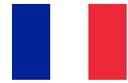




**British Institute of  
International and  
Comparative Law**

# COLLECTIVE REDRESS FRANCE



With financial support from the Civil Justice Programme of the European Union



Updated in collaboration with Aston University





**British Institute of  
International and  
Comparative Law**

#### Mission Statement

The British Institute of International and Comparative Law exists to advance the understanding of international and comparative law, and to promote the rule of law in international affairs.

#### Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

## Table of Contents

I.	General Collective Redress Mechanism.....	5
II.	Sectoral Collective Redress Mechanisms.....	6
A.	Group Actions in Consumer Law .....	6
1.	Scope .....	6
2.	Procedural Framework.....	6
a.	Competent Court .....	6
b.	Standing.....	6
c.	Availability of Cross Border collective redress.....	6
d.	Opt-In / Opt-Out .....	6
e.	Main procedural rules.....	6
3.	Available Remedies .....	7
4.	Costs .....	8
5.	Lawyers' Fees.....	8
6.	Funding.....	8
7.	Enforcement of collective actions/settlements .....	8
8.	Number and types of cases brought/pending.....	8
9.	Impact of the Recommendation/Problems and Critiques .....	8
10.	Information on Collective Redress .....	9
11.	Case summaries.....	9
B.	Group Actions in Competition Law.....	10
1.	Differences with consumer law group action .....	10
2.	Impact of the Recommendation/Problems and Critiques .....	11
C.	Group Actions in Health Law .....	11
1.	Procedural Framework.....	11
2.	Case summaries.....	11
3.	Impact of the Recommendation/Problems and Critiques .....	11
D.	Group Actions in Discrimination Cases.....	11
1.	Procedural Framework.....	11
a.	Competent Court .....	11
b.	Standing.....	12
c.	Main procedural rules.....	12
2.	Available Remedies .....	12
E.	Group Actions in Environmental Law .....	12
1.	Procedural Framework.....	12

2.	Available Remedies .....	12
F.	Group Actions in Data Protection Law .....	12
1.	Procedural Framework .....	12
2.	Available Remedies .....	13

# I. General Collective Redress Mechanism

The *action de groupe* is not set up as a horizontal collective redress mechanism. It is provided for as a specific mechanism in the various sectors mentioned above, and there is no over-arching, generic, procedure applying to all sectors. Instead, over a period of time, legislation has been enacted in an ad-hoc manner so as to allow for collective redress mechanisms in different sectors. It is however to be noted that under recently enacted legislation, a common set of procedural rules have been adopted under the Law on the modernisation of 21<sup>st</sup> Century Justice of 12 October 2016, which establishes a common set of rules applying to the various sectoral-based collective redress mechanism, except for the consumer cases, which remain subject to specific rules deriving from the 2014 Hamon Law. Even under those cases falling under the 2016 Law are subject to certain different rules : for instance, in case of the collective redress mechanism for breach of data protection rules, only injunctive remedy is available and not damages (see below). The Collective Redress mechanism in France still remains a sectoral-based asymmetrical procedure.

## II. Sectoral Collective Redress Mechanisms

### A. Group Actions in Consumer Law

A collective redress procedure for consumer claims was duly introduced in 2014 by virtue of the Act reforming consumer law (Loi n°2014-344 du 17 mars 2014 sur la consommation, also known as *Loi Hamon*). Class action proceedings in consumer law are now governed by Articles L.423-1 to L.423-16 and R. 423-1 to R.423-23 of Consumer Code (*Code de la consommation*).

#### 1. Scope

Compensatory.

Pursuant to Article L.423-1 of Consumer Code, an accredited consumer association which is representative at the national level can claim compensation before a civil court for individual damage suffered by consumers placed in similar or identical situations. The *action de groupe* is available where several consumers placed in similar or identical situations claim compensation for material damage resulting from a breach of statutory or contractual obligations committed by the defendants.

#### 2. Procedural Framework

##### a. Competent Court

The *tribunal de grande instance* has exclusive jurisdiction over collective proceedings. In accordance with French civil procedure rules, the competent court is the court of the place where the defendant lives. If this location is outside France, the *Tribunal de grande instance de Paris* is exclusively competent.

##### b. Standing

Only associations have legal standing to bring collective actions.

Associations must:

- be representative at a national level
- must comply with the following conditions set out in Article R.811-1 and seq. of the Consumer Code:
- at least one year of existence,
- evidence of effective and public activity with a view to the protection of consumer interests, and
- threshold of individual members.

To date, 15 associations have satisfied these criteria and are thus entitled to file collective proceedings.

##### c. Availability of Cross Border collective redress

Currently no collective action involves foreign plaintiffs.

##### d. Opt-In / Opt-Out

According to the French group action regime, which follows a multi-stage approach (see below), a group is constituted via an opt-in system after the decision on liability has been reached. Under the French class action regime, the group as such is only constituted after the decision on liability has been handed down, which determines the shape and the scope of the group. Since individual claimants can join the group only after this first phase, the likely success of their claims is clearer and they are ultimately less exposed to the risk associated with the litigation. Claimants are therefore incentivised to take part in the action.

##### e. Main procedural rules

The general rules applicable to proceedings before the *Tribunal de grande instance* also apply to group action proceedings. This includes the mandatory requirement of representation by a lawyer and the case management by a specific judge (*juge de la mise en état*). Furthermore, ordinary French civil procedure rules apply.

A 'simplified collective action' (*action de groupe simplifiée*) is possible if claimants are identified and their damage is identical (Art. L623-14 Consumer Code). In these circumstances, the court can oblige the defendant to compensate claimants immediately and individually within a fixed period of time.

### **Evidence/ discovery**

There is no discovery procedure under French law and the ordinary rules of French civil procedure apply. The judge in charge (*juge de la mise en état*) oversees disclosure of evidence and can order the production and timely exchanges of documents between parties and the court (Arts. 763 and seq. Code of Civil Procedure). The court is empowered to order the preservation of evidence and the production of documents, including those held by the defendant. (Art. R623-9 Consumer Code)

### **Single or multi stage process**

The group action mechanism follows a three-step approach.

(1) *First phase*: the court decides on liability issues on the basis of test cases brought by the association(s). The court then circumscribes the scope of defendant(s) liability and clarifies the damage to be compensated. If liability is established, judges shape the collective action: they determine the criteria that claimants must meet to be included in the group, specify the damage to be compensated and the available remedies, they fix cut-off dates to join the group, and set the conditions for its announcement via mass media. The decision on liability can be appealed.

(2) *Second phase*: the group is constituted via an opt-in system. Claimants must fulfil the criteria set out by the court. The judge may intervene should difficulties occur.

(3) *Third phase*: a final ruling from the court terminates the proceedings. If needed, the court may deal with remaining issues or obstacles linked to the distribution of compensation.

### **Settlement option**

Associations can settle the case on behalf of the claimants (Art. L623-22 and L623-23). Judicial approval is required for any out of court settlement agreement. The settlement agreement must specify the publicity process, the dates and the criteria for inclusion in the settlement and the court must verify that the settlement agreement correctly and sufficiently protects the claimants' interests.

## **3. Available Remedies**

Only compensatory relief is available. However, under art. L621-9 of the Consumer Code, the association can intervene and ask the Court to apply, where necessary, interim measures provided for in art. L. 621-2: if the Court recognises a violation, it can order a cessation of the breach, if necessary under penalty in the case of non-compliance.

Compensation is limited to material damage suffered by consumers. Physical or moral harm is not recoverable. Punitive damages are currently prohibited under French law.

The court has a key role in determining the nature of the compensation awarded. The ruling on liability sets out the nature of compensation and the conditions of its distribution. Compensation can be in kind or in money. Art. L. 623-6 of Consumer Code provides that whenever the court considers compensation in kind to be more appropriate, the court must specify its conditions.

Under the standard procedure, each consumer of the class is individually compensated: they must provide evidence that they suffered the damage defined by the judge, who will then individually set the amount to be recovered.

Under the simplified procedure, the individuals will have suffered identical losses and therefore receive the same amount of damages.

Associations can settle the case on behalf of the claimants (Art. L623-22 and L623-23). Judicial approval is required for any out of court settlement agreement.

## 4. Costs

Legal costs (i.e. costs pertaining to proceedings, processes and enforcement procedures) are usually borne by the losing party (Arts. 695 and 696 of Code of Civil Procedure) unless the judge, by a reasoned decision, imposes the whole or part of it on another party.

The court may also order the losing party to pay the winning party's lawyer's and/or expert's fees. In these circumstances, the judge may take into consideration the rules of equity and the financial condition of the party ordered to pay (Art. 700 of Code of Civil Procedure).

## 5. Lawyers' Fees

Professional ethics rules apply to such fees. Contingency fees are prohibited under French law. Result-based fees are only possible, if they remain a complement to hourly-based fees. There is no judicial review of lawyers' fees.

## 6. Funding

The court can direct the defendant to provide the claimant association(s) with advance payments in respect of costs and expenses arising out of constitution of the group (Art. L. 623-12 of Consumer Code). The exact amount is left to the court's discretion, but should reflect the nature and the complexity of the diligences borne by the association. The current regime does provide for public support of group action proceedings. There is no specific provision relating to third party funding. To date, the associations bringing the claims have been funding the actions.

## 7. Enforcement of collective actions/settlements

The judge who ruled on liability also decides on difficulties which might arise during the implementation stage of the judgment (art. L623-19 of the French Consumer Code). He shall fix a period of time within which he can be seized of claims regarding the distribution of compensation the professional has not complied with (art. L623-11). Under Article R623-28 of the French Consumer Code, the association is deemed to be a creditor and, as such, can benefit from articles L. 111-1 and L. 111-2 of the French Code of Civil Procedure for the enforcement of judgments: interim and conservatory measures are available to compel the defaulting debtor to perform its obligation.

## 8. Number and types of cases brought/pending

Between October 2014 and December 2016, nine claims have been brought by associations. Eight of them are currently pending, and one was settled.

- Three relating to housing (one settlement)
- Three relating to financial investment
- One relating to electronic communications
- One relating to tourism
- One relating to the economic sphere

## 9. Impact of the Recommendation/Problems and Critiques

- Change in traditional case management rules: The management of information flows about the proceedings requires the court to consider publicity and dissemination of information about collective cases.
- Publicity campaigns undertaken by parties: it appears that associations have accompanied their filings with intensive outreach campaigns launched at the very first stage of the action. This creates reputational costs for companies. In reply, companies develop their own information strategies targeting individuals.

- A recurring criticism is the complexity of the procedure.<sup>1</sup> Another is that it places a very heavy administrative and financial burden on consumer associations, which often do not have extensive resources..
- Lawyer-driven litigation: Some initiatives have encouraged the launch of web platforms aiming at informing individuals and at collecting complaints against companies (see for instance the site: [www.actioncivile.com](http://www.actioncivile.com)).

## 10. Information on Collective Redress

During the first stage of a collective action, the court decides on the publicity measures to be taken in order to inform the relevant consumers. The publicity measures can only be implemented after a final decision on admissibility of the claim. The costs of the publication measures are born by the defendant.

## 11. Case summaries

<b>Housing</b>	<i>Association UFC Que Choisir v. Foncia</i> (October 2014):	Filed on 1 October 2014, this case is the first group action lawsuit. It was filed before the Nanterre court and regards undue fees paid by 318, 000 tenants. The filing association has estimated the annual average loss to be around 27.60 Euros per claimant. In some cases, the losses have extended over several years and reached hundreds of Euros. The association has evaluated Foncia's illegal benefit to be around 40 Million Euros over five years. Aware that the success or the failure of this first groupCivic action would have consequences on future group actions, UFC Que Choisir seems to have carefully selected its first case since Foncia had already been fined by the Paris High Court of First Instance in 2013 for comparable practices.	The decision on the admissibility of this claim is currently pending.
	<i>Association Confédération Syndicale des Familles (SLC-CSF) v. Paris Habitat-OPH</i> (October 2014):	This group action was filed before the Paris court, and regards undue fees paid by tenants. According to the association, the class action concerns about 100,000 tenants. Even though the individual harm would be relatively small, the aggregated loss is estimated to be 3 Million Euros.	In May 2015, the parties reached a settlement agreement, and Paris Habitat agreed to pay 2 Million Euros to compensate 100,000 tenants.
	<i>Association Confédération Nationale du Logement (CNL) v. Immobilière 3F</i> (November 2014):	The group action concerns unfair contract terms contained in property lease contracts with the company Immobilière 3F.	On January 27th, 2016, the Tribunal de Grande Instance of Paris dismissed the claim, pointing out CNL's failure to provide adequate proof of the lack of reimbursement. The Tribunal also did not recognize the unfair nature of the clause. An

<sup>1</sup> See N. Molfessis, "L'exorbitance de l'action de groupe à la française", *Recueil Dalloz*, 2014, p. 947.

			appeal has been lodged by the association (CNL).
<b>Financial investment</b>	<i>Association CLCV v. Axia and AGIPI</i> (October 2014):	This group action was filed before the Nanterre court, and targets Axa and AGIPI for breach of their contractual obligations with regards to contracts signed before 1995 which guaranteed a 4.5% minimum remuneration rate. According to CLCV, the aggregate loss would reach between 300 and 500 Million Euros, and the loss per individual claimant would be estimated to be 1,500-4,000 Euros (with a possibility of greater losses which, in specific cases, could reach 15,000 Euros).	The decision on the admissibility of this claim is currently pending.
	<i>UFC-Que Choisir v. BNP Paribas</i> (July 2016):	BNP Paribas allegedly breached its contractual duties, promising an increase of the capital contributed to an investment fund.	The decision on the admissibility of this claim is currently pending.
	<i>CLCV v. BNP Paribas Personal Finance</i> (BNP PPF) (November 2016):	This subsidiary of BNP Paribas marketed a mortgage that proved highly detrimental to the individuals who subscribed to it.	The decision on the admissibility of this claim is currently pending.
<b>Consumer</b>	<i>Association Familles Rurales v. SFR</i> (May 2015):	This group action concerns alleged misleading information displayed by the mobile telecommunications company SFR on its 4G internet coverage.	The decision on the admissibility of this claim is currently pending.
<b>Consumer</b>	<i>CLCV v. BMW Motorrad France</i> (December 2015):	Consumers were allegedly unfairly compensated by BMW Motorrad, a motorbike manufacturer, following defects in the conception of a vehicle.	The decision on the admissibility of this claim is currently pending.
<b>Tourism</b>	<i>Familles rurales v. Manoir de Ker an Poul</i> (August 2015):	The camping site Manoir de Ker an Poul allegedly included an unfair clause in its lease contracts, to expel all mobile homes after a certain time.	In December 2016, the claim was recognized admissible. The decision of the merits is currently pending.

## B. Group Actions in Competition Law

### 1. Differences with consumer law group action

In competition law claims, Arts. L.623-24 to L.623-26 of Consumer Code specify two additional requirements to the procedure outlined above under III:

**Competition group actions are exclusively follow-on actions:** they are authorised only after a final decision from the National Competition Authority, the European Commission or a court which has identified anticompetitive behaviour. The court does not decide on liability issues, but focusses on the determination of the group, on the fixing of membership criteria, on the evaluation of recoverable loss per claimants, and on the publicity process.

**Limitation:** Group actions can only be commenced within a period of 5 years after the final decision establishing the infringement to competition rules has been made.

## 2. Impact of the Recommendation/Problems and Critiques

- Evaluation of individual damage and fixing of a damages schedule: Legal uncertainty in the fixing of a damages schedule remains where several defendants have been involved in anticompetitive practice.
- Leniency programs and their impact upon compensatory damages claims is to be determined.

### C. Group Actions in Health Law

#### 1. Procedural Framework

Law No. 2016-41 of 26 January 2016 and Arts. L.1143-1 and seq. of the French Code of Public Health introduced rules for group actions in the health sector.

Accredited users' or patients' associations can file for compensation in respect of individual damage suffered by users of the health system who are placed in similar or identical situations. The loss must result from a breach of statutory or contractual obligations committed by the manufacturers or suppliers of health products. The group action covers damages claims arising out of personal injuries suffered by users of the health system.

##### Single or multi stage process

Proceedings follow the three-step procedure outlined under III. However, mediation may be ordered upon party request. Mediators are appointed by the court and selected from a list of established by the Ministry of Health. The mediator can be assisted by a mediation committee. Together, they are in charge of proposing a settlement agreement to parties.

In the absence of mediation, the court rules on liability, the constitution of the group, recoverable harm and remedies. The court may set down cut-off dates for joining the group. The period given to claimants to join the group may extend between 6 months and 5 years.

The decree implementing the Act of November 2016 allows claims for damages which are predating the entry into force of the Act.

#### 2. Case summaries

<i>Association d'aide aux parents d'enfants souffrant du syndrome de l'anti-convulsivant (APESAC) v Sanofi</i>	A drug developed by Sanofi allegedly caused malformations to the new-borns of drug users	Both parties are currently in the out-of-court "amicable" phase until April 2017, when APESAC will be allowed to file a claim before the Tribunal de Grande Instance of Paris.
--	--	--

## 3. Impact of the Recommendation/Problems and Critiques

- Length of proceedings: Length of proceedings increased since claimants may have up to five years to join the group.
- Complexity of procedure: The impact of diverse harms and the approach to the allocation of damages within the group is yet to be determined.
- Increased administrative burden: the burden of proof for healthcare professionals increases as they must now take into account retrospective scope of claims and keep a flawless traceability of their activity.

### D. Group Actions in Discrimination Cases

#### 1. Procedural Framework

Group actions in this area were established pursuant to Act of November 2016 (Loi n° 2016-1547 du 18 novembre 2016).

##### a. Competent Court

The claim may be brought before the *Tribunal de grande instance* or the administrative court.

## b. Standing

Associations which have the objective of fighting discrimination (as well as trade unions) may bring proceedings to claim compensation for the losses suffered by persons placed in similar or identical situations due to direct or indirect discrimination.

## c. Main procedural rules

Proceedings follow the three-step procedure outlined under III. During the first phase of the procedure, the association/trade union must provide evidence of discriminatory practices before the court. On the basis of the test cases brought by the plaintiff, the court will decide on the defendant's liability.

The legislation also provides for a simplified group action (*action de groupe simplifiée*) in situations where individuals are known and have suffered identical losses.

Mediation is also possible and any settlement agreement must receive judicial approval. Individuals must voluntarily step forward to benefit from the terms and conditions of the settlement agreement.

## 2. Available Remedies

The court can order injunctive relief and may also order the defendant to pay a fixed sum in advance to cover the claimant's expenses

## E. Group Actions in Environmental Law

Environmental class actions are now incorporated in the French Environment Code, and aim at compensating the losses caused by a damage in the areas mentioned in Article L. 142-2 of the French Environment Code (amongst them: nature, environment, improvement in the living environment, water protection, urbanism, contamination, nuclear safety, or radiation protection).

### 1. Procedural Framework

Group actions are available pursuant to the Act of November 18th, 2016. The procedural framework is similar to the one described in 'Discrimination'. Only a violation of environmental law committed after the entry into force of the law can be subject to a group action.

#### Standing

As provided by Article L. 142-3-1, the organizations allowed to initiate such actions must be duly registered with for statutory aim to protect the environment, or to defend victims suffering physical injuries, or to defend the financial interests of their members.

### 2. Available Remedies

Both injunctive and compensatory relief is available.

In all sectors except data protection, the class action enables to obtain both cessation of the breach and compensation for the bodily injuries and material losses resulting from the damage.

Regarding specifically environmental damage, only the losses sustained by individuals or legal entities that result from the damage caused to the environment are compensable

## F. Group Actions in Data Protection Law

### 1. Procedural Framework

Group actions are available pursuant the Act of November 2016. Since, data privacy class actions are incorporated in the French Data Protection Act (Art. 43 ter of Law no. 78-17 of 6 January 1978 on information technology, data files and liberties (Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés)).

The procedural framework is similar to the one described in 'Discrimination'.

In this procedure, there is no formation of a group of victims, thus the mechanism is different from the group action procedure as described above.

**Standing**

The action can only be brought by organizations on behalf of individuals who are in a similar situation, all suffering a loss caused by a violation of the French Data Protection Act. The organization representing the individuals must have at least five years of existence, with a purpose to protect privacy and personal data.

**2. Available Remedies**

Injunctive relief only.

Charles Clore House  
17 Russell Square  
London WC1B 5JP

T 020 7862 5151  
F 020 7862 5152  
E [info@biicl.org](mailto:info@biicl.org)

[www.biicl.org](http://www.biicl.org)

A company limited by guarantee  
Registered in England No. 615025  
Registered Charity No. 209425



**British Institute of  
International and  
Comparative Law**