

# Collective actions in Belgium

The Belgian parliament has approved a new bill introducing a brand new action for collective redress under Belgian law. The bill forms part of the new Belgian Code of Economic Law, and will enter into force on date still to be determined by Royal Decree. The entry into force is, however, expected to take place before the summer.

## Background

■ Following various recent cases (Lernout & Hauspie, Citibank, Fortis) which have shown that the existing legal system was not equipped to deal efficiently and within a reasonable time period with cases involving a large number of claimants, Belgium has become aware of the need to allow collective redress for mass damage. During recent years, various draft bills have been prepared by the government or by parliament. None of these initiatives had, however, so far led to the adoption of class action regulation, despite the political consensus. After the government had submitted an agreed draft bill to parliament last summer, the necessary legal framework has now, however, finally been approved by parliament. The bill's main aim is to incite individual consumers to enforce their rights, as they tend not to litigate given the uncertainties, the cost and the duration of legal proceedings. The scope of the law is, at present, limited to actions by consumers, but will serve as a test case which may lead to a

broader class action for other types of claimants. It remains to be seen whether the new regime will prove successful, given the important limitations on the financing of and the access to the proceedings, and the centralisation of cases with the already overburdened Brussels courts.

## Scope of the collective action

- Collective actions will only be available in disputes between **consumers** and undertakings. The action must relate either to an undertaking's breach of **contractual obligations**, or the infringement of **specific consumer protection rules**, in the context of, inter alia:
  - privacy and data protection and IP rights;
  - market practices;
  - competition;
  - regulation on banking and finance, pricing, insurance, medicine, professional liability, product safety, transport, travel and energy.

- A collective action will furthermore only be admissible if a "**collective damage**" exists, i.e. a physical, moral or material damage arising from a common cause, and giving rise to related factual and legal questions that can be treated in one and the same procedure.
- For physical or moral damage, an opt-in system applies. In other cases, the court must decide whether an **opt-in or opt-out system** is more appropriate, taking into account the arguments of the parties. Foreign claimants will always need to opt-

## Key features

- "Consumers only" collective action
- No securities class action
- Unique access through accredited class representatives
- Three stage proceedings with mandatory settlement negotiations
- Exclusive jurisdiction of the Brussels courts

in to benefit from the collective action.

- Collective actions will only be possible in situations where such action is more "**appropriate**" than an individual action. The court will assess this in light of the balance between the results expected to be achieved and the resources used.

### Who can initiate proceedings?

- The "class" can be represented only by a **class representative** for the purposes of the proceedings. Only (i) specific organisations with legal personality represented in the Council for Consumption (e.g. Test-Aankoop/Test-Achat) or accredited by the Minister, (ii) accredited organisations with legal personality, be it consumer organisations or other organisations whose purpose is closely linked to the collective damage, or (iii) the Ombudsman in the negotiation phase of the proceedings, can act in this capacity.
- Even when a class representative meets the above-mentioned criteria, the court must still assess, on a case by case basis, whether the class representative is adequate.

### Stages of the procedure

- The proceedings can be introduced either by a unilateral application filed by the class representative, or by a joint application filed by the representative and the undertaking which is held liable. The purpose of a joint application is to ask the judge to sanction a settlement agreement prenegotiated between the parties.
- In a first judgment, the judge rules on the **admissibility** of the claim.
- After the decision on admissibility, the claim enters a **mandatory negotiation** stage, taking between 3 and 6 months. During this phase the parties try to reach an agreement on the type of redress, the payment term, the modalities of the calculation, and the quantum of the damages. The damages can be calculated globally, or on an individual basis. Once an agreement is reached, the judge can only **refuse** to sanction it on limited grounds, in particular when the proposed redress or the term for compensation is "manifestly unreasonable". If no agreement is reached, the court will, in a ruling on the **merits** of the case, decide on the damages to be awarded. The compensation can

only cover the actual damage suffered, and punitive damages are excluded.

- Once the amount of the damages has been fixed, whether by a court sanctioned settlement agreement or by court decision, the court appoints a lawyer, state official or judicial agent, who will assure the **correct execution of the compensation mechanism**.
- If the harmed consumers do not claim all of the damages awarded, the court may decide how to compensate them, e.g. by obliging the undertaking to grant discounts on products or services.

### Other points of interest

- The law excludes financial compensation for class representatives other than compensation for their costs. Success fees are hence excluded.
- The law relaxes the rule according to which civil proceedings must be stayed pending criminal proceedings relating to the same facts, and disappplies certain other rules of civil procedure.
- The Brussels courts will have exclusive competence in relation to collective actions.

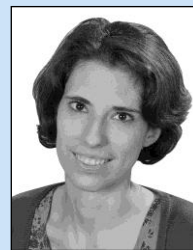
- Collective actions will only be possible for damage caused after the entry into force of the law. .

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