



**British Institute of
International and
Comparative Law**

COLLECTIVE REDRESS LUXEMBOURG



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**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.

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I. General Collective Redress Mechanisms

Luxembourg law does not permit a horizontal collective redress mechanism other than the group actions laid out in Overview.

II. Group Action in Consumer and Competition Law

1. Scope

Injunctive

A group action is available in Luxembourg law to request the cessation of any infringement of the Law of 30 July 2002 on unfair commercial and competition practices (*'loi sur les pratiques commerciales, concurrence déloyale, et publicité comparative'*).

2. Procedural Framework

a. Competent Court

The magistrate presiding over the chamber of the commercial district court (*tribunal d'arrondissement siégeant en matière commerciale*) is competent to order the cessation of the infringement (article 23 of the Law of 30 July 2002).

b. Standing

Article 23 of the Law of 30 July 2002 provides that an individual, professional group or accredited consumer association can bring the claim. A professional group is an association aiming to group individuals of the same profession (industrial, commercial, agricultural...) to defend the interests of the profession, and allow exchange between the members.

The only organisation that has so far been authorised to bring such action is the ULC (*'Union Luxembourgeoise des Consommateurs'*).

c. Availability of Cross Border collective redress

There are no specific rules or limitations as to the participation of foreign claimants.

d. Opt-In / Opt-Out

The organisation brings the claim in the general interest of the consumers, and does not represent a class of identified members. There is no mechanism of opting-in or out.

e. Main Procedural Rules

The action follows a summary procedure (*procédure de référé*) provided for in articles 932 to 940 NCPC: the Court can order any protective or interim measures to prevent a damage or put an end to a violation.

The cessation of the infringement may be ordered even in the absence of evidence of actual loss or damage, or negligence on the part of the defendant.

Collective ADR and settlements:

The court can encourage the parties to settle, and the parties can chose to do so at any time. In the majority of the cases, the defendant complied with the requests of the ULC, and the action was consequently terminated.

There is no specific collective ADR mechanisms. The law of 17 February 2016 introduced alternative dispute resolution for consumer disputes. However, it applies to “any national or cross-border dispute between one consumer and one professional concerning the contractual obligations arising from a contract of sale or service”. It is thus not applicable in the case of a group action.

Follow-on actions:

An injunction/sanction from the Luxembourg Competition Authority constitutes an irrefutable evidence of fault for the purpose of an individual action for compensation. The follow-on compensatory action cannot be collective.

3. Available Remedies

The aim of the claim can only be a cessation of the breach. It is not possible to claim damages on behalf of affected individuals.

4. Costs

The losing party usually does not bear the legal costs: generally, each party bears its own. However, article 240 NCPC provides that the successful party may recover a procedural indemnity from the losing party, the amount being determined by the judge.

5. Lawyers' Fees

Luxembourg Bar Article 2.4.5.3 prohibits contingency fees. However, a lawyer and his client may enter into an agreement providing for a maximum or minimum for a portion of the lawyer's fees, or a supplementary fee to be determined on the basis of the results obtained or services provided.

6. Funding

Currently, the only entity which has been allowed to file a group action is the ULC, which is financially assisted by the State.

Third-party funding is unknown in Luxembourg. However, there are no legal or regulatory provisions prohibiting a third party from funding a claim.

7. Enforcement

Under article 25 of the Law of 30 July 2002, any failure to comply with the injunctions or prohibitions imposed by a final decision under article 23 shall be punishable by a fine (from 251 to 120 000 euros).

8. Cases

So far, only the ULC ('*Union Luxembourgeoise des Consommateurs*') has been allowed to bring group actions under the 2002 Law on unfair business and competition practices. The ULC is only allowed to request injunctive relief, before the Luxembourg Competition Authority ('*Conseil de la Concurrence*') for competition matters, and the District Court of Luxembourg for consumer matters.

<i>2012-FO-08 - Affaire Union Luxembourgeoise des Consommateurs (ULC) v. assurances</i>	Following a complaint lodged by the ULC on 21 September 2011, the Luxembourg Competition Authority initiated an investigation against insurance companies for alleged cartels.	By decision of 20 December 2012, the Competition Authority imposed a total fine of EUR 676 807 on nine insurance companies.
<i>Union Luxembourgeoise des Consommateurs (ULC) v. Apple Distribution International</i>	On October 10 th , 2012, the ULC filed an action for cessation against Apple for misleading information in relation to the legal guarantee.	Following negotiations, Apple complied with the requests of the ULC, i.e. to properly inform buyers of their legal rights through information notice on the website and at the physical points of sale. By order of 12 July 2013, the District Court of Luxembourg terminated, at the request of the ULC, the action for cessation brought against Apple.

9. Impact of the Recommendation / Problems and Critiques

The current group action mechanism in Luxembourg can only aim at putting an end to the infringement. In the absence of an effective collective redress mechanism, the right to compensation and the right to access to justice remain theoretical for Luxembourg consumers.

Both the ULC ('*Union Luxembourgeoise des Consommateurs*') and the Bar Association of Luxembourg expressed the necessity to introduce a collective redress mechanism in Luxembourg law, in the area of consumer law in particular.

The Bar Association of Luxembourg demonstrated that without an effective collective redress mechanism, companies were technically able to maximize their profit through illegal practices, with an individual damage to the consumer "small" enough so as to discourage any legal action.

The ULC stated cases in telecommunications, insurance and transport where consumers could have been awarded damages if an efficient collective redress mechanism had been in place.

<i>Coditel (Numericable) case (Décision du Conseil de la Concurrence no 2012-AA-02 du 17 juillet 2012)</i>	The telecommunication operator's overbilling practices were condemned by the Luxembourg Competition Authority. However, individual compensation belongs to each contractual relationships between the subscribers and the operator and, as explained by the President of the Authority, it is likely that only a few subscribers will go to court to obtain compensation.
<i>Transline Tour SARL case (pending)</i>	Transline Tour SARL sold hundreds of plane tickets, cancelling them at the last minute because of an alleged bankruptcy. At least 50 customers reached out to the ULC to claim compensation, but the ULC was not allowed to represent them. The case is currently being prosecuted by the Parquet de Luxembourg before the criminal jurisdictions, but it is uncertain whether consumers will be compensated.

In 2015, in response to a parliamentary question about the implementation of the 2013 Commission Recommendation, Ministers Fernand Etgen and Etienne Schneider noted that the government had undertaken to examine the possibility of introducing group actions to defend consumers' rights.

An opportunity for the implementation of a collective redress mechanism in competition law presented itself in 2016, with the enactment of the law transposing the Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law (*Loi du 5 décembre 2016 relative à certaines règles régissant les actions en dommages et intérêts pour les violations du droit de la concurrence des Etats Membres et de l'Union européenne*).

The Luxembourg Competition Council issued an opinion, agreeing with the bill but also expressing regret as to the absence of introduction of a collective redress mechanism in the bill, despite the fact that the Directive was accompanied by the 2013 Commission Recommendation.

In the area of competition law, the reluctance of economic actors to implement collective redress mechanisms, and the general "antitrust tendency" of the Luxembourg authorities (favouring protective agreements and dominant positions), could be explained by the small size of the country and its dependence upon other countries (Ashurst study, National report for Luxembourg).

To date, no further initiative has been taken.

10. Information on Collective Redress

The Court may order a publication of the decision, to be displayed outside the business facilities of the defendant. It may also order the publication, in whole or by extract, by means of newspapers or by any other means. The costs are to be borne by the defendant.

There does not seem to be a National Registry keeping a record of the group actions in Luxembourg.

III. Other Sectoral Representative Actions

1. Scope

In Luxembourg administrative law, duly qualified organisations can request the judicial review of an administrative decision issued by a public body. The action is brought by the organization on behalf of all of its members, and can only aim at the annulment of an administrative decision.

2. Procedural Framework

a. Competent Court

The Administrative Court decides on judicial review actions brought against administrative acts of a regulatory nature, irrespective of the authority from which they emanate.

b. Standing

The legal persons allowed to challenge an administrative act can be governed by public or private law (such as associations, trade unions and other groups formed to defend specific interests), provided that the action is brought to defend a distinctive corporate interest, and that its purpose is to benefit the collective interests of the organization as a whole (and not those of its individual members).

The claim can only be raised by a person with a direct and legitimate interest in the matter. As such, for instance, associations duly authorized under a specific law will be deemed to have standing if the administrative act is infringing upon this specific law.

c. Main Procedural Rules

The request must be made within three months of the publication of the contested administrative act or, in the absence of publication, of the day on which the claimant became aware of it.

The contentious proceedings are written. The claimant must be represented by a lawyer, except in tax matters.

Challenging an administrative act is non-suspensive, except for requests of international protection. However, the claimant can request a suspension of the contested act or protective measures from the President of the Administrative Court.

3. Available remedies

The action can only aim at the annulment of an administrative decision.

4. Costs

The unsuccessful party must pay court fees which, however, represent only a tiny part of the actual costs since each party must bear its own legal costs, irrespective of the outcome of the proceedings.

In certain cases, a party may claim legal aid. In this case, the State bears all costs (including legal fees).

5. Cases

The following representative entities have been deemed to have standing by the Council of State of Luxembourg (*Conseil d'État du Luxembourg*):

<i>C.E. 9 juillet 1969, 21, 113 - Ordre des Architectes</i>	The entity representing architects was able to bring a claim in defence of the organisation's collective interests, as determined by its corporate object set out in its articles of incorporation.
<i>C.E. 9 avril 1979, 25, 5 - Associations des Patrons-Mécaniciens-Dentistes</i>	The association of employers-mechanics-dentists was deemed to have sufficient standing to bring an action for the annulment of an administrative decision, which had put in jeopardy the collective interests of the association.

C.E. 21 juin 1985 - Associations de protection de l'environnement

The action of an association for the protection of nature and the environment against a ministerial decision allowing animal testing was deemed admissible.

6. Problems and Critiques

Although useful to defend the interests of professional groups, that type of representative action is very specific in its scope, and only allows for the challenge of a decision issued by a public body. The action is thus not relevant for infringements perpetrated by an entity other than a public body, and also cannot result in compensation.

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