

French Class Action Law Has Less Impact Than Expected

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Since the entry into force on 1 October 2014 of the provisions of the “*Hamon*” law of 17 March 2014, which introduced class actions into **French law** in relation to consumer and competition law matters, only six class actions have been brought.

The first action was filed on the date the new law came into effect by the consumer association **UFC-Que Choisir v. Foncia**, a real estate group, to obtain compensation for the service charges levied by Foncia. The most recent class actions seem to have been brought in May 2015 by the consumer association Familles Rurales: one against SFR, a network operator that allegedly misled consumers as to the geographic coverage of its 4G network, and one very limited action against a campground operator who forced campervan owners to buy new ones after 10 years if they wanted to keep their plots.

Class actions are clearly not as popular as had been hoped, at least not yet. Indeed, of the (only) six procedures brought before the French Courts, four were brought around one month after the law came into effect, and all relate to consumer matters. One action led to a €2 million settlement intended to compensate the damages suffered by 100,000 consumers who had been required to pay excessive charges for elevator tele-surveillance.

The limited attractiveness of class actions is probably due to the strict conditions for bringing an action under the Hamon law.

Conditions for Bringing a Class Action

The law allows class actions only in relation to consumer and competition law matters but, as none of the six procedures brought so far relate to competition law matters, it seems that the specific mechanism put in place for class actions relating to competition law has drastically limited their appeal.

Several conditions must be satisfied in order to bring any class action:

- At least two consumers must be placed in a similar or identical situation.
- The consumers must suffer individual financial losses resulting from a tangible damage.
- The losses must arise from the same breach of legal or contractual obligation(s) by one or several professional(s), in connection with the sale of goods or provision of services, or as a result of the same anti-competitive practices.

In addition, only approved national associations can bring class actions. To be approved, an association must comply with the conditions set out by Article R. 411-1 of the French Consumer Code. Only 15 associations are currently authorised to bring class actions.

The Three Phases of a Class Action



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1. A judgment determines the validity of the claim and the liability of the defendants. If liability is determined, the judgement will also confirm the manner in which compensation should be determined, and the next steps in the procedure, including the deadline for submitting claims.
2. Once the judgement determining liability has been published, the defendants compensate the losses suffered individually by each consumer who has opted to participate in the class action.
3. A second judgment closes the proceedings at a date specified in the judgment determining liability. The second judgment determines whether or not all compensation claims have been paid by the defendant. If they have not, the court decides those claims based on the criteria for determining compensation outlined in the first judgment. Once all compensation claims have been paid, or if no compensation claim is filed within the deadline set forth in the first judgment, the court takes note of the termination of the action.

Simplified Class Actions

The Hamon law also provides for the possibility of bringing a simplified class action. The identity and number of the consumers harmed must be known and the damage must be the same for each of them, or is the same when taking into account the service provided or by reference to a time period.

The procedure for a simplified class action is substantially similar to that of an ordinary class action, except the victims are informed individually by the defendant of the existence of the action. The consumer must then inform the claimant association if he/she accepts the compensation fixed in the judgment ruling on the liability of the defendant. This is because the association must compensate the consumer if the defendant does not fulfil its payment obligation.

The Hamon law also allows for mediation between authorised consumers' associations and defendants, before and after an action has been brought, until the end of the proceedings.

What's Next?

Because of the dearth of class actions launched since the law came into effect, it is not yet possible to assess any potential failings and practical flaws, and, ultimately, its impact on companies conducting business in France. None of the settlements reached so far even allow a further understanding of the criteria that will be used by the courts to evaluate the existence and amount of damages suffered by consumers.

The expansion of class actions may prompt a larger volume of claims. For example, the Health Law, adopted on 17 December 2015, provides for class actions through authorised associations, brought by patients who suffered medical damages because of their treatment. This reform may not, however, simplify the procedure for patients, particularly in complex cases, relating to the production of evidence of the damage and the determination of compensation.

A draft law extending the scope of class actions to cover the enforcement of anti-discrimination laws is still expected and under discussion. A potential, highly disputed, extension of the Hamon law to cover environmental damages, for example, has the potential to increase the volume of class actions.

In any event, companies should make sure they pay attention to their customers, regardless of their significance in terms of goods or services purchased, in order to avoid facing a class action.

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