IMPLEMENTATION OF THE REPRESENTATIVE ACTIONS DIRECTIVE IN FRANCE: CONFIRMING THE MYTHS OF THE FRENCH EXCEPTION

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This chapter examines the implementation of Directive (EU) 2020/1828 on representative actions in France, arguing that French collective redress has long presented more myth than reality. Since the Loi Hamon in 2014, France has constructed a fragmented, sector-specific regime characterised by restrictive standing, mandatory opt-in participation, and lack of financial sustainability. Original empirical data across over a decade of litigation confirms structural weaknesses and the extent of this failure. The article then assesses whether the 2025 reform overcomes France's "peculiarity". While the new regime introduces meaningful improvements, the article concludes that the enactment of the sanction civile pour faute lucrative, a deterrent mechanism aiming at neutralising illicit profits, that goes beyond the Directive's express prohibition on punitive damages, confirms rather than dispels the French exception. France's transposition has produced a model that remains genuinely peculiar among Member States, reflecting ongoing resistance to ordinary collective litigation. The analysis places French exceptionalism within the context of broader tensions between national procedural autonomy and EU harmonisation, contributing to comparative discussion in collective redress.

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1. INTRODUCTION: THE PECULIAR HISTORICAL TRAJECTORY OF FRENCH COLLECTIVE REDRESS

The implementation of Directive (EU) 2020/1828 on representative actions,[1] the Representative Actions Directive (RAD), in France cannot be properly understood without considering the peculiar historical trajectory of French collective redress. When the European Commission adopted its Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (2013/396/EU), France remained one of the major European jurisdictions without any compensatory collective action mechanism. The Recommendation announced that, within five years, the Commission would conduct a comprehensive assessment of its implementation and, should voluntary convergence prove insufficient, would consider further legislative measures, potentially requiring Member States to introduce collective redress mechanisms capable of providing effective compensation and deterrence. Against this background, France appeared determined not to have a European model imposed upon it.[2] Only one year later, the French legislature enacted the so-called *Loi Hamon*,[3] creating for the first time a compensatory group action (*action de groupe*) limited exclusively to consumer law disputes. This initial and highly restrictive mechanism was subsequently expanded in a piecemeal manner: first to the healthcare sector through the *Loi Touraine*,[4]

1 Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers, OJ L409/1. For a comparative overview of transposition across the EU, see Maria José Azar-Baud, Current Developments Implementation of the Representative Actions Directive across the European Union: State of Play (2025) 44(2) Civil Justice Quarterly 124–149; id, All Shades of the Representative Actions Directive on Protection of the Collective Interest of Consumers (2025) ThoughtLeaders4 Competition Magazine 37; id, Winds of Change after the Implementation of the Representative Actions Directive (2025) 2 Mass Claims Journal; for the historical doctrine, see Laurent Boré, L'action en représentation conjointe: class action française ou action mort-née? (1995) Recueil Dalloz 267; Jean Calais-Auloy (ed), Le règlement des litiges de consummation, Ronéo, 1983.

2 Omar Kafi Cherrat, La réforme de l'action de groupe française, ou l'art de "couper la poire en deux" (2025) Gazette du Palais 10; Alexandre Biard, Transposition de la directive (UE) 2020/1828 en France: un second souffle pour l'action de groupe? (2024) Revue européenne de droit de la consommation 231; Philippe Métais and Elodie Valette, Un nouvel élan pour l'action de groupe à la française? (2023) Option Droit & Affaires 10.

3 Law no 2014-344 of 17 March 2014 on consumer protection (*Loi relative à la consommation*), JORF no 0065, 18 March 2014, texte no 1.

4 Law no 2016-41 of 26 January 2016 on the modernisation of the health system (*Loi de modernisation de notre système de santé*), JORF no 0022, 27 January 2016, texte no 1; see eg, among other cases in this sector, TJ Paris, 11 May 11, 2022, case no 18/03264; TJ Paris, 5 January 2022, no 17/07001.

then to discrimination,[5] personal data protection and environmental matters through the *Loi de modernisation de la justice du XXIe siècle*,[6] and finally to residential tenancy disputes through the *Loi ELAN*.[7] Rather than embracing a comprehensive collective redress framework from the outset, France progressively constructed a fragmented and sector-specific regime, thereby reinforcing what many commentators have described as the enduring myth—and perhaps the reality—of the French exceptionalism in collective litigation.[8]

This legislative trajectory stood in marked contrast to the philosophy underpinning the Commission Recommendation of 2013. Rather than endorsing a sector-by-sector approach, the Recommendation advocated the establishment of horizontal collective redress mechanisms capable of addressing infringements affecting the collective interests of groups of persons across all areas of law. The European Commission expressly conceived collective redress as a procedural tool designed to facilitate access to justice whenever a plurality of individuals had suffered harm arising from the same unlawful conduct, irrespective of the substantive field concerned. In doing so, the Recommendation referred not only to the protection of the "collective interests" and the "interests of groups of natural or legal persons", but also to situations involving harm to "diffuse interests", namely interests shared by a broad and often indeterminate category of persons. The underlying objective was therefore to promote a coherent and transversal framework for collective redress throughout the European Union. France, however, chose the opposite path. Rather than adopting a single horizontal mechanism applicable whenever collective, group or diffuse inter-

5 The administrative courts dealt with the subject matter in, eg, TA Lyon, 7th ch, 7 July 2023, no 2300189 (UNSA Services judiciaires v Etat) and TA Nancy, 23 July 2020, no 2001356 (Syndicat FA-FP v Ville de Nancy).

6 Law no 2016-1547 of 18 November 2016 on the modernisation of justice in the twenty-first century (*Loi de modernisation de la justice du XXIe siècle*), JORF no 0269, 19 November 2016, texte no 1, arts 60–92; Soraya Amrani-Mekki, Le socle commun procédural de l'action de groupe de la loi de modernisation de la justice du XXIe siècle (2016) JCP G 2310; Frédéric Guiomard, L'action de groupe dans le projet de loi sur la justice du XXIe siècle: un texte d'anesthésie? (2016) Revue de droit du travail 52; Soraya Amrani-Mekki, L'action de groupe du XXIe siècle – Un modèle réduit et réducteur (2015) JCP G 1196.

7 Law no 2018-1021 of 23 November 2018 on housing, development and digital technology (Loi portant évolution du logement, de l'aménagement et du numérique), JORF no 0272, 24 November 2018, texte no 1; for a more detailed analysis, see Maria José Azar-Baud, Variations autour du régime de l'action de groupe (2017) 27 JCP E 37–42; id, Droits préjudices et prétention processuelle dans les actions de groupe (2017) 26 JCP E 24–29; id, Le cadre judiciaire et administratif des actions de groupe: quelles différences? quelles conséquences? (2017) 28 JCP E 31–36, together with the extensive bibliography cited therein; Nicolas Molfessis, L'exorbitance de l'action de groupe à la française (2014) 16 Recueil Dalloz 947; Vincent Rebeyrol, La nouvelle action de groupe (2014) 16 Recueil Dalloz 940.

8 See also Maria José Azar-Baud and Véronique Magnier, Class Actions "à la française" in Brian Fitzpatrick and Randall Thomas (eds), The Cambridge Handbook of Class Actions, Cambridge University Press 2020, 247 and the bibliography cited therein; Kami Haeri and Benjamin Javaux, L'action de groupe à la française, une curiosité (2014) JCP G 375.

ests were affected, the French lawmaker progressively developed a mosaic of sector-specific actions, each governed by distinct rules concerning standing, admissibility, procedure and remedies. This fragmented architecture reflected a persistent reluctance to embrace collective litigation as an ordinary procedural device and instead confirmed the French preference for exceptional and carefully circumscribed forms of collective redress.

Notwithstanding the gradual expansion of its substantive scope between 2014 and 2018, the French group action regime remained constrained by two structural features that significantly limited its effectiveness. First, standing was reserved for a very limited number of entities, primarily accredited consumer associations and, subsequently, a restricted category of authorised organisations in the sectors covered by the successive reforms. Individual claimants, ad hoc vehicles, and other representative actors were excluded from initiating proceedings, thereby considerably reducing the practical availability of collective redress. Secondly, the French legislature firmly adhered to an opt-in participation model, requiring affected individuals to come forward and join the compensation phase after a judgment on liability had been rendered.[9] While this approach reflected traditional French concerns regarding individual autonomy and procedural fairness, it also substantially diminished participation rates and undermined the compensatory and deterrent functions that collective proceedings are generally expected to fulfil. As a result, despite the successive legislative extensions introduced between 2014 and 2018, the overall performance of the French regime was widely regarded as disappointing. Academic commentators, parliamentary reports and practitioners alike observed that the number of actions brought remained modest, that compensation reached only a limited fraction of eligible victims, and that the mechanism failed to generate the transformative impact initially anticipated.[10] By the time discussions surrounding the implementation of the Representative Actions Directive began, a broad consensus had emerged that the French model, although symbolically significant, had fallen short of its stated objectives and required substantial reform.[11]

Furthermore, several distinctive features of the French group action model rendered the system economically unsustainable in practice. Accredited associ-

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9 Maria José Azar-Baud, Transposons l'opt-in tacite pour sauver l'action de groupe. A propos de la Directive sur les actions représentatives en protection des intérêts collectifs, in Mathieu Combet (ed) Le droit européen de la consommation au XXIe siècle, Bruylant, 2022, 399–422 and the bibliography cited therein. See also Laurent Bloch, Vers une réforme de l'action de groupe (2023) Responsabilité civile et assurances 4.

10 Maria José Azar-Baud and Suzanne Carval, L'action de groupe et la réparation des dommages de consommation: bilan d'étape et préconisations (2015) 37 Recueil Dalloz 2136 and the bibliography therein.

11 Assemblée nationale, Rapport d'information no 3085, déposé en application de l'article 145 du règlement par la commission des lois, en conclusion des travaux d'une mission d'information sur le bilan et les perspectives des actions de groupe, Philippe Gosselin and Laurence Vichnievsky, 11 June 2020.

ations were required to bear the full cost of the proceedings and to assume both the financial and reputational risks associated with collective litigation. The absence of meaningful public financial support further weakened the viability of the regime: neither legal aid mechanisms nor a dedicated public fund designed to support group actions were made available to representative organisations. At the same time, French legislation remained silent on third-party litigation funding and provided no explicit legal framework recognising or facilitating private financing arrangements. In practice, therefore, representative associations were expected to pursue complex and resource-intensive litigation without access to either public or private sources of funding capable of mitigating the considerable costs and risks involved.[12]

This institutional and financial vacuum significantly undermined the practical effectiveness of the mechanism and contributed to the limited number of actions brought during the first decade of the regime. These risks extended beyond the possibility of losing the case on the merits. Even where an action was ultimately declared admissible and well-founded after years of litigation, there was no guarantee that affected consumers would subsequently come forward and opt into the compensation phase. As a result, a representative organisation could achieve a legal victory yet obtain little or no effective redress for the persons concerned. This paradox revealed deeper structural weaknesses within the French model. Most notably, French law did not provide for any form of aggregate assessment of the unlawful gains obtained by the defendant or of the homogeneous losses suffered by the affected group. Instead, compensation remained dependent upon the individual identification of victims and their subsequent participation in the proceedings. The effectiveness of the mechanism therefore rested on assumptions regarding claimant engagement that frequently proved unrealistic in practice. This legislative omission generated a further deficiency: the absence of any coherent regime governing residual funds. French law contained no provisions addressing the fate of undistributed or unclaimed sums, namely compensation that could not be allocated because victims failed to identify themselves or claim their entitlement. Consequently, even in successful cases, the system lacked the procedural tools necessary to ensure that the economic consequences of the unlawful conduct would be fully addressed, thereby weakening both the compensatory and deterrent functions of collective redress.

The empirical record which the author carries out at the Observatory of Class actions and other forms of collective redress further illustrates the limited effectiveness of the French model. As of May 2026, a total of forty-three group actions had been initiated in France. Of these, five resulted in settlements or

[12] Maria José Azar-Baud, (In)Action de groupe: Décomplexer l'action de groupe par l'aménagement du régime de l'aide juridictionnelle, des frais et dépens (2016) 42 Gazette du Palais, 136e année 52–56 and the bibliography therein.

court-approved settlements, while thirteen were declared inadmissible or inadmissible on procedural grounds. Only a small number of actions succeeded in overcoming the admissibility stage and were expressly recognised as receivable by the courts. More strikingly, only two group actions have, to date, resulted in a judgment on the merits holding the defendant liable. Yet even these rare substantive successes have not translated into effective collective compensation. At the time of writing, none of these cases has completed the subsequent phases of the procedure involving the identification of eligible class members, the opt-in process, and the actual distribution of compensation. The French experience therefore reveals a paradox: despite more than a decade of legislative reforms and forty-three initiated proceedings, the number of cases producing a tangible compensatory outcome for affected individuals remains extremely limited.[13] These figures provide compelling evidence of the structural shortcomings of the original French model and help explain why calls for a comprehensive reform had become increasingly difficult to ignore by the time the Representative Actions Directive was implemented.

The mixed results achieved by the successive French group action reforms between 2014 and 2018 inevitably raised the question of whether the implementation of Directive (EU) 2020/1828 would provide an opportunity to overcome the structural shortcomings of the existing regime.[14] Faced with a European instrument expressly designed to strengthen collective redress mechanisms throughout the Union, the French legislature was invited to reconsider some of the defining features of its model, including its restrictive standing rules, opt-in architecture, and fragmented sectoral approach. Whether the transposition of the Directive ultimately transformed the French system or instead reinforced its longstanding peculiarities constitutes the central issue examined in the following sections.

2. THE IMPLEMENTATION OF THE REPRESENTATIVE ACTIONS DIRECTIVE IN FRANCE BY A COMPREHENSIVE REFORM: THE LAW DDADUE

2.1 The Catalyst for the Reform and the Implementation thereof

The implementation of Directive (EU) 2020/1828 in France did not occur in a legislative vacuum. Rather, it followed a period of intense reflection on the

13 Registre des Actions de Groupe France, Observatory of Class Actions and other forms of Collective Redress, https://www.observatoireactionsdegroupe.com/français, accessed 9 July 2026.

14 Maria José Azar-Baud, The effects of the Directive on Representative Actions for the protection of the collective interest of consumers in the French Group Action regime (2020) 2 Revista Italo-española de Derecho procesal, Marcial Pons 109–126 and the bibliography cited therein.

shortcomings of the existing group action framework described in the previous section. A significant catalyst for this reassessment was the parliamentary information report submitted in 2020 by Members of Parliament Philippe Gosselin and Laurence Vichnievsky, which delivered a largely critical assessment of the French regime.[15] Drawing extensively on academic literature, including the work of the authors of this chapter, as well as on empirical data collected through the Observatory of Group Actions and Other Forms of Collective Redress, the report highlighted the limited practical impact of the mechanism despite successive legislative extensions since 2014.[16]

Against this backdrop, a succession of legislative proposals was introduced between 2020 and 2024 with the ambition of reforming and modernising French collective redress.[17] Although these proposals differed on certain issues, particularly regarding standing, they shared a common diagnosis of the deficiencies affecting the existing framework. Some drafts advocated extending standing to ad hoc entities established specifically for the purpose of bringing collective proceedings, while others maintained the traditional preference for accredited associations and institutional actors. Similarly, some proposals preserved the simplified group action procedure already available under the Consumer Code for cases involving readily identifiable consumers and substantially identical losses,[18] whereas others recommended its abolition.[19] Beyond these points of divergence, however, the various reform projects displayed remarkable continuity. Most retained what may be described as the structural features—and structural weaknesses—of the French model, including the predominance

15 Information report submitted pursuant to Article 145 of the Rules of Procedure by the Committee on Constitutional Affairs, Legislation, and General Administration of the Republic, concluding the work of an information mission on the current status and future prospects of class actions (Philippe Gosselin and Laurence Vichnievsky) no 3085 (11 June 2020).

16 Xavier Delpech, Rapport d'information sur la proposition de loi sur les actions de groupe (2023) Juris associations 677, 8; id, L'avis du Conseil d'État sur la proposition de loi (2023) Juris associations 675, 9.

17 Cf Bill Proposing a New Class Action Framework, no 3329, 15 September 2020; no 639 deposited 15 December 2022; Bill no 420 on the framework for class actions, adopted by the National Assembly on 8 March 2023, <https://www.senat.fr/leg/ppl22-420.html>; no 64 of 6 February 2024 on the legal regime for group actions, amended by the Sénat on 6 February 2024; no 529 of 31 October 2024; Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014, OJ L349/1, Arts 5–8; Maria José Azar-Baud and Fabienne Jault, Collective Redress: European and Private International Law Approach, in Rafael Amaro (ed) Private Enforcement of Competition Law in Europe, Larcier, 2021, 87.

18 For further discussion on the nature of consumer law collective actions, see Maria José Azar-Baud, La nature juridique des actions collectives en droit de la consommation (2012) Revue européenne de droit de la consommation 3.

19 Cf Bill no 420 on the framework for class actions, adopted by the National Assembly on 8 March 2023, Art 3, I, 1° (repealing chapter III of title II of book VI of the Consumer Code); Conseil d'État, Conseil d'État, Avis sur une proposition de loi relative au régime juridique des actions de groupe, 9 February 2023, para 13. Contrast the text as amended by the Sénat on 6 February 2024, Section 2 bis (new), Art 1er quaterdecies A (new).

of an opt-in participation mechanism, the absence of aggregate assessment of damages at the group level, and the resulting lack of any comprehensive regime governing residual or undistributed funds. Consequently, while the debate focused on institutional and procedural adjustments, the fundamental architecture of French collective redress remained largely unquestioned.[20]

Significantly, these legislative initiatives were being debated in Parliament precisely when Directive (EU) 2020/1828 was adopted and throughout the period during which Member States were required to transpose it into their domestic legal orders. The various proposals for reforming a group action regime whose performance had been widely regarded as disappointing were therefore developed against the backdrop of an emerging European framework for representative actions. France's delay in implementing the Directive soon attracted the attention of the European Commission, which, in 2023, formally called upon the French authorities to comply with their obligations under EU law. In this context, what had initially been conceived as domestic reforms of the French group action mechanism gradually evolved into legislative proposals aimed at transposing the Representative Actions Directive. The reform agenda thus shifted from a debate centred on the shortcomings of the existing national regime to a broader exercise of alignment with European collective redress standards.[21] Whether this legislative consolidation amounts to a genuine paradigm shift or merely a rationalisation of pre-existing solutions is the first question addressed in the following analysis.

2.2 From Fragmentation to a Unified Regime

If the French legislature did not fundamentally abandon its traditional conception of collective redress, it nevertheless introduced one reform of considerable importance: the replacement of a fragmented and sector-specific framework by a unified procedural regime. Long criticised for its complexity and lack of coherence, the coexistence of multiple group action mechanisms was finally brought to an end through a comprehensive reform enacted through Law No 2025-391 of 30 April 2025 (DDADUE).[22] The trajectory and development

[20] Maria José Azar-Baud, Le renouveau de l'action de groupe: entre ambitions réformatrices et échecs structurels (2025) 12 Revue du Droit social 1–13; Omar Kafi Cherrat, La transposition de la directive du 25 novembre 2020 sur les actions représentatives: la France à la croisée des chemins (2023) JCP G doctr 107; Rafael Amaro and Laurence Usunier, L'action de groupe à la française fait peau neuve (2023) Recueil Dalloz 1064–1065.

[21] Delpech, Rapport d'information (n 17); Cherrat (ibid); Amaro and Usunier (ibid).

[22] Law no 2025-391 of 30 April 2025 (hereinafter DDADUE). For the prior regime, Law no 2014-344 of 17 March 2014; Law no 2016-41 of 26 January 2016; Law no 2016-1547 of 18 November 2016. See Azar-Baud, Le Renouveau (n 21).

reflect a tension between legislative caution on the one hand and the need for systemic coherence on the other.[23]

The DDADUE, transposing the RAD, while exceeding its minimum requirements, establishes a truly universal regime applicable across all subject matters. Article 16 creates a single procedural framework governed by Articles 848 et seq. of the Code of Civil Procedure (CPC), replacing the previously fragmented provisions found across the Consumer Code, Environmental Code, Public Health Code, Labour Code, and data protection legislation.[24] The horizontal scope positions France alongside the Netherlands and Portugal as jurisdictions with "cross-cutting" collective redress mechanisms, in contrast to Member States that adopted minimal, solely consumer-focused transpositions.[25]

2.3 The Dual Purpose of Group Actions: Actions for Cessation (Injunctive) and Compensatory

Another important aspect of the reform concerns the harmonisation of the objectives pursued by collective proceedings. Prior to the 2025 reform, French group actions were characterised by a lack of consistency in this regard. In consumer law, the group action was conceived primarily as a compensatory mechanism designed to obtain redress for individual losses suffered by consumers, whereas in other fields, such as discrimination, environmental protection or personal data protection, collective proceedings frequently pursued injunctive relief aimed at bringing unlawful conduct to an end or preventing its recurrence. The DDADUE reform has put an end to this fragmentation by estab-

23 Azar-Baud and Magnier (n 9); Haeri and Javaux (n 9); Félix Thillaye and Alexandre Kiabski, L'action de groupe à la croisée des chemins à l'aube de son 10e anniversaire (2024) JCP G 512; Judith Quidu-Tudela, Nouveau régime de l'action de groupe: l'Arlésienne enfin sur le devant de la scène? (2026) 246 RLDC 45.

24 Nonetheless, a significant number of disputes that could have been addressed through a class action were de jure or de facto excluded from the scope of the law. On the exclusion of insurance contracts, Versailles Court of Appeal, 3rd Chamber, May 6, 2021, no 20/05165 (CLCV v Axa Agipi); On the exclusion of managed funds, Paris Regional Court, April 3, 2024, no 18/02914 (UFC v Natixis Asset Management).

25 Maria José Azar-Baud, Current Developments Implementation of the Representative Actions Directive across the European Union: State of Play (2025) 44(2) Civil Justice Quarterly 124–149; id, Winds of Change (n 2). For example Denmark, Finland, Hungary and Poland, among others, which strictly follow the material scope of the Directive, rather than including broader areas of law, and do not offer protection other than of consumer interests; in the consumer law domain, see Sabine Bernheim-Desvaux, Les incidences en droit de la consommation de l'adoption de la loi DDADUE 2025 (2025) Contrats, concurrence, consommation comm 108, and further, Sabrina Mraouahi, L'action de groupe rénovée: nouvelle ère pour le contentieux social? (2025) Revue de droit du travail 564; Corinne Lepage, Tour d'horizon des innovations introduites par la loi DDADUE sur les actions de groupe (2025) Droit de l'environnement 188; Julien Aunis and Bryan Keddouri, Réforme de l'action de groupe en matière sociale: changements, zones d'ombre et nouveaux réflexes à acquérir! (2025) Semaine Sociale Lamy no 2151.

lishing a uniform framework under which all group actions may seek injunctive measures, compensatory relief, or both simultaneously. As a result, the French legislature has aligned the objectives of collective redress across sectors and reinforced the dual preventive and compensatory functions that underpin modern representative actions.[26]

Since the reform of 2025 and akin to the Representative Actions Directive (RAD), French law distinguishes two principal forms of group action following different objectives, with each being governed by distinct procedural rules. They can be brought separately or altogether. Actions seeking cessation of wrongful conduct (*actions en cessation du manquement*) require the plaintiff to establish neither individual harm to group members nor the defendant's fault or negligence. On finding a breach, the court enjoins the defendant to cease the unlawful conduct within a specified timeframe, appointing a third-party monitor if necessary to oversee compliance. This injunctive procedure can operate independently from claims for compensation or alongside them.

2.4 Standing to Sue and Gatekeeping: (Modestly) Expanded Standing Categories

The DDADUE maintains the principle that group actions constitute *actions attitrées* reserved for expressly authorised entities. Under Article 16.I.C.1, approved associations (*associations agréées*) remain the main category of eligible plaintiffs. Approval or designation requires a non-profit status, twelve consecutive months of effective public activity defending relevant interests, statutory objectives encompassing the protection of affected rights, absence of insolvency proceedings, independence from economic interests that might compromise the represented parties, and adoption of written conflict of interest management procedures.[27]

The competent administrative authority maintains a publicly accessible list of qualified associations and may revoke designation if it determines that the qualifying conditions are no longer met. For actions seeking only injunctive relief, non-designated non-profit associations may be granted standing if they satisfy the following: two years' registration, twenty-four consecutive months of effective public activity, and a statutory purpose encompassing the defence of the infringed interests, since pure actions for cessation (thus, without the need for compensation distribution) entail less risks of abuse and/or conflict of interest.

[26] Hugo Delage and Hélène Guignard, Réforme de l'action de groupe: analyse des modifications apportées à son régime (2025) JCP E 1229; Dimitri Lecat and Matthieu Brueder, Action de groupe et produits financiers: un parcours semé d'embûches (2024) Gazette du Palais 30.

[27] DDADUE, Art 16.I.C.1 (conditions no 1–5); Biard (n 3).

Beyond approved associations (*associations agréées*), the reform extends standing to the Public Prosecutor as the principal party in cessation actions or co-plaintiff in any group action, representative trade unions in the areas of discrimination, data protection, and employment law, and cross-border qualified entities designated in other Member States and listed in the EU Official Journal.[28] A transitional provision maintains standing (for two years from 2 May 2025) for entities qualifying under predecessor provisions.[29]

However, the DDADUE did not follow the National Assembly's 2023 proposal to grant standing to ad hoc associations acting on behalf of at least fifty natural persons or five legal entities.[30] This omission is a notable missed opportunity to expand standing to cover situations, for example, where existing qualified entities are unwilling or unable to act.

2.5 Architecture for Financing (1): Explicit Acknowledgement of Third-Party Litigation Funding

Following the Directive's approach, the DDADUE, in Article 16.I.D, explicitly authorises third-party litigation funding, while subjecting it to transparency and independence requirements.[31] Funding arrangements must neither enable funders to influence action conduct in ways diverting the plaintiff away from the protection of the collective interests of represented parties, nor finance actions against funders' competitors. Specific disclosure requirements, detailed within a separate implementing decree,[32] aim to prevent conflicts of interest, and establish financial transparency. This explicit recognition addresses the long-established deficits regarding the financial viability of French group actions. The excessive costs of high-scale collective proceedings, alongside associations' limited resources, previously rendered many meritorious claims economically infeasible.[33] Third-party funding provides the means for case investigation, expert evidence, and procedural costs, whilst funders' profit motives create quality-control incentives: funders select cases likely to succeed, screening out frivolous claims more effectively than standing restrictions alone. From a comparative perspective, while only Ireland and Greece explicitly prohibit

[28] Ibid, Arts 16.I.C.3 and 16.I.C.4., CPC, Art 849-2-1.
[29] Ibid, Art 16.XVII.D.
[30] Law proposal no 420 on the framework for class actions, adopted by the National Assembly on 8 March 2023, Art 1 bis (new).
[31] DDADUE, Art 16.I.D; RAD, Art 10.
[32] Decree no 2025-1191 of 10 December 2025 establishing a procedure for the approval of associations and entities to conduct national and cross-border class actions and specifying their obligations regarding the disclosure of their funding, JORF no 0290, 11 December 2025.
[33] Maria José Azar-Baud, Trends in Third-Party Funding of Collective Actions in Xandra Kramer et al (eds), Sustaining Access to Justice: New Avenues for Costs and Funding, Hart Publishing, 2025.

third-party funding, and some Member States impose caps on the funders' remuneration, like Germany (10%), Estonia and Poland (30%), France adopts a relatively flexible approach, subject to judicial oversight of conflicts of interest.

2.6 Architecture for Financing (2): Creation of a Fund for Group Actions Composed of Civil Penalties for Fraudulent Misconduct and the *Astreinte*

One of the most innovative features of the DDADUE reform is the establishment of a dedicated fund for the financing of group actions, intended to address one of the principal weaknesses of the previous French regime, namely the absence of sustainable funding mechanisms for collective litigation.

The fund is financed through two distinct sources. First, it receives the proceeds of the civil sanction provided for by Article 1254 of the Civil Code. This sanction may be imposed where a professional is found liable for breaching statutory or contractual obligations connected with their business activities and is intended to address situations of profitable wrongdoing (*sanction civile pour faute lucrative*). The introduction of this civil penalty (*sanction civile*) for wrongful conduct with a profit-seeking motive (*faute lucrative*) causing serial harm is a central financial and substantive provision in the DDADUE, through new Article 1254 of the Civil Code;[34] a unique feature within the European Union panorama.[35] Although not equivalent to punitive damages, the measure pursues a deterrent objective by enabling courts, upon request of the Public Prosecutor or the Government and by means of a specially reasoned decision, to impose a financial penalty in addition to compensatory relief.

Secondly, the fund is financed through periodic penalty payments (*astreintes*) imposed in representative actions seeking injunctive relief. Where a court orders a defendant to cease an unlawful practice or to adopt specific compliance measures within a prescribed period, it may attach a coercive financial penalty designed to ensure effective compliance. Under the new regime, any such penalty payments recovered are allocated not to the claimant or to the affected group members, but directly to the fund.

By combining the proceeds of civil sanctions aimed at deterring unlawful conduct with the amounts generated by judicial enforcement measures, the French lawmaker has created an original financing mechanism linking the enforcement of collective rights to the future development of collective redress. The fund therefore serves both a practical and a symbolic function: it seeks to enhance the financial sustainability of representative actions while reinforcing the preventive and deterrent objectives underpinning the reformed French sys-

[34] DDADUE, Art 16.XI, inserting Civil Code Art 1254.

[35] Azar-Baud, Le Renouveau (n 21); id, Winds of Change (n 2).

tem of collective litigation. Article 1254 of the Civil Code nevertheless leaves the funding mechanism largely indeterminate, since it identifies neither the entities entitled to seek financial support nor the competent authority, application procedure, eligibility criteria, allocation priorities, decision-making timetable or conditions governing the award and use of the fund's resources.

3. PROCEDURAL INNOVATIONS IN FRENCH GROUP ACTION PROCEEDINGS

3.1 Jurisdictional Framework and Type of Proceedings

Decree no 2025-653 of 16 July 2025 designates eight judicial courts with exclusive competence over group actions: Bordeaux, Lille, Lyon, Marseille, Nancy, Paris, Rennes, and Fort-de-France, each covering specific appellate jurisdictions.[36] The Circular of August 2025 set out official guidance issued by the French Ministry of Justice to the judiciary and practitioners on how to implement the DDADUE's unified group action regime and the jurisdictional framework established by its decrees. It described this specialisation as a public policy rule of material jurisdiction, permitting non-designated courts to raise incompetence ex officio under the Code of Civil Procedure – hereinafter the CPC – Article 76.[37] The purpose is not only territorial distribution but also judicial specialisation, due to the particular complexity of group action proceedings.[38] Apart from this, territorial jurisdiction follows general principles, with the Paris court competent where the defendant resides abroad or possesses no known domicile.[39]

Group actions are filed, examined, and adjudicated in accordance with ordinary written procedure before the judicial court.[40] Further, in 2025, an

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[36] Decree no 2025-653 of 16 July 2025, Tableau X (annexe); Code de l'organisation judiciaire, Art L211-15; DDADUE, Art 16.VI.

[37] Circular CIV/09/2025 of 1 August 2025 introducing Article 16 of Law no 2025-391 of April 30, 2025, and its implementing decrees no 2025-734 of July 30, 2025, concerning the procedure applicable to class actions and the class action registry, and no 2025-653 of July 16, 2025, designating the courts with jurisdiction over class actions (hereinafter Circular CIV/09/2025). In French administrative law, a *circulaire* is a non-legislative instrument issued by a minister or administrative authority to provide guidance on the interpretation and implementation of statutes, regulations, or governmental policies. Although a circular does not, in principle, create new legal obligations or rights, it plays an important practical role by ensuring the consistent application of legal rules throughout the administration. Where a circular merely interprets existing law, it is not binding on courts; however, provisions that effectively introduce new normative rules may be challenged before the administrative courts and annulled for exceeding the authority of the issuing body.

[38] Circular CIV/09/2025; CPC, Art 76.

[39] CPC, Art 849.

[40] CPC, Art 849-2.

important reform of French civil procedure significantly strengthened the role of amicable dispute resolution, elevating it from a complementary mechanism to a guiding principle of civil justice.[41]

Through a series of legislative and regulatory measures, French law now encourages parties to seek a mutually agreed solution at every stage of the proceedings, reflecting a broader policy objective of promoting consensual justice, reducing judicial congestion, and facilitating faster and more efficient dispute resolution. Courts are granted enhanced powers to direct parties towards mediation, conciliation, participatory procedures, or other forms of alternative dispute resolution, while procedural frameworks have been adapted to facilitate negotiated settlements during pending litigation. The reform thus reflects a paradigm shift in French procedural law, whereby adjudication is no longer viewed as the sole or preferred means of resolving disputes, and amicable resolution has become a central component of the administration of civil justice. In October 2025, the Paris pre-trial judge (*juge de la mise en état*) applied these new provisions for the first time, summoning UFC Que Choisir and the automotive group Stellantis to a mediation information meeting before the *Centre de Médiation et d'Arbitrage de Paris* (CMAP).[42]

3.2 Structure of Proceedings for Compensatory Measures

Actions seeking reparation of harm (*actions en réparation des préjudices*) proceed in three main phases which are summarised here and further described below. The first one starts with the writ of summons and goes until the judgment on the merits. In this phase, the court addresses liability, the criteria for group membership, compensable harm categories, and publicity measures. It also determines and establishes the framework for damage assessment and for publicity (eg, content, deadlines, etc). The second phase consists of the opt-in period, whereby victims actively join the group within timeframes determined by the court – between two months and five years following publicity measures – to obtain compensation. The third phase consists of the enforcement of the rights to compensation acknowledged in the decision on the merits and proceeds through either individual compensation procedures or, where conditions allow for it and there is no bodily harm involved, collective settlement procedures enabling negotiated resolution.

[41] Decree no 2025-660 of 18 July 2025; CPC, Art 127.
[42] Paris Judicial Court, no 17, 15 October 2025, no 25/09445.

3.3 A Specific Admissibility Requirement for Compensatory Group Actions: Test Cases and Absence of Conflict of Interest

For compensatory actions, the summons must expressly present individual cases supporting the claim, on pain of inadmissibility that the court may raise *ex officio*.[43] Following case law under the previous regime, at least two detailed cases are sufficient.[44] The 2025 reform amended the sanction backing non-compliance with this requirement, which entails significant consequences. Indeed, it has switched from a formal condition resulting in nullity (Article 112 CPC) to a condition of admissibility. This was not directly required by the RAD or DDADUE Article 16, and it reflects a growing trend to render acts lacking a mandatory requirement inadmissible.[45] Inadmissibility may be raised at any stage without demonstrating a grievance, unlike nullity, which must be invoked before a defence on the merits.[46] The requirement only applies to compensatory actions, as the requirement to present individual cases in cessation actions has been removed.[47]

Further, Article 16.I.E DDADUE, and Decree no 2025-734 of 30 July 2025, created a novel ground for inadmissibility, amending Article 849-12 CPC. Where the plaintiff is in a conflict of interest with third parties to the proceedings, especially litigation funders, in a manner "likely to prejudice the interests of the persons represented", the court may declare the reparation action inadmissible.[48] The ground may be raised *ex officio* (as a discretionary power) or on the application of a party, and the court may request evidence from the plaintiff demonstrating the absence of conflict.[49] The above-mentioned Circular confirms that the defect may be remedied where the plaintiff resolves the conflict, as per the general regime under CPC Article 126. Additionally, courts must refuse to approve any settlement agreement between the parties where the conflict-of-interest obligation is not complied with.[50]

3.4 The Rapid Dismissal Procedure

Following the RAD, Article 849-2-1 CPC introduces a rapid dismissal procedure. Under this, the president of the chamber or the pre-trial judge may, on their own motion, by reasoned order and after inviting party observations,

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[43] CPC, Art 849-11 (substituted by Decree no 2025-734 of 30 July 2025, Art 4).
[44] Tribunal de grande instance de Nanterre, 6th ch, 8 January 2016, no 14/12664.
[45] See CPC, Art 849-11.
[46] CPC, Art 123.
[47] Circular CIV/09/2025; CPC, Art 849-11.
[48] DDADUE, Art 16.I.E; CPC, Art 849-12; Decree no 2025-734 of 30 July 2025, Art 4.
[49] CPC, Art 849-12; DDADUE, Art 16.I.E.
[50] DDADUE, Art 16.I.E.

dismiss claims that are manifestly inadmissible or manifestly unfounded.[51] This represents an extension of the RAD's wording, which covers only manifestly unfounded claims, by encompassing manifestly inadmissible actions, including, for example, actions brought by persons lacking standing. Thus, it is not "limited to cases of frivolous actions, as the European legislator had suggested".[52] Dismissal orders are immediately appealable within fifteen days of service; orders declining to dismiss are only challengeable alongside the decision on the merits.[53]

3.5 Decision on the Merits in Group Actions for Cessation Measures: Third-Party Implementation

In injunctive group actions, where the court finds a breach, it enjoins the defendant to cease the unlawful conduct and may appoint a third-party professional to implement remedial measures (Articles 849-3 to 849-10 CPC). The court defines the scope and reporting deadline. A prior requirement for a "specially reasoned decision" was removed, which may point towards a legislative intention to "ease the obligations previously imposed on the judge".[54] The courts are given significant discretion in who they appoint, as the monitor must demonstrate relevant expertise but need not hold formal certification.[55]

3.6 Decision on the Merits in Group Action for Compensatory Measures

Where the defendant is held liable, the court defines the group by establishing membership criteria, determines compensable harm categories and assessment methodology, and orders publicity measures to inform potential members of the proceedings.[56] Where possible (and the evidence and nature of harm allow), the amount of compensation or assessment may be determined within the same liability judgment. Article 849-2-2 CPC specifies that the judgment must fix the starting point and duration of the publicity obligation; in the event of non-compliance, the opposing party may implement the measures at the defaulting party's expense.[57] The reform also applies publicity measure obligations to cases where the action is declared inadmissible or rejected. The

[51] CPC, Art 849-2-1 (enacted by Decree no 2025-734 of 30 July 2025, Art 2).
[52] Art 849-2-1.
[53] CPC, Art 849-2-1 (second para); Circular CIV/09/2025.
[54] CPC, Art 849-3 (amended by Decree no 2025-734 of 30 July 2025, Art 3).
[55] CPC, Art 849-3.
[56] DDADUE, Art 16.III.A.1.
[57] CPC, Art 849-2-2 (enacted by Decree no 2025-734 of 30 July 2025, Art 2).

court may order publicity at the plaintiff's expense, to be implemented once the decision is final[58]

The information to be provided through publicity measures is set out in Article 849-13 CPC and must include a reproduction of the operative part of the decision, details regarding the compensation procedure, the form and content of compensation claims, and the consequences of joining or not joining the group.[59] Joining the group involves a compensation claim submitted by any means, providing proof of receipt within a period determined by the court, and forms.[60] The mandate conferred upon the claimant association through adhesion does not constitute or imply membership of the association and is revocable at any time, with revocation constituting withdrawal from the group whilst preserving the individual right to bring separate damages proceedings.[61]

3.7 The French-Original Late Opt-In: Problems and Limitations

By maintaining opt-in as the sole route towards compensation, the DDADUE highlights what has been described as one of the most significant structural limits of French collective redress, and an "experimental" step.[62] The court decides on the adhesion timeframe between a minimum of two months and a maximum of five years from completion of publicity measures, which is the most generous opt-in period from a comparative European law perspective, yet this cannot remedy the underlying legal, sociological and economic disadvantages of the *opt-in* choice.[63]

The sociology of collective redress demonstrates that voluntary adhesion systems lead to systematically low participation, particularly for modest individual claims. Potential victims are subject to rational apathy, where the majority of injured parties do not spontaneously pursue compensation due to insufficient individual economic interest, unfamiliarity with the mechanism, or a sense of futility.[64] The transaction costs of joining often exceed the anticipated per capita recovery for small claims, creating a structurally negative expected return that is not addressed by publicity alone. This results in the economic consequence of systematic under-compensation. Defendants retain substantial portions of illicit gains, producing a negative economic incentive.[65] Adding to

58 DDADUE, Art 16.II, para 6.
59 Azar-Baud, Le Renouveau (n 21).
60 CPC, Art 849-13 (amended by Decree no 2025-734 of 30 July 2025, Art 4).
61 CPC, Arts 849-14 and 849-17 (para 3); DDADUE, Art 16.III.B.1.a (para 2).
62 Azar-Baud, Le Renouveau (n 21).
63 Ibid.
64 Mancur Olson, The Logic of Collective Action, Harvard University Press, 1965; Nathalie Fournier de Crouy, L'entrée de la faute lucrative et sa sanction confiscatoire dans le Code civil: une innovation courageuse (2025) La Semaine Juridique 989, para 3.
65 Azar-Baud, Le Renouveau (n 21).

this, the lack of a set *cy-près* mechanism in the French implementation presents a lacuna in the law. As can be seen in the German implementation and Spanish proposal, for example, unclaimed amounts revert to the defendant. Without a pre-determined destination for uncollected sums (to serve a purpose designed to benefit consumers or consumer entities), procedures can have unintended consequences, enriching wrongdoers.

The opt-out model, instead, in which all affected individuals are included in the class unless they actively exclude themselves, reverses this logic and more fully satisfies the requirements of legal effectiveness enshrined in European law, including the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union.[66] Only four Member States have adopted opt-out systems,[67] three that will become four—if the Spanish draft is adopted as it stands—employ mixed models,[68] and all the rest have adopted or maintained an opt-in system. The Directive's silence on the choice of model left Member States with full discretion, yet France chose the more restrictive option.

3.8 The Two Enforcement Phase Options: Individual Liquidation or Collective Negotiation

Notwithstanding the reforms introduced by the DDADUE legislation, French collective redress continues to rely primarily on an individualised compensation model. Once liability has been established, the judgment on liability defines the criteria for membership of the group, the period during which eligible persons may join the proceedings, and the conditions under which compensation claims must be submitted. Individuals wishing to benefit from the judgment must therefore actively adhere to the group by submitting a claim either directly to the defendant or to the claimant entity, which acts as their representative for compensation purposes. This mandate is strictly limited to the conduct of the representative action and, where necessary, to the enforcement of the judgment; it neither constitutes nor implies membership of the claimant association or trade union. Following the opt-in phase, the defendant is required to compensate, within the time limit fixed by the court, those individuals who satisfy the criteria established in the liability judgment and who have validly joined the group. The process thus remains centred upon the individual assessment and payment of compensation to each participating group member. Where a claimant's request for compensation is rejected or only partially satisfied, the

66 Charter of Fundamental Rights of the European Union, 2000, OJ C364/1, Art 47.
67 Portugal, Cyprus, the Netherlands and Hungary.
68 Belgium, Luxembourg, Slovenia; Maria José Azar-Baud, Current Developments Implementation of the Representative Actions Directive across the European Union: State of Play (2025) 44(2) Civil Justice Quarterly 124; id, Winds of Change (n 2).

individual concerned may bring the matter before the court that rendered the liability judgment, subject to the conditions and limitations laid down therein, in order to obtain judicial determination of his or her individual loss. This mechanism, commonly referred to as the *individual liquidation of damages*, reflects the continued preference of French law for a decentralised and claimant-driven approach to compensation, even after the adoption of a unified collective redress framework.

Instead, where conditions are met for a negotiation of the enforcement of the decision on the merits, and provided that the action does not concern bodily harm, the court may order a *collective procedure for settlement of damages*, permitting the plaintiff to negotiate with the defendant the amount of the compensation owed to each group member within the findings/scope of the liability judgment.[69] The period for negotiation may not be less than six months, and in the absence of agreement, the court directly assesses "the losses likely to be compensated.[70] Judicial homologation must be refused where parties' and members' interests appear insufficiently protected or where a conflict of interest arises.[71] A civil fine of up to €50,000 may be imposed against any party obstructing settlement in a dilatory or abusive manner.[72] All compensation sums are immediately deposited at the *Caisse des dépôts et consignations*, specifically for the purpose of settling the case giving rise to the action.[73]

4. THE CONFIRMATION OF THE MYTH OF THE FRENCH EXCEPTION

The preceding sections have demonstrated that, while the French legislature has undertaken a significant overhaul of the collective redress framework in the course of implementing Directive (EU) 2020/1828, several of the defining characteristics of the French model continue to endure. The historical (low) record of representative/group actions brought since 2014 confirms that these concerns are warranted. The small number brought was predominantly pending or dismissed, with minimal successful compensation.[74] Within this context, the DDADUE reform has brought with it several observable improvements and therefore appears to embody both continuity and change, combining genuine

69 DDADUE, Art 16.III.A.2.
70 Ibid.
71 DDADUE, Art 16.III.B.2.b; Art 16.I.E.
72 DDADUE, Art 16.III.B.2.b.
73 DDADUE, Art 16.III.B.3; CPC, Art 849-20.
74 Maria José Azar-Baud, 30 class actions filed to date in France (2021) 196 Revue Lamy Droit civil, Lamy 6998; Loïc Cadiet, Class Actions: Will They Work Better? (2020) 8-9 Procédures; Observatoire des Actions de Groupe <https://www.observatoireactionsdegroupe.com>.

innovations with the preservation of longstanding structural defects and gaps. Both the defects and the improvements are further analysed below.

4.1 Remaining Structural Defects and Gaps

Despite advances of the reform, important structural limitations remain such as the continued predominance of the late opt-in model, the absence of aggregate damages, and the persistence of an individualised approach to compensation with the consequence of the absence of a global solution. Altogether, they undermine the stated objectives of collective access to justice, rights effectiveness, system efficiency, and deterrence.

Among these shortcomings, the most serious is, undoubtedly, the opt-in system presents the clearest defect, ensuring many injured parties never receive compensation and making unlawful conduct economically rational where expected penalties fall below expected profits.[75] The removal of the simplified consumer procedure, previously provided for in Articles L.623-14 to L.623-17 of the Consumer Code, compounds this issue. The simplified mechanism required neither opt-in nor opt-out, allowing direct judicial compensation without active steps from victims where damages were standardised and identical.[76]

Despite the expansions in standing, the continued exclusion of ad hoc victim associations, unless they obtain the approval, remains a restriction. Evidentiary asymmetries are also not comprehensively addressed. There is a lack of pre-litigation disclosure requirements, a restrictive interpretation of CPC Article 142 powers (document production), and a lack of transposition of RAD Article 18 evidence provisions, and the absence of rebuttable presumptions potentially leaves essential evidence within defendant control.[77]

Finally, the absence of a global harm assessment of harm or fluid recovery and *cy-près* mechanisms for unclaimed compensation permits defendants to retain portions of illicit gains where victims fail to claim, in contradiction to the deterrence objectives the civil penalty regime is designed to promote. Comparative approaches offer more exemplary models: Portugal allocates unclaimed amounts to the Fund for the Promotion of Consumer Rights and the Institute for the Management of Judicial Facilities, Luxembourg directs such sums to the State, while Sweden allocates them to the designated entity for future consumer protection initiatives.[78]

Procedural caution shows a cultural resistance to "Americanisation" of the collective litigation model and is the historical French approach to collective

75 Azar-Baud, Le Renouveau (n 21).
76 Consumer Code, Arts L623-14 to L623-17 (repealed by DDADUE, Art 16.XVII.A); Circular CIV/09/2025.
77 Azar-Baud, Le Renouveau (n 21); RAD Art 18; CPC, Art 142.
78 Azar-Baud, Le Renouveau (n 21).

litigation, but it means the aim of making justice genuinely accessible has not fully materialised. Without further reform addressing the said limitations, French group actions risk remaining "symbolic instruments" rather than effective collective rights enforcement mechanisms.

4.2 Accomplishments of the Reform

The new regime has undeniably addressed several longstanding criticisms by unifying previously fragmented regimes, broadening standing, strengthening injunctive relief, and creating innovative mechanisms designed to support the financing of representative actions. As it has been shown, the adoption of a universal scope has removed sectoral exclusions and disparate treatment of similarly situated victims. Standing expansion, notably to the Public Prosecutor and cross-border qualified entities, addresses prior institutional limits to the pool of potential claimants.[79] Procedural streamlining, including the elimination of mandatory prior formal notice outside the area of employment, the rapid dismissal mechanism, and specialisation within the judiciary, indicates future enhanced efficiency.[80] Civil penalty provisions introduce genuine deterrent dimensions, which would be lacking from purely compensatory models; explicit third-party funding authorisation recognises the economic realities of collective redress, and a national public register of ongoing group actions enhances transparency.[81]

Yet, if one feature more than any other confirms the enduring myth of the French exception, it is undoubtedly the introduction of the civil penalty for profitable wrongdoing (*sanction civile pour faute lucrative*). The civil sanction for *faute lucrative* is a hybrid civil enforcement mechanism aimed at neutralising the economic incentives of unlawful conduct. By authorising courts to impose a financial penalty calculated by reference to the profit derived from a deliberate breach of legal or contractual obligations, the French legislature has introduced into civil liability law a deterrent instrument that transcends the traditional logic of compensation. Positioned at the intersection of disgorgement, civil punishment and collective enforcement, the mechanism constitutes one of the most innovative features of the 2025 reform and arguably the clearest manifestation of the enduring French exception in the field of collective redress.

The *faute lucrative* is characterised by three cumulative elements. The first distinguishing one is legal in nature and stems from its transversal scope.[82] Any breach of statutory or contractual obligations arising from a professional activity

79 DDADUE, Arts 16.I.C.3 and 16.I.C.4.
80 DDADUE, Art 16.I.F; Decree no 2025-653 of 16 July 2025; CPC, Art 849-2-1.
81 See Azar-Baud, Le Renouveau (n 21).
82 Fournier de Crouy, L'entrée de la faute lucrative (n 65) para 8; Civil Code, Art 1254.

may fall within its ambit, irrespective of the sector concerned. The mechanism is therefore designed as a general instrument of civil enforcement rather than a sector-specific sanction. The second is a material element, which requires both the existence of an unlawful economic benefit—whether in the form of additional profit or avoided costs—and harm suffered by multiple persons placed in a similar situation.[83] The third, and most distinctive, is the moral element. The defendant must have deliberately engaged in the unlawful conduct with a view to obtaining an undue economic advantage. The decisive inquiry is therefore whether the professional knowingly disregarded a legal or contractual obligation in pursuit of greater profit.[84] Where such intentional conduct is established, the *faute lucrative* may give rise to the civil sanction provided by Article 1254 of the Civil Code.

The penalty itself is subject to significant procedural safeguards. It may be imposed only upon application by the Public Prosecutor before the judicial courts or by the Government before the administrative courts, and only through a specially reasoned decision.[85] The amount must be proportionate both to the gravity of the misconduct and to the economic benefit derived therefrom. The legislation further provides that the sanction may not exceed twice the illicit profit in the case of natural persons and five times that amount in the case of legal persons. Significantly, the sanction is expressly excluded from insurance coverage, thereby ensuring that its deterrent effect cannot be neutralised through risk transfer mechanisms.

The device though is also subject to some limitations. Some authors have considered that the automatic allocation of the proceeds of the sanction to the fund dedicated to the financing of group actions may, in certain circumstances, produce questionable outcomes.[86] Further, the economic gain derived from a profitable wrongdoing does not necessarily correspond to the loss suffered by the victims. The decision rendered against Amazon France Logistique by the French Data Protection Authority provides a useful illustration. The economic

[83] Civil Code, Art 1254 (conditions no 1 and 2); Fournier de Crouy, L'entrée de la faute lucrative (n 65) para 10. See also Boris Starck, Essai d'une théorie générale de la responsabilité civile considérée en sa double fonction de garantie et de peine privée, thèse, Paris, 1947; Alexis Jault, La notion de peine privée, thesis, LGDJ, 2005; Suzanne Carval, La responsabilité dans sa fonction de peine privée, thesis, LGDJ, 1995; Nathalie Fournier de Crouy and Bruno Deffains, La justice économique est-elle dissuasive? (2025) 3 Revue internationale de droit économique (XXXVIII) 5–38; Amandine Cayol, Consécration d'une amende civile en cas de faute lucrative cause de dommages sériels (2025) Dalloz Actualité; Frédéric Buy, Loi DDADUE 5: la sanction des fautes lucratives dans le Code civil (2025) 5 Revue Pratique Droit des Affaires; Ismail Skander, La sanction civile en cas de faute dolosive ayant causé des dommages sériels (2025) Village-Justice.

[84] Fournier de Crouy, L'entrée de la faute lucrative (n 65) para 9.

[85] Civil Code, Art 1254.

[86] Fournier de Crouy, L'entrée de la faute lucrative (n 65) para 5.

benefit allegedly derived from unlawful employee surveillance bore no direct relationship to the moral harm suffered by the employees concerned.[87]

However, while the disgorgement of illicit profits does not always reflect the actual interests of the victims or the extent of the damage sustained, its objective is not access to redress but deterrence. For this reason, the introduction of the *faute lucrative* introduces a remarkable development in French civil liability law, which had traditionally been anchored in the principle of compensation rather than punishment.

More importantly, it represents the most distinctive feature of the French implementation of Directive (EU) 2020/1828. While Recitals 10 and 42 of the Directive expressly state that punitive damages should be avoided and that the Directive should not make it possible to impose punitive damages on infringing traders, France has chosen to go beyond the minimum requirements of the European framework by creating a novel deterrent mechanism aimed at depriving wrongdoers of the benefits of unlawful conduct. Although formally distinct from punitive damages, the civil sanction for *faute lucrative* undeniably introduces a deterrent dimension into French collective redress. In this respect, more than any other aspect of the reform, it confirms the enduring reality—and perhaps the enduring myth—of the French exception in the field of collective litigation.

The French reform reflects broader tensions in Europe between national procedural autonomy and the need for harmonisation. The comparative view suggests that the French choices reflect cultural caution rather than a consensus across European practice. Nonetheless, the *sanction civile pour faute lucrative* makes France noteworthy among Member States transposing the RAD, by embedding a punitive civil liability mechanism within the collective redress regime, confirming the "myth of the French exception" in this area.[88]

87 Ibid, CNIL, Délibération de la formation restreinte no SAN-2023-021 of 27 December 2023 regarding Amazon France Logistique.
88 Azar-Baud, Le Renouveau (n 21).