

CLASS ACTIONS IN FRANCE: THE FUTURE IS STILL UNCERTAIN

16 February 2022 | Insight

Legal Briefings - By **Martin Le Touzé, Partner, Herbert Smith Freehills (Paris) LLP**

Despite an incoming EU class action regime, the prospects for group litigation in France remain bleak

We might as well just say it: France's version of the class action procedure has been disappointing so far. Only twenty class actions have been brought since the 2014 Hamon Law first introduced the possibility in France, and none have led to the defendant being held liable. In reaction to this rather unflattering record, a bill was presented to the National Assembly on 15 September 2020, ambitiously entitled "a new set of rules for class actions". However, there has been no legislative follow-up since then.

With the EU Directive on consumer class actions that was adopted on 25 November 2020, surely Europe offers the most likely forum for reviving the class action. Member States now have until 25 December 2022 to transpose the Directive and until 25 June 2023 to put it into effect.

Yet will this EU Directive actually remove the obstacles that have kept class actions from progressing in France? We believe there are three procedural hurdles that explain their extremely limited development.

First, the entities with standing to bring a class action in France are too strictly defined. The law gives standing to sue only to certain types of non-profit association. These must be authorised consumer protection associations (but there are only fifteen with this status in France), or, for other class actions (based on public health, the environment, personal data or employment discrimination), associations that have been duly registered for at least five years and have bylaws that specifically include defending the interests at issue as one of its missions.

Second, French law does not allow punitive damages. As a result, the potential award amount is not dissuasive for the business party, nor is it sufficiently of interest to plaintiff associations, since the actual amount of potential damages for each victim is often quite small.

Third, under French law there is no such thing as the Anglo-American "discovery" – a procedure in which parties can be compelled to produce evidence in their possession, even if it is not in their favour.

Given these limits on the development of class actions in France, will the transposition of the EU Directive give new impetus to France's version of the class action? It seems unlikely. The EU Directive offers only partial answers, and the main underlying issues will almost certainly not be resolved by transposition.

To begin with, the Directive leaves it to Member States to determine who has standing to bring a class action, provided they meet certain criteria set out in the Directive. These include legal personality, having a non-profit mission and demonstrating a legitimate interest in protecting consumers' interests, as in French law. This in turn means there will be no need to expand the small circle of entities qualified to bring class actions in France.

With regard to punitive damages, the Directive also specifies that its provisions are absolutely not intended to permit such awards against offending business parties. Once again, French law will not need to change on this point.

Lastly, the Directive is cautious about the prospect of introducing anything like a discovery procedure. Although Member States must make sure that if so requested by a party, judges are able to order the production of evidence either by the defendant or a third party, this procedure should be established "in keeping with national law". In other words, the existing mechanisms under French law could suffice, even though they are not at all the same as "discovery".

Overall, while French law must adapt ever so slightly in order to abide by the Directive (not least by extending recoverable losses in a class action to include personal injury), these changes seem to fall well short of what would be needed to revive the class action in France.

To date, no proposal for transposing the Directive has been submitted in France; this is proof enough that for the time being, the subject is hardly a priority for lawmakers.

Article first published in French on 10 February 2022 in L'Agefi Hebdo

SHARE

[Share to Facebook](#) [Share to Twitter](#) [Share to LinkedIn](#) [Email](#) [Print](#)

Show Share Links

RELATED TOPICS

[Class Actions](#)

FEATURED INSIGHTS

FEATURED INSIGHTS

HELPING YOU STAY AHEAD OF THE BIG ISSUES

BROWSE BY:



•

[TECH, DIGITAL & DATA](#)



-

[GEOPOLITICS AND BUSINESS](#)



-

[NEW BUSINESS LANDSCAPE](#)

RELATED ARTICLES



Tax in M&A in the UK and Europe – What you need to know



Crypto winter is here – what does it mean for insolvency practitioners?



Deal or no deal? Bring disputes lawyers in early to close that deal

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



MARTIN LE TOUZÉ
ASSOCIÉ, PARIS

+33 1 53 57 73 72
martin.letouze@hsf.com