Class Actions in Luxembourg ? Not quite

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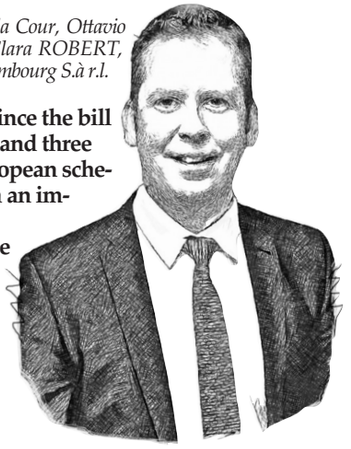

After a five-year wait since the bill was first introduced, and three years behind the European schedule, Luxembourg has taken an important step forward in consumer protection with the first constitutional vote on 30 October 2025 on bill of law n°7650 amending the Consumer Code and introducing collective actions in consumer law (the "Bill").

Background

The Bill was introduced a few months before the conclusions of negotiations at the EU level on the same topic. The Directive 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers (the "**Collective Actions Directive**"), which replaces the prior "**Injunctions Directive**" 2009/22 limited to court injunctions to cease breaches of consumer law.

Among the shortcomings of the Injunctions Directive was that it did not cover the compensation of consumers, despite such topic being arguably the main interest in consumer litigation. Following an unsuccessful attempt by the European Commission to trigger change through a non-binding Recommendation n°2013/396/EU, the Collective Actions Directive was drafted in order to tackle the issue of compensating consumers through the introduction of a collective redress mechanism in all EU member States. The Bill was then adapted to take into account the final version of the Collective Actions Directive, and had to be redrafted after numerous concerns raised by key stakeholders, such as the UCL.

Wider scope of breaches – not just consumer law

The Bill establishes a comprehensive and cross-cutting system of injunctions, covering infringements of European law in the broad sense in an exhaustive list in Annex 1 to Directive (EU) 2020/1828. Unlike the former Injunctions Directive, this is not limited to consumer law, but includes infringements of the UCTIS Directive, the AIFMD, MiFID II, PSD II, Solvency II, and the GDPR, but also the DSA, DMA and the Data Act (added later on). However, it should be emphasised that damages arising from breaches of competition law will not be included in the actions provided for in the Bill. It should be noted that the European legislator meant the Collective Actions Directive as an additional tool for redress, and is without prejudice to other forms of redress provided by other texts, with a hint that the GDPR "*could, where applicable, still be used for the protection of the collective interests of consumers*",[1] even before the CJEU rulings on damages claims under the GDPR.

Old and new players

Injunctions may now be sought by – amongst others- any natural person with an interest in taking action, as well as by any approved association either in Luxembourg or an EU member State. Sectorial regulatory authorities may also bring actions; the Competition Authority already publicised their new power to bring collective actions specifically in the DSA and the DMA. The Bill only foresees one approval to be able to bring injunctions and/or collective actions. Existing approved associations, according to the parliamentary works, will automatically be approved for bringing collective actions.[2]

The 5-year approval is however not destined to be granted to newly-created associations created for the single purpose of bringing forward a collective action. The criteria indeed require i.a. (i) an active involvement in the protection of consumer interests for twelve months prior to its application for designation, (ii) a corporate object demonstrating that it has a legitimate interest in protecting consumer interests within the meaning of the Collective Actions Directive, and (iii) independent and is not influenced by persons other than consumers, in order to avoid any conflict of interest.

Further to a concession from the government, an *ad-hoc* approval can be given by the judge for a given association if it fills the required criteria but did not go through the application process. This interest in the ability to bring claims is further highlighted by the Bill and answers to parliamentary questions clarifying that such claims may also be brought for breaches before the Bill enters into force as law.

Third-party litigation funding

There is also a mandatory disclosure of information demonstrating that the entity meets the criteria listed above and information on its sources of funding in general, its organisational, management and affiliation structure, its statutory purpose and its activities. To our knowledge, this is the first concrete measures in Luxembourg relating to third party litigation funding, a practice usually found and regulated in adversarial systems where securing funding for litigation is a crucial factor of success and where the literature often deems as one of the main hurdles for consumer actions.

Collective redress are not class actions

The intent of the European Commission was not to follow the class action model found notably in the US. Such phenomenon is considered as fundamentally tied to the features of their legal system, notably in terms of *winner-takes-all*, punitive damages, lawyer success fees, … and suffer from important drawbacks of lengthy procedures for often minor – if not ridicule – compensation for consumers, as well as encouraging an industry of litigation practices which would create unwanted risk and burden for companies and – in our view – unwanted practices from lawyers as well. Whilst this is a concern shared by the Luxembourg government, the initial draft tried to nevertheless allow for individual consumers to start collective actions, with the risks stemming therefrom being somewhat mitigated by the lack of discovery proceedings, the prohibition of lawyers being exclusively remunerated on success fees (so-called *quota litis* pacts), and the principle under Luxembourg tort law to repair the entire damage suffered by the victim.[3] This was however not sufficiently convincing and was removed from the final draft.

Instead, the authorised entities per the Bill will be able to bring collective redresses where the individual interests of several consumers in a similar or identical situation have been harmed by one or more professionals. Such damage must result from one or more breaches established in the context of a prior injunction, or have as a common cause a breach of the legal obligations of one or more of the same professionals. A collective action may be brought before the Luxembourg district court in commercial matters (instead of civil matters beforehand) in the event of a national or cross-border breach, including where such breach has ceased before the collective action has been brought.

In case of cross-border breach, any qualified entity designated in another Member State may bring a representative action before the courts of another member state, meaning that an entity designated abroad –such as NOYB in Austria – will be able to bring proceedings in Luxembourg to obtain injunctive measures, redress measures, or liability findings in the context of a cross-border dispute.

Once the writ of summons has been served, the law provides for a two-step approach: one judgement on the admissibility and a second on the liability. This is similar to bifurcation as found in arbitration proceedings and has the advantage of settling all procedural issues from the outset, and to allow the parties to argue solely and fully on the merits. This is also a cost-saving measure for both the defendant and the courts as it filters cases without the need to allocate time and resources to studying the matter. The liability judgment is based on model action or "*test case*" proceedings ; judges hand down a decision in a typical case, in this instance "*exemplary individual cases*", which applies to all similar cases, in other words to all persons in an identical or similar situation who suffer damage caused by a breach of duty by the same perpetrator.

Where the claimant entity is successful in both the admissibility and liability judgement, the court will appoint a liquidator to carry out all the steps and tasks necessary for the proper implementation of the judgment. The court will also set the time limit within which the consumers concerned may join the group in order to obtain compensation for their loss as defined by the judgment on liability, or to exclude themselves from the group, and another time limit within which the compensation for the loss must be paid.

Opt-in and opt-out

Collective and class actions function on either an opt-in system, whereby consumers are invited to participate in the litigation, or an opt-out system, where consumers in similar situations are automatically included. The latter is less protective of consumers, since they may not act in time for their compensation and would be barred from obtaining another form of compensation (since one may not be condemned twice for the same harm). The Luxembourg legislator recognised that the latter may bring some certainty to professionals, and has therefore left this choice to the courts when drafting their liability judgements, whilst imposing the opt-in in case of bodily harm or cross-border litigation.

Publicity

Each collective action claimant must provide information, in particular on their website, concerning the collective actions they have decided to bring, their progress and the results obtained. The judgement, whether admissible or not, and/or whether the liability if found or not, must be published. Consumers shall be informed of the judgment on liability through the publicity and consumer information measures provided for in the Bill.

Settlements and mediation

As reported in public statements by the Government, the Bill does indeed put a focus on the possibility to achieve out of courts settlements through the prism of existing mediation rules, which have been slightly tweaked through an explicit list of practical matters to agree on (e.g., how consumers are informed and can redeem their compensation), more selective criteria for the mediator, and the removal of confidentiality for the settlement agreement for its publication (as is also often the case in class action settlements in the US). The settlement will be then treated in the same manner as a judgement on liability as explained beforehand.

So no class actions?

The adoption of Bill No. 7650 marks a significant step forward in Luxembourg's legal arsenal for consumer protection, introducing a collective redress mechanism for the first time. However, its scope remains significantly limited. Indeed, the right to take legal action is reserved for qualified entities, and to date, only the Luxembourg Consumers' Union (ULC) meets the approval criteria set out in the text. Taking a broader view however, Europe sees private enforcement gaining momentum in consumer law whilst class actions in the U.S. have largely fallen out of favour. These trends are further corroborated by the appetite of both the UCL and the Competition Authority over their new-found procedural powers.

This development does however not remove the 'class action'-like cases which remain possible under Luxembourg law, although these have faced issues in terms notably of costs (as a bailiff must be involved for each new claimant), case management for both lawyers and courts, and the expectation to argue it as individual cases in certain aspects ; For instance, Luxembourg courts will strike out a case for being unclearly drafted if it does not clearly allocate for each claimant their share of the claim.

Whether such trend is confirmed with the Bill entering into force remains to be seen. Courts may remain open to importing certain lessons drawn from class actions in terms of practical means of enforcement, although they might reject any procedural parallels drawn with them. Collective redress are likely to be considered as a European phenomenon which may resemble or overlap with administrative proceedings brought by the same supervisory authority.

1) Recital 15 Compensation Directive
2) Doc. Parl. n°7650/09, p.5
3) Doc. Parl., n°7650/01, p.28