

Class/collective actions in Spain: overview

by Ainhoa Veiga Torregrosa, Araoz & Rueda Abogados

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A Q&A guide to class/collective actions in Spain.

The Q&A gives a high-level overview of class/collective actions, including current trends; the regulatory framework; limitation periods; standing and the procedural framework for bringing an action; funding and costs; disclosure; damages and relief; settlement; appeals; alternative dispute resolution and proposals for reform.

Overview of class/collective actions and current trends

1. What is the definition of class/collective actions in your jurisdiction? Are they popular and what are the current trends?

Definition of class/collective actions

Spanish law does not define class/collective actions. Spanish Civil Procedural Act (*Ley 1/2000 de Enjuiciamiento Civil*) (LEC) distinguishes between:

- Actions to defend the “collective interests” of consumers and end users, where the members of the affected group are determined/identified or can be easily identifiable.
- Actions to defend the “diffuse interests” of consumers and end users, where the members of the affected group are undetermined or cannot be easily identified.

The distinction between collective interests and diffuse interests is material as it dictates the action’s legal standing (*see Question 5*).

Class/collective actions regulated in the LEC are in principle limited to the protection of consumers’ interests and rights, and to matters concerning equal treatment between men and women. Therefore, these actions generally seek collective redress against unlawful conduct in those areas. This means that collective redress is pursued for wrongdoings in the contracting and delivering of goods and services of common, ordinary and generalised use or consumption. For example, in financial services, a consumers’ association could not bring a collective action on behalf of non-professional investors where the relevant financial products are not deemed to be consumer goods (*Ruling of the Supreme Court, No. 656/2018, 21 November 2018*).

While Spanish law provides for procedures such as the joinder of individual claims (*Article 72, LEC*), these cannot be considered as class/collective actions.

Use of class/collective actions

Spain provides for collective redress instruments in various specific sectors, including consumer, environment, unfair competition, anti-discrimination and labour. However, in some of these sectors, there is no class/collective action available to claim for compensation. Compensatory collective redress is only expressly acknowledged regarding infringements of consumers' rights, and challenges of terms and conditions in standard form contracts.

In the past few years, collective redress, both injunctive and compensatory, has been widely used against banks regarding unfair terms in consumer banking contracts and financial services.

Current trends

Most of the class/collective actions before the Spanish courts concern financial services and utilities, but there is an increase in collective redress initiatives in some other sectors.

Following the Cambridge Analytica incident, a Spanish consumers' organisation (*Organización de Consumidores y Usuarios*) (OCU), is leading in Spain the initiative launched by Euroconsumers (an alliance of four leading consumers' organisations in Spain, Portugal, Belgium and Italy) to start compensatory collective redress proceedings against Facebook on behalf of Facebook's users. The estimated damage amounts to, at least, EUR200 per person. In July 2019, the Madrid Commercial Court No. 5 of Madrid declared the action admissible to proceed (*admitida a trámite*).

As discussed above, Spanish law does not expressly provide for class/collective redress mechanisms against data protection infringements, unless these can also be considered as consumer law infringements. The extent to which Articles 80 and 82, General Data Protection Regulation (EU/2016/679) (GDPR) might hinder this action remains to be seen.

The most recent developments on class actions are related to revolving cards. After the judgment of the Spanish Supreme Court, declaring revolving cards contracts with interest rates of above 20% as usurious (*Ruling of the Supreme Court, No. 149/2020, 4 March 2020*) the Spanish consumer's organisation (*Asociación de Usuarios Financieros*) (Asufin) has sought injunctive relief. In this regard, on 4 June 2020, Commercial Court No.4 of Valencia declared the action admissible to proceed (*admitida a trámite*).

Furthermore, if the proposed Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC (Proposed Directive) is finally adopted, Spanish laws will have to be amended. On 22 June 2020, the European Parliament and the European Council negotiators agreed a revised text for the Proposed Directive.

According to said Proposed Directive, changes in the following areas will be introduced:

- The transparency of the funding of consumer associations.
- The disclosure of information.
- The allocation of compensation damages to the protection of collective interests.
- The supervision of transactional agreements.
- A *iuris tantum* presumption for decisions in other EU member states (as in antitrust law) will have to be introduced.

However, the specific effects of this Proposed Directive are still unknown.

Regulatory framework

2. What are the principal sources of law and regulations relating to class/collective actions?
What are the different mechanisms for bringing a class/collective action?

Principal sources of law

There is no unified or comprehensive source of law regulating class/collective actions. Since 1985, the legal system has distinguished between individual and collective interests, acknowledging the latter by granting standing to those associations and groups affected or legally qualified to defend and promote collective interests (*Article 7.3, Organic Law 6/1985 on the Judiciary (Judicial Power Organisation Act)*). In addition, collective actions in Spain are shaped by EU consumer protection legislation.

Before the Judicial Power Organisation Act, consumer protection law had entitled associations of consumers and users to file lawsuits to defend their members and the general interests of consumers and users (*Article 20.1, General Law for the Protection of Consumers and Users of 1984 (later derogated and consolidated, following subsequent reforms, by Royal Legislative-Decree 1/2007 for the Protection of Consumers and Users, which is currently in force)*).

Further, in addition to unfair terms in consumer contracts, Spanish law had provided for injunctive collective redress in specific areas such as illicit advertising and unfair competition.

However, it was not until the enactment of the LEC, in 2000, that collective interests received a more general acknowledgement for associations and groups of consumers and end users to stand for collective compensatory redress. The LEC does not, however, provide any specific and comprehensive proceeding, but only dispersed and non-exhaustive procedural rules, mainly on standing, effects and enforcement of the judgements rendered in collective lawsuits (in particular, *Articles 6.1.7, 7.7, 11, 13.1, 15, 78.4, 221, 222.3, 256.1 and 519, LEC*).

Principal institutions

The court in which a collective action can be heard depends on the legal grounds brought by the claimants and on the defendant's legal status (for example, whether they are in the public sector, and so on). Therefore, civil/commercial courts, administrative courts, labour courts and criminal courts may have authority to decide on a collective action.

The first significant case on collective compensatory redress in Spain was decided by the criminal chamber of the Supreme Court in 1997 on the *Colza Oil Case (Ruling of the Supreme Court of 26 September 1997)*. Following criminal proceedings arising from a criminal offence (oil poisoning) causing very serious personal injury and death to a large number of people, one of the leading Spanish consumer organisations, the OCU, stood on behalf of more than 20,000 people seeking subsidiary civil liability and compensation for all damages caused by the established criminal offence. The criminal chamber of the Supreme Court awarded more than EUR3,000 million to the people officially listed as affected by the oil poisoning, even though they were not directly represented in the proceedings. This was an exceptional case as, until the LEC in 2000, consumer associations could not seek compensation for people other than their members or by virtue of a specific authorisation.

This Q&A focuses mainly on class/collective actions of a civil/commercial nature, concerning private (civil/commercial) law that are regulated by the LEC where civil/commercial courts have jurisdiction.

Different mechanisms

3. Are class/collective actions permitted/used in all areas of law, or only in specific areas?

Collective redress before the civil/commercial courts can be sought for both injunctive and compensatory relief, provided the corresponding actions involve consumers' or users' rights and interests. Article 3 of Royal Legislative-Decree 1/2007 for the Protection of Consumers and Users provides a broad definition of consumers and users, to include any individual, company or other entity acting for a purpose unrelated to their business activity, trade or profession. On this basis, provided a claim is brought on valid and existing legal grounds, class/collective actions could potentially be used in many more areas of law than those strictly characterised as related to "consumer protection".

Product liability

Royal Legislative-Decree 1/2007 for the Protection of Consumers and Users consolidates the rules on liability for defective products. Provided defective products are sold to consumers and users, a class/collective action could be available under the LEC to seek compensatory relief.

Environmental law

Environmental issues can fall under the definition of "collective interests" or "diffuse interests" of consumers and users, enabling a class/collective action to seek both injunctive and compensatory relief under the LEC.

For example, following the Volkswagen emissions scandal in 2017 (*Dieseldgate case*), the OCU (a national consumer organisation) filed a class/collective action before the commercial courts of Madrid against VW-Audi Spain Group, which more than 7,000 consumers have joined. In April 2018, Commercial Court No. 1 of Madrid declared the action admissible to proceed (*admitida a trámite*). The OCU's claim amounts to more than EUR22 million, about EUR3,000 per consumer affected. The main hearing was held on 17 February 2020 and the ruling is pending.

Competition law

A class/collective action to seek both injunctive and compensatory relief is available under the LEC, provided the relevant competition infringement affects the rights and interests of consumers and end users.

Pensions disputes

Depending on the origin of the dispute and the grounds on which the relevant claim is brought, class/collective actions could also be available under the LEC to deal with issues raised in pensions disputes (for example, when redress is sought by or on behalf of consumers against fraudulent activities or against unfair or misleading conditions).

Financial services: consumer redress

A significant number of collective actions recently decided concern financial services, on grounds provided in regulations on unfair terms in consumer contracts. Significant procedural issues regarding class/collective actions have been raised and ruled in claims relating to the sale to consumers of financial products and services, some requiring preliminary rulings of the Court of Justice of the European Union (CJEU).

For example, in joined cases C-381/14 and C-385/14, the CJEU on 16 April 2016 interpreted Article 7 of the Unfair Terms in Consumer Contracts Directive (93/13/EEC). It ruled that Article 7 prevents courts from automatically suspending individual

actions where a collective action filed by a consumer association is ongoing, allowing both actions to coexist.

Other areas of law/policy

Depending on the origin of the dispute and the grounds on which the relevant claims are brought, class/collective actions may be available under the LEC to seek injunctive and compensatory relief whenever consumers' and end users' rights and interests are affected.

Limitation

4. What are the key limitation periods for class/collective actions?

There are no specific or unified limitation periods for class/collective actions. Different limitation periods may apply depending on the nature of the action exercised and the relevant legal grounds.

For example, while the general limitation period for a tortious claim is one year from the day the claimant was aware of the damage (*Article 1968, Civil Code*), because of the Antitrust Damages Directive (2014/104/EU), Spanish law now provides for a limitation period of five years for compensatory redress actions derived from infringement of anti-trust rules. More generally, where no particular statute of limitation has been provided for a particular action, Article 1964 of the Civil Code provides that personal actions become barred after five years.

Standing and procedural framework for bringing an action

Standing

5. What are the rules on standing for bringing a claim in a class/collective action?

Definition of class

Spanish law does not define "class" in this context. Standing to bring actions depends on the sector. For example, trade unions have standing in labour law actions, and associations whose purpose is the protection of equal treatment between men and women have standing to bring actions concerning anti-discrimination law. More generally, the Public Prosecutor has standing. However, this Q&A focuses on class/collective actions of a civil/commercial nature generally contemplated in the LEC.

Potential claimant

Spanish civil procedural rules for collective redress, codified in the LEC, distinguish between "collective" and "diffuse" interests (*Article 11, LEC*) (see [Question 1](#)). While this distinction lacks sufficient clarity in Spanish case law, it dictates

standing to sue.

If the persons affected or injured by the harmful event are identified or are easily identifiable, the following have standing to sue for relief on behalf of these collective interests:

- Associations of consumers and users.
- Entities legally incorporated with the purpose of defending consumers' and users' rights.
- Groups of affected consumers or users. These only have capacity to sue provided the group is made up of the majority of the affected persons (*Article 6.1.7, LEC*).

(*Article 11.2, LEC*.)

Before a lawsuit is filed for the redress of collective interests, all the members of the class must be notified (*Article 15.2, LEC*).

If the affected or injured persons are undetermined or cannot be easily identified, only consumer organisations that are considered representative under the relevant regulations have standing to sue for relief on behalf of these diffuse interests (*Article 11.3, LEC*). Prior notification is not required; the court notifies once the lawsuit is filed (unless the lawsuit only seeks injunctive relief, in which case notification is not necessary (*Article 15.1, 15.3 and 15.4, LEC*)).

Law 44/2006 of 29 December 2006 requires representative consumer organisations to be members of the Spanish Council of Consumers.

The Public Prosecutor has standing in all cases where Spanish law provides for collective actions.

Claimants outside the jurisdiction

Following EU legislation, qualified entities from any EU member state may have standing in Spain to seek injunctions for the protection of consumers' rights and interests (*Notification from the Commission on Article 4(3), Injunctions Directive (2009/22/EC)*), concerning entities qualified to bring an action under Article 2 of the Injunctions Directive). However, it appears that there are no reported cross-border cases where a qualified entity of another member state has filed for an injunction before the Spanish courts.

Spanish courts' international jurisdiction is also regulated in the Recast Brussels Regulation ((*EU*)1215/2012) and, where EU law or an international convention does not apply, in Articles 22 ff. of the Judicial Power Organisation Act.

None of this legislation provides specifically for collective actions. In addition, abusive "forum shopping" may eventually be sanctioned at the stage of recognition and enforcement on public policy grounds.

There is no case law, for example under the Recast Brussels Regulation, on whether class/collective action regulation in the jurisdiction of origin might cause a Spanish court to refuse to recognise or enforce a foreign judgment in Spain. Where neither the Recast Brussels Regulation nor other international conventions apply, Article 47 of Law 29/2015 on International Legal Cooperation on Civil and Commercial Matters requires Spanish courts to recognise and enforce judgments issued in class/collective actions, unless the international jurisdiction of the court of origin was not based on a forum equivalent to those provided for under Spanish law.

In addition, the relevant class action judgment or settlement cannot be invoked against affected parties who were not party to the foreign collective action, unless the action had been properly publicised in Spain.

Professional claimants

Assignment of claims is lawful. A third professional/commercial party could purchase a consumer's damages claim in

exchange for a share of the proceeds of the action (*Article 1526, Civil Code*). The potential debtor/defendant is free from the potential debt to the assignee, if the debtor/defendant had paid the original rightholder the amount claimed before having valid notice of the assignment.

However, because of eventual procedural risks and hurdles, professional/commercial parties acting in Spain (for example, litigation funds) tend to invest in claims rather than purchasing them.

Qualification, joinder and test cases

6. What are the key procedural elements for maintaining a case as a class action?

Certification/qualification

Spanish procedural law does not include a certification mechanism. At the lawsuit admission stage, the court seized decides the capacity/standing of the claimant/s and the nature of the claim (for example, whether the claim is for the protection of collective interests or diffuse interests):

- If the claimant is an association of consumers and users, and the lawsuit is aimed to defend collective interests, the court must first verify that the association is legally incorporated under the general regulations of Organic Law 1/2002 of Associations. Further, the association must comply with the requirements of Royal Legislative-Decree 1/2007 for the Protection of Consumers and Users, to be considered a consumers' and users' association (that is, it must be non-profit, be formally registered and have the purpose of defending the rights and interests of consumers and users).
- If the claimant is an entity legally incorporated and the lawsuit is for the defence of collective interests, the court must examine whether its statutory purpose is the defence of the rights and interests of consumers and users (despite not being formally a consumers' association).
- If the claimant is a group of affected consumers or users, the court must examine whether the group represents the majority of the consumers or users affected (*Article 6.1.8, LEC*).
- If the lawsuit is for the protection of diffuse interests, the court must verify that the claimant is a qualified consumers' and users' organisation considered representative (*Article 11.3, LEC*).

The claimant/s must comply with the procedural requirements of Articles 11 and 15 of the LEC. Before a lawsuit for the protection of collective interests is filed, the claimant must notify all the members of the class before filing the lawsuit (*Article 15.2, LEC*). Prior notification is not required if the lawsuit is filed for the protection of diffuse interests (*see Question 5*).

However, these rules are not straightforward (in particular, the issue of whether a lawsuit is for the protection of collective interests or diffuse interests). For example, in 2015, a representative consumers' organisation, *Facua*, filed a suit against *Telefonica-Movistar* before the Madrid commercial courts, for an allegedly illegal unilateral price increase applied to almost four million users. In 2012, these users had contracted for an integrated telecommunications/internet/content services package advertised as a "forever price" product. The lawsuit:

- Requested an injunction and future prohibition of the price increase under the rules prohibiting unfair conduct against consumers.

- Claimed for collective compensatory redress, asking the court to order reimbursement of the amounts that had been illegally charged to consumers.

Initially, the Madrid Commercial Court agreed to hear the lawsuit. However, following the defendant's statement, it suspended the preliminary hearing and dismissed the case for procedural inadequacy. The court found that the lawsuit was for the protection of collective interests rather than diffuse interests and, therefore, all members of the class should have been notified. On 21 September 2018, the High Provincial Court of Madrid confirmed the lower commercial court's ruling (*Auto 148/2018, de la Audiencia Provincial de Madrid, Sec. 28*). The court considered that the lawsuit was for the protection of collective interests rather than diffuse interests. Therefore, having failed to comply with the prior procedural requirement to notify the members of the class, the claimants' claims could not be substantiated.

Minimum/maximum number of claimants

There is no minimum/maximum number of claimants required to file a class/collective action. If the claimant is a group of consumers and users, it must attest that it represents the majority of the consumers and users affected.

Joining other claimants

Individuals cannot initiate a class/collective action for injunctive nor for compensatory redress (although an individual can bring an individual claim to seek redress on the same grounds as an ongoing collective action (*Judgment of the CJEU, of 16 April 2016, on Joined Cases C-381/14 and C-385/14 and Judgment of the Spanish Constitutional Court No. 148/2016, of 19 September 2016*)). Following the filing of a collective action, consumers harmed by the product or service that is the subject of the collective action must be notified, so that they can enforce their individual rights and interests (*Article 15.1, LEC*). Following the formal admission of the lawsuit, the court makes public announcements in media channels with territorial coverage.

If the claim is for the protection of collective interests, the claimant must have notified all affected persons before filing the lawsuit. In this case, following the court's public announcement (*see above*), the affected consumers can participate in the proceedings at any time (*Article 15.2, LEC*).

If the claim is for the protection of diffuse interests, the court's public announcement automatically stays the proceedings for up to two months. After the end of the stay period, the proceedings are resumed to include those consumers who had responded in time to the court's announcement. After that, no individual consumer can intervene in the proceedings (*Article 15.3, LEC*). However, the consumers can still benefit from a favourable judgment at enforcement stage (*Articles 221 and 519, LEC*).

Test cases

Spanish law does not provide for test case procedures in class/collective actions.

Timetabling

7. What is the usual procedural timetable for a case?

While procedural times and deadlines for the parties are applied strictly, those applicable to the courts are more flexible. Therefore, case timetables can vary widely.

Once the lawsuit is lodged, the court decrees its formal admission and the defendant is served. The defendant has 20 days from service to lodge its statement of defence. The defendant may raise jurisdictional, competence or inadequacy issues to challenge the admission of the lawsuit. In this case, the court rules on these preliminary objections before resuming the substantiation of the claim. Following the statement of defence, the court should schedule a preliminary hearing within 20 days. However, in practice, this deadline has is never met by the courts; it has proved unrealistic as it depends on the court's agenda and workload.

Following the preliminary hearing, provided the case presents factual issues, the court schedules a hearing. Again, while the LEC requires the court to hold the hearing within 20 days, this rarely happens. In addition, while the LEC requires the court to issue its judgment within 20 days, this almost never happens. As stated above, these deadlines are unrealistic and there are no consequences for failing to meet them.

The timeframe can be longer if the court stays proceedings following the announcement of the claim (*see Question 6*).

Current statistics show that a judgment in a first instance hearing on a class/collective action can take from one and a half years to two years. There are cases where it has taken or is taking more than three years.

On 14 March 2020, through Royal Decree 463/2020 ("RD 463/2020"), the Spanish government declared the state of emergency for the management of the health crisis caused by the 2019 novel coronavirus disease (COVID-19). Among other measures, Royal Decree 463/2020 established the suspension of court proceedings and procedural terms. The suspension lasted for almost three months, until 5 June 2020, causing a huge congestion of cases in the Spanish courts.

Effect of the area of law on the procedural system

8. Does the applicable procedural system vary depending on the relevant area of law in which the class/collective action is brought?

The applicable system varies depending on the relevant area of law in which the class/collective action is brought. This Q&A focuses on civil/commercial class/commercial actions. It does not contemplate other class/collective actions that can be brought before the administrative and labour courts, which have varying procedural rules.

Funding and costs

Funding

9. What are the rules governing lawyers' fees in class/collective actions?

There is no specific regulation regarding legal costs and lawyers' fees in class/collective actions.

The general rule is that the parties can freely agree with their lawyers on the fees, including contingency or success fees. However, if the court allocates the costs (including the lawyers' fees) to the losing party, the court might consider whether the lawyers' fees (if disputed) are reasonable in light of the scale agreed by the relevant regional bar association.

10. Is third party funding of class/collective actions permitted?

Spanish law does not regulate third party funding. Therefore, third party funding is permitted. Because of eventual procedural risks and hurdles, professional/commercial parties acting in Spain (for example, litigation funds) tend to invest in claims rather than purchasing them (see [Question 5](#)).

11. Is financial support available from any government or other public body for class/collective action litigation?

Consumers' and users' associations registered with the relevant National Registry (such as the OCU, see [Question 3](#)) have the right to receive public subsidies and legal aid, including a court fees exemption (*Article 37(b), Royal Legislative-Decree 1/2007 for the Protection of Consumers and Users*). The administrative Order SCB/1198/2019 of 4 December 2019, establishes the regulation and procedure for granting subsidies to consumer associations.

12. Are other funding options available to claimants in class/collective actions?

There are no other funding options available to claimants in class/collective actions. It appears that there are no insurance products specifically focused on class/collective actions.

Costs

13. What are the key rules for costs/fees in class/collective action litigation?

Costs in class/collective action litigation in Spain are subject to the general rules on costs (*Articles 241 ff., LEC*).

The LEC provides for the following costs and expenses:

- Lawyers' fees and mandatory court agents' fees (*procuradores*).
- Public announcements or notices required during the proceedings.
- Experts' fees and those other costs related to taking or obtaining evidence.
- Deposits required to lodge appeals or formal complaints provided for in the LEC.

The general rule is that the loser pays. However, if the issues are particularly complex, the courts do not always apply this rule.

There is no specific provision relating to settlements. The parties agree on the allocation of costs. If the claimant drops the case, provided it is without the defendant's consent, the claimant bears the costs (*Article 396, LEC*).

Key effects of the costs/funding regime

14. What are the key effects of the current costs/funding regime?

The "loser pays" principle deters frivolous actions, in particular those leading to massive litigation involving very high legal costs.

Although associations of consumers and users can access subsidies and legal aid (*see Question 11*), they do not cover all litigation costs, which must be paid in advance.

Disclosure and privilege

15. What is the procedure for disclosure of documents in a class/collective action?

There is no special procedure for disclosure of documents in a class/collective action. The general rules apply.

Before litigation

Article 256 of the LEC regulates pre-trial disclosure. Disclosure is limited to information and documents relevant and necessary to prepare the lawsuit and within its scope. In particular, in class/collective actions for the protection of collective interests, the potential claimant can ask the court to take measures aimed at identifying the persons affected by the unlawful act (*Article 256.1.6, LEC*).

The application for preliminary measures is substantiated in a pre-trial procedure heard by the court with jurisdiction and competence to rule on the main proceedings. The claimant has one month to lodge the lawsuit after completion of the preliminary measures (*Article 256.3, LEC*).

If there are reasonable grounds to fear that evidence will be lost before the disclosure phases of the trial, the claimant can ask the court to order measures to secure evidence before the proceedings begin (*Article 293, LEC*). These measures are also available for all parties once the proceedings have started. If a measure to secure evidence is taken at the pre-trial stage, the claimant has two months to file the lawsuit, failing which the evidence is invalidated (*Article 295, LEC*).

Following the transposition of the Antitrust Damages Directive (*2014/104/EU*) by Royal Decree-Law 9/2017, the LEC includes more specific and wider provisions on access to information and documentation both at pre-trial stage and during the proceedings. These provisions are only available when a class/collective action pursues compensatory redress to consumers harmed by an anti-trust infringement.

During litigation

Both the lawsuit and the statement of defence must incorporate the evidence that each party considers necessary to support their respective positions (*Article 265, LEC*).

At the preliminary hearing (*audiencia previa*), provided the parties discard any settlement to end the dispute and there is no agreement on the factual elements of the case, each party submits to the court a proposal for evidence (subject to the court's decision on admissibility).

At this preliminary hearing, the parties can further ask the court to request the disclosure of documents from the other party that are not in the possession or at the disposal of the requesting party (*Article 328, LEC*). The parties are then precluded from bringing new evidence to the proceedings, unless new facts arise or become known to the parties.

16. Are there special considerations for privilege in relation to class/collective actions?

There are no special considerations for privilege in relation to class/collective actions.

A party can refuse to disclose documents and other information based, in particular, on attorney-client privilege, which also covers information exchanged between lawyers without the opponent's lawyer's consent.

Other professional privileges may also apply, such as that relating to medical information.

Parties can withhold commercially sensitive information and information protected as an industrial or business secret, but the court can order its disclosure in certain circumstances.

Evidence

17. What is the procedure for filing factual and expert witness evidence in class/collective actions?

The procedure to file or request factual and expert witness evidence in class/collective actions is the same procedure applicable to ordinary proceedings.

At the preliminary hearing, the parties can propose as many factual witnesses as they deem necessary, subject to the court's admission. The witnesses admitted are called by the court or the parties to give evidence on the date of the trial hearing.

When specific technical or scientific expertise is necessary to support alleged facts, the parties can provide expert witness reports. Parties' expert reports must be submitted with the lawsuit or with the statement of defence (*Article 336, LEC*). If the expert reports are not yet prepared, the parties must state that they are being prepared and submit them at least five days before the preliminary hearing (*Article 337, LEC*). The court can appoint experts too. Experts are usually called to the trial hearing, if either party requests this at the preliminary hearing and the court finds it useful to clarify issues raised in the expert opinions.

Defence

18. Can one defendant apply to join other possible defendants in a class/collective action?

Joining other defendants

A defendant can ask for the joinder of other defendants in the statement of defence, to be debated at the preliminary hearing (*Article 12, LEC*). The proposed defendant must have a "direct and legitimate interest" in the outcome of the lawsuit (*Article 13, LEC*).

Rights of multiple defendants

Where there is more than one defendant, each one can appoint their own lawyer and decide their own defence strategy. Alternatively, multiple defendants can appoint the same lawyer, instruct joint experts and undertake joint defence strategies by entering into joint defence agreements. This ensures that the exchange or disclosure of information is, when necessary, ring-fenced, preserves confidentiality and does not lead to a waiver of privilege in the case of conflicts.

Damages and relief

19. What is the measure of damages under national law in the field of class/collective actions?

Damages

The general tort law rules apply in class/collective actions.

Spanish law only provides for compensatory damages. No punitive damages are available. Therefore, courts only award

damages in the amount necessary to restore the claimant to the financial position he/she was in before the harmful event (including loss of profits). Moral damages (pain and suffering) can also be claimed.

In a class/collective action, the court ruling on an award of damages must determine the persons benefiting from it or establish the requirements to ask for damages at stage of enforcement of the judgment (*Article 519, LEC*).

Recovering damages

If a defendant pays damages awarded by a court's ruling that found joint and several liabilities, the defendant can recover from the other liable parties (*Article 1.144, Civil Code*).

Recovery from a co-defendant is limited to the part of the amount that would correspond to his liability (plus interest) (*Article 1.145, Civil Code*). If a co-defendant becomes insolvent and fails to pay, the debt of the other liable parties proportionally accrues to their shares of liability.

Interest on damages

No special rules apply to the payment of interest on damages awarded in class/collective actions. When fixing the amount of damages, the court usually incorporates in its calculation the amount resulting from applying interest from the date on which claimant suffered the damage.

20. What rules apply to declaratory relief and interim awards in class/collective actions?

Declaratory relief

Declaratory relief is typically sought in collective actions concerning standard terms in contracts regulated by Law 7/1998 on the General Conditions of Contracts. Provided the collective action only seeks a declaratory judgment, an expedited procedure is available through the so called "oral proceeding" (*juicio verbal*). This simplified procedure is regulated in the LEC and is a faster procedure where unlike in the "ordinary proceeding" there is no preliminary hearing.

Interim awards

In the field of class/collective actions, interim awards are not specifically regulated, but are subject to the general regime (*Articles 721 ff., LEC*).

The general principle is that interim measures can only be granted to ensure the effectiveness of an eventual favourable judgment. They can be requested at any time during the proceedings or before the lawsuit is filed. In they are requested before the lawsuit is filed, the claimant must file the lawsuit within 20 days.

To be granted an interim measure, the claimant must offer an adequate security or bond to guarantee payment of any damage caused to the defendant if the claim is later dismissed or the measure revoked. However, Article 728.3 LEC establishes that in proceedings in which an action for an injunction is brought in defence of collective interests or diffused interests of consumers, courts may exempt the claimant from the duty to provide said security. In this regard, courts will take into account the circumstances of the case, as well as the economic and social impact of the interested parties involved.

Settlement

21. What rules apply to settlement of class/collective actions?

Settlement rules

There are no specific rules applicable to settlements in the field of class/collective actions. Therefore, the same principles and rules that regulate settlements in individual actions apply (*Article 19, LEC*). A court hearing a class/collective action could only reject a settlement if it was contrary to law or negatively affected the public interest or third parties' legitimate interests.

Separate settlements

A settlement only binds the parties who have expressly agreed to it. Therefore, when there is more than one defendant, in principle, each one could ultimately agree different settlements.

Appeals

22. Do parties have a right to appeal decisions relating to class actions, such as a decision granting or denying certification of a class action?

Class/collective actions are subject to the appeal regime generally applied to individual actions. In particular, when a class/collective action is declared inadmissible because of inadequacy of the procedure, the claimant has the right to appeal the relevant ruling to a second instance court.

Alternative dispute resolution

23. Is alternative dispute resolution (ADR) available in class/collective actions?

Royal-Decree 231/2008 on the Consumer Arbitral System (*Sistema Arbitral de Consumo*) provides mechanisms to settle and adjudicate on consumers' and users' rights. In addition, in specific regulated sectors (for example, utilities), administrative proceedings are available where reimbursement of unlawful or undue paid amounts can be sought.

Regarding mediation, Law 5/2012 of 6 July on mediation in civil and commercial matters expressly excludes mediation for consumer affairs (Article 2.2.d).

Proposals for reform

24. Are there any proposals for reform concerning class/collective actions?

Spanish consumer organisations and Public Prosecutors have publicly acknowledged the need for adopting a specific law governing class actions in Spain. However, there are no formal proposals for reform. The non-binding Collective Redress Mechanisms Recommendation (2013/396/EU) has not affected Spanish regulation of class/collective actions.

If the Proposed Directive is finally adopted, several changes will have to be introduced into the Spanish legal regime (*see Question 1*).

Contributor profile

Ainhoa Veiga Torregrosa, Partner

Araoz & Rueda Abogados

T +34 319 02 33

F +34 319 13 50

E veiga@araozyrueda.com

W www.araozyrueda.com

Professional qualifications. Lawyer, Spain.

Areas of practice. EU/competition/antitrust; unfair competition; IP & IT; litigation and regulatory.

Recent transactions

- Advice to a leading Spanish construction company on cartel proceedings before the CNMC and the Courts regarding public procurement works.
- Advice to a leading Spanish construction company on antitrust proceedings before the CNMC regarding horizontal cooperation agreements.
- Advice to Avanza, a leading bus transportation company, on merger control proceedings regarding the acquisition of Grupo Pesa.
- Advice to Eastman Chemical/Taminco in surveillance proceedings including their closing regarding the commitments undertaken for the acquisition of Cepsa Química's assets in Spain.
- Advice to certain litigation funds on the possibility of investing in antitrust damages claims in Spain.
- Advice to a Spanish collective management organization of Intellectual Property Rights regarding competition related issues on the determination and collection of royalties.

- Advice to a Spanish cheese producer in trademark infringing proceedings before the Spanish Supreme Court.
- Advice to a textbook publishing company against unfair competition claims brought by certain competitors.
- Advice to a leading pharmaceutical group on competition related issues arising from public procurement proceedings to supply radiopharmaceuticals to public hospitals.
- Advice in a dawn raid conducted by the CNMC in the market for the acquisition of lead batteries and ongoing advice in the subsequent confidential proceedings.
- Advice to an Italian energy company on antitrust related aspects regarding the joint venture with Gas Natural Fenosa, Unión Fenosa Gas.

Languages. Spanish, English, French.

Professional associations/memberships. Madrid Bar, UIA, AEDC (Spanish Association for Competition Defence).

Publications. Various listed at www.araozyrueda.com/en/team/ainhoa-veiga/#1463060194595-7e803f45-f0b6ed50-3616.

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