

## Class actions now have a general framework in France

### 23 November 2016

After a long procedure, full of unexpected developments, the bill on modernisation of the 21<sup>st</sup> century justice was eventually adopted by the French National Assembly on 12 October 2016.

After a new reading by the French Senate on 28 September 2016, which marked a [clear step backwards in the implementation of a general framework applicable to class actions](#), the French Deputies had to come to a decision in the scope of a final reading. They unsurprisingly reintroduced the provisions on class actions in the same terms as those they voted last summer, thus taking no account of the French Senate's reluctances.

Following the vote, the law was referred to the French Constitutional Council at the initiative of 60 Deputies. Since the [Council confirmed the constitutionality of these provisions on 17 November 2016](#), the law no. 2016-1547 was eventually promulgated on 18 November 2016 and entered into force on 20 November.

After years of discussions and the much debated introduction of class action mechanisms in specific fields, i.e. in consumer and health law, France now thus has a general framework applicable to class actions.

Please find below a brief summary of the main provisions of Title V of this text, entirely dedicated to class actions.

**With respect to the general framework**, the law on modernisation of the 21<sup>st</sup> century justice establishes a **common set of rules** that applies to the various specific class actions - whether current or future - except for consumer class actions. Indeed, the latter remains subject to the specific rules resulting from the 2014 Hamon law ([see our previous newsflash on this class action](#)).

Among the rules that make up this common set, it ought to be remembered that class actions can only be exercised by "*the registered associations and associations that have been duly declared for at least five years, the statutory purpose of which includes defending interests that have been harmed*". Furthermore, both individuals and companies can apply to join the group. By holding these provisions, despite the opposition of the French Senators, the Deputies confirmed their will to give a broad scope to the class action *à la française*.

**With respect to specific class actions**, at this stage four are provided for by the law: class actions in matters related to health (measure implemented by the [law on modernisation of the health system of 26 January 2016 and its recent implementation decree of 26 September 2016](#)), data privacy, environment and discrimination. However, the list of class actions created by the law on modernisation of the 21<sup>st</sup> century justice is not limitative and may thus evolve over time. In other words, in the future, the lawmaker may create other types of class actions and subject them (or not) to the common set of rules.

Regarding the **creation of data privacy and environmental class actions**, the Deputies disregarded the propositions of the French Senate, which was against creating such class actions.

**Data privacy class actions** are thus now an integral part of Law no. 78-17 of 6 January 1978 on information technology, data files and liberties (the French Data Protection Act). Class actions may thus be initiated when several individuals (and not companies) placed in a similar situation sustain a loss resulting from a breach committed by a data controller. However, it ought to be highlighted that, unlike other class actions, this action "*only aims at making this breach cease*" and gives no entitlement to financial compensation. Protection of personal data has undeniably been at the heart of the French lawmaker's concerns this fall, as the creation of this action comes with, in parallel, a noticeable increase in the powers of the French Data Protection Authority (CNIL) to impose penalties following the [adoption of the law for a digital Republic of 7 October 2016](#).

**The environmental class action** is incorporated in the French Environment Code. It aims at compensating the losses "*resulting from a damage in the areas mentioned in Article L. 142-2 of the [French Environment Code]*", that is to say nature, environment, improvement in living environment, water protection, urbanism, contamination, nuclear safety, radiation protection etc. Its scope is thus relatively broad. Furthermore, exercise of this action may enable to obtain both cessation of the breach and compensation for the bodily injuries and material losses resulting from the said damage. In this respect, it ought to be reminded that only the losses sustained by individuals or legal entities that result from the damage caused to the environment are compensable on this basis and not the environmental loss itself. Lastly, in order to ensure legal certainty, only the breaches or triggering events committed after the law entered into force may be subject to an environmental class action. It would have been appreciable that this very legal certainty gives the same rule of application in time for data privacy and health-related class actions.

The adoption of this disputed law does not come anywhere near solving all the questions that arise as to compensation of serial losses. Only the practice will show whether the mechanisms implemented will meet the objectives set by the lawmaker. So far, the example of consumer class actions hardly convinces of the usefulness and efficiency of such mechanisms. As for health-related class actions, they are merely in an early stage with only one action announced so far.

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## **The Bill on modernisation of the 21<sup>st</sup> century justice, from its presentation to the Council of Ministers to its adoption by the French National Assembly.**

Submitted to the Council of Ministers on 31 July 2015, discussed and then adopted by the French Senate at first reading on 5 November 2015, this bill was amended and then voted by the French National Assembly on 24 May 2016. After the failure of the Joint Committee, which did not manage to make Deputies and Senators agree on a common text, the bill was discussed in the scope of a new reading and adopted with amendments by the French National Assembly on 12 July 2016, and then by the French Senate on 28 September 2016. It was definitely adopted by the French National Assembly on 12 October 2016.

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