Country Report: France

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1. Introduction and general overview

Historically, no collective private enforcement (CPE) mechanisms for data protection existed in France. The initial collective redress laws were limited to mass consumer law violations.
Over time, the gradual and sectorial adjustments to CPE venues have resulted in an increasingly complex legal framework. CPE venues for data subjects in France, namely the *Action Collective* and the *Action de Groupe* ("**DPAG**"), emerged as a result of the implementation of European obligations, combined with the country's policy choice to regulate collective redress based on a sectorial approach.

Currently, French lawmakers are reconsidering the previously adopted regulatory approach in an upcoming national collective redress reform. The Legislative Proposal on a Group Action Reform (*Proposition de Loi Relative aux Régime Juridique des Actions de Groupe*) is expected to reduce procedural complexities and perhaps solve the CPE deficit in France, whilst ensuring compliance with the requirements of the *Representative Action Directive* ("**RAD**"). However, there is disagreement between the two chambers of the French Parliament about the new regime, which has not yet entered into force. At the time of writing, France still has not transposed the RAD into its national legislation.

In its current version, the legislative proposal expands the material scope of application of the *Action de Groupe* ("**DPAG**"), permits the compensation for all types of damages (including moral prejudice) and introduces less stringent *locus standi* requirements.

With this backdrop, the purpose of this report is to describe the data protection CPE routes currently present in the French legal system. The latter consists of the two mechanisms mentioned above, the Data Protection *Action Collective* ("**DPAC**") and the Data Protection *Action de Groupe* ("**DPAG**"). However, privacy-related mass claims have also been initiated based on the pre-existing Consumer Protection Collective *Action Civile* ("**CPCAC**").

The fundamental difference between these three avenues lays in the nature of the remedies offered to data subjects. In fact, only the CPCAC and DPAG have a compensatory character, and – possibly for this reason – they have been more frequently mobilised by qualified entities. Indeed, eight years after its introduction within the French legal system, there has still been no judgement rendered based on the DPAC. In terms of representation, the DPAG remains particularly difficult to mobilise due to its restrictive standing requirements – as presented under Art. 37 of the coordinated version of the French national data protection law, *Loi n° 78-17 du 6 Janvier 1978 Relative à l'Informatique, aux Fichiers et aux Libertés* ("**LIL**").
Third-party litigation funding (TPLF) is authorised under French law as confirmed by a series of national doctrine and soft law contributions. However, the market for TPLF market is relatively limited.

Section 2 of this report gives a brief description of the legal framework which applies to collective litigation also, or specifically, in the field of data protection law. It addresses three key issues: (i) opt-in regime, (ii) recognition as a qualified entity, and (iii) funding.

Section 3 identifies the main collective actors working in the field of data protection in France, either specifically, or as an element of general consumer protection.

Section 4 gives a comprehensive overview of the collective private parties' litigation in the field.

2. Legal Framework

a. National implementation of Art. 80 GDPR

French data protection law is enshrined in *Loi n° 78-17 du 6 Janvier 1978 Relative à l'Informatique, aux Fichiers et aux Libertés* ("**LIL**"). As amended to implement the GDPR, this legislation implemented Art. 80 GDPR on the representation of data subjects in two provisions, Art. 43 ter and Art. 43 quarter. These provisions have been repealed by Ordinance n. 2018-1125, implementing Law n. 2018-493, and substituted with, respectively, Articles 37 and Art 38.
Art. 38, in particular, represents the French implementation of Art. 80(1) GDPR, and regulates what we refer to as the **Data Protection Action Collective (DPAC).**
Art. 37, instead, regulates the so-called **Data Protection Action de Groupe (DPAG)**, which offers a framework for action directly by legitimized entities. However, as it will be explained below, direct action is possible only for the phase of the proceeding aimed at establishing liability, but mandate will be needed for the prosecution of a collective award of damages. In this sense, the French Action de Group solves the tensions between the advantages of granting representative entities the possibility of acting directly and the limitation on collective actions for compensatory redress which may be derived from a combined reading of Art. 80(2) – which does not mention the exercise of the right established by Art. 82 – and recital 142 GDPR.

b. National framework on collective redress:

- **The Data Protection Action Collective (DPAC)**

Art 37 It states that any person may mandate an association or organization mentioned in Article 37 IV (associations that have been formally established for at least five years with a focus on privacy or data protection, nationally recognized consumer protection organizations when consumer interests are affected, and representative trade unions for employees or civil servants when their members' interests are involved), an association or organization whose statutory purpose is related to the protection of rights and freedoms when they are disregarded in the context of the processing of personal data, or an association of which this person is a member and whose statutory purpose involves the defence of interests in relation to the purposes of the disputed processing, for the purpose of exercising on his behalf the rights provided for in Articles 77 to 79 and 82 of Regulation (EU) 2016/679 of 27 April 2016. It may also mandate them to act before the National Commission for Informatics and Liberties (CNIL), against it before a judge or against the data controller or its subcontractor before a court when processing under Title III of this law is involved.
Interestingly, the French CNIL is also competent to grant private law remedies, in particular damages. This has proven particularly important in the past, when the action under the (now

repealed) Art. 43 ter LIL did not allow actions for damages. Indeed, this option was utilized in several proceedings started by Quadrature du Net.

- **The Data Protection Action de Groupe (DPAG)**

In France, a collective judicial action procedure for breaches of data protection legislation was introduced by the *LOI n° 2016-1547 du 18 Novembre 2016 de Modernisation de la Justice du XXIe Siècle* (the 2016 LMJ). The French DPAG offers two remediation options for data subjects: the possibility to stop any infringements of the French data protection law (injunction), and the right to seek financial compensation when it can be established that the violation of privacy legislation caused actual material damage to the identified group.

Associations that qualify to represent data subjects in the context of the DPAG are (i) legal persons registered for more than five years and with the statutory purpose of protecting the rights and interests of data subjects, (ii) accredited national consumer protection associations so long as consumers are affected by the personal data mishandlings, and lastly, (iii) trade unions, under the condition that the misuse of personal data affects the natural persons that the concerned trade union defends.

The first step of the procedure consists of verifying the admissibility requirements and determining whether the defendant's data processing practices or policies constitute a contractual breach or a legal violation. In the context of this procedure, the judge rules on both the admissibility of the claim and the responsibility of the defendant in the same ruling (*jugement sur la responsabilité*). Subject to a declaration of liability, the qualified entity can request a cessation of the illegal practice.

The discussion on the reparation of the harm caused to data subjects can commence after the liability judgment has been rendered.

During the second phase, it will be necessary to prove that the claimant association has received a mandate for the representation of data subjects within the compensation discussions. The reparation can occur in two different manners, either via the individual procedure for the liquidation of damages or via the collective procedure for the compensation of damages. As a rule, the choice of the indemnification regime is a prerogative of the claimant(s), subjected to judicial review (Art. 68 of the 2016 LMJ).

Under the individual procedure, data subjects can fill a request for reparation directly addressed to the responsible person as established in the liability judgment or mandate the qualified claimant association to represent the data subjects in the context of the (second) judgment having the purpose of attributing adequate compensation. In any case, the responsible party will be under the obligation to separately compensate each data subject.

The collective procedure requires data subjects falling within the characteristic of the group defined by the judge in the previous judgement sur la responsabilité, 'opt-in' and mandate the qualified entity receives a mandate to seek compensation. In this procedure, the qualified entity must negotiate with the defendant, to reach an agreement as regards the compensation of the group. The judge will refuse to homologate the agreement if disproportionate in relation to the interests of the parties and the terms of the liability judgment and, if necessary, instruct them to renegotiate the terms of the collective compensation agreement. Additionally, it can impose civil sanction on the party which (intentionally prevented or obstructed the conclusion of the agreement. Alternatively, parties may be authorized to resort to a mediator (Art. 75 of the 2016 LMJ).

In essence, the DPAG offers data subjects the possibility to opt-in to the group (collective procedure) after the defendant has been effectively held liable or to individually request their compensation to the responsible corporation (individual procedure).

- ***Proposition de Loi Relative aux Régime Juridique des Actions de Groupe***

On March 8, 2023, the French National Assembly approved a bill to implement the RAD and increase the use of class actions in France.

The 2023 Bill allowed non-profit certified associations, representative trade unions, and ad-hoc associations meeting specific criteria to bring class actions. It proposed a unified regime replacing sector-specific regimes, enabling recovery of any kind of damages and cessation of wrongdoing without prior notice. Third-party funding was permitted provided the funder had no economic interest in the action. An opt-in mechanism was established, and a civil penalty for deliberate wrongdoing could be imposed.

On February 7, 2024, the French Senate introduced significant amendments to this bill. The amended version restricts legal standing to non-profit certified associations meeting stringent criteria, representative trade unions, and excluded ad hoc associations. It maintained the unified regime but excluded health-related matters and breaches of the Labour Code from its scope. A 4-month prior notice was required, and third-party funding was allowed only if it did not influence the action's conduct and was made public. Civil penalties are not allowed. The opt-in mechanism and public registry are confirmed.

The National Assembly will review the bill again to address these differences, potentially leading to the formation of a joint commission to reach a consensus.

- **The Consumer Protection Collective Action Civile (CPCAC)**

The CPCAC is part of the broader category of actions for the general interest of consumers (*actions dans l'intérêt collectif des consommateurs*).

The consumer law *action civile* can be initiated before a civil or criminal court ruling on civil actions, without mandate, by qualified entities independently by public action, to repair the direct or indirect harm to the collective interests of consumers, caused by a violation of consumer law.

Under articles L.621-1 ff of the French Consumer Code, to be 'qualified entities' associations must demonstrate that their statutory objectives include protecting the interests of consumers and be accredited based on article L.811-1 of the French Consumer Code and related legislation. Organizations which are part of the list published in the Official Journal of the EU in the application of article 4 of Directive 2009/22/CE have the possibility to ask for the same remedies as the national consumer organizations.

In terms of remedies, consumer associations can ask the judge to (i) order the defendant to stop the illicit practices or delete an illicit clause part of consumer contracts (ii) declare that the illicit clause was never written (iii) oblige the defendant to inform (at its own costs) all the consumers who will be affected by the ruling.

Before a civil court, associations may also claim compensation for any fact causing direct or indirect harm to the collective interest of consumers and request, where appropriate, the application of measures provided for in Article L. 621-2.

3. Main Actors

In summary, there are three main actors which are active in data protection CPE in France. The most active consumer organisation in France is the *Union Fédérale des Consommateurs (UFC) Que*

Choisir, a not-for-profit general consumer protection association. The *UFC Que Choisir* is not exclusively involved in the fight against personal data mishandlings. Undeniably, data protection remains one of the first priorities of the *UFC Que Choisir* as demonstrated by the various national civil and administrative proceedings initiated by the organisation.

Secondly, there are two associations that have considerable expertise and presence in the protection of digital rights. The first one is *La Quadrature du Net (LQDN)*. Since 2008, *LQDN* has been on the forefront of the defence and promotion of digital rights. Apart from the organisation's mission to ensure the respect of the right to privacy and family life, it's advocacy operations also cover issues related to freedom of expression, copyrights, as well as general governance aspects for the telecommunication sector.

The last one is the *Internet Society France (ISOC France)* – its overarching mission is to contribute to the enrichment of citizen's lives by supporting and promoting the development of Internet on a global scale. In line with this international objective, an *ISOC* sister-association is dealing with French citizen's matters since 1996. *ISOC France* strives to maintain a balance between the democratisation of the internet (for instance by ensuring accessibility or multiculturalism) and the safeguarding of internet user's civil and constitutional rights.

Lastly, actors such as *ISOC France* and *LQDN* sometimes interact with the public enforcement sphere by initiating DPAG proceedings in front of the French Data Protection Authority *(Commission Nationale de l'Informatique et des Libertés)*.

4. Legal Proceedings

The objective of this last section is to provide an overview of pending and adjudicated data protection CPE proceedings before civil law courts as per 31 August 2024.

France's lack of register of collective actions poses difficulties in terms of transparency and traceability. At this time, there has been only one claim started based on the DPAG, where the claimant association is *ISOC France*. As a matter of fact, most data protection CPE proceedings were filled based on the DPAC and the CPCAC.

Indeed, the *UFC Que Choisir* has effectively launched data protection CPE cases based on the CPCAC – these collective claims were instituted approximately two years before the formal adoption of the DPAG and DPAC. It remains important to note that collective public enforcement claims with a relation to data protection have also been brought to the French judges. In May 2018, as the GDPR compliance deadline had passed, *LQDN* spotted CPE opportunities and initiated legal proceedings against five global technology companies, relying on the DPAC.

a. Adjudicated collective private enforcement proceedings

Tribunal de Grande Instance de Paris, Jugement du 09 Avril 2019	
Date of Initiation of the Claim	2014
Summary	The *UFC Que Choisir* claimed that 3 legal documents drafted by Facebook that are binding on its users contain illegal or abusive provisions, i.e. the "Declaration of Rights and Responsibilities", more often called Terms of Service (formerly known as the Statement of Rights and Responsibilities), the "Data Use Policy", more often

	called Data or Privacy Policy and the "Facebook Community Standards." In this context, the main issue related to data protection was the lack of consent – in some instances, Facebook was exploiting the personal data of its users without properly warning them or duly collecting permission. In other cases, the online platform presumed that its users consented to the terms based on a simple validation click or a passive use of the platform.
Claimant	*Union Fédérale des Consommateurs (UFC) Que Choisir*
Defendant	Facebook Inc (California) and Facebook Ireland (Meta Platforms Inc)
Type of Action	CPCAC
Remedies Sought	• To declare the contractual clauses as being unwritten due to their abusive and unlawful nature (notably, alleged violation of the data protection laws). • To commend the defendant to pay for the collective interest of consumers the sum of 1 million euros for moral damage and 1 million euros for the material damage caused to consumers and lastly. • To order the publication of a judicial announcement at the expense of the defendant in selected French newspapers and on the defendant's website homepage (within fifteen days of the notification of the ruling and for a period of three months) in an immediately readable manner - prohibiting the use of a hyperlink.
Status/Outcome	• 430 contractual provisions were declared abusive and unlawful. • The court instructed the publication of the ruling on the homepage website and a provisional penalty of five thousand euros per day of delay was applicable for maximum six months. • The defendant ought to compensate the claimant association the sum of thirty thousand euros as compensation for the moral damage caused to the collective interest of consumers. • The social media platform ought to fully compensate the claimant consumer association for all direct cost of proceedings. • There has been no statement from the parties regarding (possible) appeal.

Cour d'Appel de Paris, RG n° 19/09244, Arrêt du 14 Avril 2023	
Date of Initiation of the Claim	2014
Summary	The consumer association claimed that provisions of Twitter's Terms of Use were illegal or abusive, in light of provisions of the national Civil Code, Consumer Code, Intellectual Property Code, data protection act and the law of 21 June 2004 on trust in the digital economy. Strictly in the privacy realm, the main issue was regarding the lack of consent. In certain instances, Twitter/X did not obtain the full consent of its users and instead presumed that the data subjects agreed with the practices of the online platform.
Claimant	*Union Fédérale des Consommateurs (UFC) Que Choisir*
Defendant	Twitter Inc and Twitter International Company

Type of Action	CPCAC
Remedies Sought	• To declare null and void (due to their illegal or abusive nature) the problematic contractual clauses. • To grant, for the collective interest of consumers, the sum of 1,000,000 euros as compensation. • To oblige the defendants to publish a judicial notice in selected French newspapers and make accessible a copy of the ruling on the defendant's website, mobile and tablet applications and impose a penalty of five thousand euros per day of delay (limited to one month after the notification of the ruling) in case Twitter failed to timely remove the problematic contractual provisions or comply to the publicity obligations. • To fully compensate the association for all direct cost of proceedings and to pay sixty-eight thousand euros for all indirect direct cost of proceedings in relation with the claim brought to the lower court. • For indirect costs of proceedings, to grant the amount of fifty thousand euros, in application of Art. 700 of the French Code de Procédure Civile and to fully compensate the association for all direct cost of the appeal proceedings.
Status/Outcome	• The defendants were ordered to fully indemnify the *UFC* for the direct cost of proceedings. The damage caused to the collective interest of consumers was estimated at fifty thousand euros. • The defendants ought to inform their end users of the results.

b. Pending collective private enforcement proceedings

Tribunal de Grande Instance de Paris, Jugement du 12 Février 2019 (Appeal Ongoing)	
Date of Initiation of the Claim	2014
Summary	*UFC* claimed that a series of version of Google's Privacy Policies and Terms of Use were in violation with a number of provisions of the Civil Code, the Consumer Code, the Intellectual Property Code, the national data protection act (LIL) and the law of 21 June 2004 on trust in the digital economy. The consumer association argued that the defendant's various algorithms, geolocation and profiling practices were problematic – no proper consent from the end users was obtained.
Claimant	*Union Fédérale des Consommateurs (UFC) Que Choisir*
Defendant	*Société Google Inc*
Type of Action	CPCAC
Remedies Sought	• To declare the attacked contractual clauses as unwritten due to their abusive and unlawful nature. • To order Google to communicate (at its expense) the violation to the concerned consumers (impose a penalty of five thousand euros per day of delay and applicable within one month after the publication of the ruling.

	• To order Google to pay the claimant organisation the amount of 1 million euros in compensation for the moral damage done to the collective interest of consumers and the amount of 1 million euros as compensation for the material damage done to the collective interest of consumers. • To order that, at Google's cost, the ruling be published in selected French newspapers and on the defendant's website homepage, within fifteen days of the notification of this ruling and for a period of three months. • To pronounce the provisional enforceability of the ruling. • To force Google to contribute at a rate of fifty thousand euros to the association's indirect costs of proceedings.
Status/Outcome	• 209 clauses had an abusive or illicit character and therefore were deemed unwritten. • It was imposed on the defendant to permit its French users or members to access the full ruling via a hyperlink banner to be displayed on the homepage of its website as well as on those of its tablet and phone applications for a duration of three months. Failure to comply with the publicity measures would trigger the application of the provisional penalty of five thousand euros per day of delay (limited to a maximum duration of six months). • Google was condemned to compensate the *UFC* at a rate of thirty thousand euros for the moral damage caused to the collective interest of consumers. • Google ought to fully indemnify *UFC* for the direct cost of proceedings. • This decision of February 2019 has been appealed.

Internet Society France vs Facebook	
Date of Initiation of the Claim	2019
Summary	*ISF* has filled a collective claim in front of the *Tribunal de Grande Instance de Paris*. Did not ensure effective protection of the personal data of its end users, particularly in light of recent security breaches. Moreover, the platform has not been able to notify all affected users in the aftermath of data breaches. The platform's use of cookies is not exclusively limited to track information regarding its end users, but also non-members. Moreover, sensitive personal data is collected. The company's Terms of Use unreasonably limit the data controller's liability. Lastly, users are not allowed to opt-out of the platform's data processing practices, and it cannot be confirmed that users have freely consented to the practices not adequately informed.
Claimant	*ISOC France*
Defendant	Facebook
Type of Action	DPAG
Remedies Sought	• To obtain an estimated compensation of one thousand euros for each individual data subject. The rest of the remedies sought are unknown at this stage.
Status/Outcome	Pending decision of the *Tribunal de Grande Instance de Paris*.