“Standard” procedure.** Under the standard procedure, the TGI will assess whether the conditions required to bring a class action are met and determine the liability of the defendant allegedly responsible for the conduct. If the conditions are met and the defendant is held liable, the TGI’s decision will be made public in order to allow consumers to opt-in to the class entitled to damages. Compensation will then be awarded to the members of the class.
- **“Simplified” procedure.** Under the simplified procedure, which is applicable only when the affected consumers are identified and their number is known (for example, when they can be determined via a client database) and all of the affected consumers have sustained an economic loss of the same amount, the judge can rule on the defendant’s liability and order the defendant to compensate directly and individually the consumers. In these cases, the decision is not made public. When the decision is final, it is notified to each consumer individually, and the individuals must then accept compensation.

3. ARE CLASS/COLLECTIVE ACTIONS PERMITTED/USED IN ALL AREAS OF LAW, OR ONLY IN SPECIFIC AREAS?

Class actions are available to seek recovery for economic loss suffered by consumers due to one or more defendants' breach of their legal or contractual obligations in the context of a sale of goods or provision of services or due to their infringement of competition law (*Article L. 423-1, Consumer Code*). Class actions are therefore available in the areas of competition law and consumer law. There are specific provisions set out regarding class actions for a breach of competition law (*see Question 8*). The scope of class actions may soon evolve to include healthcare law and anti-discrimination law (*see Question 22*).

Other areas of law/policy

Due to the recent introduction of class actions and the lack of case law, there are currently no examples of how class actions interact with other areas of law and policy. However, criminal proceedings cannot serve as the basis for a class action; class actions can only be brought on the basis of civil liability.

LIMITATION

4. WHAT ARE THE KEY LIMITATION PERIODS FOR CLASS/COLLECTIVE ACTIONS?

The law does not provide for any specific limitation periods. Class actions are therefore subject to French civil law limitation periods and they must be brought within five years following the damage, that is, the date on which the holder of the right to bring the claim becomes aware or should have become aware of the facts enabling him to exercise this right (*Article 2224, Civil Code*).

However, the law does set out a specific starting point of the limitation period for class actions brought for breaches of competition law. Class actions relating to breaches of competition law must be brought within five years of the date on which the decision mentioned at Article L. 423-17 of the Consumer Code is no longer subject to an appeal (*Article L. 423-18, Consumer Code*). Article L. 423-17 of the Consumer Code provides that in the context of class actions for competition law infringements, the defendant's liability can only be found by the civil judge on the basis of a definitive ruling from the competent authorities (whether national or European) finding a competition law infringement in relation to which all appeals have been exhausted. If an appeal is pending against the decision on a point unrelated to the existence of the infringement (for example, on the amount of the fine or the procedure), the appealed decision can be considered definitive under Article L. 423-17 and the civil judge can find the defendant liable for the purposes of the class action.

In other words, the limitation period for class actions in the domain of competition law is five years from the date on which the decision of the competent authority becomes definitive regarding the finding of the competition law infringement.

STANDING AND PROCEDURAL FRAMEWORK FOR BRINGING AN ACTION

STANDING

5. WHAT ARE THE RULES FOR BRINGING A CLAIM IN A CLASS/COLLECTIVE ACTION?

Definition of class

The relevant class is defined by the relevant civil court (TGI) (*see Question 2*) and must comprise similarly or identically situated consumers having suffered an individual economic loss, the common cause of which is one or more defendant's breach of its legal or contractual obligations in the context of a sale of goods or the provision of services or due to its infringement of competition law.

Potential claimant

Only nationally representative consumer associations having received a governmental accreditation are entitled to represent consumers to bring a class action (*Article L. 423-1, Consumer Code*). There are currently 15 clearly identified consumer associations authorised to bring class actions:

- *Conseil National des Associations Familiales Laïques* (Cnafal).
- *Confédération Nationale des Associations Familiales Catholiques*(CNAFC).
- *Confédération Syndicale des Familles* (CSF).
- *Familles de France*.
- *Familles Rurales*.
- *Union Nationale des Associations Familiales* (Unaf).
- *Association de Défense, d'Éducation et d'Information du Consommateur* (Adeic).
- *Association Force Ouvrière Consommateurs* (AFOC).
- *Institut National de la Consommation* (Indecosa-CGT).
- *Association Léo Lagrange pour la Défense des Consommateurs* (ALLDC).
- *UFC-Que choisir*.
- *Association nationale de défense des consommateurs et usagers* (CLCV).
- *Confédération Générale du Logement* (CGL).
- *La Confédération Nationale du Logement* (CNL).
- *Fédération Nationale des Associations d'Usagers* (Fnaut).

They are listed on the Minister of Economy's website: www.economie.gouv.fr/dgccrf/Liste-et-coordonnees-des-associations-nationales.

Class actions can only be brought by these associations on behalf of consumers having suffered an economic loss due to a professional's alleged conduct in the areas of consumer and competition law. A preliminary article in the Consumer Code defines a consumer as any natural person acting for purposes which fall outside of his trade, business, craft or profession.

Claimants outside the jurisdiction

The law does not provide any restrictions prohibiting consumers from other jurisdictions from joining a class action.

Professional claimants

This is not applicable, as only nationally representative and accredited consumer associations are entitled to represent consumers.

QUALIFICATION, JOINDER AND TEST CASES

6. WHAT ARE THE KEY PROCEDURAL ELEMENTS FOR MAINTAINING A CASE AS A CLASS ACTION?

Certification/qualification

The judge of the territorially competent civil court (TGI) (*see Question 2*) before which the class action has been brought will determine if the case can be maintained as a class action. To do so, the judge will verify that:

- The association bringing the class action is nationally representative and accredited (*see Question 5*).
- A class action is appropriate for the case at hand (that is, whether the association seeks to obtain recovery for economic loss suffered by consumers placed in similar or identical situations which have as a common cause consumer or competition law violations by one or several professionals).

If the case is not certified as a class action, the class action will fail. However, the consumers can still seek recovery individually.

Minimum/maximum number of claimants

The law does not define a maximum number of claimants. A plurality of consumers is required to launch a class action meaning that the minimum number of claimants is two.

Joining other claimants

After the defendants are brought before the competent TGI, the judge will, in a single ruling determine whether a class action is appropriate for the claim and determine the liability of the defendant on the basis of individual cases brought by the association (*Article L. 423-3, Consumer Code*). If the judge holds the professional to be liable, he will:

- Determine the class of consumers entitled to compensation and set forth the criteria for class inclusion and the damages that can be awarded to each consumer or each category of consumers forming the group and the amount of those damages or any elements enabling to evaluate the appropriate amount of damages (*Article L. 423-3, Consumer Code*).
- Determine the appropriate measures to inform the consumers likely to be part of the class (*Article L. 423-4, Consumer Code*). It is up to the judge, on a case-by-case basis, to determine the appropriate measures to make the decision public. This can be achieved

for example via:

- a press release on the internet;
- an article in the press;
- a television announcement; or
- communicated on an individual basis (electronically or on paper).

The means used will essentially depend on:

- the size of the potential class of consumers;
- the financial capacity of the defendants which will have to bear the cost of the publication;
- whether or not the defendants have a continuing relationship with the consumers concerned; and
- whether these consumers are identified or not.

The information will be communicated only after the TGI's decision has become final (that is, after all appeals have been exhausted).

- Set out the conditions under which and the time period during which consumers can apply to become a member of the class. This time period can be no less than two months and no more than six months after the communication of the information regarding the TGI's decision has been effectively completed (*Article L. 423-5, Consumer Code*). For example, if the TGI has ordered that the communication be achieved via a television campaign, the time period will start running only once the campaign is over.

Class actions in France are based on an opt-in model. Depending on the conditions set by the TGI, consumers can either directly contact the professional, the association or the court-appointed legal professional assisting the association (for example a lawyer) to opt-in to the class.

The law also provides for an alternative "simplified" process (also opt-in) when the class of consumers is known and determined (*see Question 2*). In this case, the decision is not made public; when final, the decision is communicated to each consumer individually, who must then accept compensation as provided in the judgment.

Test cases

Article L. 423-3 of the Consumer Code provides that the TGI will determine the liability of the professional on the basis of individual cases brought by the association. The law does not specifically refer to "test cases" or set out criteria for identifying test cases.

TIMETABLING

7. WHAT IS THE USUAL PROCEDURAL TIMETABLE FOR A CASE?

The expected procedural timetable is set in the applicable civil court's (TGI) ruling. There are no usual procedural timetables available as there have been no rulings to date.

EFFECT OF THE AREA OF LAW ON THE PROCEDURAL SYSTEM

8. DOES THE APPLICABLE PROCEDURAL SYSTEM VARY DEPENDING ON THE RELEVANT AREA OF LAW IN WHICH THE CLASS/COLLECTIVE ACTION IS BROUGHT?

The procedural system varies for class actions brought for breach of competition law.

Article L. 423-17 of the Consumer Code provides that in the context of class actions for competition law infringements, the professional's liability can only be found by the TGI on the basis of a definitive ruling from the competent authorities (whether national or European) finding a competition law infringement for which all appeals have been exhausted as regards the finding of the infringement. In other words, if an appeal is pending against the decision on a subject matter that is not related to the existence of the infringement (for example, on the amount of the fine or the procedure), the appealed decision can be considered definitive for the purpose of this article and the defendant's liability can be found by the TGI for the purposes of the class action. In such a case the defendant's infringement is irrefutably established implying that the TGI's ruling on the defendant's liability for the purpose of the class action will be bound by the decision of the competition authority.

Regarding limitation periods for class actions brought for breach of competition law, Article L. 423-18 of the Consumer Code provides that class actions must be brought within five years of the date on which the decision mentioned at Article L. 423-17 of the Consumer Code is no longer subject to an appeal. In other words, the limitation period is five years from the date the decision has become definitive as regards the finding of the infringement (*see Question 4*).

FUNDING AND COSTS

FUNDING

9. WHAT ARE THE RULES GOVERNING LAWYER'S FEES IN CLASS/COLLECTIVE ACTIONS?

Only nationally representative and accredited associations can bring class actions and represent consumers (*see Question 5*). With an authorisation from the judge, lawyers are allowed to assist these associations in particular in the treatment of demands for compensation by members of the class and more generally in representing the consumers in view of compensation (*Article L. 423-9, Consumer Code*).

Contingency or success fees are prohibited for lawyers under French law, unless they only come as a complement to standard fees and are agreed in advance and in writing by the client.

10. IS THIRD PARTY FUNDING OF CLASS/COLLECTIVE ACTIONS PERMITTED?

Class actions are funded by the association bringing the class action.

11. IS FINANCIAL SUPPORT AVAILABLE FROM ANY GOVERNMENT OR OTHER PUBLIC BODY FOR CLASS/COLLECTIVE ACTION LITIGATION?

See above *Question 9*.

12. ARE OTHER FUNDING OPTIONS AVAILABLE TO CLAIMANTS IN CLASS/ COLLECTIVE ACTIONS?

See above *Question 9*.

COSTS

13. WHAT ARE THE KEY RULES FOR COSTS/FEEES IN CLASS/COLLECTIVE ACTION LITIGATION?

Generally, the unsuccessful litigant is ordered to pay the taxable charges incidental to proceedings (*les dépens*), including, the fees for documents, witnesses, experts, among others (*Article 695 et seq., Civil Procedural Code*).

Additionally, the judge has a discretionary power to order the unsuccessful party to pay the costs incurred by both parties, and not comprised in the taxable charges incidental to proceedings (*Article 700, Civil Procedural Code*). The costs that are not included in taxable charges primarily comprise part of lawyers' fees.

KEY EFFECTS OF THE COSTS/FUNDING REGIME

14. WHAT ARE THE KEY EFFECTS OF THE CURRENT COSTS/FUNDING REGIME?

Although it is impossible to identify a trend at this stage, some associations have already started complaining that the current funding regime may decrease the attractiveness of class actions since the associations are solely responsible for the cost of funding the action.

DISCLOSURE AND PRIVILEGE

15. WHAT IS THE PROCEDURE FOR DISCLOSURE OF DOCUMENTS IN A CLASS/ COLLECTIVE ACTION?

There are no discovery or disclosure procedures in France as this concept is commonly known in common law countries. The association bears the burden of proof and must provide the factual evidence of the defendants' fault (that is, breach of their legal or contractual obligation for the sale of goods or provision of services). It must be noted that for class actions for breach of competition law, a competition authority's final decision finding an infringement is binding on the judge for the purpose of the class action; irrespective of whether the authority is national or European (*see Question 8*).

Under French civil procedure rules, there is no general obligation to disclose documents which support the other party's case. However, the judge may still order the disclosure of specific documents at the request of a party. These orders can be issued prior to the initiation of the proceedings (*Article 145, Civil Procedural Code*) or during the proceedings (*Article 138, Civil Procedural Code*). Forced disclosure may concern the opposing party or even a third party.

In addition, Article L. 423-3 of the Consumer Code specifically provides that for class actions, at any moment during the proceedings, the judge can take all legal measures to safeguard evidence and order the disclosure of documents, including those held by the defendant.

Before litigation

See above.

During litigation

See above.

16. ARE THERE SPECIAL CONSIDERATIONS FOR PRIVILEGE IN RELATION TO CLASS/ COLLECTIVE ACTIONS?

The law does not provide for special considerations for privilege in relation to class actions. Under French law, parties may refuse to disclose evidence if this is justified by a legitimate reason (for example, legal privilege). Business secrets can also in theory constitute a legitimate reason, but this is rarely admitted in practice.

EVIDENCE

17. WHAT IS THE PROCEDURE FOR FILING FACTUAL AND EXPERT WITNESS EVIDENCE IN CLASS/COLLECTIVE ACTIONS?

The law does not provide for a specific procedure for filing factual and expert witness evidence in class/collective actions.

DEFENCE

18. CAN ONE DEFENDANT APPLY TO JOIN OTHER POSSIBLE DEFENDANTS IN A CLASS/COLLECTIVE ACTION?

Joining other defendants

The law does not set out specific provisions regarding whether or not other defendants can apply to join other possible defendants to the class claim. French civil law rules provide

that parties to a proceeding can ask the judge to have their case joined with another one. A defendant could thus join other defendants to a class claim. The judge can also enjoin such junction on its own initiative. The condition for such junction to be granted is that the two disputes present a link such that it is in the interest of administering proper justice to have them instructed and judged jointly.

A junction of cases can be granted either when:

- The cases of different defendants are pending in front of the same court (*Articles 367 et seq., Civil Procedural Code*).
- They are in front of distinct courts (*Articles 101 et seq., Civil Procedural Code*).

In the latter case, one of the courts defers its competence to the benefit of the other.

Rights of multiple defendants

The law does not set out specific provisions regarding the rights of multiple defendants in the context of a class claim.

As a general rule under French law, multiple defendants to a same proceeding can instruct the same lawyers. However, the same lawyers can only represent multiple defendants provided there is no conflict of interest between them. In case of a serious risk of conflict, a waiver must be obtained from the parties (*Article 7, Decree No. 2005-790 of 12 July 2005*).

Under the current French civil law rules, only the judge can be responsible for instructing a judicial expert (*Articles 232 et seq. and Articles 264 et seq., Civil Procedural Code*).

DAMAGES AND RELIEF

19. WHAT IS THE MEASURE OF DAMAGES UNDER NATIONAL LAW IN THE FIELD OF CLASS/COLLECTIVE ACTIONS?

Damages

The damages that the claimant is entitled to claim for are intended to compensate the claimant for the direct loss suffered. This prejudice is pecuniary and must be direct and certain. There are no punitive damages in French law.

Recovering damages

As a general rule under French procedural law, a defendant can subsequently bring a separate contribution claim against other defendants.

Interest on damages

The law does not set out specific provisions regarding the payment of interests in the field of class actions.

20. WHAT RULES APPLY TO DECLARATORY RELIEF AND INTERIM AWARDS IN CLASS/COLLECTIVE ACTIONS?

Declaratory relief

The law does not set out specific provisions regarding declaratory relief in the field of class actions.

Interim awards

The law does not set out specific provisions regarding interim awards in the field of class actions.

Under French civil law, interim awards can be granted by the President of the TGI through a summary procedure (*référé*).

The TGI will grant interim measures if:

- There is an emergency.
- Either the measure cannot seriously be contested or the measure is justified by the existence of a dispute (*Article 808, Civil Procedural Code*).

Interim measures can also be granted, even if the measure can seriously be contested, to prevent an imminent damage or to terminate a manifestly unlawful act (*Article 809, Civil Procedural Code*).

SETTLEMENT

21. WHAT RULES APPLY TO SETTLEMENT OF CLASS/COLLECTIVE ACTIONS?

Settlement rules

Through mediation (*see Question 23*), cases can be settled. The applicable civil court (TGI) will however have to approve the settlement.

Separate settlements

The law does not set out specific provisions regarding the effects of settlements in the field of class actions.

Settlement of the action by one of the concerned parties does not bind the other concerned parties and cannot be opposed by them (*Article 2051, Civil Code*). In the context of a plurality of defendants, the settlement and subsequent discontinuance of the proceedings thus only apply for those parties who entered the settlement (*Article 384, Civil Procedural Code*).

This should also apply in the context of cases that have been joined (*see Question 17*) as there is no legal link created between the defendants as a result of the junction.

APPEALS

22. DO PARTIES HAVE A RIGHT TO APPEAL DECISIONS RELATING TO CLASS ACTIONS, SUCH AS A DECISION GRANTING OR DENYING CERTIFICATION OF A CLASS ACTION?

There is a right of appeal for class actions. Article R. 423-4 of the Consumer Code provides that the appeal will be tried according to the rules applicable to “short notice” judgments, usually required for urgent matters (*Article 905, Civil Procedural Code*).

The parties are therefore able to appeal the applicable civil court’s (TGI) ruling and the president of the Court of Appeal will set a date at “short notice” for an accelerated treatment of the appeal.

ALTERNATIVE DISPUTE RESOLUTION

23. IS ALTERNATIVE DISPUTE RESOLUTION (ADR) AVAILABLE IN CLASS/COLLECTIVE ACTIONS?

Article L. 423-15 of the Consumer Code provides that mediation can be used as an alternative to seeking compensation through the courts. Only the association can participate in the mediation process. Any agreement resulting from mediation must be approved by the applicable civil court (TGI), which will examine whether the agreement meets the consumers’ best interests. If the TGI approves the agreement, the court will enter a binding judgment on the mediating parties.

PROPOSALS FOR REFORM

24. ARE THERE ANY PROPOSALS FOR REFORM CONCERNING CLASS/COLLECTIVE ACTIONS?

There is currently a legislative proposal to open class actions to the domain of health law which would enable class actions to be brought against a producer of healthcare products or devices, or a service provider using such products.

One of the key features of the bill as it currently stands is that, contrary to the legislation in force regarding class actions for consumer and competition law, a class action in the health sector could be initiated by accredited associations, irrespective of whether they are nationally representative. As of May 2015, there were over 400 associations that could meet the criterion. The full list is available on: www.sante.gouv.fr/l-agrement-des-associations-de-malades-et-d-usagers-du-systeme-de-sante.html.

This proposal, if approved and enacted into law, will significantly extend the scope of class actions in France.

There is also a legislative proposal to open class actions to the domain of anti-discrimination law. The bill in its current form would allow certain associations and

syndicates to bring class actions on behalf of victims of direct or indirect discriminations to claim for damages against the authors of the discriminatory act, including legal persons.

Overall, the current system in France is in line with the EU Commission's recommendations in that area. It has to be noted that the 2013 Recommendation predates the introduction of this system in France and that the Directive 2014/104/EU was formally adopted on 26 November 2014, less than two months after class actions entered into force in France.

Most notably, in line with the 2013 Recommendation, the mechanism for collective claims in France provides for:

- An opt-in system for class claims.
- The possibility of consensual dispute resolution (through mediation).
- A limitation of contingency fees for lawyers as a percentage of the compensation awarded to the plaintiff, through the role of associations as plaintiff and the prohibition of such fees on a standalone basis in the French legal system.
- No award of punitive damages.