

## Commercial Litigation Client Service Group

Bryan Cave, Paris

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### The introduction of class actions in French law

Demanded for many years by consumer defense associations, a bill to allow "*class actions*" in the field of consumers' rights is expected to be submitted to the French Parliament in the spring of 2013.

Admittedly, there already exist two forms of group actions in French consumer law, but these actions do not allow the reparation of damages to individuals, as opposed to so-called collective damages. The existing action for termination of illegal acts may be brought by associations in the interest of consumers<sup>(1)</sup> but the aim is normally limited to injunctive-type relief. There is also an action referred to as "*in joint representation*"<sup>(2)</sup>, which allows at least two consumers, who have suffered individual damages caused by an act or omission of the same professional, to mandate a registered association recognized as representative on a national level, to act in their names in order to seek reparation before the competent jurisdictions. However, this form of action must be used without publicity and hence, does not allow the associations to seek mandates from other consumers.

Since these existing actions are rarely used in practice, the French legislator plans a larger reform.

The French "*class action*" draft legislation may well be based on a report of the Economic Analysis Council<sup>(3)</sup> (the « CAE ») published on September 11<sup>th</sup>, 2012. This report sets forth several proposals to reinforce consumer protection, including the introduction of a class action in French law.

After noting that the existing French system is unsatisfactory for individual consumers who very often refrain from bringing individual action against a company on the grounds that the legal costs are higher than the suffered damage, the CAE set forth the following proposals:

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<sup>(1)</sup> Article L.421-6 of the Consumers Code.

<sup>(2)</sup> Article L.422-1 of the Consumers Code.

<sup>(3)</sup> Placed with the First Minister, the Economic Analysis Council's mission is to "*enlighten, through the confrontation of points of view and analysis, the government's choice in the economical field*".

1. The participating cost of the plaintiffs must be low. This implies to use, either an *opt-in*<sup>(4)</sup> or *opt-out*<sup>(5)</sup> mechanism, with or without publicity by mail and through the press. The CAE did not explicitly favor one or the other mechanism. However, the report considers the *opt-out* without publicity (until liability is found) as the most discreet and the more appropriate device to avoid the call into question of the reputation of the concerned companies.
2. The subject matter should be as broad as possible. That being said however, the report proposes to the French legislator to (i) "*conceive the class actions without punitive damages*<sup>(6)</sup>" and to (ii) "*limit them to consumer law and exclude the other sectors*".
3. The report advocates to avoid the granting of a too significant remuneration to intermediaries representing registered consumer defense associations. It is thus advised to the legislator, within the draft legislation, to allow the formation of *ad hoc* associations in order to lead the class action, potentially acting in close cooperation with consumers associations.

Even though the permissible subject matter is not likely to cover mass torts other than consumer law violations, the adoption of this draft legislation on class actions would still represent a small revolution in French consumer law since no government has yet been successful in adopting such draft legislation. Successively promised by the Presidents Chirac in 2005 and Sarkozy in 2007, the draft bills to introduce a French class action were finally abandoned under pressure from French business leaders (*Medef*).

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<sup>(4)</sup> In the hypothesis of an *opt-in*, the plaintiffs express their will to join the legal action.

<sup>(5)</sup> In the hypothesis of an *opt-out*, the group is automatically formed by the aggregate of consumers potentially wronged.

<sup>(6)</sup> These "*punitive damages*" are granted by the American legal system to the plaintiffs in order to punish a company beyond the damages its has created.