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# **Erin Brockovich turns European : is there an interest for class actions?**

**Litigation/Antitrust/Distribution law Commissions**

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National Report of France

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## **INTRODUCTION**

Class actions are often related and associated to the American legal culture, as it is illustrated by several movies including the famous “Erin Brockovich” picture.

However, the class actions or collective redress actions exist also in other jurisdictions, notably in Europe.

Precisely, the European Commission has recently given an accurate definition of collective redress and of its aim in its communication named “Towards a European Horizontal Framework for Collective Redress”<sup>1</sup>, accompanying its “Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law”<sup>2</sup>:

*“Collective redress is a procedural mechanism that allows, for reasons of procedural economy and/or efficiency of enforcement, many similar legal claims to be bundled into a single court action. Collective redress facilitates access to justice in particular in cases where the individual damage is so low that potential claimants would not think it worth pursuing an individual claim. It also strengthens the negotiating power of potential claimants and contributes to the efficient administration of justice, by avoiding numerous proceedings concerning claims resulting from the same infringement of law.”*

Although collective redress and class actions exist in several jurisdictions in the world, there are some differences arising from different legal and procedural cultures, notably between the Common Law and the Civil Law legal systems.

Thus, the purpose of this questionnaire is to identify such differences as well as the common points between the collective redress and class actions in various jurisdictions.

There is also a particular focus on class actions in the anti-trust field, which is one of the main areas for such actions, as shown by the recent proposal for an EU “Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union”<sup>3</sup>.

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<sup>1</sup> COM(2013) 401/2

<sup>2</sup> C(2013) 3539/3

<sup>3</sup> COM(2013) 404 final

## 1. Existence and scope of class actions/collective redress actions

1.1 In your jurisdiction, is there any specific legislation dealing with class actions/collective redress actions, and is there a specific definition of such actions?

The Law on consumers' affairs dated 14 February 2014 (hereafter, "**The Law**") has instituted into French law a collective redress action/class action. Such action did not exist in France before.

The Law was brought before the French Constitutional Supreme Court (*Conseil constitutionnel*) in order to examine its complying with the French constitutional principles. In a decision handed down on 13 March 2014, it ruled that the provisions of the Law relating to this new action were fully in accordance with such constitutional principles (French Constitutional Supreme Court, 13 March 2014, case no. 2014-690 DC).

The new Article L. 423-1 of the French Consumer Code defines class action as the action brought "[...] *before a civil Court aiming at being granted compensation for the individual damages suffered by consumers in a similar or identical situation and having for common ground a breach, by one or many professionals, of their legal or contractual obligations:*

*1° in the event of a sale of goods or service delivery;*

*2° or when these damages result from an anti-competitive agreement and/or concerted practices as defined under Title II of Book IV of the [French] Commercial Code or under Articles 101 and 102 of the Treaty on the Functioning of the European Union."*

Under French law, such action goes through a two stage process:

1° a first phase during which the admissibility of the claim as well as the professional's liability will be ruled. The judgment rendered at the end of Phase 1 also touches to the question of how the loss suffered by the Class must be compensated (hereafter, "**Phase 1**"); and

2° a second phase dealing with the actual recovery of damages, in compliance with the guidance given in the Phase 1 ruling (hereafter, "**Phase 2**"). This second phase will only be brought before a Court in case of dispute on the performance of the ruling given at the end of Phase 1.

1.2 Are class actions/collective redress actions applicable to any legal action, irrespective of the legal ground and the area of law, or do they have a scope limited to some fields of law (such as consumer law, competition law, environmental law...)?

Based on the new provisions of Article L. 423-1 of the Consumer Code, class actions have a scope limited to:

- Consumer law (Article L. 423-1, 1°); and
- Competition law (Article L. 423-1, 2°).

1.3 Is it allowed to initiate summary/emergency proceedings in class actions / collective redress actions?

As of today, there are no indications in the Law regarding any specific class actions summary/emergency proceedings.

In light of this, one may consider that the several law provisions of the French Civil Procedure Code regarding summary proceedings still apply in the event of (i) emergency and absence of a valid challenge to the action (Article 808) or (ii) in order to prevent an immediate damage or in order to stop a manifestly unlawful disturbance (Article 809).

1.4 Through class actions/collective redress actions, is it possible to claim cessation of unlawful practices/behaviors (“injunctive relief actions”) and/or to claim compensation for damage suffered (“compensatory relief actions”)?

Pursuant to the new Article L. 423-1 of the French Consumer Code, consumers shall only claim “[...] *compensation of the economic harms resulting from the material damages*” they suffered.

In that regard, French class actions may rather be qualified as “compensatory relief actions”.

1.5 If it is possible to claim compensation, can every type of damage suffered by the victims can be compensated, or only some types of harms (material damages/bodily injuries, death)?

Pursuant to the new Article L. 423-1 of the French Consumer Code, consumers shall only claim “[...] *compensation of economic compensation resulting from the material damages*” they suffered.

Consequently, compensation on the ground of physical injury and moral prejudice are excluded from the scope of the French class action, which reduces the scope of the law in matters relating to health or environment.

1.6 Can the compensation awarded to the victims exceed the compensation that would have been awarded if the claim had been pursued by means of individual actions? More particularly, are punitive damages, leading to overcompensation in favor of the claimant party of the damage suffered, allowed and applied in class actions / collective redress actions?

There are no specific provisions, in the Law, regarding the extent of the compensation that the victims can be awarded following a class action.

In light of this, one may consider that the common law provisions regarding compensation shall apply.

In that regard, Article 1149 of the French Civil Code provides that “[d]amages due to a creditor are, as a rule, for the loss which he has suffered and the profit which he has been deprived of [...]” (underline added).

Accordingly, Tribunals shall only grant “*full compensation*”, which cannot exceed the loss suffered (See: Cass. Civ. 2e, 13 September 2012, case no. 11-22.051). As a result, punitive damages are not allowed under French law.

1.7 More particularly in the anti-trust field, how does the ‘passing on’ defence (demonstrating that the claimant passed on the whole or part of the overcharge resulting from the infringement) play a role in your country and have such a defence been successful?

The “passing on” defence has no legal ground under French law. However, it seems that such defense has been acknowledged by case law.

Indeed, in a decision handed down on 15 June 2010, the French *Cour de cassation* quashed a decision from the Court of Appeal of Paris which ruled that the fact that the defendant “[...] *passed the overcharges on the increases in the price of the product had no effect on the extent of the right of the claimant to compensation*”.

The *Cour de cassation* enounced that the judges “*should have analyzed if [the claimants] had passed the overcharges resulting from the infringement imputable to [the defendant] on their customers, so that the granting of damages may have led to their unjust enrichment*” (Cass. Com. 15 June 2010, case no. 09-15.816).

## 2. Standing and admissibility to bring class actions/collective redress actions

2.1 In your jurisdiction, may the class actions / collective redress actions be brought by any group of individuals or legal persons claiming to have been harmed by the same alleged infringement (“collective actions”), and/or can they be brought by an authorized representative entity/ ad hoc certified entity/ public authority on behalf and in the name of two or more individuals or legal persons claiming to be victims of the relevant practice (“representative actions”)?

Pursuant to Article L. 423-1 of the French Consumer Code, only a “*representative consumer association which has been certified in pursuance of Article L. 411-1* [of the same Code]” can bring the case before a Court.

Also, Article L. 423-14 recalls that the above mentioned consumer association “[...] *represents the consumers who are members of the group* [of victims]”.

Therefore, the French class action may be referred to as a “dedicated action” (*action attitrée*)/representative action by which the representative and certified consumer association will act on behalf and in the name of the individuals claiming compensation for the damages they allegedly suffered.

2.2 Are there any criteria/rules defining the cases where one or another kind of actions referred to in 2.1 could apply?

Such scheme seems not to be applicable under French law to the extent this kind of actions can only be brought by the representative consumer association referred to in Article L. 423-1 of the French Consumer Code (See 2.1.)

2.3 In case of representative actions, are there rules defining the requirements for representative entities (for instance: a non-profit character; a relationship between the main objectives of the entity and the rights that are claimed to have been violated; financial/human resources/legal expertise requirements...), and can the representative entities be sanctioned if they do not comply with such requirements?

Pursuant to Article L. 423-1 of the French Consumer Code, only a “*representative consumer association which has been certified in pursuance of Article L. 411-1* [of the same Code]” can bring the case before a Court.

The above mentioned Article L. 411-1 refers to Article R. 411-1 of the Consumer Code which provides for a set of requirements for the certification of consumers association.

Pursuant to Article R. 411-1, such certification can be granted to consumers associations which:

- 1° have been existing for at least 1 year as of its registering;
- 2° can prove that it has actively and publicly defended consumers' interest in this meantime;
- 3° gather, at the date of the request for certification, (i) at least 10,000 members for "national" associations or (ii) a "sufficient" number of members for "local" associations.

If failing to comply with the requirements set out in Article R. 411-1 of the French Consumer Code, the consumer association would be considered as illegitimate to act on behalf and in the name of the alleged victims.

In that case, it is very likely that the actions be deemed inadmissible.

#### 2.4 Is the admissibility of a class action / collective redress action examined by the courts at an early stage of the proceedings, or is it ruled together with the merits of the case?

The provisions of the Law dealing with the "decision on liability" only mention that "[i]n the same decision, the judge acknowledges that the admissibility requirements set out in Article L. 423-1 [of the French Consumer Code] are met and rules on the professional's liability, based on the individual cases defended by the applicant association" (new Article L. 423-3 of the French Consumer Code).

Under French law, there are two phases regarding the action:

- 1° a first phase during which the admissibility of the claim as well as the professional's liability will be ruled; and
- 2° a second phase dealing with the recovery of damages, as set out in the Phase 1.

Therefore, the admissibility of the class action will be examined by the Court at an early stage of the proceedings (i.e., end of Phase 1).

#### 2.5 Is it possible for third parties to bring actions? If so, are indirect purchasers able to bring actions with respect to antitrust infringements?

Pursuant to Article L. 423-3 of the French Consumer Code, only a "*representative consumer association which has been certified*" is able to bring actions whether dealing with consumer law or antitrust infringements.

2.6 How may claims be aggregated? For example, is it possible for multiple plaintiffs to file a complaint jointly?

Regarding the filing of complaints, implementing provisions shall be determined by the executive power in a further Decree.

2.7 More generally, what procedural defences are available for defendants short of trial and therefore before the national court decides on the merits of a collective action?

It seems that there are no procedural defenses for defendants short of trials before the Court decides on the merits of the collective actions given that the judge is required to rule on procedural issues and the merits in the same decision (Article L. 423-3 of the French Consumer Code; See 2.4.).

### 3. “Opt-in” vs “Opt-out” systems and information on the class action/collective redress action

3.1 In your jurisdiction, is the claimant party/group formed on the basis of express content of the natural or legal persons claiming to have been harmed (“opt-in” principle), or is it composed of all individual belonging to the defined group and claiming to have been harmed by the same of similar practice unless they actively opt out of the group (“opt-out” principle)?

The French class action seems to have enshrined the opt-in principle.

Indeed, Article L. 423-4 of the French Consumer Code mentions the necessity “[...] *to inform the consumers likely to belong to the group of this decision* [ruling on the professional’s liability]”.

As for Article L. 423-5 of the French Consumer Code, it requires the judge to “[...] *fix the deadline until which the consumers will be able to join the group*”.

Also, such choice in favor of the opt-in principle indirectly results from a decision handed down by the French Constitutional Supreme Court (*Conseil constitutionnel*) on 25 July 1989, which is analyzed as prohibiting any “opt-out” scheme, based on the constitutional principle of freedom of choice (Cons. Const., 25 July 1989, case no. 89-257).

3.2 What are the effects of the judgment on the victims in the “opt-in” or “opt-out” system chosen in your jurisdiction?



As provided by Article L. 423-3 of the Consumer Code, the judgment “[...] *defines the group of consumers towards whom the professional has been held liable and sets the connecting factors*”.

Also, the judgment “*determines the damages which may be compensated for each consumer or for each category of consumers involved in the group previously defined, as well as the amount or all the elements allowing the assessment of the harms suffered*”.

Furthermore, pursuant to Article L. 423-5 of the French Consumer Code, the judgment “[...] *fixes the deadline until which the consumers will be able to join the group*” and “[...] *determines the conditions of their membership and specifies whether the consumers may contact the professional directly or through the association or a [specific legal counsel as listed in a Decree to be issued]*”.

The deadline mentioned should be between 2 and 6 months as of the publicity measures (Article L. 423-5 of the French Consumer Code).

3.3 May a member of the claimant party be free to leave the claimant party at any time before the final judgment is rendered or the case is otherwise settled, and if he/she/it may, on which conditions?

Under the provisions of the Law, victims actually join the group of persons to be compensated *after* it has been ruled on the professional’s liability (Article L. 423-5 of the French Consumer Code).

If they join, they can always leave at any stage of the indemnification stage (Phase 2 of the action).

3.4 May a natural or legal person claiming to have been harmed in the same mass harm situation be able to join the claimant party at any time before the judgment is rendered or the case is otherwise settled?

Under the provisions of the Law, victims, whether natural or legal persons, actually join the group of persons to be compensated *after* it has been ruled on the professional’s liability within a period of 6 months (Article L. 423-5 of the French Consumer Code).

3.5 Is the defendant informed about the composition of the claimant party, and in which conditions?

During the first phase of the proceedings, there are no indications in the Law as to the obligation, for the claimant party, *i.e.* the consumers association, to inform the defendant about the composition of the group of people it represents.

It results from the action's being brought by a representative consumers association, which acts on behalf of still unknown potential victims.

These victims will only be known when the judgment ruling on the professional's liability is handed down.

At this stage, Article L. 423-11 provides that “[t]he professional shall proceed to the individual compensation of the harms suffered by any consumer [...]”.

Therefore, once the judge has ruled on its liability, the defendant will have knowledge of the composition of the victims.

- 3.6 Are there any provisions regulating the way the victims of the practice are informed about a possible or actual class action / collective redress action? More particularly, are there safeguards regarding the protection of the reputation or the company value of the defendant before (and after) its responsibility for the alleged infringement is established by the final judgment?

So far, Article L. 423-4 of the French consumer code only provides that the Court, provided it has found the professional liable, “[...] shall order appropriate measures to inform consumers who may belong to the group”.

The conditions of such publicity measures are not defined in the Law. They will probably be so once the Decree on the application of the Law will be issued.

Concerning the protection of the reputation of the company, there are no specific provisions regarding that issue in the Law.

Yet, when the draft of the Law was introduced before the Parliament, the Government recalled that the scheme to be set up shall preserve “*the legal and economic security that companies legitimately expect*” (See: Explanatory Statement to the draft of the Law).

There is somehow a protection due to the fact that the publicity will only occur *after* the Court has ruled on the professional's liability to compensate the consumers' loss.

- 3.7 Is there any registry of class actions / collective redress actions in your jurisdiction? If there is such a registry, how is it possible to access it?

So far, there are no indications in the Law regarding such registry. A decree still has to be issued and it may very well establish one. Yet, as of today, we do not have any further information on this issue.

#### **4. Interplay of class actions / collective redress actions and public enforcement**

4.1 In your jurisdiction, do class actions / collective redress actions have to follow on from infringement decisions adopted by public authorities in regulated policy areas like competition law (“follow-on actions”) or is it possible to start a stand-alone action (ie, without a prior finding of infringement of any applicable antitrust laws by a national court or competent authority)?

The Law on consumers’ affairs provides for specific modalities for class action when it concerns the rules defined in Title II of Book IV of the Commercial Code (Anti-competitive practices) or articles 101 and 102 of the Treaty on the functioning of the European Union (see article L.423-17 of the French Consumer Code).

Class action in competition law area is a “follow-on action” since it must be pronounced on the basis of a definitive decision taken from the competent national or European regulating authorities, that is a decision which cannot be challenged anymore. The idea behind this policy was that the anti-competitive litigation is very technical and a civil judge would not have the required expertise to assess liability in a stand-alone action.

4.2 Are such stand-alone and/or follow-on actions available for both bilateral antitrust infringements (eg, a cartel) as well as unilateral antitrust infringements (eg, an abuse of a position of dominance)?

The French class action is available for both bilateral and unilateral antitrust infringement. In fact, are pointed out all anti-competitive practices described in the Commercial Code which include :

- Article L420-1 : Common actions, agreements, express or tacit undertakings or coalitions, particularly when they are intended to 1° limit access to the market or the free exercise of competition by other undertakings; 2° Prevent price fixing by the free play of the market, by artificially encouraging the increase or reduction of prices; 3° Limit or control production, opportunities, investments or technical progress; 4° Share out the markets or sources of supply, shall be prohibited, even through the direct or indirect intermediation of a company in the group established outside France, when they have the aim or may have the

effect of preventing, restricting or distorting the free play of competition in a market.

- Article L420-2 : The abuse of a dominant position by a company or a group of companies in the internal market or a substantial part of this shall be prohibited in accordance with the conditions specified by Article L.420-1. These abuses may in particular consist of refusals to sell, linked sales or discriminatory conditions of sale and the severance of established commercial relations solely because the partner refuses to submit to unjustified commercial conditions”. That is, are aimed exclusive dealings and price discrimination.

4.3 In such cases, are there rules regulating access by claimants to documents obtained or produced by the public authority in the course of the investigation? What kinds of devices to obtain evidence are available for plaintiffs? Is, for example, discovery possible in your country?

The class action French law does not provide for specific rules about access to documents for claimants, or discovery.

In case of a stand-alone action, the rules regulating access by claimants to documents in civil proceeding would have been sufficient only if the anti-competitive practice stems from a contract. On the contrary, it would have been difficult for the claimant to prove more occult practices through the civil procedural rules. The civil judge does not have discovery power or coercive investigation power like the criminal judge or the competitive public authority.

But, the class action does not stand alone but is based on a definitive decision taken by the public authority; the claimant would not have to prove the illicit or illegal practice. The evidence as to the existence of the fault, the causality link found by the authority will be used by the claimant in the civil action. As to the evaluation of the prejudice, it could be determined by an expert.

4.4 Are there rules on limitation periods allowing potential claimants to wait with class actions until the public authority takes its decision as regards the infringement?

The Law sets a specific limitation period for class action based on anti-competitive decisions: the claimants must initiate the class action before the expiration of a period of five years from the date the decision cannot be challenged anymore (art. L 423-18 of the French Consumer Code).

- 4.5 Does a decision of the national competition authority or national court create a rebuttable presumption of proof? For EU jurisdictions, how does the judgment of the Court of Justice EU in *Masterfoods* (20 September 2001, C-344/98) play a role in your country with respect to actions based on cartel damages?

For the purposes of the class action, since there is a decision taken by a national or European competition authority or court, the infringement of the professional is deemed to be irrevocably proved. Therefore, the judge has not to decide on the liability of the professional. The liability is already proved.

## **5. Funding of the class actions / collective redress actions, attorney's fees**

- 5.1 In your jurisdiction, is it possible to have class actions financed by third parties who are not parties to the proceedings?

There are no provisions about funding of the class actions by third parties.

- 5.2 Is the claimant required to declare to the court, notably at the outset of the proceedings, the origin of the funds that it is going to use to support the legal action?

There are no provisions requiring the claimant to declare to the court the origin of the funds that is going to support the legal action.

- 5.3 Can the court stay the proceedings for any reason relating to the funding of the action (for instance: conflict of interest between the financing third party and the claimant and/or its members; the third party has insufficient resources in order to meet its financial commitments to the claimant party; the claimant party has insufficient resources to meet any adverse costs should the collective procedure fail; the fund provider is a competitor of the defendant)?

The judge can defer the proceedings for a period or until the occurrence of an event that it specifies (art. 378 and f. of the French Civil Procedure Code). The case law specifies that besides when it is foreseen by the law, the judge can stay a proceeding for the "good administration of justice" (Civ. 1re, 16 June 1987: Bull. civ. I, no 196).

- 5.4 Do public funds providing financial support for potential claimants in collective redress/ class actions exist in your jurisdiction?

No public funding system has been set by the Law (the option has been only discussed during the parliamentary debates).

5.5 Are contingency or success fees for legal services that cover not only representation, but also preparatory action, gathering evidence and general case management allowed in your jurisdiction?

The Law provides that the judge may put in charge of the professional the payment of a deposit for all the expenses incurred by the association that are not included in the legal costs of the proceeding : like the cost of the legal work provided by the association, preparation of the filing, etc... (art. L423-8 of the French Consumer Code).

But, contingency or success fees for legal services are forbidden.

5.6 Does the losing party of a class action / collective redress action have to reimburse necessary legal costs borne by the winning party (“loser pays principle”), and in which proportion?

Pursuant to article 700 of the French Civil Procedure Code, *“the judge will order the party obliged to pay for legal costs, or, in default, the losing party, to pay to the other party the amount which he will fix on the basis of the sums outlaid but not included in the legal costs. The judge will take into consideration the rules of equity and the financial condition of the party ordered to pay. He may, even sua sponte, for reasons based on the same considerations, decide that there is no need for such order.”*

5.7 More generally, are there any rules and/or safeguards aimed at avoiding incentives to abuse the collective redress systems?

Many provisions of the Law aim at avoiding abuses in class actions, among which the fact that the action can be brought only by a certified association and that only material damages may be compensated.

5.8 Are the parties to an action able to insure against the cost risks?

Legal expense insurance is possible under the conditions of articles L127-1 and f. of the French Insurance Code.

5.9 Is a defendant able to apply for an order for security of costs? If so, what are the difficulties to obtain such an order?

An order for security of costs for the defendant doesn't seem to exist. Provisional measures can be requested before the Judge of Execution but they apply only to a debt.

5.10 Are there (other) ethical or Bar rules in your country relevant with respect to class actions?

Ethical rules from the Bar apply to class actions (see. The National Internal Regulations (RIN) set by the “Conseil National des Barreaux” laying down the ethical rules for all lawyers practicing in France). According to those rules, the agreement « *dequota litis* » is forbidden : an agreement between the lawyer and the client before a definitive legal decision, which exclusively fixes the entirety of his fees according to the judicial ruling on the matter, whether these fees consist of a sum of money or any other asset or security.

## 6. Cross-border cases

6.1 In your jurisdiction, are there specific international private law rules (conflict of law and of jurisdiction rules) applicable to class actions / collective redress actions, or do the general international private law rules apply to such actions?

The general international private law rules apply to collective actions. In a decision dated May 11, 2010, the French Court of Appeal of Paris (known as the “Vivendi Affair”) decided that the class action initiated by French shareholders of Vivendi before an American Court was not abusive. It ruled that the French shareholders had the rights participated in a class action against the company in the United States, that there was no hierarchy between the different courts competent over a case. Since the Council Regulation of Bruxelles I allows legal action brought before a court where the harmful event occurred or may occur, the shareholders had legally brought the legal action in New York. Since the decision before the American court was not definitive, the French court had not to rule over the exequatur of the decision, and notably whether the ruling is in conformity with the French “public policy”.

6.2 Are there rules prohibiting a single collective action to take place in a single forum?

6.3 Can a representative entity designated by a foreign country have legal standing to bring representative actions in your jurisdiction?

A representative entity designated by a foreign country can't have legal standing to bring representative actions in the French jurisdiction since the French collective action can be brought before the court only by a representative consumer association acting at the national level which has been certified pursuant to article L. 411-1 of the French Consumer Code.

6.4 What are the rules where there are several actions regarding the same facts and practices brought in different jurisdictions? Is it for example possible to bring an action against a company and/or individual domiciled outside of the jurisdiction (e.g., against a parent company domiciled outside of the jurisdiction which has a subsidiary within the jurisdiction)?

A class action brought regarding the same facts, the same breaches, compensation of the same damages than another class action that has already been ruled would be inadmissible (article L.423-23 of the French Consumer Code). Common civil rules shall also apply, and the defendant could always raise the “res judicata” effect of the said ruling (art. 122 of the French Civil Procedure Code).

## **7. Alternative dispute resolution**

7.1 In your jurisdiction, is there any specific mechanism of collective alternative dispute resolution allowing the settlement of class actions / collective redress actions? If so, are the parties required to engage in alternative dispute resolution prior to trial and are the implications for refusing?

There is the possibility for the association claimant in a class action to participate in a mediation in order to settle and obtain damages. This is not a requirement.

The agreement obtained through mediation in the name of the members of the group would have to be officially recorded by the judge, who will check whether this agreement is “fair” as regards to the interests of the claimants, and he will make it enforceable.

7.2 Are the parties encouraged to settle the dispute out of court in any way, and is it a usual practice in your jurisdiction?

Alternative dispute resolutions are encouraged in France. Every judge has a mission to try to settle and approach the views of the parties (art. 21 of Civil Procedure Code). Moreover, mediation may happen during a proceeding, and in this case, it takes place under the control of the judge (articles 131-1 of the Civil Procedure Code).

7.3 Are limitation periods applicable to the claims suspended during the period when the parties try and negotiate a settlement through collective alternative dispute resolution mechanisms or any other means?

In general, mediation is initiated during a proceeding, and the judge is not disposed of (the case is not removed from the judge).



7.4 Can a seller of a good or any contracting party insulate himself/herself/itself from a class action by including, in the terms of use or in a purchase agreement, a mandatory arbitration clause, thus prohibiting the consumer from bringing a class action in court?

Pursuant to article L 423-25 of the French Consumer Code, a clause that would prohibit a consumer from bringing a class action in court is deemed to be void.

## **8. Enforcement of the court decision**

8.1 Are there any provisions regulating the way the victims of the practice are informed about decision rendered in a class action / collective redress action concerning them? If there are such provisions, who is in charge of such information (the court/ an independent entity/ the claimant/the defendant)?

It belongs to the judge to define the way the victims or consumers that could be included in the class action will be informed. The publicity costs are in charge of the professional; then the judge fixes the delay given to the consumer to adhere to the class action (between 2 and 6 months). He will decide whether the consumer has to contact directly the professional or the association or any other person to obtain the damages (L.423-5 of the French Consumer Code).

8.2 Are there any provision regulating the way the court order is enforced and the possible compensation paid by the defendant? If there are such provisions, who is in charge of the enforcement, notably of the payment of the damages (a public authority/ an independent entity/ the claimant/the defendant)?

The judge is in charge of the enforcement of the decision. The association will represent all the claimants who have not obtained the damages by the professional in the fixed delay. (art. L 423-13 of the French Consumer Code).

8.3 In relation to injunctive orders, are there rules ensuring their effective compliance by the losing defendant (for instance: payment of a fixed amount for each day's delay or any other amount provided)?

There are pecuniary sanctions that can apply in case of a refusal to execute a judicial decision.