

CLASS ACTIONS REFORM IN FRANCE: NECESSARY, BUT DEBATABLE

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Legal Briefings

We assess two new proposals that could fundamentally change the French system for class actions

A proposed law on a new set of rules for class actions in France was presented to the French National Assembly on 15 September 2020. In developing the proposal, Assembly representatives took the following clear failure as their starting point: only 21 class actions, including 14 consumer cases, have been brought since 2014, and not a single company has yet been held liable.

In the current system, class actions are governed variously by the Consumer, Environment, Public Health and Employment Codes. Under the proposed new law, this sector-based approach would end and a general regime for class actions would take its place. The proposed law also suggests to substantially expand which associations would have legal standing to bring a class action: they could do so provided they have been in existence for two or more years and their mission is to defend the interests that have been harmed, or if they have at least fifty individuals as members (this would most obviously apply to victims' associations). Legal entities, including public entities other than the State, would also be able to take part in class actions.

Alongside these objectively welcome provisions, the proposed law puts forward two new rules that would fundamentally change the French system for class actions if passed. The proposed rules have already prompted certain misgivings on the part of businesses.

The first debatable measure involves how the class action may be publicised. As things stand today, decisions on measures to publicise the class action – in order to inform members of the "class" (i.e. the group) about its existence – are made as part of the judgment on liability. If the proposed law is passed, associations filing a class action would be able to publicise the action *before* the court has issued any ruling on liability.

There is some concern that this new feature might open the door to potential abuses due to virulent, unfounded public relations campaigns that seriously harm the reputation of companies targeted in a suit. Significant pressure could be brought on a company in settlement negotiations, for example, due to the threat of this type of bad publicity.

The second debatable measure concerns possible penalties. Under the proposed law, companies held liable could be ordered to pay a civil fine "proportional to the seriousness of the wrongful act, the liable party's financial situation, and the profit earned from that wrongful act." Such fines would only be imposed on companies "that have deliberately acted wrongfully for financial gain or savings."

This civil fine, potentially for as much as 5% of the liable company's revenue, would be paid into the Public Treasury. The fine is a way of getting around the ban on punitive damages in France, where the guiding legal principle is full and complete compensation only for harm actually suffered. We might wonder how useful a civil fine of this kind really is, since in consumer law for example, criminal offences specifically aimed at discouraging and penalising certain types of culpable behaviour are already on the books.

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