N° 271

SÉNAT

ORDINARY SESSION OF 2023-2024

Registered at the Presidency of the Senate on 24 January 2024

REPORT

DONE

on behalf of the Committee on Constitutional Law, Legislation, Universal Suffrage, the Rules of Procedure and General Administration (1) on the draft law, adopted by the National Assembly following the accelerated procedure, on the **legal regime** *for* **group** *actions,*

By Christophe-André Frassa,

Senator

(1) This committee is made up of : François-Noël Buffet*, Chairman;* Christophe-André Frassa, Marie-Pierre de La Gontrie, Marc-Philippe Daubresse, Jérôme Durain, Philippe Bonnecarrère, Thani Mohamed Soilihi, Cécile Cukierman, Dany Wattebled, Guy Benarroche, Nathalie Delattre*, Vice-Chairmen;* Agnès Canayer, Muriel Jourda, André Reichardt, Isabelle Florennes, Secretaries Jean-Michel Arnaud, Philippe Bas, Nadine Bellurot, Olivier Bitz, François Bonhomme, Hussein Bourgi, Ian Brossat, Christophe Chaillou, Mathieu Darnaud, Catherine Di Folco, Françoise Dumont, Jacqueline Eustache-Brinio, Françoise Gatel, Laurence Harribey, Lauriane Josende*,*
Éric Kerrouche, Henri Leroy, Stéphane Le Rudulier, Audrey Linkenheld, Alain Marc, Hervé Marseille, Michel Masset, Marie Mercier, Corinne Narassiguin, Paul Toussaint Parigi, Olivia Richard, Pierre-Alain Roiron, Elsa Schalck, Patricia Schillinger, Francis Szpiner, Lana Tetuanui, Dominique Vérien, Louis Vogel, Mélanie Vogel.

See the numbers :

National Assembly (**16**ème): **639**, **862** and T.A. **87**

Senate : **420** (2022-2023) and **272** (2023-2024)

S O M M A I R E

Pages

THE ESSENTIAL

Introduced into French law a decade ago, **the group action procedure has not met with the expected success**. In the light of this relative failure, which is supported by an information report to which it is a follow-up, the draft law presented by MPs Laurence Vichnievsky and Philippe Gosselin aims to encourage the use of this procedure.

It does this by **unifying the procedural framework** and, at the same time, by "triple broadening" the scope of the group action, the subjective rights it aims to protect, the losses that can be compensated and the standing to bring an action. Aimed at establishing a mechanism
The **proposed law also introduces a civil fine**, which could be raised to 3% of average annual turnover, as a "deterrent" to any intentional breach that causes serial damage - particularly by economic operators.

On the proposal of the rapporteur, **the committee welcomed the creation of a unified system**, which has the merit of making the law clearer and more accessible, but felt that **the wording of the text resulting from the work of the National Assembly was unbalanced**. The committee was in favour of broadening the scope and compensable losses of the group action, but consequently **significantly tightened the conditions for standing to bring an action because of the risk of destabilising economic operators** that would result from the undue initiation of group actions, the publicity for which multiplies the reputational cost. It also **abolished the civil fine**, a measure whose appropriateness and constitutionality appear more than doubtful and whose scope goes beyond the present bill.

Lastly, the Committee wished to **better guarantee the legal certainty of the system**, in particular by ensuring that **the applicable provisions of European law** were **properly transposed**. It **adopted the draft law as amended**.

I. RELATIVE FAILURE OF GROUP ACTIONS IN FRANCE

A. FRUIT FROM THE SEDIMENTATION INITIATIVES THE COEXISTENCE OF RELATIVELY DISPARATE REGIMES

Envisaged in the mid-1980s by the consumer law commissions chaired by Professor Jean Calais-Auloy, French-style group action was not introduced into national law until 2014 by the so-called "Hamon" law. The culmination of a **thirty-year process** marked by lively doctrinal and political debate, the introduction of group action into French law was cautious: its scope was limited to the law of

It also favours **the *opt-in* mechanism**, under which injured parties must join the group in order to receive compensation[1].

However, this initial legal regime was rapidly supplemented by the creation in 2016 of six new regimes covering health, the fight against discrimination (including discrimination attributable to a public or private employer), environmental protection and personal data, each with its own procedural features linked to the specific nature of its field of application. **The legal framework for group actions is therefore characterised by the formal coexistence of distinct** and relatively disparate **legal systems.**

B. A FAILURE THAT NEEDS TO BE PUT INTO PERSPECTIVE

The failure of the "French-style" group action is often based on the **low number of proceedings initiated and actually brought to a conclusion**. Although the data provided by the Government is surprisingly discrepant[2], it can be considered that **35 group actions have been brought since the procedure was introduced in 2014**, which testifies to the relative success of the procedure.
The DACS (Direction des affaires civiles et du Sceau) points out that the procedure is not "attractive".

In quantitative terms, the balance sheet is described as follows
The results were "*particularly negative* "[3] **in terms of the quality of the actions taken**, some of which failed to be brought to a conclusion, either because they were deemed inadmissible or because they were withdrawn.

Despite this observation, **the supposed failure of group actions needs to be put into perspective**. On the one hand, as a number of consumer associations interviewed by the rapporteur pointed out, this record is partly **attributable to the necessary appropriation phase involved in setting up such a procedure**. On the other hand, some group actions have flourished and resulted in compensation for damage, sometimes as part of an out-of-court settlement, particularly in the case of Depakine. However, as this record is considered insufficient, this proposed law aims to encourage the use of group actions.

---

[1] As opposed to the opt-out system, in which injured parties are considered by default to be part of the group of people to be compensated, unless they refuse.
[2] The DGCCRF sent the rapporteur a list of 35 actions taken to date, while the DACS, in its response to the rapporteur's questionnaire, counted 32 actions taken since 2014. [3] *In the words of Professor Maria-José Azar-Baud, interviewed by the rapporteur.*

II. THE PROPOSED LAW: ENCOURAGING THE USE OF GROUP ACTIONS BY COMPLYING WITH EUROPEAN LAW

A. A THREEFOLD EXTENSION OF THE SCOPE OF GROUP ACTION

Conceived as a "framework law", this draft law does **not unify the procedural regime in a constant field of application**. Articles 1 and *1a* of the proposed law therefore broaden the scope in three ways.

On the one hand, Article 1 provides for **the universalisation of the scope of application of the group action**, which could henceforth aim, in any matter, at the cessation of a breach or the reparation of a prejudice suffered as a result thereof. It also **extends** the **range of losses that can be compensated**: whereas some of the pre-existing sectoral schemes provided for the possibility of compensating a specific type of loss - property in consumer law, personal injury in health law - the new scheme would allow all losses to be compensated.

Lastly, **Article *1a* broadly extends standing**, which is generally limited in sectoral regimes to approved associations, by granting it to associations that have been duly registered for at least two years or that represent 50 natural persons, 5 legal entities under private law entered in the trade and companies register or 5 local authorities or their groupings.

B. THE CREATION OF A UNIFIED LEGAL FRAMEWORK

1. A procedural framework close to current law

Title I of the proposed law provides for **the unification of the procedural framework for group actions**. In so doing, it essentially reproduces the provisions of current law and retains the structure currently provided by the common procedural foundation set out in Law 2016-1547 of 18 November 2016 *on the modernisation of justice in the 21st century*. It thus provides for the applicability of group actions for the cessation of breaches as well as for compensation for damages. In the latter case, the procedure is as follows:

- once it has been accepted that the action brought by the plaintiff is admissible, the court rules on the **liability** of the defendant;

- Once this has been established, the judge will set the **framework for compensation** to the members of the group he defines, which will take place in a second phase;

- Compensation can then be paid either **individually** or **collectively**. In the latter case, the claimant negotiates the terms of compensation for the members of the group directly with the defendant.

2. The introduction of a measure deemed to act as a deterrent: the civil fine

Article 2 *undecies* also creates **a civil penalty in the event of intentional misconduct, with a view to obtaining an undue gain or saving, having caused one or more losses to several natural or legal persons placed in a similar situation**. This fine must be requested either by the Public Prosecutor's Office, before the judicial court, or by the Government, before the administrative court. The **proceeds of the fine are allocated to the Treasury**.

The amount of the penalty must be proportionate to the seriousness of the offence committed and the profit made by the offender. **If the offender is a natural person, the amount may not exceed twice the profit made**, and **if the offender is a legal entity, the amount is set at 3% of average annual turnover**. If the fine is combined with an administrative or criminal fine imposed on the offender for the same acts, the total amount of the fines imposed may not exceed the highest legal maximum. Finally, **the risk of a civil penalty being imposed is not insurable**.

According to the rapporteurs of the National Assembly, the civil penalty mechanism described above is intended to respond to the concerns expressed by the Conseil d'État in its opinion of 9 February 2023 on the draft law.

C. THE NECESSARY TRANSPOSITION OF LAW EUROPEAN LAW

The third ambition of this bill is to transpose the European directive on *representative actions*[1] . Adopted on **25 November 2020**, the aim of this directive is to **guarantee the existence, in each Member State, of an effective representative action mechanism to obtain injunctions and compensation.** To this end, it lays down **a set of minimum principles** with which representative action mechanisms set up in each Member State must comply, and also introduces the possibility **of cross-border group actions.**

The deadline for transposition of this directive was **25 December 2022.** While most of the principles set out in the directive already appear to be satisfied by French law, certain measures still need to be transposed to comply with European Union law, and to this end have been included in this draft law.

---

[1] *Directive (EU) 2020/1828 of 25 November 2020* on representative actions to protect the collective interests of consumers.

III. THE COMMISSION'S POSITION: A WELCOME FRAMEWORK LAW WHOSE LEGAL RISKS MUST BE CIRCUMSCRIBED

A. PREVENTING THE EXCESSES OF TRIVIALISED GROUP ACTION

The Committee welcomed the proposed broadening of the scope of losses eligible for compensation under the common procedural regime thus created. On the other hand, the Committee wished to further restrict the scope of the action, on the initiative of the rapporteur. On the one hand, it felt that the proposed universalisation of the scope of application would **benefit from being limited to its current perimeter in the areas of health and work.**

Secondly, **in Article *1a*, the Committee has significantly tightened the conditions for granting standing**. Instead of the very liberal legal regime resulting from the work of the National Assembly, which would allow a large number of players - including malicious ones - to act in many areas, it preferred to strike a balance based on a capacity to act in various areas reserved for a **limited number of associations** offering all the necessary guarantees of seriousness and transparency. In order to ensure **that the legal framework is clear and to avoid over-transposition, the** Commission has chosen to grant standing only to **associations that are subject to approval**, the terms of which would be aligned with the conditions for granting standing in cross-border group actions.

Lastly, the committee considered that the introduction of a group action should not constitute an end in itself and consequently restored, by means of two amendments by the rapporteur, provisions of the law in force **such as prior formal notice or the simplified group action procedure**. The Committee also **rejected the application of the provisions of the Act to actions brought in respect of events occurring prior to the Act**. In accordance with the system adopted by the legislature in Law 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*, it felt that it would be preferable to limit the application of the Act **only** to **actions whose triggering event occurred after its entry into force,** so as not to create difficulties for economic operators who may not have anticipated such a change in the legal framework and the legal risks it entails.

B. PREVENT THE RISKS LEGAL POSED BY THE PROPOSED SCHEME

1. Eliminating an inappropriate civil fine

The Committee has decided to **delete the civil penalty mechanism** provided for in the draft law. Firstly, it points out that in its opinion no. 406517 of 9 February 2023 on the draft law in its initial version submitted to the National Assembly**, the Conseil d'État expressed the view that the civil penalty mechanism should be abolished.**
The Conseil de l'État also expressed "strong reservations about the creation of this civil penalty*", which remain relevant despite the amendments made by the Members of Parliament**. Indeed, the Conseil d'Etat rightly points out that **the creation of the civil penalty "was *not preceded by an in-depth assessment of its effects and consequences in each of the areas concerned* and *that it does not form part of a more comprehensive reform of civil liability or of a reflection on the methods of punishing wrongful behaviour by economic actors, *but is inserted in a procedural text and in an incidental manner* "[1].

Secondly, **the creation of a sanction in the field of civil liability, in the form proposed or in the form, derived, of punitive damages - which has been debated for many years - does not meet with any consensus whatsoever among the academics, legal practitioners and economic players heard by the rapporteur**. Moreover, in recent years, in its work on civil liability, **the Senate has already shown particular reservations about the creation of a generalised civil fine[2]**.

Finally, bringing national law into line with the Directive
The aforementioned ***"Representative Actions" clause in*** no way requires the creation of a civil penalty in the event of intentional misconduct causing serial damage.

2. Securing the legal framework provided by the proposed law

The committee decided to set a **minimum number of two specialised judicial courts for group actions**, considering that the specialisation of the Paris court alone could prove counter-productive, while leaving it up to the Government to set the appropriate number of specialised judicial courts, which must however remain limited in order to ensure sufficient specialisation of the courts. She also specified that, unless otherwise provided for in the proposed law, **the rules of procedure under ordinary law would apply before the judicial and administrative courts**.

---

[1] Conseil d'État, opinion no. 406517 of 9 February 2023 on a draft law on the legal regime for group actions, point 24.
[2] Information report no. 558 on liability, by Alain Anziani and Laurent Béteille, on behalf of the Senate Law Commission, registered on 15 July 2009, pp. 79-93.

The Committee also endeavoured **to improve information for litigants.** With this in mind, on the initiative of its rapporteur, it has extended the content of the **national register of group actions** established by **Article 1** ***sexdecies*** to all group actions, collective actions and actions for recognition of rights, whether they are in progress or closed or have been withdrawn. The aim is to make it easier for litigants to join actions that concern them or to find out whether their initiative is likely to succeed, if a similar action has been brought previously.

Lastly, the Committee has endeavoured to secure the procedural framework provided by the proposed law, in particular by bringing it into line with current law where it has deemed this useful. In particular, it abolished **the provisional enforcement of the judgment on liability** provided for in Article 1 *septies***.**

C. PARACHEVER A TRANSPOSITION IMPARFAITE OF EUROPEAN LAW

Finally, **the Committee has endeavoured to ensure that the legal regime provided for in the draft law complies with European law**. With regard to national group actions, on the initiative of the rapporteur, it has made **the persons entitled to take action subject to the solvency and transparency requirements** laid down by European law. As regards the prevention of conflicts of interest, the committee **abolished the declaration on honour provided for in Article *1b*, an** ineffective formality which failed to transpose adequately the conditions laid down by the aforementioned directive while creating an unnecessarily cumbersome procedure for challenging inadmissibility. It therefore preferred **provisions giving the administrative authority and the judge real means of action** when a conflict of interest is suspected or proven, in accordance with European law.

With regard **to cross-border group actions**, the committee adopted two amendments from its rapporteur aimed at ensuring full transposition of the directive. With this in mind, **the definition of cross-border group action** in **Article *2k* A has been** replaced by the definition set out in the Directive, for the sake of clarity. In addition, **Article *2k***, which sets out the criteria that legal persons must meet in order to obtain authorisation to bring cross-border group actions, has been supplemented to include all the criteria set out in the Directive. At the same time, the wording of this article has been harmonised with that of **Article *1a***, to ensure that the overall legal framework is clear.

*

* *

The Committee adopted the draft law as amended.

EXAMINATION OF ARTICLES

Articles 1 and 1a *A (new)*
Purpose of the group action

Article 1 sets out to define the purpose of the unified group action regime provided for in this proposed law. In so doing, it significantly modifies the law in force, by opening up the procedure to any breach and any prejudice.

While the committee did not wish to go back on this twofold extension of the procedure, it nevertheless felt it necessary to circumscribe its effects with regard to breaches of the provisions of the Public Health Code and the Labour Code. In these two areas, the current scope of the group action seems satisfactory and extending it would be excessively detrimental to the activities of operators subject to these provisions, in particular health professionals and representative trade unions. The Commission has also sought to clarify the definition of group action, in conjunction with a transposition measure that is necessary in the case of group actions for the cessation of non-compliance.

The Committee adopted Article 1 as amended and added a new Article *1a* A as follows.

1. The state of the law: a fragmented system, the result of the accumulation of successive initiatives

1.1. The "very gradual "[1] introduction of group action in French law

Envisaged as early as the mid-1980s by the consumer law commissions chaired by Professor Jean Calais-Auloy - in a form already close to the "French-style" group action as provided for by the so-called "Hamon" law2 - the **group action was not included in the** resulting **reform and codification of consumer law in the** 1990s.

The Consumer Code, created by Act no. 93-949 of 26 July 1993 *on the Consumer Code*, does not follow this model and merely codifies Act no. 92-60 of 18 January 1992 *strengthening consumer protection*, which itself only created **a joint representation action, the failure of which has been widely acknowledged**. In their 2010 report on group actions, Laurent Béteille and Richard Yung noted that the action in

---

[1] Allard, Baptiste and Jourdan-Marques, Jérémy, "Action de groupe", Répertoire de procédure civile, Dalloz, February 2021.

[2] Professors Allard and Jourdan-Marques note that the legal regime envisaged in the reports of the two commissions chaired by Professor Calais-Auloy was already based on three principles characteristic of the "French compromise on group action": an interest in bringing an action limited to representative associations; a limitation on the scope of application; and a "compromise on group action".
This is a "reversal of the classic procedural order", with the decision on the merits taking place before the persons in respect of whom res judicata will apply are identified.

Joint representation, "*conceived restrictively as a substitute for the introduction of group action in French law, has only been initiated on five occasions since its introduction* "[1].

The idea of possibly creating a group action was revived with the publication of the report of a working group co-chaired by Guillaume Cerutti, Director General of Competition, Consumer Affairs and Fraud Control (DGCCRF) and Marc Guillaume, then Director of Civil Affairs and Seals (DACS). Noting that the working group had "*not reached a single conclusion unanimously accepted by all its members*", **the report simply set out the various possible avenues for development** - improving legal action by consumer associations, creating a group action based on the American class action model and creating an action for a declaration of liability for mass prejudice - as well as the potential advantages and disadvantages, without deciding in favour of any of them.

Following the tabling of several bills by various political groups in both the National Assembly and the Senate[2], the above-mentioned report by Laurent Béteille and Richard Yung put forward twenty-seven proposals in 2010 for the introduction of a regulated French-style group action in national law.

1.2. The "Hamon" law: the birth of group action, limited to consumer law

The culmination of this thirty-year process, group action was introduced into French law by Articles 1 and 2 of Law 2014-344 of 17 March 2014 on consumer affairs, known as the "Hamon" law. Noting a "*significant and unsatisfied demand for law*" resulting from the absence of a procedure to compensate a small loss suffered by a large number of consumers, the consumer bill submitted to the National Assembly thus followed up on a debate that was "*some thirty years* old "[3] and proceeded with a cautious introduction of this procedure into national law.

---

[1] See Information Report No. 499 (2009-2010), by Laurent Béteille and Richard Yung, submitted on behalf of the Law Commission on 26 May 2010, available at https://www.senat.fr/rap/r09-499/r09-499_mono.html.

[2] For details of these bills, see the above-mentioned report by Laurent Béteille and Richard Yung.

[3] Étude d'impact du projet de loi relatif à la consommation, available at https://www.assemblee-nationale.fr/14/dossiers/projet_de_loi_consommation.asp.

The resulting legal regime for consumer group actions is therefore **logically framed**:

- **standing is limited to** nationally representative and approved consumer protection associations[1] ;

- the **scope is limited** to consumer and competition law: only individual losses suffered by consumers as a result of a trader's failure to comply with his legal or contractual obligations may be the subject of group proceedings This is the case for damage "*arising from the sale of goods or the provision of services*" or damage "*resulting from anti-competitive practices*".

The individual losses in question may not be identical. If they are, the legislator has provided for a simplified group action procedure[2].

The procedure adopted by the legislator consists of **two main phases**:

- the **judgment on liability**: in this phase, after recognising the admissibility of the class action, the judge rules on the merits of the case, on the defendant's liability and sets the terms and conditions for compensation for damages;

- **Settlement of damages**: in this second phase, the defendant compensates the members of the group in accordance with the terms and conditions set by the court in the liability judgment. However, the court will settle any disputes that may arise during this phase and will close the proceedings either with a ruling that the proceedings have been terminated or with a ruling settling any losses that have not been compensated within the time limit set by the defendant.

1.3. An initial extension: the creation of a group action for disputes relating to health products

Act no. 2016-41 of 26 January 2016 *on the modernisation of our healthcare system* **creates a legal regime for group action in relation to healthcare** products[3] that differs significantly from the regime then in force in consumer matters.

While the procedure is essentially similar, structured around a phase in which the defendant's liability is recognised and a subsequent phase focusing on the liquidation of the loss, it has **three major specific features**:

- **standing** is limited to approved healthcare user associations;

---

[1] *Article L. 623-1 of the French Consumer Code.*
[2] *Articles L. 623-14 to L. 623-17 of the French Consumer Code.*
[3] *See articles L. 1143-1 to L. 1143-13 of the French Public Health Code.*

- **Individual injuries** that **are eligible for compensation are only those** suffered by users of the healthcare system;

- the **scope of breaches that may be the subject of group action is limited to breaches by a producer, supplier or service provider using a health product** listed in II of Article L. 5311-1 of the Public Health Code.

1.4. The creation of an extended and enriched common law system

Act 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century* is first and foremost an opportunity to **broaden the scope of the group action.** It thus becomes applicable to disputes arising :

- **direct or indirect discrimination**;

- **in employment law**, **discrimination** attributable to a private or public employer, whether at the point of recruitment - in which case an association may be entitled to take action - or in career management - in which case only trade unions may take action;

- **environmental damage** ;

- a **breach relating to the processing of personal data**.

The result of this gradual sedimentation is the **formal coexistence of seven distinct legal systems**.

The seven legal bases for group action

Type of group action	Law creating the type of group action	Provisions in force authorising the type of action group	Compe tent judge
Class action *"Consumer* Affairs	Act no. 2014-344 of 17 March 2014 on consumption + Law no. 2018-1021 of 23 November 2018 on the evolution of housing, development and the digital economy.	Articles L. 623-1 to L. 623-32 of the French Consumer Code.	Judicial judge
Class action *"Health*	Law no. 2016-41 of 26 January 2016 on modernisation of our healthcare system.	Articles L. 1143-1 to L. 1143-13 of the French Public Health Code.	Administrative or judicial judge
Class action *"Discrimination*	Law no. 2016-1547 of 18 November 2016 on the modernisation of the justice system for the 21st century.	Article 10 of Law no. 2008-496 of 27 May 2008 containing various provisions for adapting to Community law in the field of anti-discrimination.	Administrative or judicial judge
Class action *"Discrimination attributable to an employer - private law*		Articles L. 1134-6 to L. 1134-10 of the French Labour Code.	Judicial judge
Class action *"Discrimination attributable to an employer - public law*		Articles L. 77-11-1 to L. 77-11-6 of the Code of Administrative Justice.	Administra tive judge
Class action *"Environment*		Article L. 142-3-1 of the French Environment Code.	Administrative or judicial judge
Class action *"Personal data*		Article 37 of Law no. 78-17 of 6 January 1978 relating to data processing, data files and individual liberties.	Administrative or judicial judge

Source: National Assembly Law Commission1

[1] Report no. 862 (XVIth legislature) by Laurence Vichnievsky and Philippe Gosselin on the draft law on the legal regime for group actions, available at the following address: https://www.assemblee-nationale.fr/dyn/opendata/RAPPANR5L16B0862.html.

In addition to simply broadening the areas of application of group action, Law 2016-1547 of 18 November 2016 *on the modernisation of justice in the 21st century* also **enriched its legal regime** by providing a general framework applicable *mutatis mutandis* to the various fields of group action.

Firstly, **standing to bring an action is open to associations that have been duly registered for five years** and whose statutory purpose involves defending interests that have been adversely affected, with the exception of the health sector, where standing to bring an action is limited to approved associations.

Secondly, **the group action is preceded by a formal notice phase**. A person entitled to bring an action is required to give formal notice to "*the party against whom they intend to bring a group action to cease or bring to an end the breach or to make reparation for the damage suffered*"; the action may not be brought until four months have elapsed from receipt of this formal notice, failing which it will be inadmissible[1].

Thirdly, the common base thus created provides for the possibility of bringing **a group action for the cessation of an** infringement[2] , which the consumer and health schemes did not provide for.

Fourthly, **the system thus created provides for two procedures for settling damages**: an individual procedure, based on the system then in force for group actions in consumer or health matters; and a collective procedure - except in health matters - which allows the plaintiff in the action to negotiate with the defendant the arrangements for settling the damages on behalf of the members of the group.

1.4. Positive law: a relatively disparate procedural framework

As there have been no major changes since 2016, **the legal framework for group actions is relatively disparate**. It is characterised by the coexistence of distinct legal regimes, as illustrated in the table below.

[1] *Section 64 of the Act.*
[2] *Section 65 of the Act.*

Summary table of legal regimes f o r group actions

	Consumption	**Health**	**Discrimination**	**Discrimination by a private-sector employer**	**Discrimination by a public-sector employer**	**Environment**	**Personal data**
Type of dispute	Disputes arising from the sale of goods or the provision of services, or from the rental of real estate, or from anti-competitive practices.	Litigation relating to health products	Disputes arising from discrimination direct or indirect	Disputes arising from direct or indirect discrimination	Disputes arising from direct or indirect discrimination	Disputes arising from environmental damage in the areas covered by Article L. 142-2 of the Environmental Code	Disputes relating to the processing of personal data
Standing to act	Nationally representative and approved consumer protection associations	Approved health system user associations	Associations regularly registered for five years	Representative employee trade unions; associations duly registered for at least five years (only f o r discrimination at the application stage).	Representative trade unions; associations duly registered for at least five years (only f o r discrimination at the application stage)	Approved associations whose statutory purpose includes the defence of victims of or the defence of the economic interests of their members, approved environmental protection associations	Associations duly registered for five years, representative trade unions (when the processing affects the interests of persons whom the statutes of these organisations instruct them to defend)
Purpose of the action	Repairs only	Repairs only	Remedying or ending the breach	Remedying or ending the breach	Remedying or ending the breach	Remedying or ending the breach	Remedying or ending the breach
Formal notice	No	No	Yes: 4 months	Yes: 6 months	Yes: 6 months	Yes: 4 months	Yes: 4 months

	Consumption	**Health**	**Discrimination**	**Discrimination by a private-sector employer**	**Discrimination by a public-sector employer**	**Environment**	**Personal data**
Procedure	Judgment on the professional's liability followed by a procedure for settling damages (individual) . Existence of a group action procedure simplified.	Judgment on the professional's liability followed by a procedure for settling damages (individual)	Judgement on the professional's liability, followed by a procedure for settling damages (individual or collective).	Judgment on the professional's liability followed by a procedure for settling damages (individual)	Judgment on the professional's liability followed by a procedure for settling damages (individual)	Judgment on the professional's liability followed by a procedure for settling damages (individual)	Judgment on the professional's liability followed by a procedure for settling damages (individual)
Damages eligible for compensation	Property damage	Damages resulting from bodily injury	All types of loss (material, non-material, bodily)	All types of loss (material, non-material, bodily)	All types of loss (material, non-material, bodily)	Bodily injury or property damage	All types of loss (material, non-material, bodily)
Competent judge	Judicial judge	Administrative or judicial judge	Administrative or judicial judge	Judicial judge	Administrative judge	Administrative or judicial judge	Administrative or judicial judge

Source: National Assembly Law Commission

Although disparate, **this legal framework allows the specific features of each area of law to be taken into account**. For example, the specific nature of the losses suffered in the health sector would make it difficult to continue the collective proceedings for the settlement of losses.

2. The proposed mechanism: a twofold extension of the scope of group action

As drafted by the National Assembly, this proposed law aims to unify the legal regime for group actions. Conceived as a "framework law", this bill does not, however, proceed with this unification in a constant field of application.

The purpose of Article 1 is to **define the purpose of group actions**. It provides, on the model of the provisions of Article 62 of Law 2016-1547 of 18 November 2016 *on the modernisation of justice in the 21st century*, that group action is brought by a claimant "*on behalf of several natural or legal persons, placed in a similar situation, suffering damage caused by a single breach or a breach of the same kind of their legal or contractual obligations committed by any person acting in the course of or in connection with the exercise of their professional activity, by any legal person governed by public law or by any body governed by private law entrusted with the management of a public service*". As set out in paragraph 2 of the article, this action would be brought either to put an end to the alleged breach, or to obtain compensation for the damage suffered as a result of the breach, or for both.

The main innovation of this article lies not so much in the terms chosen to define the group action, which are relatively broad and similar to those used by the legislator in the common framework provided by Law 2016-1547 of 18 November 2016 *on the modernisation of justice in the 21st century*, as in **the application of this procedure to all areas of law and to all losses**. In fact, by not specifying which areas of law the group action applies to - unlike Article 60 of the aforementioned Act no. 20161547 - Article 1 has the effect of **extending the scope of the group action to all subjective rights**. It also extends the scope of compensable losses to all types of losses, "*whatever their nature*".

3. The Commission's position: a principle of enlargement to be strengthened while reducing its scope

3.1. A universal approach whose relevance could be called into question

The Committee had no difficulty whatsoever with the universalisation of compensable losses. On the one hand, as the DACS (Direction des affaires civiles et du Sceau) pointed out to the rapporteur, this **universalisation is more in line with the principle of full reparation which governs our law of civil liability**. It makes it possible to

prevent the need, in the case of breaches for which the group action only allows compensation for a single loss - such as, in consumer matters, financial loss - for the individual to bring a parallel individual action allowing compensation for other types of loss resulting from the alleged breach. On the other hand, the unification of the legal regime of the group action and the welcome simplification it brings about render this distinction irrelevant, on the understanding that certain procedural specificities - such as the inapplicability of the collective procedure for the liquidation of damages for personal injury - are maintained.

On the other hand, **the committee found the universalisation of the scope of group action more problematic**. While it is of course desirable for litigants to have suitable procedures enabling them to assert their rights adequately, the universalisation of group action may seem excessive, at least in two respects.

Firstly, the application of group action to all areas of the law could **significantly increase the number of economic operators subject to the serious reputational risk that** the unwarranted initiation of group action is bound to generate. Although difficult to quantify in principle, this cost could weigh on economic operators at two levels:

- prior to the commission of the alleged breach: if the effect
The supposed "dissuasive" effect of group action may prevent economic operators from committing certain breaches, but it may also discourage a perfectly lawful activity for which the threat of group action has been unduly raised. Deterring unlawful activity must not result in a disincentive to lawful activity;

- downstream of the alleged breach: it is perfectly conceivable that economic operators who have not committed a breach could nonetheless be subjected to the negative publicity that a group action would bring, which is particularly damaging to their business.

Secondly, the application of group actions to all areas of the law could **give rise to disappointed hopes**, as it could lead to a significant increase in the protection of people's rights without any change to the liability regime or procedural simplification. By their very nature, group actions take longer than individual proceedings. As the DACS (Direction des affaires civiles et du Sceau) pointed out to the rapporteur, litigants may wrongly believe that their rights will be better protected in the context of a group action, when in fact they will benefit from an individual decision more quickly.

3.2. Acknowledging the universalisation of the scope of group action while limiting its manifestly harmful effects

The Committee had reservations about the broad scope of the group action, but nevertheless accepted it, subject to two observations.

Firstly, **in Article *1a*, the Committee has significantly tightened the conditions for granting standing**. Instead of the very liberal legal regime resulting from the work of the National Assembly, which would allow a large number of players - including malicious ones - to act in many areas, the Committee preferred to strike a different balance.

In view of the potential benefits to litigants of initiating a group action in areas of the law to which the legislator has omitted to apply this procedure, it may seem appropriate to extend its application; however, this extension can only go hand in hand with **much stricter control of the persons with standing** than that currently provided for by the present draft law. On the express condition that standing is granted to approved associations, whose reliability and transparency can be verified, the Committee felt that it would be acceptable to extend the scope of standing.

On the other hand, the Committee felt that the proposed universalisation of the scope of application **would benefit from being circumscribed, in accordance with the current legal framework, in two areas**. Excessive openness in this area could be detrimental, in certain areas of law, to practitioners and professionals who are unable to defend themselves adequately against the reputational risk involved in taking such action. In this respect, the fact that liability law has not been amended and that the changes made by the proposed law are procedural in nature, as the National Assembly's rapporteurs explained at the public session[1], is irrelevant: the risk entailed by the introduction of a group action does not relate to undue liability, but precisely to the procedural and reputational cost that such a public action is bound to entail.

[1] *See in particular the responses by Philippe Gosselin and Laurence Vichnievsky to amendment no. 54 by Frédéric Valletoux in the minutes of the first sitting of 8 March 2023, available at the following address: https://www.assemblee-nationale.fr/dyn/16/comptes-rendus/seance/session-ordinaire-de-2022-2023/premiere-seance-du-mercredi-08-mars-2023.*

Consequently, **by adopting the rapporteur's amendment COM-7,** the committee **added an Article *1a* A designed to specify the scope of group actions in the areas of health and employment law.**

In the area of healthcare, taking action against healthcare professionals as a result of public health service conditions or in response to environmental health issues could have a disproportionate impact on the practice of the professionals and services concerned. Similarly, in the field of employment law, indiscriminately opening up the scope of group action would run the risk of depriving industrial tribunals of a significant proportion of litigation and depriving trade unions of a major role that is theirs, both in the conduct of social dialogue and in litigation.

The Committee has thus **retained the current scope of application of group actions with regard to breaches of the Public Health Code and the Labour Code**: these may only be brought on the grounds of a breach of legal or contractual obligations by a producer or supplier of one of the products mentioned in II of Article L. 5311-1 of the Public Health Code or of a service provider using one of these products, or in order to establish that several applicants for a job, an internship or a period of training in a company, or several employees, are the subject of direct or indirect discrimination based on the same grounds listed in article L. 1132-1 of the Labour Code and attributable to the same employer.

3.3. Improving the legal certainty of the system

Finally, **by adopting the rapporteur's amendment COM-6, the committee wished to clarify the definition of group action to ensure that it complies with European law**.

Article 8(3) of Directive 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions to protect the collective interests of consumers provides that, in the case of actions for an injunction, the claimant is not required to "*prove actual loss or damage suffered by individual consumers who have been harmed*".

In these circumstances, in order to **clarify the definition of group action and to be consistent with the rapporteur's amendment COM-12 transposing this provision, the concept of group action seems to be linked more to the similar situation in which several persons are placed as a result of the failure of another person than to the condition of suffering damage as a result of this same failure**. Naturally, the possibility of obtaining compensation for

The second paragraph of the article clearly states that group proceedings may be brought for the purposes of both putting an end to a breach and seeking compensation for damage.

The Committee adopted Article 1 **as amended** and Article *1a* A **worded as follows**.

Article 1a
Standing to act

Article *1a* seeks to unify and significantly broaden standing to bring a group action. In addition to standing to bring a cross-border action, approved associations and representative trade unions, associations that have been duly registered for at least two years or that act on behalf of at least fifty natural persons, five companies or five local authorities or their groupings could bring a group action.

As a result, the committee did not accept the proposed extension of standing, which it deemed incompatible with maintaining the necessary legal certainty for economic operators in the conduct of their activities and with the successful conduct of group actions by players who do not offer the necessary guarantees of seriousness and transparency. It then introduced the requirement for authorisation to act in group actions, the conditions for which would be aligned with those already laid down for "cross-border" group actions. The Committee also made the article legally more secure by transposing measures from Directive 2020/1828 on cross-border group actions.

The committee adopted this article as amended.

1. The state of the law: standing to bring an action differs according to the legal regime of the group action

Standing to bring a group action has been extended very gradually, as legal systems have multiplied.

From the outset, consumer group actions were only open to nationally representative and approved consumer protection associations[1]. Conceived by analogy with

[1] *Article L. 623-1 of the French Consumer Code.*

As a result, group action in health matters was only opened up to associations approved in health matters[1].

The extension of the scope of group actions by Law 2016-1547 of 18 November 2016 *on the modernisation of justice in the 21st century* has nevertheless been accompanied by an **extension of standing beyond just approved associations**.

In matters of discrimination, associations that have been legally registered for at least five years and that are involved in the fight against discrimination or that work in the field of disability, as well as associations that have been legally registered for at least five years and whose statutory purpose includes the defence of an interest that has been harmed by the discrimination in question, may bring a group action.

Where discrimination is attributable to an employer, whether private or public, standing is designed to ensure that trade unions retain a monopoly on any actions arising from failings in the operation of the company or public body. Thus, representative employee trade unions and, in the case of public employers, representative civil servants' trade unions and representative trade unions of magistrates in the judiciary can take action for discrimination at the application stage and at the career stage. Conversely, associations that have been duly registered for at least five years and are involved in combating discrimination or working in the field of disability may only take action in respect of discrimination at the job application stage.

Standing to sue in environmental matters is only available, on the model of group actions in consumer or health matters, to approved associations whose statutory purpose includes the defence of victims of personal injury or the defence of the economic interests of their members and approved environmental protection associations.

Finally, with regard to the protection of personal data, group actions may be brought by associations that have been duly registered for at least five years and whose statutory purpose includes the protection of privacy or the protection of personal data, consumer protection associations that are representative at national level and approved when the processing of the data in question affects consumers, as well as representative employee or civil servant trade unions or representative trade unions of judges when the processing affects the interests of persons whom the statutes of these organisations require them to defend.

The table below summarises the state of the law as regards standing to bring a group action.

---

[1] *Article L. 1143-1 of the French Public Health Code.*

Summary table of conditions giving rise to standing to bring a group action

	Consumption	Health	Discrimination	Discrimination by a private-sector employer	Discrimination by a public-sector employer	Environment	Personal data
Standing to act	Representative consumer associations at national and international level approved	Approved health system user associations	1) Regular associations that have been registered for at least five years and are active in the fight against discrimination or in the field of anti-discrimination. disability; 2) Regular associations that have been registered for at least five years and whose objects include the defence of an interest adversely affected by the discrimination in question (for candidates, not employees)	1) Representative employee trade unions (for discrimination at the application and career stages); 2) Regular associations that have been registered for at least five years and are involved in combating discrimination or working in the field of anti-discrimination. disability (only for discrimination at the application stage).	1) Civil servant trade unions representative bodies and unions representing judges (for discrimination at the application stage and at the career stage); 2) Regular associations that have been registered for at least five years and are involved in combating discrimination or working in the field of anti-discrimination. disability (only in the case of discrimination at the pre-discrimination stage).	Approved associations whose articles of association include the defence of victims of bodily injury or the defence of their members' economic interests, associations for the protection of the environment, etc. approved environmental	1) Regular associations that have been registered for at least five years and have as one of their statutory purposes the protection of privacy or the protection of personal data 2) Associations of defence of consumer organisations at national and approved when the processing affects consumers 3) Representative employee or civil servant trade unions, or trade unions

	Consumption	Health	Discrimination	Discrimination by a private-sector employer	Discrimination by a public-sector employer	Environment	Personal data
					application)		representative me mbers of the judiciary where the processing affects the interests of of people that the statutes of these organisations to defend

Source: Senate Law Commission

2. The proposed mechanism: an unprecedented extension of standing whose conformity with European law is uncertain

In addition to granting the Public Prosecutor's Office standing to bring an action for an injunction and allowing persons with standing to bring a joint action, **the main purpose of Article *1a* is to unify the conditions that give rise to standing to bring a group action**. While the choice of a unified system could have led to an alignment with the most stringent framework - giving standing only to approved associations, as is the case in consumer or health matters - the draft law, in the version that emerged from the work of the National Assembly, makes the opposite choice.

It **thus gives a very broad scope to standing by recognising it, regardless of the** area of law in which the action is brought:

- **approved associations** ;

- **associations that have been duly registered for at least two years** - instead of the five years currently required for certain group actions - and whose objects include the defence of interests that have been adversely affected;

- **duly registered associations acting on behalf of at least fifty natural persons**, or at least **five legal entities governed by private law entered in the** Trade and Companies Register (RCS), or at least **five local authorities** or groups of local authorities claiming to be victims of damage under the conditions set out in Article [1] of this proposed law;

- **trade unions representing** both employees and civil servants, including members of the judiciary, for actions relating solely to discrimination, personal data protection or a breach by a public or private employer.

Standing is therefore **broadened in two ways**. On the one hand, the criteria for associations that are not approved are either made more flexible - the period of existence of the association is reduced from five to two years - or made alternative to particularly insubstantial criteria - such as the representation of fifty natural persons, a threshold that can be reached very quickly. Secondly, the unification of the system makes these criteria applicable to group actions that until now have been open only to approved associations, particularly in the areas of consumer affairs and health, which are the two main areas in which actions have been brought to date.

In addition, Article *1a* transposes Directive 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions to protect the collective interests of consumers by providing for the standing to bring a group action before a French court of persons who have standing as entities qualified to bring so-called "cross-border" group actions, where its purpose is "*to penalise infringements by traders of the provisions of European Union law listed in Annex I to [Directive 2020/1828], which harm or are likely to harm the collective interests of consumers*".

3. The committee's position: better guarantee the success of group actions brought by tightening the standing requirement

3.1. Tightening the conditions for standing to ensure that group actions are taken seriously

The Committee did not adopt the provision proposed in Article 1 *bis* of the draft law, deeming the opening up of standing it provides to be excessive. While the wording of Article *1a* adopted by the National Assembly has the merit of unifying the rules governing standing to bring a group action, it has four major drawbacks.

Firstly, by **opening up the action very widely to players whose credibility and sincerity cannot be diligently verified**, the conditions thus laid down for standing could lead to the initiation of malicious group action procedures, aimed at imposing a **heavy reputational cost** on economic players, not all of whom will have the financial and legal means to defend themselves. The committee therefore felt that it would be particularly problematic to give associations representing only fifty individuals, with no prior existence requirement, the right to bring an action with potentially major reputational costs for the defendant.

Secondly, given the importance of the interests they represent, the sensitivity of the personal data they are called upon to collect and the aspirations they represent, it is imperative that the associations involved in group actions offer **all the guarantees of seriousness needed to bring these procedures to a successful conclusion.** In this respect, disappointing the legitimate hopes of people who have suffered prejudice by granting such procedures to people who are incapable of seeing them through to the end could *ultimately* damage the credibility of the group action.

Thirdly, the decision to open the courtroom wide will necessarily shift the responsibility for verifying that persons claiming standing comply with the necessary requirements of transparency and probity from the administrative authorities - which are currently responsible for the administration of justice - to the courts.

responsible for issuing approvals that give rise to standing to bring group actions in consumer, health or environmental matters, for example - to the courts. The **creation of this litigation on standing**, particularly as regards verification of conflicts of interest, could place the courts - which do not have the same resources as administrative authorities in this area - in a delicate position[1].

Lastly, the transposition of Directive 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions to protect the collective interests of consumers into national law is an opportunity to create a system that is as clear as possible for all litigants, both claimants and potential defendants. In this respect, it **seems essential to limit any over-transposition as far as possible**.

In these circumstances, **the committee adopted the rapporteur's amendment COM-8**, which seeks to **make recognition of standing to bring a group action subject to approval by an administrative authority** - which it will be up to the regulatory power to designate, possibly by distinguishing several authorities according to the field of law likely to be the subject of group actions. As the DACS (Direction des affaires civiles et du Sceau) pointed out to the rapporteur, it is necessary to
"It is indisputable that the principle of prior administrative review, as part of the procedure for granting authorisation, makes it possible to maintain a high level of legal certainty for litigants". In addition, the conditions to be met for the granting of this authorisation, which would essentially be limited to checking that the applicant association had been effectively and publicly active for one year in defending the interests of injured parties and that it was solvent, would be aligned with those set out in the aforementioned Directive 2020/1828 for cross-border consumer actions.

This system has the **twofold advantage of guaranteeing a unified and clear framework, avoiding any form of over-transposition, and preventing the risk of the introduction of litigation concerning the admissibility** of group actions brought, in particular on the basis of the necessary compliance with the obligations of transparency and probity laid down by the aforementioned Directive 2020/1828.

In addition, this provision **maintains, on a transitional basis, the possibility for associations that currently have standing to bring group actions.** The aim of this provision is to enable non-accredited associations that currently have standing, for example in the fight against discrimination or in the protection of personal data, to be able to obtain accreditation under this scheme. They would then have a period of two years in which to set up their organisation.

---

[1] *See the commentary on articles* [1] ter *and* [1] quater *AA.*

compliance with the requirements set out in the framework provided by this amendment.

3.2. Ensuring that the transparency requirements laid down in European law are properly transposed.

The Committee also wished to **complete the transposition of the aforementioned Directive 2020/1828**. By **adopting the same amendment COM-8 by the rapporteur, it stipulated that persons entitled to take action, at both national and European level, must make available to the public information** on the group actions envisaged and initiated, as well as the outcome of these actions, in accordance with the provisions of Article 13(1) of the aforementioned directive[1].

In addition, by aligning the criteria for granting authorisation with those laid down for so-called "cross-border" actions, the Committee has **ensured the introduction into national law of several provisions relating to the transparency of persons entitled to act**, which must be transposed:

- the pursuit of a **non-profit-making aim**, in accordance with Article 4(3)(c) of Directive 2020/1828 ;

- the addition of a **solvency criterion**, reflected for the association in question by the condition that, on the date the application for authorisation is submitted, it is not the subject of collective proceedings, in accordance with Article 3(d) of the Directive;

- **the introduction of publicity measures** concerning the statutory purpose, activities, financing and organisation of the association, in accordance with Article 3(f) of the Directive.

The introduction of these provisions ensures that national law complies with European law.

The Committee adopted Article *1a* **as amended**.

[1] *This provides that "*Member States shall lay down rules to ensure that qualified entities provide information, in particular on their website, concerning: a) representative actions which they have decided to bring before a court or administrative authority; b) the progress of representative actions which they have brought before a court or administrative authority; and c) the results of the representative actions referred to in points a) and b)*"*.

Articles 1b *and* 1c *AA (new)*
Preventing conflicts of interest

Article 1 *ter, which makes the* admissibility of a group action conditional on the production by the plaintiff of a simple declaration on his or her honour that he or she is not pursuing any profit-making aim and is not in a conflict of interest situation, completes a particularly flexible framework for standing.

The control thus envisaged, which is exercised by the judge when the proceedings are instituted, becomes pointless as soon as Article *1a* provides for approval by the administrative authority including such a control. The Committee has therefore, on the initiative of the rapporteur, deleted this article in favour of the introduction of stricter provisions for the sanctioning of conflicts of interest by the judge and the administrative authority, in line with European law.

The Committee deleted Article *1b* and added a new Article *1c* AA as follows.

1. The proposed system: particularly flexible control of the prevention of conflicts of interest

Article *1b* supplements the rules governing standing by requiring the plaintiff to produce a sworn statement to the effect that he or she is pursuing the following, failing which the action will be inadmissible
It must be "non-profit-making *and the third parties who provide funding, unless they themselves suffer damage caused by the breach of which the defendant is accused, do not have an economic interest in the bringing or outcome of the action and are not competitors of the defendant*".

This article, introduced by an amendment of the rapporteurs at the National Assembly[1] , is intended to **prevent the introduction of group actions by "false fronts", competitors of the defendant whose** sole aim is to harm him by this means. It thus seeks to transpose - albeit imperfectly - the provisions of Article 10 of the aforementioned Directive 2020/1828, which stipulates that
"*Member States shall ensure that, where a representative action seeking redress is funded by a third party, in so far as national law permits, conflicts of interest are avoided and that funding by third parties with an economic interest in the bringing or outcome of the representative action seeking redress does not distort the representative action away from the protection of the collective interests of consumers*."

[1] *Rapporteurs' amendment CL 26, available at https://www.assemblee-nationale.fr/dyn/16/amendements/0639/CION_LOIS/CL26.*

Under the system provided for in Article 1 *ter*, checks on these possible conflicts of interest would be limited to the judge receiving the certificate of honour thus envisaged and, if he suspects that it is fraudulent, forwarding it under Article 40 of the Code of Criminal Procedure to the public prosecutor, who could prosecute the applicant on the basis of Articles 441-1 or 441-7 of the Criminal Code.

2. The committee's position: to replace a vulnerable system with controls on conflicts of interest that meet European requirements

The **Committee did not adopt the provisions of Article *1b.* of this proposed law**.

Such a system would present **two clearly insurmountable legal obstacles**. Firstly, by making such a formality applicable to entities qualified to bring a so-called "cross-border" group action, it **would add a condition for bringing such an action which is not provided for by Directive** 2020/1828 and would consequently place the national legal framework in breach of it. Secondly and *a contrario*, **the formality thus laid down, which is particularly insubstantial, would fail to bring national law into line with an obligation actually laid down by Article 10 of the aforementioned Directive**, which provides, with regard to the prevention of conflicts of interest, that "*Member States shall ensure that (...) the courts or administrative authorities are empowered (...) if necessary, to reject the standing of the qualified entity in a given representative action*".

Furthermore, from an operational point of view, this article **would be tantamount to creating a dispute over inadmissibility without guaranteeing a satisfactory level of control over conflicts of interest**. For example, the defendant in the action could argue for delaying purposes that the certificate produced was fraudulent, but this would not guarantee that the courts had any real control over the absence of any conflict of interest, as it would be difficult for the defendant to prove that it was fraudulent. There is thus a risk that this system will bog down courts that are ill-equipped to ensure effective control of the conditions laid down by European law.

For all these reasons, **the committee adopted the rapporteur's amendment COM-9, which would delete Article *1b***.

Aware of the need to guarantee a high level of protection against conflicts of interest, **the Committee has also added an Article *1c* AA by adopting the rapporteur's amendment COM-10**. The aim of this amendment is to bring together in a single article the provisions on preventing conflicts of interest required by Directive 2020/1828/EC of the European Parliament and of the Council of 25 November 2020 on representative actions to protect the collective interests of consumers in the case of group actions for damages.

Firstly, the committee **created an obligation for claimants** to ensure that they do not place themselves in a situation of conflict of interest and to protect the group action they are bringing from the influence of a third party likely to harm the interests of the persons represented.

Secondly, it drew the consequences, in accordance with Article 10 of the aforementioned Directive, for group actions for damages only.

On the one hand, the committee stipulated that the authorisation introduced in Article *1a* **could be withdrawn if the administrative authority found that** an applicant had **failed to** exercise the necessary vigilance to prevent conflicts of interest.

Secondly, it **clarified the judge's role when the applicant's failure to comply with this obligation is suspected or proven**. If the court considers that compliance with this duty of care is uncertain, it may order the claimant to produce a financial overview listing the sources of the funds used to support the action: this provision, currently set out in Article *2a* C for cross-border actions only, would be moved to Article *1c* AA and extended to all actions for damages. If the court finds that the duty of care has not been complied with, it could declare the group action for damages inadmissible.

The Committee **deleted** Article *1b*.
and **added** the **following** Article *1c* AA.

Article 1c *A*
Prior formal notice

Article *1c* A, introduced by a Government amendment at the National Assembly's public session, seeks to restore the procedure of prior formal notice for breaches of employment law. In so doing, however, it ratifies the abolition of prior formal notice in those areas of group action for which it was previously provided.

Sharing the concerns expressed by the Conseil d'État in its opinion, the committee felt that it would be detrimental if this procedure were abolished as a matter of principle and has therefore reinstated it for all group actions. To this end, it has adopted the provisions already laid down by the legislator in the context of the law on the modernisation of justice for the 21st century, while preserving the formal notice specific to group actions in the area of employment law, as provided for in the article.

The Committee adopted the article as amended.

1. The proposed system: prior formal notice limited to breaches of employment law only

The law currently in force provides for a **prior formal notice** procedure for five of the seven procedural regimes currently provided for.

With regard to the protection of personal data, the environment and discrimination, Article 64 of Law 2016-1547 of 18 November 2016 *on the modernisation of justice for the 21st century* provides that.
"the person entitled to bring the action shall *give formal notice to the party against whom he intends to bring a group action to cease or bring to an end the breach or to compensate for the damage suffered*". The group action may not be **brought until four months have elapsed from receipt** of this formal notice, failing which it will be inadmissible.

In the case of discrimination attributable to a public[1] or private[2] employer, the time limit for bringing a group action after receipt of the formal notice is extended to six months. In the case of discrimination attributable to a private employer, the procedure also requires the employer to inform the social and economic committee and the representative trade union organisations of receipt of the formal notice and to initiate, at the request of the social and economic committee or a representative trade union organisation, "*a discussion on measures to put an end to*" the alleged discrimination.

[1] *Article L. 77-11-4 of the Code of Administrative Justice.*
[2] *Article L. 1134-9 of the French Labour Code.*

Article *1c* A incorporates only the latter procedure. By not restoring the prior formal notice procedures provided for under current law, this draft law therefore has the effect of abolishing them.

2. The committee's position: restoring and extending a procedure that encourages the avoidance of litigation

As the Conseil d'État pointed out in its opinion on the draft law, the abolition of the prior formal notice procedure "*may be questionable, given that the legislator has for several years been encouraging the development of amicable procedures to prevent litigation*". While the formal notice procedure does have the effect of lengthening the group action procedure, it **may nonetheless make it possible to avoid certain unwarranted procedures**. At a time when the scope of the group action has been broadly extended by this proposed law, it seems desirable to maintain and extend to all group actions a procedure of prior formal notice. The introduction of a group action should not be an end in itself, and it would therefore be useful to avoid this by extending by a few months a procedure that is intended to last several years.

Fully sharing the concerns expressed by the Conseil d'Etat on this point, and taking care to avoid litigation as far as possible, **the Committee accordingly adopted, in addition to Nathalie Goulet's coordinating amendment COM-4, the rapporteur's amendment COM-11 aimed at restoring and extending to all group actions the prior formal notice procedure** - which is not currently provided for in health and consumer law. Limited to a period of four months - with the exception of group actions concerning a breach of the provisions of the Labour Code, for which the National Assembly has already called for the maintenance of an *ad hoc* procedure with a six-month time limit - this prior notice would not significantly lengthen the procedure and could, in certain cases, allow the alleged breach to cease, or even allow amicable compensation for the harm suffered.

The Committee adopted Article *1c* A **as amended**.

Article 1c
Action for an injunction

Article *1c* incorporates the procedure for the cessation of infringements already provided for in the common procedural basis for group actions. However, it provides for the payment of any penalty ordered by the judge to the claimant - and not to the Treasury as is currently the case - as well as the possibility for the pre-trial judge to order any interim measures.

While the committee considered the first of these innovations to be relevant, it nevertheless followed the opinion of the Conseil d'État, which had considered the possibility of the pre-trial judge ordering interim measures to be superfluous and even problematic.

The Committee adopted the article as amended.

1. The proposed mechanism: the adoption and extension of a mechanism provided for by existing law

While group actions in consumer and health matters can only be brought for compensation for damage, Law 2016-1547 of 18 November 2016 *on the modernisation of justice in the 21st century* provided that other group actions can be brought to put an end to the alleged breach.

Article 65 of the aforementioned Act provides that "*where the group action seeks to put an end to the breach, the court, if it finds that there is a breach, shall enjoin the defendant to put an end to the breach or to ensure that it is put an end to and to take, within a time limit that it shall set, all measures necessary to that end, if necessary with the assistance of a third party that it shall designate*". Where it imposes a penalty payment, this is "*liquidated in favour of the Treasury*".

The purpose of Article *1c* of this draft law is to incorporate these provisions; in doing so, however, it makes three changes:

- Firstly, it **extends** the procedure for putting an end to a breach **to all group actions**, including consumer and health actions;

- secondly, it **provides for the astreinte to be paid not to the Treasury, as is currently the case, but to the plaintiff in the action**;

- lastly, it stipulates that **the Pre-Trial Judge may** ***"order all appropriate interim measures*** *to put an end to the alleged breach, within a time limit that it shall set, in order to prevent imminent damage or to put an end to a manifestly unlawful disturbance*".

2. The committee's position: guaranteeing the legal certainty of the system

The committee **welcomed these provisions but wished to better guarantee their legal certainty**.

Firstly, **it accepted the general scheme of the proposal**. It therefore considered that **it would be** useful **to extend the procedure for putting an end to infringements to all group actions** within the common procedural framework that this draft law aims to establish. The committee also **agreed that any penalty payment ordered by the court should be paid to the plaintiff**. At the hearing held by the rapporteur, law professor Jérémy Jourdan-Marques pointed out that this provision, which would constitute a source of funding for the plaintiff in the action, could encourage the latter to favour the action for cessation of the breach rather than the action for compensation for the damage suffered. Following the opinion of its rapporteur, the committee nevertheless considered that such a provision did not present any particular difficulty, although the financing of such actions remains an obstacle to their development. In addition, the risk of abuse appears to be all the more limited since, as the Department of Civil and Legal Affairs (DACS) pointed out to the rapporteur, "*the very mechanism of the astreinte, ordered and liquidated by the judge on the basis of criteria that take into account the behaviour of the debtor of the obligation to perform, constitutes a reassuring framework in the face of the risk of abuse or misuse of the system for profit-making purposes*". It also pointed out that it is not unusual for the astreinte to be liquidated in favour of the creditor of the unfulfilled obligation, i.e. the claimant in this case. The committee therefore did not consider it necessary to amend this provision.

Secondly, **the Committee wished to ensure better transposition of Directive** 2020/1828 of the European Parliament and of the Council of 25 November 2020 *on representative actions to protect the collective interests of consumers*, which provides in Article 8(3) that "in *order for a qualified entity to apply for an injunction, individual consumers shall not be required to express their wish to be represented by the said qualified entity. The qualified entity is not required to prove : a) actual loss or damage suffered by individual consumers as a result of the infringement referred to in Article 2(1); or b) the intention or negligence of the trader*. In line with a change proposed in Article 1, **Amendment COM-12, adopted on the initiative of the rapporteur, thus transposes this provision**.

Lastly, **the Committee has removed the possibility for the Pre-Trial Judge to order any interim measures necessary to put an end to the alleged breach**. Article 1 of the initial draft law provided that "*prior to any judgment on the merits, the Pre-Trial Judge may order the defendant to cease or put an end to the alleged breach of contract and to take, within a time limit set by the Pre-Trial Judge, all appropriate measures to that end, if necessary with the assistance of*

with the assistance of a third party designated by him". The Conseil d'Etat has levelled two criticisms at this system:

- on the one hand, it authorised "*the Pre-Trial Judge to order not only provisional measures, in accordance with his office, but also final measures based on an assessment of the merits of the case*". The rapporteurs of the National Assembly duly took account of this reservation by providing for the exclusively provisional nature of the measures that may be ordered by the Pre-Trial Judge, and the operative part of Article *1c* is satisfactory on this point;

- on the other hand, the Conseil d'État points out in its opinion that "*the wording chosen could be interpreted as reserving to the pre-trial judge alone the power to put an end to the breach*". It also points out that
"Article 789 of the Code of Civil Procedure, which is applicable to group actions by virtue of Article 849-2 of the same Code, already provides that the pre-trial judge may order any provisional measures, including protective measures.

On this second point, the wording of Article *1c* appears to be superfluous in the light of the provisions of Article 789(3) of the Code of Civil Procedure. Following the recommendation of the Conseil d'État "*not to amend the law in force on this point*", **the Committee therefore adopted the rapporteur's amendment COM-12, which deletes the second paragraph of the article.**

The Committee **adopted** Article *1c* **as amended**.

Articles 1d, 1e *and* 1f
Judgment on liability in a group action for damages

Articles *1d* to *1f* define the rules applicable to the liability phase of a group action for damages. Article 1 *quinquies* sets out the procedure applicable to the judgment on liability; article 1 *sexies* provides for the possibility for the court to decide, on the initiative of the claimant, to initiate collective proceedings for the settlement of damages; article 1 *septies* provides for the provisional enforcement of the judgment on liability, unless the court decides otherwise.

Noting that these provisions essentially reproduce the law in force, the Committee has not altered the general structure of this section of the draft law. It has, however, made two procedural clarifications to Articles *1d* and *1e in* order to consolidate and provide legal certainty. On the other hand, it has significantly amended Article 1 *septies*, which could have resulted in an appeal judgment on liability overturning the first instance judgment being rendered difficult to enforce.

The Committee adopted Articles *1d*, *1e* and *1f* as amended.

1. The proposed system: incorporating existing provisions and adding procedural innovations

Articles [1] *quinquies* to [1] *septies* **essentially reproduce the provisions of current law** governing the liability phase of group actions for damages.

Provided for in Articles 66 to 68 of Law 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*, this procedure takes place in several phases:

- the **court rules on the defendant's liability** on the basis of the individual cases submitted to it;

- Once liability has been established, the court **sets out the precise terms of compensation**, starting with the exact definition of the members of the group in question: it "*defines the group of persons in respect of whom the defendant is liable by setting out the criteria for membership of the group and determines the losses that may be compensated for each of the categories of persons making up the group it has defined*". It also specifies the period within which persons wishing to avail themselves of the judgment may join the group and the membership criteria they must meet;

- in order to enable the said persons to be aware of the option offered to them, **the court shall order the defendant "at the *defendant's expense, to take appropriate publicity measures* *to inform of this decision the persons likely to have suffered damage caused by the event giving rise to it*"**, which may only be implemented once the judgment on liability is no longer subject to ordinary appeal - appeal or opposition - or to an appeal to the Supreme Court;

- finally, the court may, where the plaintiff so requests and where the evidence produced and the nature of the losses so permit, **order the implementation of collective proceedings to liquidate the losses**. In this case, the court will authorise the plaintiff to negotiate directly with the defendant for compensation for the losses suffered by the members of the group, setting the amount or valuation of the losses as well as the deadlines and procedures for these negotiations.

This procedure is, for the most part, reproduced in the articles of this section, **subject to certain innovations**.

Firstly, the first paragraph of Article 1 *quinquies* provides that the claimant must present "*at least two individual cases*" in support of these claims. This differs from the current wording of articles L. 1143-3 of the Public Health Code and L. 623-4 of the Consumer Code, which merely provide that the claimant must present "individual cases" in support of his or her claims.

Secondly, Articles 1 *quinquies* and 1 *septies* are intended to **shorten the time limits for the procedure thus provided for in order to speed up its progress**. On the one hand, the first of these articles does not include the guarantee set out in Article 67 of the aforementioned Law 2016-1547 regarding the measures ordered against the defendant to ensure publicity of the judgment on liability: these could thus be ordered even if this judgment is still subject to an ordinary appeal or an appeal to the Supreme Court. Secondly, it provides for the judge to set a time limit, of between two months and five years from the completion of the publicity measures, within which persons wishing to join the group may do so. This period is considerably longer than that currently provided for in consumer group actions, where it may not be less than two months or more than six months[1]. Last but not least, **Article 1 *septies* provides for provisional enforcement of** the judgment on liability, unless the court decides otherwise.

Thirdly, Article *1e* **opens up the collective liquidation procedure to all types of injury**, provided that the claimant so requests. This would enable the collective liquidation of **personal injury**.

Lastly, Article *1d* introduces some **welcome procedural clarifications** into the common core of group actions:

- Paragraph 7 thus provides that the court shall set the period "*available to the defendant who has been ordered to pay compensation and the period, starting on the expiry of this first period, for bringing before it any claims for compensation that the defendant has not met*", thus introducing into the general framework of group actions a useful provision set out in Article L. 623-11 of the French Consumer Code;

- Paragraph 8 stipulates that the judge shall lay down "*the conditions and limits under which the members of the group may refer the matter to the judge with a view to obtaining individual compensation*", in connection with Article *1i* of this proposed law;

[1] *Article L. 623-8 of the French Consumer Code.*

- Lastly, paragraph 9 provides that, with the exception of compensation for personal injury, where the court deems compensation in kind to be more appropriate, it may order such compensation and specify the conditions under which it is to be provided, thus repeating a provision of article L. 623-6 of the Consumer Code.

2. The committee's position: guaranteeing the legal certainty of the system

The Committee has not significantly altered the general structure of these three articles, whose provisions have been largely inspired by existing law. It has, however, sought to ensure greater legal certainty in three respects.

Firstly, **the Committee felt that it was inappropriate to specify in the first paragraph of Article *1d* that the claimant must present "*at least two*" individual cases** in support of his or her claims. By **adopting the rapporteur's amendment COM-13**, the committee therefore wished to return to the law in force on this point. This preserves the **judge's discretion in assessing** the number and actual similarity of the individual cases submitted that are likely to give rise to liability on the part of the defendant in a group action. As the presentation of just two cases would appear to be an excessively insubstantial formality, it should be left to the courts to assess this criterion on a case-by-case basis, for each instance. Conversely, the reference to the **presentation of "*at least two cases*" could mislead claimants by suggesting that the presentation of a very small number of cases would in itself be sufficient to meet the criterion laid down by the law**.

Secondly, **the Committee adopted the rapporteur's amendment COM-14** aimed at clarifying Article *1e*, by providing, as is the case under current law, that the judge may decide to implement a collective procedure for the liquidation of damages "taking into *account the evidence produced and the nature of the damages allowing for this*". To this end, it also explicitly stated, as does Article *2a* A, that **personal injury is excluded from such a procedure**. It therefore deleted Article *2a* A.

Lastly, **by adopting the rapporteur's amendment COM-15**, **the committee sought to abolish the provisional enforcement of the judgment on liability** provided for in Article *1f*. Such a provision is likely to make the procedure excessively complex. Thus, if a defendant is ordered to pay compensation for damage, he would be obliged to compensate the plaintiff and the persons he represents as soon as the judgment on his liability was handed down, even though he might have withdrawn his admission of liability on appeal.

The committee has therefore replaced this provision with one that is already in force (articles L. 1143-5 of the Public Health Code and L. 623-12 of the Consumer Code), under **which the judge may order that part of the sums owed by the defendant be deposited with the Caisse des dépôts et consignations**. The sums thus immobilised would constitute a pledge and could only be disbursed for the benefit of the compensation of the members of the group at the end of the proceedings.

The Committee **adopted** Articles *1d*, *1e and* 1f. and [1] *septies* **as amended.**

Articles 1g*,* 1h *and* 1i
Individual compensation procedure

Articles *1g* to *1i* are intended to provide for an individual procedure for compensation after the liability judgment has been handed down.

Noting that there is no difference with current law, which does not seem to pose any difficulty, the committee did not intend to amend these articles.

It therefore adopted Articles *1g*, *1h* and *1i.* without modification.

1. The proposed mechanism: strict adoption of the provisions currently set out in the overall procedural framework

Articles *1g* to *1i* **reproduce identically the provisions of current law governing the individual procedure for compensation for damage** after the judgment on liability in the context of the group action for compensation for damage.

Provided for in Articles 69 to 71 of Law 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*, this procedure is divided into three phases:

- firstly, **persons wishing to join the group defined by the court in its judgement on liability submit a claim for compensation** for their loss to the person declared liable or to the plaintiff in the action, who then receives a mandate for the purposes of compensation. This mandate, given for the purposes of representation in order to bring an action before the judge in the event that compensation is not paid, or to enforce the judgement at the end of the proceedings, is the same as the mandate given for the purposes of representation in the event that compensation is not paid, or to enforce the judgement at the end of the proceedings.

procedure, does not constitute membership of the applicant association or trade union organisation;

- secondly, the person declared liable **pays individual compensation for the losses** suffered by those who have duly joined the group;

- finally, **if the claim for compensation is not satisfied, the persons who made the claim may apply to the court** that ruled on the liability for compensation for their loss, in accordance with the conditions laid down in the judgment on liability.

2. The committee's position: adopting a system largely inspired by existing law

Articles *1g* to *1i* therefore reproduce identically the provisions of Articles 69 to 71 of the aforementioned Act 2016-1547. Furthermore, the hearings conducted by the rapporteur did not reveal any legal difficulties at this stage of the procedure.

Noting that there is no difference with current law, which does not seem to pose any difficulty, **the committee did not intend to amend these articles.**

The Committee **adopted** Articles *1g* and *1h.* and *1i* **unchanged**.

Articles 1j *and* 1k
Collective procedure for the liquidation of damages

Articles *1j* and *1k* provide for the collective procedure for the liquidation of damages, subsequent to the judgment on liability. These provisions, which are modelled on the procedure set out in the current common procedural framework, were accepted by the committee.

It has nevertheless restored useful clarifications provided for under current law that had not been included in these articles. It has also reinstated the measures provided for by the law in force aimed at avoiding any dilatory behaviour on the part of either the defendant or the claimant in the negotiation of the terms and conditions for the liquidation of damages or the failure to comply with the judgment ordering the collective procedure for the liquidation of damages.

The Committee adopted Articles *1j* and *1k* as follows drafted.

1. The proposed system: a partial reworking of existing law

Articles [1] *undecies* and [1] *duodecies* more or less reproduce the provisions of Articles 72 and 73 of Law 2016-1547 of 18 November 2016 *on the modernisation of justice in the 21st century*. These set out the framework for the **collective procedure for liquidating damages**. Once the judgment on liability has been handed down, the judge may thus order this procedure at the initiative of the plaintiff in the action.

This provides that the **claimant himself negotiates the amount of compensation, within the limits set by the judgment ordering the collective proceedings for the liquidation of the losses**. Membership of the group by the persons whose interests have been adversely affected thus constitutes a mandate for the claimant to conduct these negotiations and take legal action to obtain enforcement of the judgment, but does not constitute or imply membership of the claimant association or trade union organisation.

Once an agreement has been reached between the claimant and the defendant, **the judge who ruled on liability approves it**. The judge may refuse to approve the agreement "*if it appears to him that the interests of the parties and the members of the group are insufficiently protected in the light of the terms of the judgment*" ordering the collective proceedings for the settlement of damages, and may in this case refer the matter back to the negotiating table for a period of two months.

In the absence of full agreement between the parties, the matter is referred to the court within the time limits set by the judgment on liability in order to **settle the remaining damages**.

Article 73 of the aforementioned Law 2016-1547 nevertheless includes two provisions designed to **avoid possible dilatory attitudes on the part of the defendant or claimant**, in order to protect group members and guarantee their compensation:

- on the one hand, where no agreement has been reached by the court within one year of the date on which the judgment ordering the collective procedure for the settlement of damages has acquired the force of res judicata, **the members of the group "*may submit a claim for compensation to the person declared* liable" by the judgment on liability**, in which case the individual procedure for the settlement of damages applies;

- secondly, **a civil fine of €50,000** may be imposed on the claimant or defendant where the latter has "*dilatorily or abusively*" obstructed the conclusion of an agreement.

Articles [1] *undecies* and [1] *duodecies* include almost all of these provisions, with two exceptions:

- in the second paragraph of Article [1] *duodecies*, the judge's right to refuse approval of the agreement reached, as provided for in Article 73 of the law

No 2016-1547 **becomes binding** if it does not sufficiently protect the interests of the parties;

- Article 1 *terdecies* does not include the measures designed to prevent dilatory behaviour in the negotiation and conclusion of the compensation agreement - i.e. the default initiation of the individual liquidation procedure and the civil fine.

2. The committee's position: to consolidate the system by restoring all existing legislation

The committee **welcomed the provisions of these two articles**, noting their similarity with current law.

With regard to Article 1 *undecies*, **however, the committee wished, through the rapporteur's amendment COM-16, to bring its wording into line with the provisions already in force** - in this case, Article 72 of the aforementioned Act 2016-1547. The clarifications made are thus intended to **detail the procedure** and to explicitly provide for the negotiation by the claimant of an agreement in the context of the collective proceedings for the liquidation of damages.

With regard to Article 1 *duodecies*, **the committee accepted the change in the judge's role that entails moving from an option to an obligation to refuse to approve an agreement that does not sufficiently protect the interests of the parties**. This plea would then have to be raised and examined by the court of its own motion, which does not seem to pose any difficulty, however: the approval of the agreement involves checking that the interests of the parties have been preserved, over and above compliance with the conditions laid down by the judgment ordering the collective procedure for the liquidation of losses.

Nevertheless, by **adopting the rapporteur's amendment COM-17**, the committee wished to restore the provisions of the law in force that are likely to **encourage the speedy conduct of such a procedure**. The deletion by the National Assembly of the procedure for activating the individual compensation procedure and of the fine of 50,000 euros in the event of dilatory measures seems harmful in that these provisions strongly encouraged the plaintiff and defendant to negotiate quickly. With regard more specifically to the civil fine, the fine for dilatory measures is limited to 10,000 euros under the terms of article 32-1 of the Code of Civil Procedure, an amount that seems insufficient.

Lastly, **the same amendment makes clarifying changes** to the judgments to which the court must refer in the procedure for the collective liquidation of damages.

The Committee **adopted** Articles 1 *undecies* and *1k* **as amended.**

Article 11
Management of funds received as compensation for group members

Article 1 *terdecies* sets out the rules for the management of funds received by the claimant in respect of compensation to group members.

Paid into an account opened with the Caisse des dépôts et consignations, the sums collected in this way could only be debited to settle the case in question, i.e. to compensate the members of the group.

Seeing no difficulty in adopting these provisions already in force, the Committee adopted Article 1 *terdecies* unamended.

Article 1 *terdecies* sets out the arrangements for the management of funds received by way of compensation for group members by the claimant. It thus adopts identically the provisions of the law in force on the subject, in this case Article 74 of Law 2016-1547 of 18 November 2016 *on the modernisation of justice in the 21st century*.

This provides that, "*subject to the legislative provisions relating to the handling of funds of the regulated legal professions, any sum received by way of compensation for injured parties who are members of the group shall be immediately paid into an account opened with the Caisse des dépôts et consignations*". The purpose of such a provision is to **ensure that the claimant does not attempt to make any profit from the sums paid to him in this way**. Since its sole purpose is to transfer funds, the account "*may only be debited for the purpose of settling the case that gave rise to the deposit*".

Noting that Article 1 *terdecies* incorporates these provisions identically, and that they did not appear to pose any problems during the work carried out by the rapporteur, **the committee adopted the article without amendment**.

The Committee **adopted** Article 1 *terdecies* **unamended**.

Article 1m *A*
Restoration of a simplified group action procedure

Article 1 *quaterdecies A* provides for the restoration of the simplified group action procedure. Abolished by the current draft law, this procedure would benefit from being restored and extended to all group actions. While group actions are intended to be opened up in new areas of law, in which easily quantifiable losses suffered by easily identifiable individuals could be compensated, the committee wished to preserve this option.

At the initiative of the rapporteur, the committee has therefore added an Article 1 *quaterdecies* A designed to restore the simplified group action procedure. In doing so, it has drawn on the provisions already in force for the "Consumer" group action.

The Committee added a new Article 1 *quaterdecies* A as follows.

1. The abolition of a legal remedy that has failed to prove its worth

This draft law does **not include a simplified group action procedure in the common procedural framework that it creates**. This only exists for consumer group actions.

Articles L. 623-14 to 623-17 of the French Consumer Code set out the conditions for this procedure:

- **prior knowledge of** the identity and number of consumers affected;

- the fact that they have suffered **losses of the same amount**, or of an identical amount per service rendered or by reference to a period or duration.

In this case, the judge who has ruled on the claimant's liability may order the claimant to pay **direct and individual compensation to the persons whose interests have been harmed**, using a procedure similar to that for the individual assessment of damages. The professional concerned would thus be required to **inform** each of the injured parties **individually, at his or her own expense, prior to enforcement of the judgment and once it has become unappealable.** If the professional concerned fails to comply with the decision, the court will settle any disputes and may order that the judgment be enforced.

2. The committee's position: restoring a procedure that could prove useful

The Committee considered it unfortunate that such a procedure was not provided for in the present draft law. While it has certainly not yet proved its effectiveness, as the Conseil d'État pointed out in its opinion, its **abolition in principle seems detrimental**.

The very broad scope of the losses and the areas of law concerned could thus give this procedure its full relevance. Identical losses suffered by a limited number of injured parties - such as a co-ownership - could thus be compensated more quickly. If the purpose of this proposed law is to **encourage the use of group action,** it seems paradoxical, to say the least, to abolish a procedure that could be used on an ad hoc basis to protect the rights of individuals.

As a result, the Committee has added a new Section *2a* containing a single Article *1m* A, through the adoption of **amendments COM-18 and COM-19 by the rapporteur, aimed at restoring this procedure**. To this end, it has taken over most of the provisions of Articles L. 623-14 to L. 623-17 of the Consumer Code, adapting them accordingly.

The Committee added a new Article 1 *quaterdecies* A as follows.

Article 1m
Mediation

Resuming fro provisions currently at vigour, The purpose of Article *1m is to* allow people who can bring a group action to take part in mediation in order to obtain compensation for individual losses. This article was supplemented at the National Assembly session to specify that the judge may appoint a mediator, with the agreement of the parties, to settle the terms of out-of-court compensation for the damage that is the subject of the group action.

The Committee is in favour of the development of alternative dispute resolution methods, which are likely to speed up compensation for victims, and has therefore adopted this article. It did, however, delete the stipulation that a judge may appoint a mediator, as this possibility is already covered by current law, as set out in the first paragraph of this article.

1. The use of mediation in group actions: a little-used mechanism but considered useful by the various players involved

1.1. Recourse to mediation is authorised as part of a group action

Mediation is defined as "a *structured process, by whatever name it may be called, whereby two or more parties attempt to reach an agreement with a view to the amicable settlement of their disputes, with the assistance of a third party, the mediator, chosen by them or appointed, with their agreement, by the court hearing the dispute*[1] ".

With regard to group actions, recourse to mediation was authorised as soon as this procedure was created in the consumer field by the so-called "*Hamon*" Act[2] . Article L. 423-15 of the Consumer Code, as amended by this law, provided that the claimant association could take part in mediation in order to obtain compensation for individual losses, once the liability of the company in question had been established.

Subsequently, when **the scope of the group action** was **extended to the health field**[3]**,** a mediation procedure was also introduced to enable the court to appoint a mediator, with the agreement of the parties, to settle the terms of out-of-court compensation for the damage that is the subject of the action.

Lastly, the so-called "J214" law extended the scope of group action to the **environment, discrimination, discrimination in the workplace and the protection of personal data**.

At the same time, the so-called "*J21"* Act introduced **a common set of rules applicable to all group actions**, and in particular provided in Article 75 that associations authorised to bring a group action[5] may **take part in mediation in order to obtain compensation for individual losses**, under the conditions set out in Chapter I of Title II of Act no. 95-125 of 8 February 1995 *on the organisation of the courts and civil, criminal and administrative procedure*.

As the law stands, it is therefore possible to use mediation as part of a group action.

---

[1] *Article 21 of Act no. 95-125 of 8 February 1995* on the organisation of the courts and civil, criminal and administrative procedure.

[2] *Law no. 2014-344 of 17 March 2014* on consumer affairs.

[3] *Law no. 2016-41 of 26 January 2016* on the modernisation of our healthcare system.

[4] *Law no. 2016-1547 of 18 November 2016* on the modernisation of justice for the 21st century.

[5] *Approved associations and associations that have been duly registered for at least five years and whose statutory purpose includes the defence of interests that have been adversely affected may bring a group action.*

1.2. The mediation procedure in group actions is little used but is considered useful by the players concerned

Since the creation of the group action, mediation has been little used. According to a National Assembly information report published in 2020 on the results of and prospects for group actions[1], only three procedures have resulted in mediation agreements.

With regard more specifically to **consumer law**, the report lists two approved mediation agreements. The first concerns a group action brought by the Confédération syndicale des familles in the housing sector, and the second concerns an action brought by UFC-Que choisir against the operator Free.

However, this low number of mediation agreements should be set against the number of group actions brought since their creation in 2014. Only 32 group actions have been brought to date, 20 of them in the consumer field.

Furthermore, even though few group actions have resulted in the approval of a mediation agreement, this mechanism is unanimously considered useful by the players involved and should be retained.

According to the Institut National de la Consommation, which was heard by the rapporteur, the use of mediation has made it possible to **speed up compensation for victims**. More generally, it has **reduced the costs associated with the procedure**, both for the injured parties and for the companies involved. Lastly, mediation has **a lower cost on companies' reputations** than a public trial, due to the confidential nature of mediation. As a result, mediation is also very popular with businesses.

2. The proposed mechanism: maintain the possibility of using mediation as part of a group action and allow the judge to appoint a mediator.

2.1 Maintaining the option of mediation for persons bringing a group action

Introduced in committee at the National Assembly[2] on the initiative of the rapporteurs Laurence Vichnievsky and Philippe Gosselin, Article 1 *quaterdecies* of the proposed law aims to **allow persons authorised to bring a group action to take part in mediation to obtain compensation for individual losses**, under the conditions set out in Chapter I of Title II of Law no. 95-125 of 8 February 1995.

---

[1] *Information report n° 3085 (XVth legislature) by Philippe Gosselin and Laurence Vichnievsky,* "Assessment and prospects for group actions*, 11 June 2020.*

[2] *Amendment no. CL27 by Laurence Vichnievsky and Philippe Gosselin.*

on the organisation of the courts and civil, criminal and administrative procedure[1].

This article reproduces identically the provisions set out in Article 75 of Law 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*, so as to maintain the possibility, for persons authorised to bring a group action, of participating in mediation.

However, as **a** result of **the extension of standing** introduced by Article *1a* of this proposed law, more people will be authorised to use this alternative dispute resolution method.

2.2 The possibility for the judge hearing a group action to appoint a mediator, with the agreement of the parties

In addition, an amendment adopted at the sitting of the National Assembly[2], on the initiative of the rapporteurs Laurence Vichnievsky and Philippe Gosselin, added a second paragraph to this article, the purpose of which is to **allow the judge hearing a group action for damages, with the agreement of the parties, to appoint a mediator to attempt to reach an agreement to settle the terms of out-of-court compensation for the damages that are the subject of the action**. This mediation procedure would also be carried out under the conditions set out in Chapter I of Title II of Law no. 95-125 of 8 February 1995 *relating to the organisation of the courts and to civil, criminal and administrative procedure*.

This addition is intended, according to the authors of the amendment, to **ensure the correct transposition of Article 11 of Directive (EU) 2020/1828 of 25 November 2020 *on representative actions to protect the collective interests of consumers***, which provides that "*Member States shall ensure that, in the context of a representative action seeking redress, the court or administrative authority, after consulting the qualified entity and the trader, may invite the qualified entity and the trader to reach an agreement on redress within a reasonable period of time*".

---

[1] *This law sets out the legal framework for mediation and stipulates, for example, that the mediator must respect the principle of impartiality.*

[2] *Amendment no. 67 by Laurence Vichnievsky and Philippe Gosselin.*

2. The Commission's position: maintain the possibility of using mediation to facilitate compensation for victims, while avoiding superfluous details.

The Law Commission is in favour of maintaining the possibility for persons authorised to bring a group action to take part in mediation to obtain compensation for individual losses, as provided for in the first paragraph of Article 1 *quaterdecies*.

Despite the low number of agreements approved, this is a **useful mechanism that can speed up the resolution of disputes and compensation for claimants**.

On the other hand, the Committee considered **superfluous the stipulation in the second paragraph of the same article that the court may, with the agreement of the parties, appoint a mediator** to try to reach an agreement on the terms of out-of-court compensation for the damages that are the subject of the action.

The first paragraph already opens up this possibility and thus makes it possible to comply with European Union law. This paragraph provides for the possibility of recourse to mediation **under the conditions laid down in Chapter I of Title II of Law no. 95-125 of 8 February 1995** ***on the organisation of the courts and civil, criminal and administrative procedure***. **Article 22** of this law, which appears in the chapter referred to, provides that "*the judge may, with the agreement of the parties, appoint a mediator to conduct mediation at any stage of the proceedings (...)*".

Consequently, the committee adopted **amendment COM-20** by the rapporteur, deleting the second paragraph of Article *1m.*

The Committee adopted Article *1m.*
as amended.

Article 1n
Court approval of mediation agreements

The purpose of Article *1n is, firstly, to* provide that any agreement negotiated on behalf of the group is subject to approval by the court, which checks that it is in line with the interests of those to whom it is intended to apply and gives it enforceability. Secondly, it stipulates that the mediation agreement must specify the publicity measures required to inform the people likely to be compensated on its basis, as well as the deadlines and procedures for benefiting from it.

The committee welcomed the retention of these provisions, which already exist, and therefore adopted this article without amendment.

1. Court approval of mediation agreements

As the law stands, article 76 of the so-called "*J211*" law provides that mediation agreements negotiated on behalf of the group in the context of a group action are subject to **approval by the judge**.

This homologation allows the judge to **give enforceability** to the mediation agreement, which gives each party the possibility of compelling the other party to respect the content of the agreement concerned.

Unlike ordinary mediation law, which is set out in Act no. 95-125 of 8 February 1995 on the *organisation of the courts and civil, criminal and administrative procedure*, approval of the negotiated settlement is **mandatory** in the context of a group action.

Before approving the agreement, the judge will check that **the negotiated agreement is consistent with the interests of those to whom it is intended to apply**. This clarification was adopted on the initiative of the Senate Law Commission when the consumer group action was created in 20142. Its purpose is to enable the judge to examine the content of the agreement and, if necessary, to refuse to approve it, particularly if the agreement does not comply with the interests of the injured parties likely to belong to the group, insofar as approval of the agreement extinguishes the group action.

Article 76 of the "*J21*" law also stipulates that the mediation agreement must **specify the publicity measures required to inform people likely to be compensated on its basis of its existence**, as well as the deadlines and procedures for benefiting from it.

2. Reintroduction of the provisions currently in force by the draft law

Article *1n* of this proposed law, introduced in committee at the National Assembly3 by an amendment from the rapporteurs Laurence Vichnievsky and Philippe Gosselin, reproduces without modification **the provisions currently in force, set out in Article 76 of the so-called "*J214*" law**.

The Law Commission can only agree with the inclusion of the provisions relating to the approval of mediation agreements, which take up **the recommendations made by the senators.**

---

[1] *Act 2016-1547 of 18 November 2016* on the modernisation of justice for the 21st century.

[2] *Amendment COM-170 by Nicole Bonnefoy, taking up a recommendation made by Laurent Béteille and Richard Rung in their information report entitled "*L'action de groupe*", published on 26 May 2010.*

[3] *Amendment no. CL27 by Laurence Vichnievsky and Philippe Gosselin.*

[4] *Law no. 2016-1547 of 18 November 2016* on the modernisation of justice for the 21st century.

Laurent Béteille and Richard Yung in [1] , before the introduction of group action in French law.

These provisions are also consistent with the provisions of the so-called "*Representative Actions*" [2] , Article 11 of which provides that mediation agreements are systematically reviewed by the court, which checks that the agreement respects the interests of all the parties and specifies that "*Member States may lay down rules authorising the court (...) to refuse to approve an agreement on the grounds that it is unfair*".

The Committee is also satisfied with the retention of the provisions relating **to publicity measures, which will make it easier to inform injured parties and, consequently, to compensate them**.

The Committee adopted Article *1n.*
without modification.

Article 1e
National register of group actions

Article [1] *sexdecies* aims to establish a national register of group actions pending before all courts, kept and made available to the public by the Ministry of Justice.

The Committee was in favour of the creation of this register, which will facilitate the provision of information to potentially injured litigants and the reparation of damages suffered, and adopted this article. Again with a view to facilitating the provision of information to litigants, the committee nevertheless wished to extend the content of the register to group actions that have been withdrawn and closed, actions for recognition of rights and classic collective actions that are in progress, withdrawn and closed, as well as approved mediation agreements.

1. **There is currently no exhaustive list of all group actions pending before the courts.**

1.1 Group actions in administrative matters are listed on the Council of State website

Under the terms of Article L. 77-10-1 of the Code of Administrative Justice, group actions may be brought **before the administrative courts**.

[1] *Information report no. 499 (2009-2010) by Laurent Béteille and Richard Yung, "*L'action de groupe*", 26 May 2010.*
[2] *Directive (EU) 2020/1828 of 25 November 2020* on representative actions to protect the collective interests of consumers.

Group action before the administrative courts

Introduced by the "*J21"* law, group actions before the administrative courts are governed by articles L. 77-10-1 to L. 77-10-25 of the Code of Administrative Justice.

They concern only the areas listed exhaustively in Article L. 77-10-1 of the Code of Administrative Justice, namely :

- discrimination suffered by citizens ;
- discrimination suffered by employees of a public employer ;
- violations of environmental law ;
- failures in the production, supply or delivery of healthcare products;
- and personal data protection breaches.

All group actions in administrative matters are listed on the Council of State's website[1]. Article R. 77-10-10 of the Code of Administrative Justice states that "*information on current group actions is published on the website of the Council of State*". This list also specifies the body targeted by the action, the nature of the alleged breach, the nature of the alleged damage, the factors making it possible to assess the similarity of the situations of the persons on whose behalf the action is brought and the court responsible for ruling on the action.

It should be noted that the list drawn up by the Conseil d'État also **includes closed group actions for which a decision has already been handed down**, even though the regulation does not require this.

1.2 On the other hand, there is no list of judicial group actions.

While a list of group actions in administrative matters has been drawn up by the Conseil d'État**, there is no exhaustive list of group actions pending before the courts**.

The only existing registers are the result of informal initiatives, such as **the register drawn up by the Observatoire des actions de groupe et autres actions collectives[2] , set up by Maria José Azar-Baud**, a lecturer in private law. While such initiatives are to be welcomed, the

[1] Group actions are listed at https://www.conseil-etat.fr/vos- demarches/je-suis-un-particulier/actions-collectives.

[2] The register is available at the following address: https://observatoireactionsdegroupe.com/registre/registre-france/

The inventory does not appear to be perfectly exhaustive and therefore does not guarantee complete information for litigants.

2. The proposed mechanism: the creation of a national register of group actions

Article 1 *sexdecies* of the proposed law aims to create **a public register of group actions pending before all courts**.

According to the authors of the draft law, who were interviewed by the rapporteur, the aim of this measure is **to improve the information available to citizens about ongoing group actions so that they can join them if they are concerned**. Group actions would be entered in this register as soon as they are brought before the competent court and deleted when the proceedings are terminated.

In its initial version, the text provided that this register would be kept and made available to the public by **the Conseil national des barreaux**. However, in its opinion of 17 February 2023, the Conseil d'État stated that "*such an assignment has no direct link with the missions of the Conseil national des barreaux*" and suggested that the Ministry of Justice should be entrusted with this task.

As a result, an amendment by the rapporteurs adopted in committee at the National Assembly[1] amended Article 1 *sexdecies* so as to **entrust the Ministry of Justice with the task of maintaining this register and making it available to the public**.

3. The committee's position: a desirable measure that should be extended to ensure that litigants are fully informed

3.1 The creation of a public register will provide better information to those subject to the law and will encourage compensation for injured parties.

The committee is fully in favour of setting up a public register of group actions.

It emerged from the hearings conducted by the rapporteur that it is currently very difficult to keep track of the cases pending before the courts, which does not help to ensure that people who are likely to join a group are properly informed.

On the contrary, the creation of a national register will make it possible to **effectively publicise ongoing group actions to potentially injured parties and thus facilitate their compensation**.

---

[1] *Amendment no. CL27 by Laurence Vichnievsky and Philippe Gosselin.*

The committee believes that this register should be **made public on a website, which is** the simplest solution to implement from a technical point of view and which will make it possible to reach a wide audience.

The introduction of this register is also in line with the *Representative Shares* Directive.

Article 13 of the Directive states that "*Member States shall lay down rules ensuring that consumers concerned by a pending representative action seeking redress receive information about the representative action in good time and by appropriate means, in order to enable them to express explicitly or tacitly their wish to be represented in the representative action*".

Article 14 of the same Directive also provides that "*Member States may set up **national electronic databases which are accessible to the public via Internet sites** and which provide information on qualified entities designated in advance for the purpose of bringing national and cross-border representative actions as well as **general information on pending and closed representative actions***".

As regards the authority responsible for keeping and making available this register, the committee welcomes the fact that this task has been entrusted to the Ministry of Justice. The Directorate of Civil Affairs and the Seal, which was heard by the rapporteur, confirms in this respect the capacity of the Ministry of Justice to keep this register, by means of a procedural standard requiring the public prosecutor to denounce the initiating summons, and an instruction to public prosecutors' offices requiring the transmission to the Ministry of Justice of information relating to the initiation of a group action.

3.2 However, the content of the register needs to be extended to ensure that litigants are fully informed.

While the Law Commission is in favour of the creation of this register, it felt that it should not be limited to listing only the group actions pending before all the courts.

By means of **an amendment COM-21** from its rapporteur, the Commission has extended the content of the register:

- group actions closed and withdrawn ;

- actions for recognition of rights[1] in progress, closed and withdrawn, which seek recognition by the administrative court of individual rights for a group of people with the same interest;

[1] *Articles L. 77-12-1 to L. 77-12-5 of the Code of Administrative Justice.*

- actions for the cessation of unlawful conduct[1] that are in progress, have been closed and have been withdrawn, and which are designed to enable consumer defence associations to bring an action before the civil courts to stop or prohibit unlawful conduct;

-actions for the removal of unfair terms[2] that are in progress, have been closed and have been withdrawn, which authorise consumer defence associations to apply to the civil courts to order the removal of unfair terms from model agreements proposed by professionals to consumers;

- joint representation actions[3] in progress, closed and withdrawn, which enable an approved and representative association to bring an action for compensation on behalf of several consumers who have suffered individual losses caused by the same professional and having a common origin;

- approved mediation agreements.

This extension will make it possible **to inform litigants of all collective actions currently before the courts**. It will also enable litigants wishing to bring a group action, for example, to **find out whether their initiative is likely to be successful**, if a previous group action relating to a similar loss has already been brought. Lastly, this extension will make it possible to compile statistics so that the reform can be **assessed if necessary**.

The Committee adopted Article *1e* **as amended**.

Article 2

Specialisation of the courts to hear group actions

The purpose of Article 2 is to **make certain courts specialised in group actions within the jurisdiction of the courts, irrespective of the** legal areas concerned (consumer, health, environment, personal data protection, anti-discrimination and property rental).

The committee felt that it was **essential to provide for the specialisation of judicial magistrates in** order to guarantee greater mastery of the specific features of the group action mechanism on the one hand and, on the other, of the various matters that may be affected by this procedure. It **adopted this article, setting a minimum number of specialised courts**.

[1] *Articles L. 621-7 and L. 621-8 of the French Consumer Code.*
[2] *Article L. 421-6 of the French Consumer Code.*
[3] *Articles L. 622-1 to L.622-4 of the French Consumer Code.*

1. No specialisation of the courts for group actions within the judicial system

1.1 The specialisation of the courts is manifested in a variety of ways and in different areas

In civil law, courts are already specialised according to subject matter. Commercial courts mainly hear disputes between tradesmen and merchants and commercial acts[1], industrial tribunals hear disputes between employers and employees under private law[2] and joint rural lease tribunals hear disputes between lessors and lessees of rural leases[3].

Among the judicial courts, there are also territorial specialisations in civil law. This is the case, for example, in intellectual property[4], European Union trade marks[5], actions relating to the duty of vigilance[6], *etc*. The Code of Judicial Organisation also requires the designation of a judicial tribunal per court of appeal for actions relating to ecological damage or civil liability under the Environmental Code[7].

For criminal law cases, there is similarly **a territorial specialisation of the judicial courts**. For example, the Paris judicial court has exclusive jurisdiction over criminal offences affecting the financial interests of the European Union and falling within the remit of the European Public Prosecutor[8].

The Code of Criminal Procedure[9] also provides for the creation of inter-regional centres specialising in environmental and public health offences, namely the Marseilles and Paris judicial courts10. These two courts also have jurisdiction over collective accidents[11]. In another example, eight judicial courts[12], commonly known as specialised inter-regional courts (JIRS), have territorial specialisation in complex organised crime13.

---

[1] *Articles L. 721-3 et seq. of the French Commercial Code.*
[2] *Articles L. 1411-1 et seq. of the French Labour Code.*
[3] *Article L. 491-1 of the French Rural and Maritime Fishing Code.*
[4] *Article L. 211-10 of the COJ.*
[5] *Article L. 211-11 of the COJ, which refers to "a judicial court"; the Paris court has been designated.*
[6] *Article L. 211-21 of the COJ, which explicitly refers to the Paris judicial court.*
[7] *Article L. 211-20 of the COJ.*
[8] *Article L. 211-19 of the COJ.*
[9] *Article 706-2 of the Code of Criminal Procedure (CPP).*
[10] *Article D. 47-5 of the CPP.*
[11] *Article 706-176 and D. 47-38 of the CPP.*
[12] *Paris, Nancy, Rennes, Bordeaux, Marseille, Lille, Lyon and Fort-de-France.*
[13] *Articles 706-75 and D. 47-12-7 of the CPP.*

1.2 A specialisation that has not been adopted for class actions

Article 2 of the *Consumer* Act 2014-344 of 17 March [20141] entrusted all the tribunaux de grande instance (judicial courts today) with the litigation of consumer law group actions, indirectly excluding the other courts existing at the time (tribunaux d'instance, conseils des prud'hommes)**.**

Law 2016-1547 of 18 November 2016 *on the modernisation of justice for the 21st century, which* introduced a common procedural basis for the various matters newly concerned by this type of action, did not give rise to any specialisation of the judicial courts either. Its Article 84 created a new Article L. 211-9-2 within the Code de l'organisation judiciaire (COJ)[2] , which incorporates the provisions of Article L. 211-15 of the COJ, while repealing that Article, and extends the jurisdiction of the judicial courts to all the new areas that may be the subject of a group action.

2. Specialisation of the courts for group actions: a long-standing desire of the National Assembly

The Consumer Bill, submitted by the Government to the National Assembly on first reading, already provided for the specialisation of the courts in group actions. During the discussion of this text by Parliament, and more specifically at second reading before the Senate, **the Law Commission had expressed its approval of the specialisation of the courts in group actions**, but the debates at the session ruled out this specialisation.

The **draft law on the legal regime for group actions,** both in the initial version tabled by MPs Laurence Vichnievsky and Philippe Gosselin[3] and in the version registered with the Senate, **provides for the specialisation of the courts**.

Article 2 proposes the creation of a new article L. 211-15 of the COJ, which states that: "*Specially designated judicial tribunals shall hear group actions brought in all matters on the basis of law no. du relating to the legal regime for group actions*".

---

[1] *Article L. 211-15 of the Code of Judicial Organisation, repealed by Article 84 of Law 2016-1547 of 18 November 2016.*

[2] "The judicial court hears group actions as defined in Chapter III of Title II of Book VI of the Consumer Code and by Law 2016-1547 of 18 November 2016 on the modernisation of justice in the 21st century."

[3] *The initial wording of Article 2 provided for the creation of an article L. 211-9-2 of the COJ: "*Specially designated judicial courts, the list of which is set by decree, hear actions brought on the basis of Title XV bis of Book III of the Civil Code*".*

3. The committee's position: useful and necessary specialisation

Back in 2010, the Senate's Law Commission recommended that group actions should be handled by specialised courts[1]. The rapporteurs noted that: "*In order to rationalise skills and resources**, it would be appropriate to reserve jurisdiction over group actions to a limited number of specialised courts**. The court registries would be large enough to handle the most massive proceedings**, and the judges would develop special expertise.** In addition, the question of proximity between the litigant and the judge does not arise in the case of an action brought on behalf of litigants by an approved national association: **the concentration of litigation in a few courts is neutral** for the consumer. On the other hand, it saves businesses from having to deal with a number of proceedings spread across the country, even though they concern the same case*.

The rapporteur also shares this analysis and notes that there are currently 164 judicial courts and 36 appeal courts. The large number of these courts makes it possible to ensure a degree of proximity between litigants and their judges. However, with regard to group actions, the hearings conducted by the rapporteur did not highlight the need to maintain such territorial coverage, on the contrary. In fact, the observations made by Senators Laurent Béteille and Richard Yung are still valid today and are widely shared by those involved in potential group actions.

Nevertheless, aware that the geographical designation of judicial courts is a matter for the regulatory authority and wishing to leave it to the Government to determine the appropriate number of courts specialising in group actions, the rapporteur notes that **retaining too large a number of judicial courts would not be efficient**. This would be the case, for example, if a court were to specialise in each jurisdiction of a court of appeal. On the other hand, given the very close links between group actions and complex criminal proceedings, he considers that it would be appropriate to specialise the courts of Paris and Marseilles or, at most, the eight judicial courts that have jurisdiction over organised crime.

With this in mind, **the committee adopted amendment COM-22, on the initiative of the rapporteur, introducing a minimum number of two specialised judicial courts**.

The committee also **wanted to specify the rules of procedure under ordinary law that would apply in the competent courts.**

---

[1] *Recommendation no. 8 in information report no. 499 on group action by Laurent Béteille and Richard Yung, drawn up on behalf of the Senate Law Commission, registered on 26 May 2010, pp. 61 and 62.*

Article 61 of Act No. 2016-1547 of 18 November 2016 *on the modernisation of justice in the 21st century* provides that, "*unless otherwise provided, group actions shall be brought and governed in accordance with the rules laid down in the Code of Civil Procedure*". This provision, which appeared in Article 22 of the initial bill and was moved to the forefront of the group action regime at the initiative of the rapporteur Yves Détraigne[1], also had its counterpart for the administrative courts: Article L. 77-10-2 of the Code of Administrative Justice thus provides that the group action is brought and governed by the provisions of the same code, unless otherwise provided.

While this draft law makes **no mention of these provisions** in the wording that emerged from the work of the National Assembly**, the committee wished to restore these clarifications by adopting the rapporteur's amendment COM-22**.

As this is an action brought before a court, although the Code of Civil Procedure is regulatory in nature and could theoretically be amended to take account of the consequences of the adoption of this proposed law, **the Committee felt it would be useful to explicitly provide for this clarification** so that the court, faced with a situation for which neither the legislator nor the regulatory authority had made provision, could refer to any applicable provisions of the Code of Civil Procedure.

Moreover, in the case of a group action brought before an administrative court, this **clarification seems all the more necessary** given that, unlike civil procedure, the Code of Administrative Justice is partly governed by statute. It cannot be **ruled out as a matter of principle that the exhaustive nature of the framework provided by the legislator may, in the course of proceedings, be called into question from time to** time[2].

The Committee adopted Article 2 **as amended**.

---

[1] *See the commentary on Article 19a in Report No. 121 (2015-2016) on the bill* implementing measures relating to justice in the 21st century *by Yves Détraigne, on behalf of the Law Commission, tabled on 28 October 2015, available at: https://www.senat.fr/rap/l15-121/l15-121.html.*

[2] *By way of example, Article 2* quaterdecies *of this proposed law excludes the application of its Article* [1] quaterdecies *relating to mediation - which refers de facto to provisions that are in principle applicable only to the courts - while Article 3 excludes the applicability of the provisions of the Code of Administrative Justice relating to mediation - by repealing Article L. 77-10-2 of the Code of Administrative Justice: as it stands, a mediation procedure would therefore appear to be impossible in the context of a group action brought before the administrative court.*

Article 2a *A (deleted)*
Inapplicability of collective liquidation proceedings to personal injury claims

Article *2a* A provides that the collective procedure for the settlement of damages is not applicable when the group action seeks compensation for damages resulting from personal injury.

As this is a specific provision on group actions in the health field, although **the Committee felt that this article was relevant, it nevertheless felt that, to make the law easier to read, it should be deleted and moved to Article *1e*.**

1. A technical clarification on collective proceedings for the liquidation of personal injury claims

At present, group action in the field of health "*can only relate to compensation for harm resulting from bodily injury*", according to the third paragraph of article L. 1143-2 of the French Public Health Code.

Unlike other areas covered by group **action, the current system of group action in the health sector does not provide for a collective procedure for settling personal injury claims**.

Article [1] *sexies* of the proposed law introduces a generalised system of collective procedures for settling damages.

However, during the debate in the public session of the National Assembly, on the initiative of the rapporteurs, **the Members of Parliament excluded personal injury from the collective procedure for the liquidation of damages**. The rapporteurs justified their position by pointing out that "***personal injury is necessarily of an individual nature****, which means that it cannot be compensated under a collective procedure for the liquidation of damages* "[1].

2. A relevant provision that would be made clearer by incorporating Article *1e*

The directorate of civil affairs and the seal of the Ministry of Justice and the directorate of legal affairs of the social ministries both drew the rapporteur's attention to the **need to maintain the exclusion of personal injury from the collective procedure for the settlement of damages**, particularly in view of the need for individual assessment of damages, which cannot be identical from one victim to another.

[1] *Amendment no. 49 by Philippe Gosselin and Laurence Vichnievsky.*

The Committee was therefore in favour of the proposed measure aimed at making collective liquidation proceedings in respect of personal injury inapplicable. However, in the interests of **greater legal clarity**, it felt that it would be **appropriate to provide for this exclusion in Article *1e* of the proposed law[1]**.

Consequently, on the initiative of the rapporteur, the committee adopted an amendment **COM-23** deleting Article *2a* A (*new*).

The Committee **deleted Article *2a* A**.

Article 2a *B*
Out-of-court settlement for damages resulting from bodily injury

Article *2a* B allows the **rules of recourse against third parties to** be applied **to compensation obtained for losses resulting from personal injury,** regardless of the source of the compensation. In particular, it covers recourse action by the social security authorities and insurers.

As this is a coordinating provision with existing special arrangements for personal injury compensation, **the Committee has adopted this article without amendment.**

Compensation for bodily injury is governed by specific rules that take into account the methods of compensation and the players involved: the perpetrator, the victim, social security and insurers.

A number of specific procedural provisions are set out in the Social Security Code, Article L. 752-23 of the Rural and Maritime Fishing Code, the Order of 7 January 1959 *relating to actions for civil damages by the State and certain other public bodies*, and Act 85-677 of 5 July 1985 *to improve the situation of victims of road traffic accidents and speed up compensation procedures*.

These provisions allow third parties, insurance funds or insurers, to pay all or part of the compensation for losses resulting from bodily injury and to bring a subrogated action against the person responsible for the damage, up to the amount of the expenses incurred.

Article *2a* B, which **safeguards the specific features of the action for recourse in personal injury cases in the context of the action of**

[1] *This led to the adoption of amendment* ***COM-14*** *to Article* 1e.

group, was introduced by an amendment tabled by the rapporteurs during the debates at the National Assembly[1].

The Legal Affairs Directorate of the Social Ministries reminded the rapporteur that it had requested this addition, which it felt was important to maintain in view of the specific nature of compensation for personal injury.

The **Committee felt that Article *2a* B provided useful and necessary coordination that should be retained**.

The Committee **adopted Article *2a* B unamended.**

Article 2a *C (deleted)*

Transposition of Article 10 of Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020

Article *2a* C provides, solely for group actions that fall within the scope of Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions to protect the collective interests of consumers and repealing Directive 2009/22/EC, **for the court to order the claimant to produce a financial overview listing the sources of funding for the action in order to identify any conflicts of interest** that may undermine the protection of the collective interests of consumers.

Although the National Assembly had chosen to transpose Article 10 of the aforementioned directive only for transnational group actions, **the Committee deleted this article, considering that the transposition made was incomplete. It therefore reintroduced a robust mechanism for monitoring the claimant's funding in a new article after Article *1b*. It therefore deleted Article *2a* C.**

Article *2a* C, which stems from Article 10 of Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions to protect the collective interests of consumers and repealing Directive 2009/22/EC, aims to **prevent conflicts of interest by ensuring the transparency of funding supporting group actions falling within the scope of the Directive.**

In practical terms, the judge can order the plaintiff in a group action seeking redress to produce a financial overview listing the sources of the funds used to support the action.

[1] *Amendment no. 53 by Philippe Gosselin and Laurence Vichnievsky.*

However, the rapporteur considers that, as drafted, Article *2a* C is an inadequate transposition of the arrangements for monitoring conflicts of interest. **The transparency of the plaintiff's funding is essential for all group actions, whether national or European, it** being pointed out that the National Assembly's provision for national group actions (in Article *1b* of the draft law) itself presented a number of legal difficulties.

Firstly, Article *1b* (see commentary on this article *above*) also applies to so-called "cross-border" group actions and creates a condition not provided for in Directive 2020/1828. Secondly, the mechanism put in place (a simple declaration on honour) is not sufficiently robust to constitute a real system for monitoring conflicts of interest as provided for in Article 10 of the aforementioned Directive.

Since the Committee has introduced a new article after Article *1b* aimed at fully transposing the conflict of interest control mechanism provided for in Article 10 of the Directive[1], Article *2a* C has become superfluous.

The Committee therefore adopted the rapporteur's **amendment COM-24** aimed at **deleting Article *2a* C**.

The Committee deleted Article *2a* C.

Article 2a D
Specificity of competition law class actions

Article *2a* D lays down **specific** provisions **concerning group actions relating to anti-competitive practices**: only certain authorities or courts are competent to establish a breach in this area, this decision may not be appealed and the group action must be brought within a maximum period of five years from the aforementioned decision.

As this is a technical provision specific to group actions in the field of anti-competitive practices, **the Committee has adopted this article without amendment.**

Anti-competitive practices may be subject to administrative sanctions and measures (by the Autorité de la concurrence and the Direction générale de la concurrence, de la consommation, etc.).

[1] *See amendment COM-10, creating Article 1c AA.*

and fraud control), **criminal or civil** (by the courts).

Anti-competitive practices are governed in particular by the provisions of Title II of Book IV of the French Commercial Code and Articles 101 and 102 of the Treaty on the Functioning of the European Union.

At the National Assembly, the rapporteurs introduced an amendment at the sitting aimed at providing for specific treatment of group actions against a professional who has committed anti-competitive practices[1].

Firstly, the group action must be based on a decision by an authority or court with jurisdiction to make a finding of anti-competitive practice. Secondly, the aforementioned decision is not subject to appeal. Lastly, the group action may not be brought more than five years after the decision.

Article *2a* D is **a welcome co-ordination provision with the law applicable to anti-competitive practices, which** does not call for any particular comments on the part of the Committee, which has therefore adopted this article without amendment.

The Committee **adopted Article *2a* D unamended.**

Article 2a

Class action suspends the limitation period for individual actions for damages

Article *2a* provides for **the suspension of the limitation period for individual actions** in the event of a group action **for the duration of the group action proceedings**. The limitation period will start to run again from the date of the final judgment or the approved agreement, for a period of not less than six months.

As this is a provision already included in Act 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*, **the committee has adopted this article without amendment.**

Article 2 *bis* was introduced by the National Assembly rapporteurs during the committee stage of the draft law. It incorporates, in its entirety, the provisions of Article 77 of Law 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*.

[1] *Amendment no. 75 by Philippe Gosselin and Laurence Vichnievsky.*

However, the scope of Article *2a* is slightly broader than that of the aforementioned Article 77, since it extends the suspension of the limitation period for individual actions to group actions seeking the cessation of a breach or compensation for damage, whereas Article 77 only covered the latter.

As this is a reinstatement of existing law, subject to a justified amendment that calls for no further comment, the Committee was in favour of adopting this article.

The Committee **adopted Article *2a* unamended.**

Article 2b
Res judicata

Article 2 *ter* **makes the judgment on liability and the judgment on approval of the agreement enforceable against all members of the group** whose loss has been compensated in the group action.

As this is a provision already included in Act 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*, **the committee has adopted this article without amendment.**

Article 2 *ter* was introduced by the National Assembly rapporteurs at the committee stage of the draft law. It incorporates the provisions of Article 78 of Law 2016-1547 of 18 November 2016 *on the modernisation of justice in the 21st century*, which enshrine the res judicata effect of the judgment on the defendant's liability and of the approved agreement. These judgments are therefore enforceable against all members of the group whose loss has been compensated.

As it is identical to current law and does not call for any further comment, **the Committee was in favour of adopting this article**.

The Committee **adopted Article *2b* unamended.**

Article 2c
Maintenance of ordinary law procedures

Article *2c* specifies that **participation in the group action does not prevent the claimant from obtaining compensation for losses not covered by the judgment on liability**.

As this is a provision already included in Act 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*, **the committee has adopted this article without amendment.**

Article *2c* was introduced by the National Assembly rapporteurs at the committee stage of the draft law. It incorporates the provisions of Article 79 of Law 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*, which specify that joining a group action does not preclude the right to take action under ordinary law to obtain compensation for losses that do not fall within the scope of the judgment on the defendant's liability or the approved agreement.

As **it is identical to current law** and does not call for any further comment, **the Committee has adopted this article**.

The Committee **adopted Article *2c*
without modification.**

Article 2d *A (deleted)*
The applicant's right to advice

Article *2d* A introduces an **option for the claimant to be assisted by a lawyer, in particular for the management of the members of the group action and to represent the persons likely to be compensated vis-à-vis the claimant**.

As this is a purely declaratory provision, **the committee has deleted this article.**

1. The introduction of the option of assistance by a lawyer outside the monopoly devolved to this profession

1.1 Lawyers have a monopoly on assistance and representation before the courts

In accordance with the first paragraph of article 4 of Law no. 71-1130 of 31 December 1971 reforming certain judicial and legal professions: "*No one may assist or represent the parties unless he is a lawyer,*

appear and plead before the courts and judicial or disciplinary bodies of any kind whatsoever, subject to the provisions governing lawyers at the Conseil d'Etat and the Cour de cassation". **This provision gives lawyers a "monopoly" on assisting and representing litigants before the courts.**

This monopoly is linked, firstly, to article 54 of the aforementioned law, which restricts the right to give legal advice or draw up private documents to certain persons, such as lawyers with a law degree or other regulated legal professions (notaries, judicial commissioners, administrators and court-appointed agents). Secondly, certain rules of civil procedure require the compulsory assistance of a lawyer (for example, in certain areas of family law, for civil proceedings known as "*written*" or "oral" proceedings). *"ordinary*" cases before the courts[1] or during civil appeals[2]).

In the absence of specific provisions concerning class actions before the courts, the Code of Civil Procedure states that "*Unless otherwise provided, the parties are required to constitute a lawyer before the court*". With regard to actions before the administrative court, it is not compulsory for a lawyer to be present, apart from a few exceptions.

However, the complexity of certain areas of law or of certain procedures (such as a group action) means that, in practice, claimants need to use the services of a lawyer.

1.2 Group actions: a role for lawyers and court commissioners

The health[3] and consumer[4] group action regimes provide for the possibility for the association bringing the group action to be joined, with the judge's authorisation, by any person belonging to a regulated legal profession specified by decree in the Conseil d'Etat. According to Article R. 623-5 of the Consumer Code, issued by Decree no. 2016-884 of 29 June 2016, these are lawyers and bailiffs (now commissaires de justice[5]).

Article L. 623-13 of the French Consumer Code specifies that the purpose of this assistance is "*in particular*" *to* "*receive compensation claims from group members and, more generally, to ensure that it represents the interests of the group as a whole".*

---

[1] *Article 760 of the Code of Civil Procedure: "*Unless otherwise provided, the parties are obliged to constitute a lawyer before the court.

[2] *Article 899 of the CPC: "*Unless otherwise provided, the parties are required to constitute a lawyer*".*

[3] *Article L. 1143-12 of the French Public Health Code.*

[4] *Article L. 623-13 of the French Consumer Code.*

[5] *New name for bailiffs and auctioneers since the reform introduced by Order no. 216-728 of 2 June 2016 on the status of judicial commissioners.*

injured consumers to the trader, with a view to their compensation". Insofar as this provision stems from Order 2016-301 of 14 March 2016 *on the legislative part of the Consumer Code*, it is not possible to identify the reasons that led the Government to specifically provide for this provision.

However, the current provisions of Article L. 1143-12 of the Public Health Code relating to group action in the healthcare field provide some insight as they were introduced by Article 184 of Law 2016-41 of 26 January 2016 *on the modernisation of our healthcare* system[1].

At first reading in the Senate, two identical amendments[2], withdrawn by their authors at the sitting, sought to make it compulsory for the plaintiff association to use a lawyer to conduct a group action, in order to secure the procedure and make the group action more effective. The rapporteur of the bill for the Social Affairs Committee, Catherine Deroche, emphasised that she felt it was necessary to
"In the second reading at the National Assembly, some Members of Parliament also sought to specify that the association must be assisted by a lawyer, but this amendment was rejected. At the second reading in the National Assembly, some Members of Parliament also sought to specify that the association should be assisted by a lawyer, but this amendment was rejected[3].

1.3 The National Assembly wants to strengthen the role of lawyers in group actions

Neither the initial draft law by Laurence Vichnievsky and Philippe Gosselin nor the text resulting from the work of the National Assembly's Law Commission included the provisions of articles L. 623-13 of the Consumer Code and L. 1143-12 of the Public Health Code, which provide for the possibility of assistance from a legal professional at certain stages of the group action procedure.

It was during the examination of the text at the sitting that the rapporteurs, Laurence Vichnievsky and Philippe Gosselin, proposed to include this provision in an amendment[4] by referring more broadly to "*any person belonging to a regulated judicial profession, the list of which is set out in the Code of Civil Procedure*". They referred more specifically, in the purpose

---

[1] *Initially provided for in Article L. 1143-14 of the CSP, they were moved to Article L. 1143-12 of the same code by Article 90 of Law 2016-1547 of 18 November 2016 on the modernisation of 21st century justice.*
[2] *Amendment no. 855 rect. by Leila Aïchi and Aline Archimbaud to the bill to modernise the healthcare system, tabled when the text was examined on first reading in the Senate.*
[3] *Amendment no. 116 aimed at modifying paragraph 50 of article 45 of the bill to modernise our healthcare system, tabled by Colette Capdevielle and her colleagues during the examination of the text on second reading at the National Assembly.*
[4] *Amendment 66 inserting a new article after Article* 2c.

of their amendment, to lawyers and bailiffs - who have since become "commissaires de justice".

This amendment was adopted, but modified by a sub-amendment tabled by the members of the Socialistes et apparentés group, with the aim of reserving to lawyers the possibility of providing legal assistance to the plaintiff in the group action and removing the need for the judge's authorisation to obtain this assistance[1].

During the debates at the plenary session, **Members of Parliament stressed the importance of preserving the role of lawyers in this procedure**, noting that the National Assembly's Law Committee had chosen to rule out the possibility of lawyers being parties to proceedings in the context of group actions.

2. A purely declaratory provision that undermines the readability of the draft law

Firstly, the rapporteur notes that **lawyers already have a monopoly on assistance and representation before the courts.** Outside this monopoly, litigants are free to be accompanied by the professional of their choice.

Secondly, **the provisions of articles L. 623-13 of the French Consumer Code and L. 1143-12 of the French Public Health Code merely give** the claimant the **option** of retaining the services of a lawyer or a court-appointed representative for the phase aimed at compensating the beneficiaries of the group action.

The rapporteur is also astonished at the judge's supervision of the claimant's right to be assisted by a lawyer or a court-appointed representative. **In the absence of provisions requiring recourse to a legal professional, this should be a matter for the claimant alone to decide whether or not to be assisted by a legal professional, and if so, the claimant must be free to choose a professional of his or her choice** (lawyer, notary, judicial commissioner, jurists, *etc.*).

The current law imposes restrictions on applicants that are not justified in terms of the rules governing the legal profession, and this article is purely declaratory in nature, so it is unnecessary.

Consequently, on the proposal of the rapporteur, **the committee adopted amendment COM-25 aimed at deleting this article in order to improve the readability and quality of the draft law**.

The Committee **deleted Article *2d* A.**

[1] *Sub-amendment no. 112 by Cécile Untermaier and her colleagues.*

Article 2d

Inadmissibility of a group action that has already been heard

Article *2d* introduces a **ground of inadmissibility in the event of a group action based on the same cause of action, breach of duty or seeking compensation for losses already recognised** in a liability judgment or an approved agreement.

As this is a provision already included in Act 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century,* **the committee has adopted this article without amendment.**

Article 2 *quinquies* was introduced by the National Assembly rapporteurs at the committee stage of the draft law. It faithfully reproduces the provisions of Article 80 of Law 2016-1547 of 18 November 2016 on the modernisation of the justice system for the 21st *century*, which make inadmissible a group action based on the same operative event, the same breach and compensation for the same losses as those already recognised by a judgment on liability or an approved agreement.

As **it is identical to current law** and does not call for any further comment, **the Committee was in favour of adopting this article**.

The Committee **adopted Article *2d* unamended.**

Article 2e

Right of substitution in the event of default by the applicant

Article *2e* allows the **substitution of the defaulting plaintiff in a group action by any person who is entitled to bring the main action**.

As this is a provision already included in Act 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century,* **the committee has adopted this article without amendment.**

Article 2 *sexies* was introduced by the National Assembly rapporteurs at the committee stage of the draft law. It faithfully reproduces the provisions of Article 81 of Law 2016-1547 of 18 November 2016 on the *modernisation of the justice system for the 21st century*, which allows any person who is entitled to bring an action as a principal to request the

judge to take the place of a group action plaintiff who has defaulted.

As this is **an identical identical to the law** the **Committee adopted this article**.

The Committee **adopted Article *2e* without modification.**

Article 2 septies
A clause prohibiting participation in a group action is null and void

Article 2 *septies* provides that **any clause whose purpose or effect is to prohibit a person from taking part in a group action is deemed to be unwritten**.

As this is a provision already included in Act 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*, **the committee has adopted this article without amendment.**

Article 2 *septies* was introduced by the National Assembly rapporteurs at the committee stage of the draft law. It reproduces without change the provisions of Article 82 of Law 2016-1547 of 18 November 2016 on the *modernisation of justice in the 21st century*, which ensures the nullity of any clause whose purpose or effect is to prohibit a person from participating in a group action.

As **it is identical to current law** and does not call for any further comment, **the Committee was in favour of adopting this article**.

The Committee **adopted Article 2 *septies* unamended.**

Article 2g
Direct action against the insurer

Article *2g* provides for a direct action mechanism against the insurer guaranteeing the civil liability of the person responsible.

As this is a provision already included in Act 2016-1547 of 18 November 2016 *on the modernisation of the justice system for the 21st century*, **the committee has adopted this article without amendment.**

Article 2 *septies* (*new*) was introduced by the National Assembly rapporteurs at the committee stage of the draft law. It faithfully reproduces the provisions of Article 83 of Law 2016-1547 of 18 November 2016 on the *modernisation of justice for the 21st century*, which allows the claimant in the group action to take direct action against the insurer guaranteeing the civil liability of the person responsible in accordance with Article L. 124-3 of the Insurance Code[1].

As **it is identical to current law** and does not call for any further comment, **the Committee has adopted this article unchanged**.

The Committee **adopted Article *2g*. without modification.**

Article 2h
Advance payment of court fees and costs to be borne by the State

Article 2 *h* creates the possibility, by decision of the judge, for the State to bear all or part of the advance costs of the investigative measures and, where the plaintiff loses, the costs of the proceedings.

The committee adopted this article, which aims to **transpose Article 20 of Directive 2020/1828 of 25 November 2020 on** representative shares, **subject to an amendment to improve the drafting of the provision.**

1. The law in force: the costs of the proceedings and the costs are usually borne by the losing party

Article 696 of the Code of Civil Procedure provides that "*The losing party shall be ordered to pay the costs, unless the court, by reasoned decision, awards all or part of the costs to another party*". Article 695(4) of the same Code specifies that the remuneration of technicians is included in the costs.

The provisional cost of investigative measures, of which expert opinions are the best known in civil procedure, is usually charged to the party requesting the measure in the course of the proceedings in the form of an advance.

[1] *"The injured third party has a direct right of action against the insurer covering the civil liability of the person liable. The insurer may not pay to anyone other than the injured party all or part of the sum owed by the latter, until such time as the third party has been reimbursed, up to the amount of the said sum, for the pecuniary consequences of the harmful event which gave rise to the liability of the insured."*

However, the judge may decide to divide the payment of this advance between the various parties to the proceedings[1].

Article 700 of the Code also provides that
"The court shall order the party required to pay the costs or who loses the case to pay the other party the sum it determines for the costs incurred and not included in the costs.

2. The proposed law aims to create a possibility for the State to pay the provisional costs of the investigation and the costs of the proceedings.

Article *2h*, introduced by the rapporteurs of the National Assembly during the committee stage of the draft law, provides that "*if the action brought is of a serious nature, the judge may decide that the advance costs relating to the investigative measures that he orders shall be borne, in whole or in part, by the State" and, secondly, that "if the court rejects the application before it, it may also, if it finds that the action brought was neither serious nor reasonable, decide that the advance costs relating to the investigative measures that it orders shall be borne, in whole or in part, by the State",* on the other hand, that "*in the event of dismissal of the claim before the court, the court may also, if it finds that the action brought was not reckless or fraudulent, order that all or part of the costs be borne by the State*. ".

The rapporteur points out that the first paragraph of the provision proposed by the National Assembly refers only to the advance payment of costs relating to an investigative measure that could be charged to the State. A decision in this area in no way prejudges the outcome of the group action.

It also notes that the first paragraph requires that "*the action brought is of a serious nature*". This concept is well known in law, notably through the mechanism of the question prioritaire de constitutionnalité[2] , the powers of the juge des référés in civil law[3] and the granting of legal aid at the stage of appeal to the Supreme Court[4].

The Directorate of Civil Affairs and the Seal also told the rapporteur that: "*The judge who assesses the seriousness of an action examines whether the dispute submitted to him appears to be well-founded and supported. This assessment of seriousness can also be understood as an a contrario analysis: the action must not be manifestly ill-founded*".

The judge's assessment of this criterion should therefore not pose any particular difficulties.

3. The position of the committee : improve a necessary to make group action more effective

The provisions of Article *2h* are intended to transpose Article 20 of Directive (EU) 2020/1828 of the European Parliament and of the Council of

---

[1] *Article 269 of the CPC.*
[2] *Concept introduced by Article 1 of Organic Law no. 2009-1523 of 10 December 2009 on the* application of Article 61-1 of the Constitution *to Article 23-2, 3° of Ordinance no. 58-1067 of 7 November 1958* containing the Organic Law on the Constitutional Council.
[3] *Articles 834 and 835 of the Code of Civil Procedure.*
[4] *Article 7 of Law no. 91-647 of 10 July 1991 on legal aid.*

25 November 2020 on representative actions to protect the collective interests of consumers and repealing Directive 2009/22/EC, which requires Member States to take measures to ensure that the procedural costs associated with group actions can be borne by the State in order to enable claimants to bring a group action effectively.

While **the rapporteur believes that the system proposed by the National Assembly is appropriate on the whole, he felt that it would be useful to simplify it to make it clearer**.

He has therefore submitted an amendment **(COM-26)** to the committee, the aim of which is, on the one hand, to **reinstate the requirement for a specially reasoned decision** (provided for in Article 696 of the CPC) for the State to bear the advance costs of taking evidence and, on the other hand, to **remove the requirement that the action be reckless or fraudulent in** order for the State to bear the costs. The latter condition is not provided for in Article 20 of Directive (EU) 2020/1828 and, in any event, it is important to leave it to the discretion of the court to determine whether it is appropriate to order the State to pay the costs of a group action that it has rejected.

The committee adopted this amendment to simplify and harmonise the wording.

The Committee **adopted Article *2h* as amended.**

Article 2i
Terms and conditions of application

Article *2i* specifies that the procedures for implementing Title I on group action will be defined by decree in the Council of State.

As this is a technical provision, **the committee adopted this article without amendment.**

Article *2i* was introduced by the National Assembly rapporteurs during the committee stage of the draft law.

The decree in the Council of State will be used to specify the designation of specialised courts for group actions, the implementation of the national register of group actions and measures to adapt the Code of Civil Procedure or the regulatory part of the Code of Administrative Justice.

The committee was in favour of adopting this article, as it is a technical and customary measure.

The Committee **adopted Article *2i.* without modification.**

Article 2 undecies *(deleted)*
Civil penalties in the event of intentional misconduct causing serial damage

Article 2 *undecies* creates a civil penalty in tort law, with an adjustable fine, in the event of intentional misconduct (with a view to obtaining an undue gain or saving) causing one or more losses to several natural or legal persons.

Considering that the creation of a civil fine for lucrative misconduct was not consensual, that its introduction in the present bill was not appropriate and that the proposed mechanism was marked by several legal weaknesses**, the Committee deleted Article 2 *undecies*.**

1. While French procedural law is familiar with civil fines, this is not the case in tort law.

1.1 Examples of civil fines under procedural law

Firstly, with regard to group actions, Article L. 77-10-14 of the Code of Administrative Justice (introduced by Article 85 of Law 2016-1547 of 18 November 2016 on the *modernisation of 20th century justice*) provides for **a civil fine of up to €50,000 against the plaintiff or defendant in the proceedings where the latter has, in a dilatory or abusive manner, obstructed the conclusion of an agreement**.

Secondly, article 32-1 of the Code of Civil Procedure provides for a **fine of up to €10,000 to be imposed for any dilatory or abusive behaviour in legal proceedings**.

These two measures are designed to punish procedural behaviour that is deemed to be abusive rather than a lucrative fault.

Thirdly, Article L. 442-4 of the French Commercial Code[1] provides that the Minister for the Economy or the Public Prosecutor may request that a **civil fine be** imposed **on the perpetrator of restrictive competition practices**. This article provides for a fine of

[1] *Introduced by Article 2 of Order No 2019-359 of 24 April 2019 recasting Title IV of Book IV of the Commercial Code relating to transparency, restrictive competition practices and other prohibited practices.*

which may not exceed the highest of the following three amounts: five million euros, three times the amount of the advantages wrongly received or obtained, or 5% of the pre-tax turnover generated in France by the perpetrator of the practices in the last financial year since the financial year preceding that in which the practices were carried out.

Lastly, a **civil fine may be imposed in the event of unfair commercial practices within** the meaning of article L. 121-1 of the Consumer Code. Under article L. 132-1 A of the same code, the administrative authority responsible for competition and consumer affairs, consumer defence associations, the public prosecutor or the consumer may ask the court hearing the case to impose a civil fine **of up to 300,000 euros**. This amount may be increased, in proportion to the benefits derived from the practices in question, to 4% of average annual sales, calculated on the basis of the last three annual sales known on the date of the decision.

1.2 The rejection of punitive damages in French law

The law of civil liability has historically been governed by **the principle of full reparation for the damage caused to the victim**. The tortfeasor must therefore compensate for the damage and nothing but the damage, and the victim must not benefit from any enrichment or suffer any loss as a result of the harm he or she has suffered. In other words, damages are awarded to the victim of the harm with a compensatory rather than punitive aim.

Punitive damages, which originated in *common law* countries *(United States, United Kingdom)*, are therefore far removed from the principle of full reparation for damage in that they can be defined as **a civil penalty designed to deter the commission of lucrative wrongs**. Allocated to the victim, they are therefore intended, while punishing the perpetrator, to enrich the latter, well beyond the cost or consequences resulting from the damage of which he or she is the victim. The idea is to re-establish an economic public order that has been undermined by the tortfeasor's lucrative misconduct.

The preliminary draft reform of the law of obligations and the law of prescription, coordinated by Professor Pierre Catala and sent to the Minister of Justice in 2005, included punitive damages in the following terms in article 1371: '*A person who has committed a manifestly deliberate fault, and in particular a fault for financial gain, may be ordered, in addition to compensatory damages, to pay punitive damages, a proportion of which the court may award to the Treasury. The judge's decision to award such damages must be specially reasoned and their amount must be fixed by the court.*

The amount of punitive damages must be distinguished from that of other damages awarded to the victim. Punitive damages are not insurable "[1].

In their report on civil liability[2], Laurent Béteille and Richard Yung, then rapporteur for the Law Commission, noted that the
"[3] Their hearings already showed a total lack of consensus on the matter, as did the hearings conducted by the rapporteur as part of the examination of the present draft law.

Ten years later, the Senate Law Commission, in its information report on civil liability which analysed the draft reform of civil liability presented by the Chancellery in 2017, once again ruled out the creation of a civil fine (article 1266-1 of the aforementioned draft) to punish lucrative faults in extra-contractual matters[4].

2. The proposed law aims to revitalise group action by introducing a financially dissuasive civil penalty.

Article 2 *undecies* creates a **civil penalty in the event of intentional misconduct, with a view to obtaining an undue gain or saving, having caused one or more losses to several natural or legal persons placed in a similar situation.** This fine must be requested either by the Public Prosecutor's Office, before the judicial court, or by the Government, before the administrative court. The proceeds of the fine are allocated to the Treasury.

The amount of the penalty must be proportionate to the seriousness of the offence committed and the profit made by the offender. **If the offender is a natural person, the amount may not exceed twice the profit made, and if the offender is a legal entity, the amount is set at 3% of average annual turnover**. If the fine is combined with an administrative or criminal fine imposed on the offender for the same acts, the total amount of the fines imposed may not exceed the highest legal maximum. Finally, the risk of a civil penalty being imposed is not insurable.

---

[1] The full report is available at à this address https://www.justice.gouv.fr/sites/default/files/migrations/portail/art_pix/RAPPORTCATALASEPT EMBRE2005.pdf.

*[2] Their recommendation no. 24 provided for "*the authorisation of punitive damages in cases of lucrative misconduct in certain specialised litigation, paid first to the victim and, for a portion defined by the judge, to a compensation fund or, failing that, to the Treasury, the amount of which would be set according to that of compensatory damages*".*

[3] Information report no. 499 on group action, by Laurent Béteille and Richard Yung, submitted to the European Parliament.
on behalf of the Senate Law Commission, registered on 26 May 2010, pp. 79-100

[4] Information report no. 663 on civil liability by Jacques Bigot and André Reichardt, drawn up on behalf of the Senate Law Commission, registered on 22 June 2020.

According to the National Assembly rapporteurs, the civil penalty mechanism described above is intended to respond to the concerns expressed by the Conseil d'État in its opinion on the draft law. Firstly, the Law Commission of the National Assembly has therefore extended the civil penalty to all types of action. Secondly, it has provided for the proceeds of the fine to be allocated to the Treasury, to distinguish this fine from punitive damages. Thirdly, the deputies stipulated that only the Public Prosecutor or the Government could request this fine. The National Assembly's Law Commission considered that the measures adopted were necessary, proportional and in keeping with the principle of the legality of offences and penalties.

At the plenary session, although **the MEPs accepted the principle of a civil fine, they set the amount of the fine** for a natural person at twice the profit made (instead of five times as much as the Commission had proposed) and, if the offender is a legal entity, at 3% of average annual sales calculated over the last three financial years, instead of 5% of the highest sales figure achieved in France during one of the last three financial years. At the suggestion of the Government, the Members of Parliament also adopted an amendment[1] to require compliance with the principle that penalties must not be cumulative.

3. The committee's position: a measure considered inappropriate that presents certain legal weaknesses

The committee has decided to **remove the civil penalty mechanism** provided for in the proposed law for several reasons.

Firstly, it points out that in its general assembly opinion no. 406517 of 9 February 2023 on the draft law in its initial version submitted to the National Assembly**, the Conseil d'État expressed its opinion on the draft law in its initial version submitted to the National Assembly.**
***"strong reservations about the creation of this civil penalty*", which remain relevant despite the amendments made by the deputies**. Indeed, the Conseil d'Etat rightly points out that **the creation of the civil penalty "*was not preceded by an in-depth assessment of its effects and consequences in each of the areas concerned* and *that it does not form part of a more global reform of civil liability or of a reflection on the methods of punishing wrongful behaviour by economic actors,* *but is inserted in a procedural text and in an incidental manner* "[2].

Secondly, **the creation of a sanction in the field of civil liability, in the form proposed or in the form, derived, of punitive damages - which has been debated for many years - does not enjoy the support of the academic community,**

---

[1] *Amendment no. 90.*
[2] *Conseil d'État, opinion no. 406517 of 9 February 2023 on a draft law on the legal regime for group actions, point 24.*

the legal practitioners and economic players heard by the rapporteur. Moreover, in recent years, in its work on civil liability, **the Senate has already shown particular reservations about the creation of a generalised civil fine**[1].

Thirdly, the rapporteur agrees with the analysis of the Directorate of Civil Affairs and the Seal of the Ministry of Justice, which has pointed out certain **legal weaknesses in the civil fine mechanism** provided for in Article 2 *undecies*.

The principle of the legality of offences and penalties is not respected by the text resulting from the work of the National Assembly. **It** does **not provide a sufficiently clear and precise description of the offending conduct** and is drafted in overly general terms. **The concept of lucrative misconduct is not precisely defined, in particular the lucrative dimension of this misconduct**. Although the text mentions "*undue gain or saving*", it does not define this notion either. Similarly, the notions of "*breach by the professional of a specific obligation*" and "*serial damage*" are not defined, given that the latter notion is unknown in civil law.

Article 2 *undecies* also runs the risk of coming up against the principle of proportionality of penalties insofar as, in the **absence of a maximum amount laid down by law in absolute terms,** the proportional rate (in this case 3% of turnover) in the proposed law must have a link between the offence punished and the basis for calculation. However, **the Constitutional Council considers that the maximum penalty cannot be set as a percentage of the turnover of the accused legal entity** where there is no "*link between the offence to which it applies and the turnover*" and that this criterion is "*likely to be manifestly out of proportion to the seriousness of the offence established* "[2]. As the scope of Article 2 *undecies is* very broad, **the link between lucrative misconduct in a particular area and turnover could be absent and the percentage applied could appear disproportionate to the misconduct alleged**.

Finally, bringing national law into line with the Directive
The aforementioned ***"Representative Actions" clause in*** no way requires the creation of a civil penalty in the event of intentional misconduct causing serial damage.

In the light of these considerations, **the committee adopted the rapporteur's amendment COM-27, aimed at deleting Article 2** *undecies*.

---

[1] *Information report no. 558 on liability, by Alain Anziani and Laurent Béteille, on behalf of the Senate Law Commission, registered on 15 July 2009, pp. 79-93; Information report no. 663 on civil liability, by Jacques Bigot and André Reichardt, on behalf of the Senate Law Commission, registered on 22 June 2020.*

[2] *Recital no. 10 of Decision no. 2013-679 DC of 4 December 2013, Law on combating tax fraud and serious economic and financial crime.*

The committee **deleted Article 2 *undecies***.

Article 2 duodecies *A*
Definition of a cross-border group action

Article 2 *duodecies* A seeks to transpose into national law the definition of a cross-border group action set out in the "*Representative Actions*" Directive.

The Committee has amended this article to incorporate the definition set out in the aforementioned Directive, so as to ensure that it is transposed accurately and to clarify the definition of cross-border group action.

1. The "Representative Shares" Directive

1.1. The "Representative Actions" Directive: guaranteeing the existence of a mechanism for representative action to protect consumer interests in all EU Member States

• A long-standing desire on the part of the European Commission to introduce a harmonised European collective redress mechanism

Faced with the increased risk of damage to consumers' collective interests as a result of globalisation and the digitalisation of the economy, the idea of introducing **a harmonised collective redress mechanism at European level** emerged very early on in the European public debate.

As early as 1984, the idea of setting up such a mechanism was mentioned by the European Commission in its **memorandum on consumer access to justice**[1]. In 2007, the Commission published a **Green Paper on consumer collective redress**[2] before organising a **public consultation on the European approach to collective redress** in 2011.

Although the public consultation organised in 2011 did not result in a legislative initiative due to opposition from certain Member States such as Germany and the United Kingdom, it did lead to the publication by the European Commission of a **recommendation**[3] **calling for the introduction of a collective redress mechanism in all EU Member States and for compliance with certain conditions.**

---

1 https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:51998PC0198&from=F
2 https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0794:FIN:FR:PDF
[3] *Commission Recommendation 2013/396/EU of 11 June 2013* on common principles applicable to mechanisms for collective redress for injunctions and damages in the Member States for violations of rights conferred by Union law.

minimum guarantees in this area, such as the introduction of transparency criteria for the designation of entities qualified to bring a class action.

The competence of the European Union consumer protection

The European Union shares responsibility for **consumer policy** with the Member States.

Under **Article 169 of the Treaty on the Functioning of the European Union (TFEU)**, the European Union may take measures to approximate the laws of the Member States or to supplement the provisions adopted by the Member States "in ***order to promote the interests of consumers and to ensure a high level of consumer protection***".

Furthermore, **Article 12 of the TFEU** states that "***consumer protection requirements*** *shall* ***be*** *taken into account in defining and implementing other Union policies and activities*".

Article 38 of the Charter of Fundamental Rights of the European Union states that "a ***high level of consumer protection shall be*** *ensured in the policies of the Union*".

• The disappointing consumer protection record has led to an acceleration of the European legislative process and the adoption of the "*Representative Actions*" Directive.

Despite the recommendation issued by the European Commission in 2013, it became apparent in 2018 that **very few Member States had introduced a collective redress mechanism within their own borders**. In addition, the mechanisms in place did not provide the same level of protection in each Member State, and some were highly complex, making it impossible to ensure effective consumer protection.

In response to this disappointing record and the observation that "*large-scale abusive practices* [have] *undermined consumer confidence in the single market* "[1] , the European Commission launched a "**new deal for consumers**" in 2018 and announced the forthcoming presentation of a **proposal for a directive on representative actions**.

Adopted definitively on 25 November 2020, the purpose of the "*Representative Actions*" Directive is to **guarantee the existence, in each Member State, of an effective mechanism for representative action to obtain cessation and reparation measures**.

[1] *Commission report of 25 January 2018* on the implementation of the *Commission Recommendation of 11 June 2013* on common principles applicable to mechanisms for collective redress for injunctions and damages in the Member States for breaches of rights conferred by Union law.

The **scope of this directive is broad**, covering actions for injunctions and damages in the sectors of data protection, financial services, tourism, telecommunications, energy, health and the environment.

In order to guarantee an effective level of protection in each Member State of the European Union, the Directive lays down a set of **minimum principles that must be respected by the representative action mechanisms set up in each Member State**.

1.2 The Directive also introduces the possibility of cross-border group actions

In addition to the obligation to set up a representative action mechanism meeting a number of minimum requirements, the directive also introduces **the possibility of cross-border group actions**.

Article 3 of the Directive defines **cross-border group actions** as "*representative actions brought by a qualified entity in a Member State other than that in which the qualified entity has been designated*".

In practical terms, the creation of this type of action will enable **qualified French entities to bring or join group actions in other Member States**. Conversely, qualified foreign entities will be able to bring group actions before the French courts.

2. The definition of a cross-border group action

The purpose of Article 2 *duodecies* A, which was introduced at the sitting of the National Assembly on the Government's initiative[1], is to **transpose into domestic law the concept of cross-border group actions**, as set out in the so-called "Representative Actions" Directive.

Article 2 *duodecies* A states that a cross-border group action is "***a group action brought before a court or competent authority of a Member State of the European Union other than that in which the claimant is entitled to bring such an action***".

According to the Government, the aim of transposing this definition into domestic **law is** to **ensure clarity and promote legal certainty**.

The Committee agrees with this desire to **improve the clarity of the law**. It notes, however, that the definition introduced in this draft law does not include the definition in the directive
"Representative shares".

[1] *Government amendment no. 94.*

As indicated *above*, **Article 3 of the Directive** defines a cross-border action as "*a representative action brought by a qualified entity in a Member State other than that in which the qualified entity has been appointed*".

To avoid any confusion and to make the standard easier to understand, the Committee has therefore, on the initiative of its rapporteur, adopted **an amendment COM-28 aimed at adapting the definition** in the draft law sent to the Senate, in order to come closer to the definition used in the European directive and thus ensure that it is fully transposed.

The Committee adopted Article 2 *duodecies* A **as amended**.

Article 2k
Entities qualified to bring a cross-border group action

The purpose of Article 2 *duodecies is to* define the criteria that legal entities must meet in order to obtain approval from the Minister responsible for consumer affairs to bring cross-border group actions. It also specifies that the list of persons approved to bring cross-border group actions is published by the Minister for Consumer Affairs.

To ensure accurate transposition of the directive, the committee specified that to obtain approval to bring cross-border group actions, legal entities would have to demonstrate twelve months of actual public activity in defending consumer interests prior to their application for approval. In addition, the wording has been harmonised with that of Article *1a*, relating to the conditions to be met in order to bring a group action at national level. The article was adopted as amended.

1. Entities qualified to bring cross-border group actions

The *Representative Actions* Directive introduced the possibility **of cross-border representative actions**, which will allow, for example, qualified French entities to bring a group action in another EU Member State.

Article 4 of the aforementioned Directive provides that the entities qualified to carry out cross-border activities shall be **designated in advance by the Member States**.

The same article specifies that in order to be designated as a qualified entity for the purposes of bringing cross-border representative actions, **legal persons must satisfy a set of criteria** laid down by the Directive.

Thus, in order to be designated as a qualified entity to bring a cross-border representative action, the legal person must :

- be able to demonstrate **twelve months of actual public activity in the protection of consumer interests** prior to its application for designation;

- have a statutory purpose which demonstrates that it has **a legitimate interest in protecting the interests of consumers**;

- pursue **a non-profit aim**;

- it is not the subject of **insolvency proceedings** and has not been **declared insolvent**;

- **be independent and not be influenced by persons other than consumers**, in particular by professionals with an economic interest in the bringing of any representative action, including in the case of funding by third parties, and, to this end, **have procedures in place to prevent such influence and conflicts of interest** between itself, its funders and the interests of consumers;

- make available to the public, in clear and understandable terms, by any appropriate means, in particular on its website**, information demonstrating that it meets the above criteria and information on the sources of its funding, its organisational, management and membership structure, its statutory purpose and its activities**.

2. The transposition into French law of the criteria set out in the Directive for bringing cross-border group actions

2.1 The proposed law

Introduced in committee at the National Assembly by an amendment[1] from the rapporteurs Laurence Vichnievsky and Philippe Gosselin, Article 2 *duoedecies* seeks to **define the criteria that legal persons must meet in order to obtain authorisation to bring cross-border group actions within** the meaning of the Directive.
"Representative shares".

The article specifies that **the Minister responsible for consumer affairs will grant authorisation to bring cross-border group actions** to legal entities that meet the criteria set out in the directive.
"representative shares" detailed *above*.

[1] *Amendment no. CL33, tabled by Mrs Laurence Vichnievsky and Mr Philippe Gosselin.*

A **list of legal entities authorised to bring cross-border group actions** would also be drawn up and made available to the public by the Minister for Consumer Affairs.

2.2 The committee's position: the need to specify the criteria for bringing a cross-border group action in order to ensure that the directive is accurately transposed

The committee supports the transposition into national law of the criteria authorising a legal person to bring a cross-border group action, which is necessary to comply with European Union law.

However, it noted that **the proposed measures did not transpose the directive perfectly**.

Consequently, on the initiative of the rapporteur, it adopted amendment **COM-29**, which specifies that **in** order to obtain approval from the Minister responsible for consumer affairs authorising them to bring cross-border group actions, **legal entities must demonstrate twelve months of actual public activity in the protection of consumer interests prior to their application for approval**.

By adopting the same amendment (**COM-29)**, the wording of Article 2 *duodecies* has been amended to **bring it into line with the wording of Article *1a* of this proposed law**, relating to the criteria to be met in order to bring a group action at national level.

The Committee adopted Article 2 *duodecies* **as amended**.

Article 2 terdecies *A*
Verification of authorisations to bring cross-border group actions

The purpose of Article 2 *terdecies* A is to provide that, at the request of the European Commission or a Member State of the European Union, the administrative authority responsible for competition shall verify that legal entities that have obtained authorisation to bring cross-border group actions meet the criteria that justified the issue of the said amendment. The authority making the request would then be informed of its position by the administrative authority responsible for competition and consumer affairs.

The committee adopted this article without amendment.

Article 2 *terdecies* A was introduced at the National Assembly session by an amendment[1] from the rapporteurs Laurence Vichnievsky and Philippe Gosselin. Its purpose is to provide that, at the **request of the European Commission or a Member State of the European Union, the administrative authority responsible for competition and consumer affairs shall verify that entities that have received approval from the Minister responsible for consumer affairs to bring cross-border group actions still meet the criteria set out in Article 2 *duodecies***.

This article thus transposes Article 5(4) of the *Representative Shares* Directive, which provides that "*if a Member State or the Commission expresses concerns as to whether a qualified entity fulfils the criteria listed in Article 4(3), the Member State which designated that qualified entity shall investigate those concerns. Where appropriate, Member States shall revoke the designation of that qualified entity if it no longer meets one or more of those criteria*".

The Committee welcomed the introduction of this mechanism for verifying authorisations issued by the Minister for Consumer Affairs to bring cross-border group actions, which is necessary to transpose the *Representative Actions* Directive.

The Committee adopted Article 2 *terdecies* A.
without modification.

[1] *Amendment no. 70 by Laurence Vichnievsky and Philippe Gosselin.*

Articles 2l*,* 2m *and* 2n (deleted)
Coordination provisions

Articles 2 *terdecies*, 2 *quaterdecies* and 2 *quindecies* make various coordinations with the Consumer Code, the Code of Administrative Justice and the Code of Judicial Organisation.

As some of the coordinations provided for by the National Assembly could be improved or were superfluous**, the Committee adopted Articles 2 *terdecies* and 2 *quaterdecies* with amendments and deleted Article 2 *quindecies*.**

Article 2 *terdecies* provides for the necessary coordination with several provisions of the Consumer Code, which do not call for any particular comment, with the exception of 3° of this article, which provides for the applicability of this draft law to the Walis and Futuna Islands, in Article L. 652-2 of the Consumer Code, but without ensuring the general applicability of the draft law to the Walis and Futuna Islands.

However, in its opinion on the draft law, the Conseil d'État noted that "*while civil procedure no longer falls within the jurisdiction of the State in New Caledonia and French Polynesia, this is the case for Wallis and Futuna. It therefore seems necessary to state that the provisions relating to group actions apply to Wallis and Futuna, as was provided for in the Law of 18 November 2016 on the modernisation of the justice system. The provisions relating to judicial organisation must also be extended to Wallis and Futuna".*

Consequently, on the proposal of the rapporteur, **the committee adopted an amendment COM-35 aimed at making the draft law applicable to the Walis and Futuna Islands and an amendment COM-31 deleting paragraph 3° of Article 2 *terdecies***.

Article 2 *quaterdecies* enables a reference to be made from the Code of Administrative Justice to this Act. However, the second paragraph provides for a number of exclusions (transnational group actions, pre-trial proceedings and mediation) which are not relevant.

The committee therefore adopted the rapporteur's amendment COM-32, deleting the exclusions provided for by the National Assembly.

Article 2 *quindecies* creates a new article L. 211-22 in the Code de l'organisation judiciaire (French Code of Judicial Organisation), providing that jurisdiction in respect of group actions is set out in Article 2 of this proposed law. This article supplements a sub-section relating to the special jurisdiction of certain judicial courts.

This provision is superfluous insofar as Article 2 already creates a new Article L. 211-15 within the COJ conferring jurisdiction

specific to the courts for group actions in all matters.

On proposal of the rapporteur, **the committee a adopted amendment COM-33, deleting Article *2n***.

The Committee **adopted Articles *2l* and *2m* as amended.**
and deleted article 2 *quindecies*.

Article 2e

Report assessing the reform of the legal regime governing group actions

Article 2 *sexdecies* provides for the submission to Parliament of a report evaluating the reform of the legal system for group actions, within four years of the law's promulgation.

In line with its consistent position, the Committee has deleted this paragraph. article.

Article 2 *sexdecies* was introduced at first reading in the National Assembly, with the adoption in committee of an amendment by the rapporteurs Laurence Vichnievsky and Philippe Gosselin. It stipulates that **the Government shall submit to Parliament an evaluation report on the reform of the legal regime for group actions** within four years of the law's promulgation. If necessary, this report will also make recommendations for additional or corrective measures.

This article takes up a recommendation made by the Conseil d'État in its opinion of 9 February 2023 on this draft law, which suggested "*that an evaluation of the application of the law be carried out four years after its entry into force*".

In line with its consistent position on requests for reports from the Government, the Committee deleted this article by means of amendment **COM-34** from its rapporteur. By adopting the same amendment, it also deleted Chapter IV of this proposed law, which contained only Article 2 *sexdecies*.

The Committee **deleted** Article *2e*.

Article 2 septdecies (new)
Application to the Wallis and Futuna Islands

Article 2 *septdecies* was introduced by the Committee and ensures the applicability of this draft law to the Wallis and Futuna Islands.

In order to ensure that the proposed law applies to the Wallis and Futuna Islands, **the Committee adopted amendment COM-35, adding Article 2 *septdecies*.**

The Committee **adopted Article 2** *septdecies*.

Article 3
Entry into force and repeal of specific group action regimes

Article 3 seeks to draw the consequences of the creation by this proposal of a common procedural framework by abolishing the specific systems in force. It also lays down the procedures for the entry into force of the proposed law, opening up the application of the group action system thus created to actions brought after the publication of the law, including actions relating to events occurring prior to the publication of the law.

The Committee rejected this last provision and considered it preferable, as the legislator had done in Act 2016-1547 *on the modernisation of the justice system for the 21st century,* to provide for the application of the Act only to actions brought in respect of events occurring after the publication of the Act.

The Committee adopted the article as amended.

Firstly, Article 3 **repeals all the provisions currently governing the various group action regimes**, in order to draw the consequences of the creation of a single procedural framework by this proposed law.

It thus repeals :

- of Chapter III of Title II of Book VI of the Consumer Code (group action in consumer matters) ;

- Article L. 142-3-1 of the Environment Code (group action in environmental matters);

- Chapter XI of Title VII of Book VII and Articles L. 77-10-2 to L. 77-10-25 of the Code of Administrative Justice (group action before the

administrative judge or relating to discrimination by a public employer);

- Article L. 211-9-2 of the Code de l'organisation judiciaire (jurisdiction of the courts to hear group actions);

- Articles L. 1143-1 to L. 1143-13 of the Public Health Code (group action in health matters);

- Section 2 of Chapter IV of Title III of Book I of Part One of the Labour Code (group action in cases of discrimination attributable to a private employer) ;

- Article 37 of Act no. 78-17 of 6 January 1978 on Data Processing, Data Files and Individual Liberties (group action on personal data);

- Article 10 of Law no. 2008-496 of 27 May 2008 containing various provisions adapting to Community law in the field of anti-discrimination (group action in discrimination matters);

- of Chapter I of Title V of Act 2016-1547 of 18 November 2016 on the modernisation of the justice system for the 21st century (general group action regime).

The committee merely added to these provisions by adopting the rapporteur's **coordinating amendment COM-36.**

Article 3 then sets out the arrangements for the entry into force of this proposed law. It provides that **the repealed provisions remain applicable to actions brought before the publication of** the law. The provisions of the law are therefore **only** applicable to **actions brought after its publication**, with the exception of Article 2 *undecies* which, being a criminal provision, is **only** applicable to **actions where the event giving rise to the defendant's liability occurred after the** publication of the law.

The Committee rejected these provisions by adopting the rapporteur's amendment COM-37. In accordance with the regime adopted by the legislator in the context of Law 2016-1547 of 18 November 2016 *on the modernisation of justice for the 21st century*, it considered it preferable to limit the application of the law **only** to **actions whose triggering event is subsequent to its entry into force** - as opposed to actions brought after the law on the basis of triggering events prior to it.

Although the legislator is free to provide for the retroactivity of civil procedure provisions, the application of such provisions could pose **major operational difficulties for certain economic operators**. Current insurance contracts, for example, are not calibrated to the new legislation.

for the legal risk and reputational cost entailed by the legal regime for group actions as set out in this proposed law. In order to promote legal certainty for economic operators, the Committee therefore felt it necessary to **provide for the application of this law only to actions whose triggering event occurs after its publication**.

In addition, to coordinate with the proposed deletion of Article 2 *undecies*, the Committee has deleted the specific provisions relating to its entry into force.

The Committee **adopted** Article 3 **as amended**.

Articles 4, 5 and 6

Unification of the legal regime for group actions before administrative courts, entry into force of the law and financial "pledge".

Articles 4, 5 and 6, as originally drafted, provided respectively for the unification of the system of group actions before the administrative courts, the entry into force of the law and the introduction of a new procedure for group actions. financial "pledge".

Article 4 has been rendered redundant by the creation of a common procedural regime. The Committee therefore did not wish to reintroduce this article, which had been deleted when the draft law was examined by the National Assembly, and maintained its deletion.

Article 5 set out the provisions for the entry into force of the law, which were rendered superfluous by the provisions already contained in Article 3. The Committee has therefore maintained its deletion.

Article 6 provided for the financial "pledge" guaranteeing the admissibility of the bill under Article 40 of the Constitution. This article was deleted by a Government amendment in the public session of the National Assembly, thereby "lifting" the pledge[1]. The Committee has therefore maintained its deletion.

[1] *Government amendment no. 116, available at https://www.assemblee-nationale.fr/dyn/16/amendements/0862/AN/116.*

CONSIDERATION BY THE COMMITTEE

WEDNESDAY 24 JANUARY 2024

François-Noël Buffet, Chairman. - We will now examine Christophe-André Frassa's report on the draft law on the legal regime for group actions.

Christophe-André Frassa, rapporteur. - Since its introduction into French law a decade ago, the group action procedure has not, it has to be said, met with the success we had hoped for. Faced with this relative failure, the draft law presented by our fellow MPs Laurence Vichnievsky and Philippe Gosselin aims to encourage the use of group actions.

So here we are again, reviving a debate whose fortieth anniversary we are celebrating, and whose terms are well known: On the one hand, protecting the rights of those subject to the law, particularly consumers, means providing them with effective legal remedies enabling them to obtain compensation for damages, even when these are small amounts; on the other hand, our legal system and the protection of economic operators against malicious actions aimed solely at destabilising them mean that group action "à la française" should not be modelled on the American *class action, in* order to avoid its excesses.

The authors and rapporteurs of this proposed law in the National Assembly believe that the balance struck by the legislature to date gives excessive weight to the second of these considerations, which would explain the failure of the group action they describe.

First and foremost, I would like to stress that I believe this failure should be put into perspective. Admittedly, thirty-five group actions have been initiated since 2014 and the uneven quality of the claims means that a number of them have been declared inadmissible by the judge. Even so, this mixed record is partly attributable to the necessary appropriation phase involved in creating such a procedure. On the other hand, some group actions have flourished and resulted in compensation for damage, sometimes as part of an out-of-court settlement, particularly in the case of Depakine.

Clearly not sharing this view, the authors and rapporteurs of the draft law at the National Assembly wished to encourage the use of group actions, and accordingly proposed the unification of the seven legal regimes currently provided for into a single framework law. In so doing, they have transposed the provisions of the

Directive (EU) 2020/1828 on representative shares, as well as a significant relaxation of the single legal framework created.

Firstly, they provided for a threefold procedural extension.

First of all, the scope of the group action has been broadened: Article 1 provides for the universalisation of the scope of the group action, which could henceforth be aimed at putting an end to a breach or seeking compensation for a loss suffered as a result of the breach in any matter.

Secondly, a broadening of the range of losses for which compensation may be awarded: Article 1 also provides for the universalisation of the range of losses for which compensation may be awarded, whereas the sector-based schemes sometimes only provided compensation for certain losses.

Lastly, standing is extended: Article *1a* broadly extends standing, which is generally limited in sectoral regimes to approved associations, by granting it to associations that have been duly registered for at least two years or that represent fifty natural persons, five legal entities under private law registered in the Trade and Companies Register, or five local authorities or their groupings.

In addition to this threefold expansion, the unified legal framework proposed to us is essentially characterised by the adoption of provisions of existing law, in particular the common procedural foundation provided for by the Act of 18 November 2016 on the modernisation of justice in the 21st century.

As you know, the group action procedure has two main phases: the judgment on liability, during which the judge rules on the merits of the case as to the defendant's liability and sets the terms and conditions for compensation for damages; the individual or collective settlement of the recognised damage, during which the defendant compensates the members of the group in accordance with the terms and conditions set by the judge in the judgment on liability. Although I will be submitting a number of amendments to make this procedure more secure, I do not believe that it poses any major problems in terms of the proposed reinstatement of existing law.

On the other hand, the authors and rapporteurs wished to add a civil fine to the group action procedure in the event of intentional misconduct, with a view to obtaining an undue saving or gain, having caused one or more losses to several natural or legal persons in a similar situation. The aim of the provision is to deter potential breaches by imposing a particularly severe penalty.

Whilst the principle of unifying the procedural regime for group actions will ensure that the law is clearer and that litigants have better access to their rights, and we can therefore only agree with it, I would like to express my disappointment at the way in which it has been implemented.

Nevertheless, I propose that you adopt thirty-two amendments, which have three objectives.

Firstly, the framework proposed by our colleagues in the National Assembly seems to me to be excessively loose. While the universalisation of compensable losses does not pose any difficulty and can be seen as a simplification measure, I have more reservations about the universalisation of the areas of application of the group action. I nevertheless propose that you accept it, subject to two observations.

On the one hand, I propose that you adopt an amendment to limit the scope of this action, in the areas of health and employment law, to the current scope of group action. Excessively broad coverage in these two areas could be detrimental to practitioners and professionals who are unable to defend themselves adequately against the reputational risk of taking such action. In this respect, I would like to respond to the argument put forward by the rapporteurs in the public session of the National Assembly against these amendments: the fact that liability law has not been amended and that the changes made by the proposed law are procedural in nature is of no importance, since the risk entailed by the introduction of a group action does not relate to undue liability, but precisely to the procedural cost and damage to reputation that such a public action is bound to entail.

Secondly, I propose that you adopt a different overall balance to that adopted by the National Assembly, by significantly tightening up standing. Instead of the very liberal legal regime resulting from the work of the National Assembly, which would allow a large number of players - including malicious ones - to act in many fields, I would like to retain a different balance, based on a capacity to act extended to various fields, but reserved for a limited number of associations offering all the necessary guarantees of seriousness and transparency. We therefore felt that the introduction of accreditation was essential to guarantee the seriousness and transparency of those with the right to act.

Under these conditions, the particularly weak control of conflicts of interest introduced by Article 1 *ter* would become pointless, as this control would be carried out when the authorisation is issued. I therefore propose that this article be deleted and replaced by an article with a legal regime more in line with European requirements in this area.

Secondly, I will be proposing a number of amendments aimed at preventing the legal risks posed by the scheme. The first of these risks is, of course, the civil fine provided for in Article 2 *undecies*, which the Conseil d'Etat has rightly pointed out poses constitutional difficulties. More broadly, the appropriateness of including such a provision,

The insertion, almost by breaking and entering, of a provision that significantly modifies civil liability law in a procedural text, without a prior impact study, seems extremely problematic. I will naturally be asking for it to be deleted.

On a more subsidiary basis, I will be proposing several amendments aimed at improving the system on the fringes by providing more information to litigants or by reverting, where useful, to the law in force. For example, I thought it would be useful to include in this unified system the requirement for prior formal notice and a simplified group action procedure, which could enable certain cases to be settled more quickly.

Finally, I propose that you adopt a number of amendments aimed at completing the transposition of the directive on representative actions, with regard to both national group actions, particularly in terms of transparency and the solvency of persons entitled to take action, and cross-border group actions.

With these observations in mind, and subject to the adoption of the amendments I will be submitting to you, I propose, ladies and gentlemen, that you adopt this draft law.

Ms Muriel Jourda. - I would like to thank the rapporteur for these clarifications. As this is not a bill, we don't have an impact study. However, do we have any idea of the number and type of actions that have been banned by the current legislation? Why do we need to change the law?

Mr Christophe-André Frassa, rapporteur. - Unfortunately, we don't have these kinds of figures. This text was drawn up on the basis of a fact-finding mission on the results of and prospects for group actions, led by our fellow MPs Laurence Vichnievsky and Philippe Gosselin. An initial draft law, designed to reflect this work, codified this unique system in the Civil Code. Following the recommendation of the Conseil d'État, which was consulted on this bill and opposed the inclusion of these provisions in the Civil Code, the authors of the bill decided in the National Assembly's Law Committee that it would be preferable to group these measures together in a framework law, while the directive on representative actions needed to be transposed.

As this is only a draft law, we do not have an impact assessment. We only know that since the enactment ten years ago of the consumer law of 17 March 2014, known as the "Hamon" law, thirty-five group actions have been initiated. However, we do not know how many actions could have been initiated but did not get past the acceptance stage. Incidentally, one

Statistics of this kind are inherently difficult to produce: it's hard to quantify what hasn't happened.

Mr François-Noël Buffet, Chairman. - Before examining the amendments, it is my duty to indicate the scope of the bill. In application of the vade-mecum on the application of inadmissibilities under Article 45 of the Constitution, adopted by the Conference of Presidents, I propose that you consider that this scope includes the provisions relating to the legal systems for group actions as well as the civil sanction for intentional wrongdoing.

It is so decided.

EXAMINATION OF ARTICLES

Article 1er

Mr Christophe-André Frassa, rapporteur. - Amendment COM-6 seeks to modify the definition of group action to complete the transposition of the directive on representative actions, by considering that the plaintiff in the action is not required to "prove actual loss or damage suffered by the individual consumers injured".

Amendment COM-6 is adopted.

Mr Christophe-André Frassa, rapporteur. - Nathalie Goulet's amendment COM-2, presented as an editorial clarification amendment, is intended to open up group action to people in a "similar or related" situation.

On the one hand, it would have the potential effect of opening up the group action to new situations, which is contrary to our objectives, as the draft law already provides for a particularly extensive extension of the group action. Secondly, the wording is problematic, as the adjective "related" is not used in current group action law, and is rarely used in positive law in general. Contrary to its objective, this amendment would therefore reduce the precision of the definition of group action. Unfavourable opinion.

Amendment COM-2 is not adopted.

Article 1 is adopted as drafted by the Committee.

After Article 1er

Mr Christophe-André Frassa, rapporteur. - The purpose of amendment COM-7 is to limit the scope of group actions in the areas of health law and employment law.

In healthcare, practitioners and professionals must be able to defend themselves appropriately against damage to their reputation caused by such actions.

Similarly, in employment law, indiscriminately opening up the field of group action would run the risk of depriving the industrial tribunals of a significant proportion of disputes and depriving the trade unions of a major role that is theirs to play.

Mr Hussein Bourgi. - We will be voting against this amendment.

Mr Francis Szpiner. - This amendment amounts to restricting the scope of group actions, by excluding health, which is an important field.

Mr Christophe-André Frassa, rapporteur. - We are not taking health out of the scope of group actions. On the other hand, we are opposed to the universalisation of the scope of group action so as to include all breaches of the Public Health Code, when group action can cause definitive reputational damage to certain health professionals in particular. We are therefore retaining the current scope of group action in health matters by stipulating that, among breaches of the Public Health Code, the scope of those that may be the subject of group action remains identical.

Francis Szpiner. - In what areas of healthcare will it then be possible to bring group actions?

Christophe-André Frassa, rapporteur. - In the current field of group action, i.e. with regard to breaches relating to health products, whether caused by a producer, a supplier or a service provider using them.

Mr François-Noël Buffet, Chairman. - The list of products concerned is set out in Article L. 5311-1 of the Public Health Code.

Amendment COM-7 is adopted and becomes an additional article.

Article 1er **a** *(new)*

Mr Christophe-André Frassa, rapporteur. - The purpose of amendment COM-8 is to issue an authorisation granting legal standing, and to define legal standing in a way that is more in line with the European directive than the wording used by the National Assembly.

It seeks to amend the conditions for recognition of standing to bring a group action, which currently has four major drawbacks.

Firstly, by opening up the action very widely to players whose credibility and sincerity cannot be diligently verified, the

The text could seriously damage the reputation of economic players, not all of whom would have the financial and legal means to defend themselves.

Secondly, those with standing will be collecting sensitive personal data, particularly health data, and will have the onerous responsibility of leading an action in which those whose interests have been harmed often have high hopes. We cannot, therefore, open up this action to people who do not offer all the guarantees of seriousness required to carry out these procedures from start to finish.

Thirdly, the measure would create litigation relating to standing, in particular as regards verification of conflicts of interest, which could place courts that do not have the same resources as administrative authorities in this area in a delicate position.

Finally, the transposition of the Directive on representative actions provides an opportunity to create a system that is as clear as possible for all litigants, both claimants and potential defendants. In this respect, it seems essential to limit as far as possible any over-transposition.

In order to avoid these difficulties, this amendment seeks to make recognition of standing to bring a group action subject to approval by an administrative authority, the conditions of which would be aligned with those set out in the European directive, in order to guarantee a unified and clear framework and avoid any form of over-transposition.

In addition, the amendment seeks to maintain, on a transitional basis, the possibility for associations that currently have standing to bring group actions, which would have a period of two years to comply with the requirements set out in the framework provided by this amendment.

Amendment COM-8 is adopted.

Mr Christophe-André Frassa, rapporteur. - The purpose of amendment COM-1 is to allow representative trade unions to bring group actions in the fight against tax fraud and tax evasion. I am against it.

On the one hand, the broadening of the scope of group actions in the proposed law already satisfies Nathalie Goulet's desire to ensure that group actions can be brought in the fight against tax fraud and tax evasion, since these acts constitute a failure by the persons concerned to comply with their legal obligations. However, it will be necessary to show that several natural or legal persons are in a similar situation as a result of this failure.

On the other hand, the exercise by representative trade unions of such actions seems incompatible with the raison d'être of trade unions, which is to ensure the representation of their members in the social dialogue within the company or public entity employing them.

Amendment COM-1 is not adopted.

Article 1a *is adopted as drafted by the Committee.*

Article 1er* ter *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-9 aims to delete this article, which is not legally sound, since a sworn statement such as the one provided for only has the weight of the paper on which it is written. To paraphrase Talleyrand, we only have one word, which is why we hasten to take it back as soon as we have given it.

This article may also give rise to a dispute over inadmissibility, by allowing the defendant's lawyers to challenge the legitimacy of this sworn statement, which also presents a high risk of legal uncertainty.

In addition, the changes we have made to Article *1a* and which we are proposing in our amendments COM-9 and COM-10 render Article *1b* redundant, by introducing a control of conflicts of interest worthy of the name, both for the issue of approval by the administrative authority and for the conduct of the procedure under the supervision of the judge.

Amendment COM-9 is adopted. Consequently, amendments COM-38, COM-5 and COM-3 become redundant.

Article 1b *is deleted.*

Mr Christophe-André Frassa, rapporteur. - Similarly, amendment COM-38 no longer serves any purpose because of the deletion of the article, but Francis Szpiner's idea was a good one. If we had not amended the wording of Article *1a*, a fundamental problem would have arisen in Article *1b*, which required, in addition to the sworn statement on resources, that the third-party funder must ensure that it is not in a conflict of interest situation with the claimant bringing the group action, in order to confirm that third-party funders, unless they themselves suffer damage caused by the alleged breach, have no economic interest in the initiation or outcome of the action.

It is true that a third-party funder of group actions necessarily has an economic interest in the case, since its role is precisely to finance it. The effect of this mechanism would be to exclude the

admissibility of group actions financed by third-party funders, which does not seem desirable.

The deletion of Article *1b* that we have just voted on has caused this amendment to fall. I am not opposed to it in principle, but in any case I felt it could not be adopted.

On the one hand, this amendment maintained the use of a mechanism of attestation on honour, which was insubstantial and likely to give rise to litigation, preferring instead the introduction of administrative approval.

On the other hand, amendment COM-8 adopts a different criterion for monitoring and preventing conflicts of interest, in accordance with the provisions of the directive on representative actions, whereby any third-party funders must not exert any influence on the conduct of group actions by persons with standing. In practical terms, it is not ruled out in principle that approved associations may take part in group actions financed by third parties with an economic interest in the case, but the latter are prohibited from exerting any influence on the said associations. Written procedures to prevent conflicts of interest must be adopted for this purpose.

Lastly, the system for combating conflicts of interest set out in amendment COM-10 also refers to the prevention of any influence by a third party to the proceedings likely to be prejudicial to the interests of the persons represented, without making any reference to any economic interest that the third party may have in the outcome of the proceedings.

Francis Szpiner's request therefore seems to me to have been more or less met.

Mr Francis Szpiner. - This point actually concerns the rewriting of Article 1. I want finance companies to be able to take part in group actions for three reasons.

First of all, Paris must remain a legal centre: we must avoid judicial tourism, whereby proceedings are opened in foreign courts under more favourable legislation. While European legislation provides for third-party financing, France would be the only country not to authorise finance companies to intervene in these proceedings.

Secondly, these finance companies have an advantage: since they are profit-oriented, they generally avoid going to court for the sake of going to court, and only take part in cases that are financially worthwhile, which is often a sign of seriousness.

Thirdly, it represents protection for consumers. In some cases, associations are unable to carry out lengthy and costly procedures, involving expert appraisals in particular. These companies don't go on the offensive just for the sake of it; they think things through in the interests of consumers.

These associations must not become fronts for competitors, which is why a sworn statement was required.

If the rapporteur agrees, both for the purposes of transposing the European directive and for the reasons I have just mentioned, I think that these points should be expressly included in Article 1, which should state that finance companies can take part in these group actions.

We can have this debate when the text is examined at the plenary session: there is certainly an avenue to be explored and perfected regarding the participation of finance companies in group actions. Some countries did this when transposing the directive.

Mr Christophe-André Frassa, rapporteur. - The purpose of amendment COM-5 was to register private legal entities represented by the claimant in the Trade and Companies Register (RCS). It is rendered redundant by the adoption of amendment COM-9.

Mr André Reichardt. - The content of this amendment seems to me to be justified: requiring proof of registration in the commercial register and of status with regard to the tax authorities, when associations act on behalf of legal entities, seems to me to be relevant.

Mr Christophe-André Frassa, rapporteur. - The problem is that this amendment tends to exclude all associations that are not listed in the RCS. Furthermore, it is satisfied by the provisions for controlling conflicts of interest that I am proposing, both in terms of issuing approval and conducting the proceedings under the supervision of the judge.

Mr André Reichardt. - I think it would be interesting to clarify the situation with regard to the tax authorities, but as things stand there is no provision for this.

Mr Christophe-André Frassa, rapporteur. - That can be discussed at the meeting.

After Article 1er* ter *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-10 seeks to bring together in a single article the provisions on preventing conflicts of interest required by the directive on representative actions to protect the collective interests of consumers, in the case of group actions seeking compensation for damage.

The purpose of the amendment is to oblige claimants to the action not to place themselves in a situation of conflict of interest, and to protect the exercise of the group action from the influence of a third party likely to bring about a conflict of interest.

the interests of the persons represented. We then draw the consequences for group actions for damages alone.

On the one hand, the authorisation provided for in Article *1a* could be withdrawn if the administrative authority became aware that an applicant had failed to exercise the necessary vigilance to prevent conflicts of interest.

Secondly, we are clarifying the role of the judge.

Amendment COM-10 is adopted and becomes an additional article.

Article 1er* quater *A (new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-11 aims to restore the requirement for prior formal notice.

In its opinion, the Conseil d'État noted that the abolition of any formal notice prior to the commencement of proceedings "may be questionable at a time when the legislator has for several years been encouraging the development of out-of-court procedures as a means of preventing litigation".

The group action could therefore be initiated four months after the defendant receives the formal notice.

Amendment COM-11 is adopted.

Mr Christophe-André Frassa, rapporteur. - Nathalie Goulet's editorial amendment COM-4 is judicious; it ensures parallelism of form and editorial harmony.

Editorial amendment COM-4 is adopted.

Article 1c *A is adopted as drafted by the Committee.*

Article 1er* quater *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-12 aims to give legal certainty to the procedure for terminating breaches.

Amendment COM-12 is adopted.

Article 1c *is adopted as drafted by the Committee.*

Article 1er* quinquies *(new)

Mr Christophe-André Frassa, rapporteur. - According to the initial wording, the claimant had to present the judge with "at least two individual cases" in support of his or her claims. This minimalist definition could mislead claimants into thinking that the

presentation of only two cases would guarantee the admissibility of the action. Amendment COM-13 seeks to replace this clarification with the article "of", which we feel is more serious and leaves the judge the margin of appreciation currently provided by the law in force.

Amendment COM-13 is adopted.

Article 1d *is adopted as drafted by the Committee.*

Article 1er* sexies *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-14 aims to provide that the judge will take into account the evidence produced and the nature of the losses in order to order the initiation of the procedure for settling the losses, in order to make the procedure more secure. The aim is to restore the current law.

Amendment COM-14 is adopted.

Article 1e *is adopted as drafted by the Committee.*

Article 1er* septies *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-15 aims to abolish provisional enforcement of the judgment on liability.

Amendment COM-15 is adopted.

Article 1 septies *is adopted as drafted by the Committee.*

Articles 1er* octies, *1er* nonies *and 1er* decies *(new)

Articles 1g, 1h *and* 1i *were successively adopted without amendment.*

Article 1er* undecies *(new)

Mr Christophe-André Frassa, rapporteur. - Here again, we are reverting to the law in force, in this case article 72 of the law on the modernisation of justice in the 21st century. The aim is to set out the procedure in some detail.

Amendment COM-16 is adopted.

Article 1 undecies *is adopted as drafted by the Committee.*

Article 1er* duodecies *(new)

Mr Christophe-André Frassa, rapporteur. - The purpose of amendment COM-17 is to restore measures to combat dilatory behaviour in the conduct of collective proceedings for the liquidation of damages. Its fourth paragraph in particular restores a provision deleted by the National Assembly, namely the civil fine of 50,000 euros provided for on expiry of the one-year period from the judgment ordering the collective procedure for the liquidation of damages.

Amendment COM-17 is adopted.

Article 1 duodecies *is adopted as drafted by the Committee.*

Article 1er* terdecies *(new)

Article 1 terdecies *is adopted without amendment.*

Additional division before section 3: Mediation (new division)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-18 seeks to create an additional division relating to the simplified group action procedure for small disputes involving small amounts of damage. This was not provided for in the draft law, even though it seems useful.

Amendment COM-18 is adopted.

An additional division is thus inserted.

Before section 3: mediation (new division)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-19 therefore seeks to insert the simplified group action procedure I mentioned.

Amendment COM-19 is adopted and becomes an additional article.

Article 1er* quaterdecies *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-20 deletes the stipulation that the judge may, with the agreement of the parties, appoint a mediator to settle the terms of compensation. This clarification is superfluous: the judge can already appoint a mediator with the agreement of the parties.

Amendment COM-20 is adopted.

Article 1 quaterdecies *is adopted as drafted by the Committee.*

Article 1er* quindecies *(new)

Article 1n *is adopted without amendment.*

Article 1er* sexdecies *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-21 aims to broaden the content of the national register of group actions provided for in the proposed law in order to improve information for litigants. In five points, we specify what this register will contain.

Amendment COM-21 is adopted. Article

1 sexdecies *reads as follows.*

Article 2

Mr Christophe-André Frassa, rapporteur. - Provision is made for specialised courts, designated by the regulatory authority. We specify that "at least two" courts are provided for, and not "courts".

Amendment COM-22 is adopted.

Article 2 is adopted as drafted by the Committee.

Article* 2a *A (new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-23 seeks to delete this article for reasons of clarity, as its provisions have been incorporated into Article *1e*.

Amendment COM-23 is adopted.

Article 2a *A is deleted.*

Article* 2a *B (new)

Article 2a *B is adopted without amendment.*

Article* 2a *C (new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-24 aims to delete this article, which becomes irrelevant since Article *1c* A of the proposed law deals with the prevention of conflicts of interest and includes its provisions.

Amendment COM-24 is adopted.

Article 2a *C is deleted.*

Articles* 2a *D,* 2a, 2b *and* 2c *(new)

Articles 2a *D,* 2a, 2b *and* 2c *were successively adopted without amendment.*

Article* 2d *A (new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-25 aims to remove the option for applicants to be assisted by counsel, as this provision seems superfluous.

Amendment COM-25 is adopted.

Article 2d *A is deleted.*

Articles* 2d, 2e, 2f *and* 2g *(new)

Articles 2quinquies, *2* sexies, *2* septies *and 2* octies *were successively adopted without amendment.*

Article 2* h *(new)

Editorial amendment COM-26 is adopted.

Article 2h *is adopted as drafted by the Committee.*

Article* 2i *(new)

Article 2i *is adopted without amendment.*

Article 2* undecies *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-27 seeks to remove the civil fine. The text that has been sent to us provides for a penalty available at any time, in any place and for any case, which is in no way linked to the group action, and which moreover does not benefit a fund for group actions that could actually be relevant in facilitating the financing of group actions.

Instead of this effective and intelligent mechanism, which could have financed the actions of associations, a civil fine has been created, with the Treasury remaining the sole beneficiary. This article misses its target and has only a punitive aspect, which does not correspond to my conception of the law.

Amendment COM-27 is adopted.

Article 2 undecies *is deleted.*

Article 2* duodecies *A (new)

Mr Christophe-André Frassa, rapporteur. - We are clarifying the definition of a cross-border group action, to ensure that the directive on representative actions is transposed exactly as it stands.

Amendment COM-28 is adopted.

Article 2 duodecies *A is adopted as drafted by the Committee.*

Article* 2k *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-29, which is a drafting clarification, is intended to ensure accurate transposition of the directive on representative actions, by specifying that legal persons must demonstrate twelve months of actual public activity in defending consumer interests at the time they submit their application for authorisation. It also harmonises the definition of standing between the national and cross-border group action regimes, with a view to improving the clarity of the legal framework.

Amendment COM-29 is adopted.

Article 2 duodecies *is adopted as drafted by the Committee.*

Article 2* terdecies *A (new)

Article 2 terdecies *A is adopted without amendment.*

Article 2* terdecies *(new)

Coordination amendments COM-30 and COM-31 are adopted.

Article 2 terdecies *is adopted as drafted by the Committee.*

Article* 2m *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-32 seeks to delete a paragraph rendered redundant by the changes we are proposing.

Amendment COM-32 is adopted.

Article 2 quaterdecies *is adopted as drafted by the Committee.*

Article* 2n *(new)

Mr Christophe-André Frassa, rapporteur. - The purpose of amendment COM-33 is to delete this superfluous article insofar as Article 2 of the proposed law already introduces a provision in the Code of Judicial Organisation providing for the specialisation of courts in matters of group action.

Amendment COM-33 is adopted.

Article 2n *is deleted.*

Article* 2e *(new)

Christophe-André Frassa. - This article provides for an evaluation report on the reform of group actions to be submitted to Parliament. This evaluation report is unnecessary. In line with the Law Committee's consistent position on requests for reports, the purpose of amendment COM-34 is to delete it.

Amendment COM-34 is adopted.

Article 2e *is deleted.*

After Article 2* sexdecies *(new)

Mr Christophe-André Frassa, rapporteur. - Amendment COM-35 aims to ensure that the text is applied in Wallis and Futuna.

Amendment COM-35 is adopted and becomes an additional article.

Article 3

Coordination amendment COM-36 is adopted.

Mr Christophe-André Frassa. - The purpose of amendment COM-37 is to make the law non-retroactive: we are specifying that its provisions apply only to actions where the event giving rise to the action or the breach occurred after the law came into force, in order to avoid major operational difficulties for certain economic players, particularly in the insurance sector.

Mr Francis Szpiner. - I disagree with the rapporteur on this point. Actions relating to problems of discrimination and harassment generally extend over time. This amendment is actually intended to grant a kind of amnesty in these matters. The facts existed before the law, and the law must provide redress. This law is not retroactive, it is an adaptation. I am against the adoption of this amendment.

Discrimination and harassment procedures are often very specific. The time between the start of the acts and the moment when the complaint is lodged must be assessed as a whole, and it cannot be argued that the acts predate the provisions of this proposed law. The de facto amnesty that would result from the adoption of this amendment is not desirable.

Mr Christophe-André Frassa, rapporteur. - The discrimination regime for group actions already exists. It has therefore already been possible to bring group actions for such acts under this system.

Mr Francis Szpiner. - Of course, but this amendment will make it impossible to go back to events prior to the enactment of the law. If your amendment doesn't change anything, why table it?

Mr Hussein Bourgi. - I agree with Francis Szpiner's comments, and I invite the rapporteur to look into this issue before the text is examined in the public session.

Mr Christophe-André Frassa, rapporteur. - The group action system relating to discrimination pre-exists the possible entry into force of this framework law. These facts can therefore already be the subject of a group action and actions already initiated under the existing regimes will not be altered by the entry into force of this proposed law.

Mr Francis Szpiner. - Let's take an example: during its trial, France Telecom, now Orange, was sued for discriminatory management and harassment.

Mr Christophe-André Frassa, rapporteur. - It was a trial criminal.

Francis Szpiner. - The case became a criminal matter, but it would have been could not have been. There could have been group action by employees or trade unions. If they had been slow to take action, because the facts had occurred before, they would not have been able to plead. So I see this as a limitation on the right to take action.

Mr Christophe-André Frassa, rapporteur. - But they could have acted under the previous system.

Mr Francis Szpiner. - Which is less favourable than the one that will come into force: that's the problem.

Christophe-André Frassa, rapporteur. - The system provided for in this draft law is not more favourable in terms of liability but in procedural terms, in particular by allowing new players to bring group actions. In any event, I will take careful note of your comments, dear colleague, with a view to the public session.

Amendment COM-37 is adopted.

Article 3 is adopted as drafted by the Committee.

Articles 4, 5 and 6 (deleted)

Articles 4, 5 and 6 remain deleted.

The proposed law is adopted as drafted by the Committee.

The fate of the amendments examined by the committee is shown in the table below:

Author	N°	Object	Fate of the amendment
TITLE I: Group actions (New division)			
Chapter I: Object of the group action, standing and commencement of proceedings (New division)			
Article 1			
MR FRASSA, rapporteur	6	Changes to the definition of group action	**Adopted**
Ms Nathalie GOULET	2	Opening up the group action to persons in a related situation	**Rejected**
Additional Article(s) after Article 1			
MR FRASSA, rapporteur	7	Extending the scope of group actions in areas of health law and employment law	**Adopted**
Article 1 *a* (new)			
MR FRASSA, rapporteur	8	Issuance of an authorisation granting standing to act in group actions	**Adopted**
Ms Nathalie GOULET	1	Exercise of group action by the representative trade unions in the fight against fraud and tax evasion	**Rejected**
Article *1b* (new)			
MR FRASSA, rapporteur	9	Article deletion	**Adopted**
MR SZPINER	38	Amendment to the sworn declaration of applicant relating to the preservation of conflicts of interest	**Rejected**
Ms Nathalie GOULET	3	Changes to the content of the declaration on honour	**Rejected**
Ms Nathalie GOULET	5	Registration of legal entities private company represented by the applicant for registration with the RCS	**Rejected**
Additional Article(s) after Article *1b* (new)			
MR FRASSA, rapporteur	10	Controlling and preventing conflicts of interest	**Adopted**
Article *1c* A (new)			
MR FRASSA, rapporteur	11	Prior formal notice	**Adopted**
Ms Nathalie GOULET	4	Editorial amendment	**Adopted**

Author	N°	Object	Fate of the amendment
Chapter II: Group actions to put an end to breaches (New division)			
Article *1c* (new)			
MR FRASSA, rapporteur	12	Legal certainty for the procedure to terminate a breach of contract	**Adopted**
Chapter III: Group actions for damages (New division)			
Section 1: Judgment on liability (New division)			
Article *1d* (new)			
MR FRASSA, rapporteur	13	Presentation of individual cases by the applicant for the action	**Adopted**
Article *1e* (new)			
MR FRASSA, rapporteur	14	Exclusion of personal injury from collective liquidation proceedings and securing it	**Adopted**
Article *1f* (new)			
MR FRASSA, rapporteur	15	Abolition of provisional enforcement of liability judgments	**Adopted**
Section 2: Compensation for damage (New division)			
Subsection 2: Collective procedure for the liquidation of damages (New division)			
Article 1 *undecies* (new)			
MR FRASSA, rapporteur	16	Adoption of current law	**Adopted**
Article *1k* (new)			
MR FRASSA, rapporteur	17	Restoration of measures to combat dilatory attitudes in the conduct of the collective procedure for the liquidation of damages	**Adopted**
Subsection 3: Management of funds received as compensation for group members (New division)			
Article 1 terdecies (new)			
Additional division(s) before Section 3 : Mediation (New division)			
MR FRASSA, rapporteur	18	Introduction of a simplified group action procedure	**Adopted**
Additional article(s) before Section 3: Mediation (New division)			
MR FRASSA, rapporteur	19	Introduction of a simplified group action procedure	**Adopted**

Author	N°	Object	Fate of the amendment
Article *1m* (new)			
MR FRASSA, rapporteur	20	Deletion of the requirement that the judge may appoint a mediator with the agreement of the parties	**Adopted**
Article *1n* (new)			
Chapter IV: National group actions register (New division)			
Article *1e* (new)			
MR FRASSA, rapporteur	21	Extending the content of the national register of group actions	**Adopted**
Chapter V: Jurisdiction over group actions (New division)			
Article 2			
MR FRASSA, rapporteur	22	Securing the legal status of draft law and specify the minimum number of specialised courts for group actions.	**Adopted**
Chapter Va: Provisions specific to certain group actions (New division)			
Article *2a* A (new)			
MR FRASSA, rapporteur	23	Elimination of the exclusion of personal injury from the collective proceedings of liquidation of damages.	**Adopted**
Article *2a* B (new)			
Article *2a* C (new)			
MR FRASSA, rapporteur	24	Removal of the possibility for the judge order the initiator of the group action to disclose the source of funding for the action.	**Adopted**
Article *2d* A (new)			
MR FRASSA, rapporteur	25	Abolition of the applicant's right to be assisted by a lawyer.	**Adopted**
Article 2 *h* (new)			
MR FRASSA, rapporteur	26	Editorial amendment.	**Adopted**
Article 2 *undecies* (new)			
MR FRASSA, rapporteur	27	Elimination of civil penalties for wilful misconduct resulting in serial damage.	**Adopted**
Article 2 *duodecies* A (new)			
MR FRASSA, rapporteur	28	Clarification of the definition of a cross-border group action	**Adopted**

Author	N°	Object	Fate of the amendment
Article *2k* (new)			
MR FRASSA, rapporteur	29	Editorial clarification amendment for ensure the correct transposition of the Representative Shares Directive	**Adopted**
Chapter III: Coordinating provisions (New division)			
Article 2 *terdecies* (new)			
MR FRASSA, rapporteur	30	Coordination	**Adopted**
MR FRASSA, rapporteur	31	Coordination	**Adopted**
Article *2m* (new)			
MR FRASSA, rapporteur	32	Editorial amendment.	**Adopted**
Article 2n (new)			
Author	**N°**	**Object**	**Fate of the amendment**
MR FRASSA, rapporteur	33	Deletion of an article referring the Organisation Code to the law relating to the legal regime for group action.	**Adopted**
Chapter IV: Assessment of the law (New division)			
Article *2e* (new)			
MR FRASSA, rapporteur	34	Deletion amendment	**Adopted**
Additional Article(s) after Article *2e* (new)			
MR FRASSA, rapporteur	35	Overseas coordination.	**Adopted**
Chapter V: Entry into force and repeal of specific group action schemes (New division)			
Article 3			
MR FRASSA, rapporteur	36	Coordination	**Adopted**
MR FRASSA, rapporteur	37	Application of the law only to actions arising after its publication	**Adopted**

RULES RELATING TO THE APPLICATION OF ARTICLE 45 OF THE CONSTITUTION AND ARTICLE *44A* OF THE RULES OF THE SENATE ("RIDERS")

While the first paragraph of Article 45 of the Constitution, since the amendment of 23 July 2008, states that "*any amendment is admissible at first reading if it has a link, even indirect, with the text tabled or transmitted*", the Constitutional Council considers that this reference has had the effect of consolidating, in the Constitution, its previous case law, based in particular on "*the need for an amendment not to be devoid of any link with the subject of the text tabled on the desk of the first assembly to which it is referred*". [1].

In accordance with established case law and despite the reference to the "transmitted" text in the Constitution, the Constitutional Council thus assesses the existence of the link in relation to the precise content of the provisions of the initial text, tabled on the desk of the first assembly to which the matter has been referred.[2]. For ordinary laws, the only criterion for analysis is the material link between the initial text and the amendment, the modification of the title during the shuttle procedure having no effect on the presence of "riders" in the text.[3]. For organic laws, the Constitutional Council adds a second criterion: it considers as a "rider" any organic provision adopted on a different constitutional basis from that on which the initial text was adopted.[4].

Pursuant to Articles *17a* and *44a* of the Senate's Rules of Procedure, it is up to the committee responsible to rule on inadmissibilities resulting from Article 45 of the Constitution, it being specified that the Constitutional Council raises them of its own motion when a bill is referred to it before its promulgation.

---

[1] Cf. *commentary on Decision no. 2010-617 DC of 9 November 2010 - Pensions Reform Act.*

[2] See, *for example, Decisions no. 2015-719 DC of 13 August 2015 - Law adapting criminal procedure to European Union law and no. 2016-738 DC of 10 November 2016 - Law to strengthen the freedom, independence and pluralism of the media.*

[3] *Decision No. 2007-546 DC of 25 January 2007 - Law ratifying Order No. 2005-1040 of 26 August 2005 on the organisation of certain health professions and the repression of the misuse of titles and the illegal practice of these professions and amending the Public Health Code.*

[4] *Decision no. 2020-802 DC of 30 July 2020 - Organic Law postponing the election of six senators representing French citizens established outside France and by-elections for deputies and senators representing French citizens established outside France.*

Pursuant to the *vademecum* on the application of inadmissibilities under Article 45 of the Constitution, adopted by the Conference of Presidents, at its meeting on Wednesday 24 January 2024**,** the Law Committee **determined the indicative scope of Bill 420 (2022-2023) on the legal regime for group actions**.

It considered that **this scope included** the provisions relating to the **legal regimes for group actions** as well as **civil penalties for intentional misconduct**.

LIST OF PEOPLE INTERVIEWED

Authors of the draft law

Mrs Laurence Vichnievsky, Member of Parliament for Puy-de-Dôme

Philippe Gosselin, MP for Manche

Ministry of Justice - Directorate of Civil Affairs and the Seal (DACS)

Ms Céline Boniface, Head of the Process Law Office

Ms. Lorraine de Chanville, editor at office at law processual

Delphine Chevalier, Editor, Process Law Office

Julie Khalil, Assistant to the Head of the Law of Obligations Office

Ministry of Health - Legal Affairs Department

Hélène Wulfman, Deputy Director of Legislation

Directorate-General for Competition, Consumer Affairs and Fraud Control (DGCCRF)

Ms Carla Deveille-Fontinha, Deputy Director of Competition Law, Consumer Affairs and Legal Affairs

M. Philippe Guillermin, head of office of law of Consumer Law

Ms Alice Chonik, Deputy Head of the Consumer Law Office

Directorate-General for Labour

Ms Nina Prunier, Head of the Office of Individual Labour Relations work

Ms Coraline Berthe, Research Officer, Bureau des individual labour relations

Court of Cassation

Agnès Martinel, President of the Second Civil Division

Ms Mireille Bacache, special adviser to the First Civil Division

Paris Court of Appeal

M. Daniel Barlow, Chairman of the chamber of the Paris Court of Appeal

Paris Judicial Court

Pascale Compagnie, First Vice-President and Coordinator of the Economic and Commercial Activity Division

National Council of Bars (CNB)

Bernard Fau, Chairman of the Texts Committee

Charles Renard, Public Affairs Officer

Conference of Bar Presidents

Thierry Wickers, former Chairman

Paris Bar

Bénédicte Graulle, member of the Association's Council

National Confederation of Lawyers (CNA)

Maître Roy Spitz, lawyer at the Nice bar, former Chairman

National Federation of Young Lawyers' Unions (FNUJA)

Anne-Laure Casado, President of the UJA de Paris

Antoine Lafon, member of the UJA de Paris

Ms Antoinette Frety, member of the UJA de Paris

French Lawyers' Union (SAF)

Joao Viegas, member of the Paris Bar

Paris Ile-de-France Chamber of Commerce and Industry

Ms. Françoise Arnaud-Faraud, Secretary General Secretary of Corporate Law Committee

Laurent Pfeiffer, elected member

Marc Canaple, Head of the Corporate Law Department

French Business Confederation (MEDEF)

Christine Barattelli, Deputy Director of the Legal Department

Antoine Portelli, Mission Director, Public Affairs Division

Confederation of Small and Medium-sized Enterprises (CPME)

Lionel Vignaud, Director of Economic, Legal and Fiscal Affairs

Léa Bouchet, legal expert, Economic, Legal and Fiscal Affairs Department

Adrien Dufour, Head of Public Affairs

Union of local businesses (U2P)

Pierre Burban, General Secretary

Ms Thérèse Note, Technical Adviser, in charge of relations with Parliament

French Association of Private Enterprises (AFEP)

Stéphanie Robert, Deputy General Manager

Emmanuelle Flament-Mascaret, Director of Economic Law

Pharmaceutical companies (LEEM)

Marianne Bardant, Director of Legal Affairs, Tax and Compliance

Laurent Gainza, Director of Public Affairs

Antoine Quinette, Public Affairs Officer

Academic round table

Daniel Mainguy, Professor at the Sorbonne Law School

Emmanuel Jeuland, Professor of Private Law and Criminal Sciences at the University of Paris I Panthéon-Sorbonne

Jérémy Jourdan-Marques, Professor at Lyon-II- Lumière University

Baptiste Allard, lecturer at the University of Le Havre-Normandie

Maria José Azar-Baud, lecturer in private law at the University of Paris-Sud, founder of the Observatoire des actions de groupe et autres actions collectives (Observatory of group actions and other collective actions)

Malo Depincé, lecturer at the University of Montpellier

European Consumers' Organisation (BEUC)

Alexandre Biard, head of the consumer complaints team

National Consumer Institute (INC)

Patricia Foucher, Head of the Legal, Economic and Documentation Department

Association d'aide aux parents d'enfants souffrant du syndrome de l'anti-convulsivant (Dépakine) (APESAC) (Support association for parents of children suffering from anti-convulsant syndrome (Depakine))

Marine Martin, President

Charles Joseph Oudin, lawyer

Association for Assistance to Victims of Accidents Involving Medicines (AAAVAM)

Georges Alexandre Imbert, Chairman

Network for self-help, support and information on tubular sterilisation (Essure contraceptive implant) (RESIST)

Emilie Gillier, Chairman

Clara Wauquier, Secretary

National Council of Secular Family Associations (CNAFAL)

Claude Rico, Vice-Chairman

Karine Létang, lawyer

National Confederation of Catholic Family Associations (CNAFC)

Mr Laurent Wallut, Head of Consumer Affairs, Antennas local

M. Nicolas Income, head of national of the department consumption

Rural families

Nadia Ziane, Director of the Consumer Sector

Association FO consommateurs (AFOC)

Mr David Rousset, General Secretary

Confédération générale du logement (CGL)

Stéphane Pavlovic, Director

Consumption, housing, living environment (CLCV)

François Carlier, Managing Director

National Housing Confederation (CNL)

Jocelyne Herbinski, Confederal Secretary

Philippe Teste, lawyer

UFC Que Choisir

Mr Cédric Musso, Director of Political Action

Mélissa Chevillard, Senior European Institutional Relations Officer

None of Your Business (NOYB)

Romain Robert, Programme Director

La Quadrature du Net

Bastien Le Querrec, lawyer

THE LAW UNDER CONSTRUCTION

To help you navigate through the successive drafts of the text, a synoptic table of the law under construction is available on the Senate website at the following address:

https://www.senat.fr/dossier-legislatif/ppl22-420.html