Collective redress
France

The availability of collective redress in France has been expanded by the introduction in 2017 of a statutory opt in class actions procedure. Class actions may now be brought by authorised associations on behalf of claimants suffering loss or damage as a result of breaches of consumer law, health product liability, environmental protection, personal data protection and discrimination. These are supplemented by other collective redress mechanisms which permit authorised associations to commence proceedings on behalf of their members or affected parties. Entitlement to and the type of compensation obtainable by claimants differs under the different procedures.

What forms of collective actions are permitted in this jurisdiction and under what authority?

The following types of actions are permissible in France:

Class actions

> Consumer law: class actions are permitted under the conditions set out in the French Consumer Code (Articles L.623-1 et seq.). The scope of these actions is limited to losses arising out of a breach of legal or contractual obligations by a “professional” (i.e. a person or entity acting in the course of its professional or business obligations) in the context of the sale of goods or the provision of services, or infringements of competition law.

> Health product liability: under Articles L.1143-1 et seq. of the Public Health Code, class actions may be initiated on behalf of victims having suffered bodily harm against a producer (e.g. a pharmaceutical company) or a supplier (e.g. a pharmacy) of a health product or a provider using this product (e.g. a doctor). The claim can also be brought against their insurers.

These provisions regarding health product liability are now subject to the common framework established by the Law of 18 November 2016 (n°2016-1547) (“the 2016 Law”), which entered into force on 20 November 2016.

The 2016 Law has also introduced the possibility of initiating class actions in three other areas (the “Newly Introduced Actions”):

> Environment: where the event giving rise to the damage or the breach has occurred after the entry into force of the 2016 Law, a class action may be filed by an authorised association before the administrative courts for damages caused to nature or relating to environmental protection (Article L.142-1 et seq. of the Environmental Code).
Protection of personal data: where numerous persons placed in a “similar situation” (e.g., users of a same social network) have suffered damage due to a breach of the Law of 6 January 1978 on Data Processing, Data Files and Individual Liberties, a class action can be initiated against a personal data manager or a subcontractor (Article 43 ter of the Law n°78-17 of 6 January 1978 as amended by the Law dated 20 June 2018).

Discrimination: where the event giving rise to the damage or the breach has occurred after the entry into force of the 2016 Law, a class action may be brought by trade unions for the protection of employees’ rights, or by certain associations for job or internship applicants who have suffered from discrimination (Articles L. 1134-6 et seq. of the Labour Code).

Other collective actions
In addition, French law also provides for five other types of collective actions:

> actions for the joint representation of consumers ("action en représentation conjointe des consommateurs"). An authorised association may, if expressly mandated by at least two individuals who have suffered damage resulting from the same cause, bring an action on their behalf. Such actions are permissible in the areas of: consumer law (Article L.622-1 of the Consumer Code); investment law (Article L.452-2 of the Monetary and Financial Code); and environmental law (Article L.142-3 of the Environmental Code) but they are rarely used;
> actions brought in the collective interests of consumers (“action exercée dans l'intérêt collectif des consommateurs”). Under Article L.621-1 of the Consumer Code, an authorised consumer association may exercise the “rights given to a civil party relating to facts which cause direct or indirect harm to the collective interests of consumers”. These actions seem to be relatively frequent because, in practice, criminal offences are often committed to the detriment of consumers, such as false information on prices and contractual conditions and misleading advertising;
> defence leagues (“ligues de défense”). Case law has recognised that, in certain circumstances, an association may bring a collective civil action to defend the combined interests of its members, provided that its charter expressly provides for such a right of action;
> in defence of “important causes”. Specific regulations allow several associations to bring an action before civil or criminal courts in order to obtain damages, where a criminal offence has been committed (e.g., environmental protection associations);
> with regard to competition offences, such as price fixing and unfair competition, article L.490-10 of the French Commercial Code permits professional organisations to initiate proceedings in a civil or commercial court for harm caused directly or indirectly to the collective interests of the profession or sector which it represents. To our knowledge, very few decisions have been rendered on the basis of this provision.

Who may bring them?

The various actions may be brought by different parties.

Class actions

> Consumer class actions: only an association authorised to represent consumers at a national level may initiate proceedings on behalf of all consumers who have suffered loss or damage as a result of a breach of legal or contractual provisions by a professional or infringements of competition law, without the need for an express mandate from the consumers it represents and without the need to identify a particular number of consumers. The association must, however, present distinct individual cases to the court in support of its claim (Articles L.811-1 and R.811-1 of the French Consumer Code).

> Health product liability: a class action may only be initiated by accredited, national or regional, associations of users of the French health system as per Article L. 1114-1 of the Public Health Code.

The 2016 Law has established a common framework for the Newly Introduced Actions. Under Article L.77-10-4 of the Code of Administrative Justice, a class action may only be initiated by (i) authorised associations and (ii) associations registered for at least five years and whose statutory purpose includes the defence of the interests that have been harmed.

However, there are special provisions limiting or widening the standing to bring a class action in the different areas:

> Environment: a class action can be filed by (i) an authorised environmental protection association or (ii), under certain conditions, an authorised association whose statutory purpose includes the defence of victims of
All class actions currently available under French procedure are subject to an **opt in mechanism**.

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physical damages or the defence of the business interests of its members.

> **Protection of personal data**: a class action may be brought by (i) an association registered for at least 5 years and having as its statutory purpose the protection of privacy and personal data, (ii) where consumers are affected by the processing of personal data, a consumer protection association authorised at a national level or (iii), under certain circumstances, a trade union.

> **Discrimination**: a class action may be initiated by (i) a representative trade union as defined in the French Labour Code or (ii) an association registered for at least five years and involved in combating discrimination or engaged in defending the rights of the disabled.

Other collective actions

> **Actions for the joint representation of consumers**: the authorised association may commence an action for the joint representation on behalf and for the benefit of each claimant. In order to commence an action, the association must receive written instructions from each claimant. Each claimant must be known and identified. A claimant can revoke his instructions at any time and pursue the action on his own account, as long as he informs the court, the defendant and any other party to the proceedings.

> **Actions brought in the collective interest of consumers**: where the loss suffered is related to the commission of a criminal offence, the association may commence the action itself. If not, it may only intervene in a civil action which has already been commenced by one or more consumers with respect to losses related to goods or services received by them.

> **Defence leagues and cases brought in defence of important causes**: the relevant association may bring the action on its own behalf.

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**Opt in or opt out?**

All class actions currently available under French procedure are subject to an opt in mechanism.

The other five types of collective action remain subject to the general rule under French law, pursuant to which the effects of a judgment cannot extend to persons who have not been a party to the action. Judges are not permitted to render decisions that extend beyond the claims of the parties.

Generally, class action proceedings comprise the following three steps:

> The competent court renders a decision on the liability of the defendant, based on the case brought by the association;
> After declaring the class action admissible and the defendant liable, the judge defines the group of persons affected and how the decision will be publicised. Individuals then have the opportunity to opt into the class during a period set out by the court.
> The court rules on the amount of damages or other remedies for each member of the class.

**Limitations?**

**Class actions**

First and foremost, there is no specific statute of limitation for class actions beyond those applicable generally under article 2224 of the Civil Code. Claims on a contractual or tortious basis must be brought within five years of the damage (that is, five years from the day the injured parties become aware, or should have become aware, of the facts enabling them to bring a claim).

For personal injury, the limitation period is 10 years, starting from the date at which the state of health is considered stable. For product liability, the limitation period is three years. This cannot be extended beyond ten years from the date on which the product was sold.

Class actions to protect the rights of consumers have a number of other limitations.

> In order to bring a class action, an association must be expressly authorised to do so by the State. At present, only 15 consumer associations benefit from that authorisation.

> In the context of product liability cases, for example, class actions may only be initiated with respect to the pecuniary harm suffered by consumers, excluding physical injury or other non-pecuniary harm. Individual claims would need to be brought with respect to those other kinds of harm.

> With regard to the right to initiate class actions in cases of breach of personal data, the scope of remedies varies according to the date of the event giving rise to the damage. If the event resulting in the damage occurred before 24 May 2018, the scope of remedies is limited to the cessation of the breach of personal data. If that event occurred after 24 May 2018, the claimants can also obtain reparation for the harm suffered as a result of the breach.

> With regard to health-related issues, class actions may only claim reparation for actual harm suffered.

**Other collective actions**

A number of limitations also exist as regards other types of collective actions.

> According to French case law, for an association to bring a collective action, its constitutive documents must provide for the possibility of it undertaking an action to defend the collective interests of its members, even if the harm was caused before the association was set up, and at least one of its members
must have suffered relevant loss or damage. Those requirements have, however, been lessened by case law with regard to actions brought in defence of important causes.

> Associations cannot advertise for potential claimants on the radio or television, nor by means of posters, flyers or personal letters, but only in the newspapers. An exception to this rule is that, under the action for the joint representation of investors, associations can be authorised by the President of the Court to use the media in order to seek members of the class.

The 2016 Law sets out two ways for individuals to receive compensation through a class action: the individual procedure and the collective procedure.

Under the individual procedure, the court will rule on the criteria and time limit to be met to be part of the class of persons harmed by the defendant. The court will also decide on the amount of damages to be paid to each category of persons in the class. Each individual member of the class will then need to request damages from the defendant or the association. In cases of disagreement, the individual member can apply the court.

Under certain circumstances, the court may decide to implement a collective procedure at the claimant’s request. This procedure is half mediation, half judgment, in the sense that the claimant will receive a mandate from the court to negotiate the amount of damages with the defendant on behalf of the whole class. The court will indicate the elements to be relied upon by the claimant to assess the amount of the damages to be negotiated with the defendant. The court will also set a deadline by which the negotiation should end and for the compensation to be paid to the individual members of the class. The procedure is intended to result in a settlement agreement between the association and the defendant. If such a settlement cannot be reached, the matter can be referred back to the court to request the application of the individual procedure.

A civil fine of a maximum amount of €50,000 can be imposed on any party who is considered by the court to be abusively delaying or preventing the conclusion of a settlement agreement.

Other collective actions
> Actions for the joint representation of consumers: Damages may be awarded to the individual claimants.

> Actions brought in the collective interests of consumers: The association may seek an injunction restraining the defendant from engaging in illegal activities, since this action is designed to seek relief which is in the interests of the group as a whole.

> Defence leagues actions: Damages are awarded to the association. In practice, courts tend to award nominal or symbolic amounts, as the actual loss to be compensated (that is, the loss suffered by the group as a whole), is difficult to evaluate. In addition, individual members may seek damages on their own behalf.

> Actions in the defence of important causes: Damages are allocated to the association. In practice courts tend to award nominal or symbolic amounts only.

There is no such concept as “punitive damages” under French law. The damages ordered are intended solely to compensate a party for the losses suffered.

In addition, there are two further procedures available by which relief may be awarded in specific circumstances: simplified class actions and mediation.

Judge or jury?

One to three judges depending on the amount and/or complexity of the matter. There is no jury in civil cases in France.

What relief may be obtained?

The relief available depends on the type of action.

Class actions

Damages may be awarded to the individual consumers who opt into the group defined by the judge in the liability judgment. The same judge will have jurisdiction to rule, separately, on any difficulty or claim arising out of the implementation of the liability judgment. Damages for harm such as mental distress or reputational harm cannot be compensated through class action proceedings.

The 2016 Law sets out two ways for individuals to receive compensation through a class action: the individual procedure and the collective procedure.
Simplified class actions: Where the identity and number of affected customers are known and the harm suffered by each is similar in amount, Article L.623-14 of the Consumer Code provides that the judge can sentence the company to pay compensation directly to the relevant consumers individually, within a set timeframe and in a manner set down by the judge.

Mediation: A mediation procedure was introduced in 2014 between the applicant consumer association and the company. The resulting mediation agreement will be presented to the judge who, after confirming that it is in accordance with the consumers’ interests, will declare the agreement fully enforceable. The 2016 Law also allows authorised associations to participate in mediation.

How are such actions funded?

The losing party is normally obliged to contribute a specified sum (usually rather low), by way of costs to the successful party, in addition to payment of court fees. Legal aid may be available to qualifying claimants.

Lawyers’ professional ethics rules prohibit lawyers from conducting cases on a “no win, no fee” basis; any fixing of fees purely on the basis of the outcome of the judgment is forbidden. However, it is permissible to agree to a supplementary fee payable upon the outcome of the case (i.e. a “success” fee) or for the services rendered.

Third party funding is not prohibited in France but the legal boundaries of the practice remain uncertain. Associations must comply with specific rules governing their funding.

Is pre-trial disclosure available?

There is no general discovery or pre-trial witness depositions in France. As a general rule, each party must voluntarily produce any relevant documents to support its claim. If a party has reason to believe that the other party is withholding relevant documents, it may request the court to order the filing of such documents by the other party. In addition, any party can ask the court to appoint a judicial expert to give evidence on technical issues and under certain conditions.

Likely future scope and development?

The Newly Introduced Actions law constitutes the most recent development of French law in this field. The implementation decree of the 2016 Law was published on 6 May 2017 (n°2017-888) and entered into force on 11 May 2017. As the 2016 Law has only recently been adopted, there is as yet no case law regarding its interpretation or practice. The coming months will tell us more about the success of these new class actions.

On 4 October 2018, a bill was introduced in the National Assembly aiming at allowing a group of at least 100 consumers to appoint one of its members to initiate a class action, without the need to go through an authorised consumer association. If this bill is passed, the number of class actions in France could substantially increase.
Law as at February 2019

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