While general class actions are not permitted in Luxembourg, plaintiffs with similar but separate claims against the same defendant(s) may bring an action on a group basis by way of a joint action. There are, in addition, a number of procedures by which actions may be brought on behalf of a group of plaintiffs, including representative actions brought in the name of a duly qualified organisation and on behalf of its members, for the defence of their collective interests. However, the development of a true class actions procedure is not anticipated in the near future.

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

The New Code of Civil Procedure, introduced in 1998 (Nouveau Code de Procédure Civile) (the "NCPC"), does not permit plaintiffs to bring a general class action in court.

However, it is possible for plaintiffs who have similar but separate claims against the same defendant(s) to bring an action on a “group” basis by way of a joint action. It is also possible to ask the court, under article 206 NCPC, to join claims which are closely related and to rule on them together. Luxembourg courts have adopted a liberal view in order to join separate cases. Courts usually tend to join cases in order to simplify the pleadings, to avoid conflicting judgments or even to save procedural costs. The claims may be connected as they share the same facts, the same objective or the likelihood of a common solution.

Alternatively, proceedings may be commenced against one or more defendant(s) by the service of a single application at the request of a large number of claimants. Each claimant still has to be individually identified in the application.

Under article 483 NCPC, it is also possible for a claimant with a direct or indirect material or moral interest in doing so, to intervene in pending proceedings on a voluntarily basis (intervention volontaire). Similarly, a third party may be obliged to intervene in pending proceedings (intervention forcée), if the upcoming court decision may affect its rights.

Under article 313-1 to 320-7 of the Consumption Code, an individual, professional group or qualified consumer association may commence summary proceedings to request an injunction for the cessation of any infringement of the law without having to prove any loss. However, it is not possible to claim damages on
behalf of individuals affected by the infringement. The only association so far authorised to bring such proceedings is the ULC (Union Luxembourgeoise des Consommateurs), a non-profit making organisation.

Who may bring them?

In general, each claimant must commence its own proceedings against one or more defendants in court. Pursuant to article 50 NCPC regarding the provisions common to all courts, only claimants with sufficient standing (qualité à agir) and a legitimate and direct interest (intérêt à agir) may bring an action in court, except as specifically set out by law (the principle of nul ne plaide par procureur).

A representative action may be brought in the name of a duly qualified organisation and on behalf of its members, but only for the defence of their collective interests, not individual interests. At present, such actions are limited to consumer claims but this may be extended in the future to professions such as architects and doctors.

A joint action has to be brought by all the claimants individually, albeit that this may be done by means of a single writ of summons. A representative action may only be brought by an entity authorised to do so by statute.

Opt in or opt out?

The judgment will only bind those claimants that are a party to the proceedings. Collective actions in Luxembourg can therefore be considered to be opt in actions.

Limitations?

There are no specific legal provisions limiting the ability of an entity to publicise a proposed joint action. However, the possibility and the extent of such a publication would have to be analysed on a case-by-case basis with regard to, for example, press law, etc.

However, it is prohibited for lawyers in Luxembourg actively to promote specific services beyond offering simple information.

Judge or jury?

Actions are tried by one or three judges, depending on the jurisdiction hearing the case. There are no juries in Luxembourg.

What relief may be obtained?

A joint action may result in both damages and/or injunctive relief. A representative action will generally result in injunctive relief. Punitive damages are not permitted. Damages awarded by the courts are compensatory only.

How are such actions funded?

Generally, each party bears its own legal costs. A successful party’s fees and expenses are not usually recoverable from the unsuccessful party. However, under article 240 NCPC, the successful party may recover a lump sum of money from the losing party by way of a procedural indemnity (indemnité de procédure). The amount of the indemnity is determined by the judge and typically varies between €1,500 and €10,000, depending on the complexity of the case and the amount at stake.

Judicial costs (i.e. bailiff’s costs) are paid by the unsuccessful party, or proportionally by all the parties involved, depending on the outcome of the matter and the decision of the court. Article 2.4.5.3 of the Internal Regulation of the Luxembourg Bar Association (Règlement intérieur de l’ordre des Avocats du Barreau de Luxembourg) prohibits lawyers from setting their fees by reference to the outcome of a matter before the outcome is known. However, an agreement which not only provides for fees that are determined by reference to the services rendered, but also by reference to the result obtained, would be permitted. State-funded legal aid may be available for persons with an income lower than the minimum wage (currently €1,921.03 per month).

Is pre-trial disclosure available?

An application may be made for pre-trial disclosure where there is a legitimate reason to establish and preserve relevant evidence before the main trial. Witness depositions are permitted under the general legal investigation measures in article 350 NCPC. In addition, a party may ask a witness to make a written statement before trial commences.

Likely future scope and development?

The European Commission’s Recommendation regarding the introduction of collective redress procedures in national law was debated in Parliament when the EU Directive was
transposed. The Competition Council and the Luxembourger Consumer Union stressed the utility of introducing such a procedure, but it was decided not to take up the Recommendation. As a consequence, the law of 5 December 2016 transposing the Directive does not include any possibility of collective redress.

Whilst Belgium and France have successfully introduced collective redress procedures, there are currently no further initiatives in that regard in Luxembourg.

In April 2018, the European Commission presented its draft proposal for a directive on representative actions for the protection of the collective interests of consumers (repealing Directive 2009/22/EC on injunctions for the protection of consumers’ interests). Under this proposal, parties in collective actions may no longer be consumers but must be qualified entities. If the directive is adopted, this is likely to have an impact on the current Luxembourg legal framework.

The introduction of a class action procedure is on the agenda of the new Luxembourg government, which took office in October 2018, but so far no proposals for legislative change have been published.

“Whilst Belgium and France have successfully introduced collective redress procedures, there are currently no further initiatives in that regard in Luxembourg.”
This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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