

French Class Actions at a Glance and Their Prospects for Development

IN SHORT

The Situation: After a lukewarm start since their introduction in 2014, class actions in France have gradually seen their field broaden. Still, while the regime of class action is already quite comprehensive in France compared to other EU Member States, it has not yet gained significant traction in the French litigation landscape.

Developments: [A Proposal for a Directive on representative actions for the protection of the collective interests of consumers](#) has been issued by the European Commission in April 2018, which was approved by the European Parliament in March 2019. The proposed changes do not appear as fundamental in France as they might be in other Member States, since French class actions already allow consumers to seek monetary damages.

Looking Ahead: While some procedural aspects of class actions in France might be expanded in light of the EU proposal, a French MP has already suggested passing a law opening up class actions to large groups of consumers without the need for them to use one of the French certified associations to bring legal proceedings.

Overview

Since its introduction into French law in 2014, the class action *à la française* (*action de groupe*) has not met the legislator's expectations for the settlement of consumer disputes. Among the reasons for this mixed picture is the restrictive interpretation of the material scope of this action by French courts as well as the cost it represents for associations in terms of human resources, legal costs, and management of claimants' groups to bring such actions.

So far, there have been about 17 class actions, most of which revolved around consumer law, the latest being related to the dispute between the French telephone operator Free and its customers (March 2019). Since the introduction of class actions into the French legal system, French courts have not awarded damages to consumers. Indeed, no class action has reached the compensation phase which is the second stage of the two-step proceedings, the first step being the liability phase. In a recent case, a "joint collective action" (collective action whose regime is slightly different from class action) was brought against German pharmaceutical company Merck in relation to alleged damages resulting from a pharmaceutical, but the case was dismissed on the merits in first instance.

The French class action regime could potentially be amended, albeit not significantly, in light of future European legislation.



The European harmonization proposal for class actions also aims at shortening the French proceedings, which is one of the factors that currently deters consumers from instituting class actions.



Proposal for a Directive on Representative Actions

In April 2018, the European Commission presented a [Proposal for a Directive on representative actions for the protection of the collective interests of consumers](#), which has been recently

approved by the European Parliament, to ensure the effectiveness of the prohibitory injunctions, the simplicity and speed of the procedure, the access by applicant associations to effective evidence procedures, cost reduction, and greater legal certainty for the applicants and the defendant(s).

The Proposal requires all Member States to set up a collective action mechanism for compensation, at least in the field of European consumer law.

However, the Proposal will not bring about any significant change in French law as the class action currently incorporated in the French Consumer Code is quite close to the one contemplated by the Commission. In particular, a compensatory relief mechanism is already available in France allowing consumers to seek compensation for economic losses resulting from material damages only (physical and moral damages are excluded).

Future Outlook for France

The Proposal changes some aspects of the current French class action regime, for example by extending its scope to stock market matters.

It also brings changes with regards to the funding of class actions. Currently, while French statute does not provide for public funding or third-party funding, the Proposal allows for the latter and regulates it under its Article 7 with the aim of ensuring transparency and avoiding any conflict of interest.

In addition, the Proposal aims at tackling the issue of the length of the French class action proceedings which is one of the factors that currently deters consumers from instituting class actions. This issue is addressed under Article 12 of the Proposal which requires Member States to treat class actions with "due expediency." Since this principle is currently not enshrined in French law, the Proposal may prompt the French legislator to specifically prescribe timelines for the proceedings.

Lastly, the Proposal provides that a class action may be brought by certified entities designated in advance by the Member States or created on an *ad hoc* basis for a specific action. To date, France allows approximately 15 nationally certified consumer associations to bring a class action on behalf of consumers, which some consumer right activists consider to be too restrictive. Therefore, independent from or ahead of the Proposal, a draft French bill was proposed in October 2018 that would allow a group of consumers (consisting of at least a hundred individuals) to institute legal proceedings without acting through nationally certified associations. This draft bill also provides that there will be a class representative who will represent the rest of the group before French courts. The group will also have to be represented by a lawyer before French courts. However, the draft bill does not provide any information on the requirements under which such groups would be created, their internal functioning, nor their dissolution.

Jones Day is monitoring the developments across the various jurisdictions, with an eye on the European legislation that will likely become the yardstick over the years to come. [Read our related publications on class actions in Europe.](#)

THREE KEY TAKEAWAYS

1. The number of class actions in France increases, albeit slowly, and decisions dealing with class actions instituted years ago are gradually being issued by French courts. However, to date, no class action has reached the compensation stage. At most, some actions seem to have incentivized parties to settle their case.
2. European Union law is involved in the development of this area. While the EU Proposal for a Directive may not bring any significant change in French law, it may drive the implementation of new legal mechanisms and the extension of the scope of class actions.
3. National initiatives are already emerging, proposing



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the substitution of certified associations by "consumer groups."

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