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The new group actions law in France – A cause for concern for companies?

The French law on consumer rights, also referred to as the "Hamon law" ("*loi Hamon*"), was enacted on 17 March 2014. The introduction of group actions is one of the main innovations of this law.

Companies must now integrate this possibility into their legal risk management. However, as the text currently stands, radical measures are not likely to be necessary.

Companies will face a new possibility for collective action

Up until now, consumers generally did not pursue legal action for damages, given the small sums likely to be awarded and the complex and costly nature of lawsuits.

The possibility for group actions will now allow consumers to pursue compensation for losses "arising in connection with the sale of goods or the supply of services" and for those resulting from anticompetitive practices (abuse of a dominant position, anticompetitive agreements). The recoverable loss is the "pecuniary loss resulting from material damages [translated from the French term "dommages matériels"]".

A "group" will be made up of consumers put in a "similar or identical position" and sharing as a "common cause a breach by one or the same professionals of their legal or contractual obligations".

A "consumer" is defined in the Hamon law, in accordance with European law, as "a natural person who acts for purposes which are outside his or her trade, business or profession". A "professional" is a natural or legal person who acts within his/her trade, business or profession.

The procedure prescribed by the law gives the judge significant power.

The judge must first decide on the nature of the professional liability, as well as define the group of consumers affected and the criteria to join the group. In the same judgment, the judge will determine the nature of losses for each consumer or for each consumer category within the group, as well as the amounts of such losses or the criteria to assess such damages. The judge will then determine how the professional must inform other consumers who are likely to be included in the group. Consumers will be given a period of time between two and six months from the advertising measures to join the group in order to obtain compensation.

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The Hamon law provides a simplified version of the procedure when the identity and the number of consumers affected are known and when the consumers have suffered a loss of the same amount or of an identical amount per service supplied or over the same period or duration (for example, subscribers to a service). The judge may order the professional to compensate the consumers directly and individually within certain terms and time limits. Said consumers must then be individually informed of the final decision by the professional and allowed to accept compensation.

Where the injury suffered is a result of competition law infringements, the new law states that judges will decide on the professional(s)' liability after a national or European competition authority or court has found an infringement of competition law and all appeals regarding the infringement have been exhausted.

Lastly, the French *tribunaux de grande instance* (a category of first instance civil courts, composed of judges who take decisions on a collegiate basis) have exclusive jurisdiction to determine group actions.

The conditions of application will need to be defined via decrees before any group actions may be pursued.

What are the risks that the group action will be abused?

It is important to note that French group actions are very different from US class actions. The two legal systems are quite dissimilar: there is no French equivalent to the discovery procedure, punitive damages do not exist under French law, French lawyers cannot work on a no win-no fee basis, lack of a jury, etc.

Moreover, the French group actions law includes safeguards. Only authorized consumer associations are permitted to file lawsuits. The French law requires the use of the "*opt-in*" procedure, whereby consumers need to express their consent to belong to the group. This procedure naturally limits the number of applicants compared to the "*opt-out*" procedure, which integrates by default all potential victims of an identified offense (as is the case in the US and the Netherlands).

In comparison, since a similar "*opt-in*" collective redress mechanism was introduced in the UK in 2003, there has been only one instance of a designated consumer association bringing a competition damages claim on behalf of a defined group of consumers. Although that claim did lead to a settlement in favour of the claimants, the complexity and cost of bringing the claim compared to the relatively small amounts actually payable to individual consumers, has meant that the mechanism has not been used subsequently. Indeed, its failure is cited as one of the factors justifying the current legislative proposal to introduce "*opt-out*" collective actions in the UK in the very near future.

Furthermore, the text of the French legislation on group actions, as it stands, raises some additional questions which judges will have to answer. The judges will have to define the concept of "*material damages*" as only "*pecuniary losses resulting from material damages*" can be indemnified. So far, this excludes all physical and moral damages.

Lastly, the cross-border aspects of class actions, which are not addressed in the law, will undoubtedly raise complex issues, particularly if foreign consumers try to obtain group action compensation in France, or if the group action will be conducted against companies domiciled abroad.

It should be noted that the law allows the possibility for the scope of group actions to be extended, in the future, to the areas of health and the environment. This will, however, entail the adoption of a new law.

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