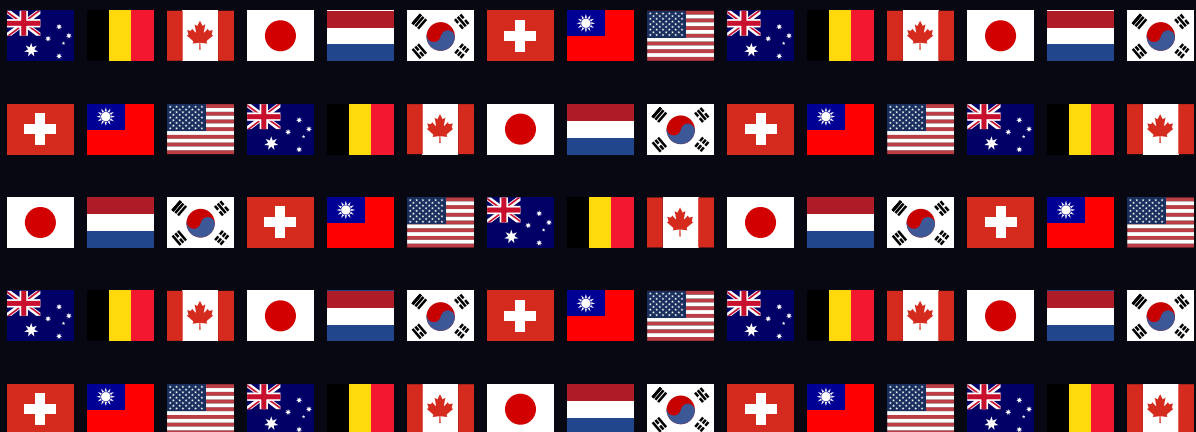


CLASS ACTIONS

Belgium



Class Actions

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including an overview of the court system, frequency of class actions, legal basis, types of claim and relief; class formation; procedure; defence; settlement; judgment and appeal; regulatory action; alternative dispute resolution; fees, costs and funding, including potential selling of claims; and recent trends

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OVERVIEW

Court system

Outline the organisation of your court system as it relates to collective or representative actions (class actions). In which courts may class actions be brought?

According to article XVII.35 of the Belgian Code of Economic Law (BCEL) and article 633-ter of the Belgian Judicial Code, the Enterprise Court of Brussels and, in case of appeal, the Court of Appeal of Brussels, have exclusive jurisdiction to hear class actions. Finally, a decision from the Court of Appeal of Brussels could be challenged before the Court of Cassation. This recourse is however limited to the review of legal or procedural errors.

Law stated - 17 September 2021

Frequency of class actions

How common are class actions in your jurisdiction? What has been the recent attitude of lawmakers and the judiciary to class actions?

So far, few class actions have been initiated. More precisely, since the entry into force of the Law of 28 March 2014 (Class Action Law) which introduced class action under Belgian law, only 10 of these actions have been filed. Two of these actions were filed in 2015, three in 2016, one in 2017, two in 2018, one in 2019 and one in 2020. Class actions are thus relatively rare and there are currently no signs that they would become more frequent in a soon future. However, it remains to be seen whether the Directive 2020/1828 on representative actions for the protection of the collective interests of consumers adopted by the European Parliament on 25 November 2020, will have any impact on the frequency of class actions once it will have been implemented in Belgian law. At this stage, we anticipate that the implementation of the directive is unlikely to bring any major increase to the number of class actions filed considering that Belgian law is already substantially in line with the directive.

Out of the 10 class actions filed so far, only one action has been decided on the merits (and the Court of Appeal rejected the claim as unfounded), four have been settled, four are still pending and one has been declared inadmissible.

Law stated - 17 September 2021

Legal basis

What is the legal basis for class actions? Is it derived from statute or case law?

The legal basis for class actions is laid down in articles XVII.35 to XVII.70 of the BCEL.

Law stated - 17 September 2021

Types of claims

What types of claims may be filed as class actions?

The BCEL contains an exhaustive list of the type of claims based on which class actions may be filed. More precisely, such actions can only be filed in case of:

- potential violations by an undertaking of its contractual obligations; or
- potential violation by an undertaking of certain Belgian and European laws and regulations that are exhaustively

listed in article XVII.37 of the BCEL (the Laws). The Laws relate to competition law, market practices and consumer protection, products and services safety, consumers' health and energy, among others. In this regard, it appears from the preparatory work of the Class Action Law that the legislator selected the Laws because they all provide (some) protection to consumers' rights.

The BCEL thus limits the types of claims that may be filed as class actions to certain violations committed by undertakings. The defendant in a class action will therefore always be an undertaking, which the BCEL defines as (1) any natural person exercising a professional activity as a self-employed person, (2) any legal person, or (3) any other organisation without legal personality, with certain exceptions. For instance, the federal State, the Regions and the Communities are excluded from the definition of undertaking.

Finally, a class action may only be brought on behalf of a group of (1) consumers or (2) small and medium-sized enterprises (SMEs) by a representative of the group members (the group representative). The claimant in a class action (ie, the group representative) can therefore only act on behalf of consumers and SMEs, to the exclusion of any other person or entity.

Law stated - 17 September 2021

Relief

What relief may be sought in class proceedings?

The only relief that may be sought is the compensation in kind or by equivalent (ie, money damages) of the collective damage incurred by the class members. Note that punitive damages do not exist under Belgian law so that no such damages may be awarded as the result of a class action (or any other action). Finally, in case of undistributed amount after that the compensation has been distributed to the class members, the judge must decide how this amount must be used. The judge enjoys a wide discretion in this regard and can, among other things, order the defendant to grant a compensatory indemnity such as a discount voucher or the free distribution of a product to the class members.

Law stated - 17 September 2021

Initiating a class action and timing

How is a class action initiated? What is the limitation period for bringing a class action? Can the time limit for bringing a class action be paused? How long do class actions typically take from filing to a final decision?

Under article XVII.42 of the BCEL, a class action is initiated by the Group Representative filing an application with the Enterprise Court of Brussels.

However, it results from a Court of Cassation's decision of 1 October 1990 that when a procedural rule provides that proceedings are brought by application, such rule does not, in principle, render void the bringing of proceedings by a writ of summons. In this regard, X. Taton and G. Hendrix explain that the Dutch-speaking Court of First Instance of Brussels (which used to also have jurisdiction for class actions prior to a legislative amendment of 2018) confirmed in its (unpublished) decision of 2 October 2017 that the use of a writ of summons by the Group Representative to file its class action was valid (see Taton, X and Hendrix, G, (2020) 'De Rechtsvordering tot Collectief Herstel – Overzicht van Rechtspraak (2014–2020)', R.D.C.-T.B.H, pp. 871).

Also, the BCEL requires that the application contains the following elements:

- evidence that the conditions for the admissibility of the class action are met;
- the description of the collective damage;
- whether the group should be composed on an opt-in or opt-out basis and the justifications thereof; and
- the description of the group on behalf of which the group representative is acting with an estimation of the number of injured people and the potential sub-categories within the group.

If the application does not contain these four elements, the court registry will ask the group representative to complete his application within eight days. If the group representative does not do so within this deadline, the application is deemed not filed.

As for the limitation period, there is not a single specific limitation period for bringing a class action. Rather, Belgian law provides for different limitations periods depending on the type of claims involved. The following limitation period are among the most relevant ones:

- contractual claims are subject to a 10-year limitation period; and
- extra-contractual claims are time-barred (1) after five years from the day following that on which the injured party became aware of the damage or its aggravation and of the identity of the person responsible or (2) in any case, after 20 years from the day following that on which the event which caused the damage occurred.

These limitation periods may be tolled or interrupted in different cases. In this regard, article XVII.63 of the BCEL provides for specific rules regarding the tolling of the limitation period for the individual action of the consumers or SMEs in case of class actions. More precisely:

- once the request for class action has been declared admissible, the limitation period of the consumers' or SMEs' individual actions that opted out from the group is tolled from the date of publication of the decision on the admissibility of the class action in the Official Gazette until the date on which the consumers or SMEs inform the court registry of their opt-out;
- if the class action ends because there is no valid group representative, the limitation period for the consumers' or SMEs' individual actions that are part of the group is tolled from the date of publication of the decision on the admissibility of the class action in the official gazette until the date on which the end of the class action is declared; and
- the limitation period of consumers' or SMEs individual actions that have been excluded from the final list of group members is tolled from the date of publication of the decision on the admissibility of the class action in the Official Gazette until the date on which the consumers or SMEs are informed by the court registry that they are not mentioned in the final list of group members.

Law stated - 17 September 2021

CLASS FORMATION

Standing

What are the standing requirements for a class action?

The Belgian Code of Economic Law (BCEL) contains specific provision regarding standing in class actions (ie, articles XVII.36, XVII.38, XVII.39 and XVII.40). More precisely:

- class actions can only be brought on behalf of a group of consumers or SMEs that have been personally harmed

by the alleged violation by an undertaking of its contractual obligations or of the Belgian and European laws listed in article XVII.37 of the BCEL. Note that all the class members can only be represented by one group representative for the same class action and that consumers and SMEs cannot be represented by the same group representative for the same class action; and

- the action can only be brought by a group representative. In this regard:
 - article of the XVII.39 of the BCEL provides an exhaustive list of the entities that can act as group representative for consumers and for SMEs. These includes, for example, for consumers, consumer protection organisations with legal personality provided that such organisation is represented in the Special Consumer Advisory Committee or that it has been recognised by the Minister of Economy and, for SME's, professional organisations with legal personality in charge of defending SMEs' interests provided that such organisation is represented in the High Council for the Self-Employed and SMEs or that it has been recognised by the Minister of Economy;
 - the group representative must be found suitable by the judge; and
 - if the group representative stops meeting the above-mentioned requirements at some point during the proceedings, the judge will appoint a new group representative. If the judge does not find a new group representative meeting the statutory conditions mentioned above, the judge will bring the class action to an end.

Law stated - 17 September 2021

Participation

Do members of a class have to opt in or opt out of the action? Are class members notified that an action has been commenced on their behalf and, if so, how?

For the consumers having their habitual residence or SMEs having their main establishment in Belgium, it will be up the judge to decide whether they must opt in or opt out of the action. The judge will do so in the judgment declaring the class action admissible. The BCEL does not provide any criteria pursuant to which the judge should decide between the opt in or opt out option. Several indications can however be found in the preparatory works of the Law of 28 March 2014 (Class Action Law). According to the legislator, the judge should, for example, rely on the facts and arguments put forward by the parties as well as on the nature of the harm suffered by the members of the group. These indications are, however, not binding upon the judge.

Also, there are two instances where the BCEL mandates members of a class to opt in of the action. This is so (1) for consumers not having their habitual residence or SMEs not having their main establishment in Belgium and (2) when the class action seeks the compensation of a collective physical or moral damage.

Further, class members are not, as such, notified that an action has been commenced on their behalf. They are, however, made aware of the class action by the publication of the decision on admissibility (1) on the website of the Federal Public Service Economy, SMEs, Self-employed and Energy and (2) in the Official Gazette. If the judge deems that these publicity measures will be insufficient, he or she may order additional measures regarding the publication of the decision on admissibility. In this regard, the preparatory works of the Class Action Law set out that the judge could order that a letter be sent to all the clients of the defendant undertaking or that an announcement be published in the major Belgian newspapers.

Class members do not exercise any control regarding the class action other than when they exercise their option to opt in or opt out of the action. Otherwise, the class members are represented by the group representative and are not as such a party to the proceedings. They are, however, bound by the decision rendered in the context of the class action.

Certification requirements

What are the requirements for a case to be filed as a class action?

For a class action to be declared admissible, there must be:

- an alleged violation by an undertaking of (1) its contractual obligations or (2) the laws listed in article XVII.37 of the BCEL;
- the case must be filed by a group representative meeting the conditions set out in the BCEL; and
- the recourse to the class action must appear more efficient than ordinary law proceedings.

As such, there is therefore no minimum (or maximum) number of claimants required for a class action to be filed.

However, a class action can only be declared admissible if it appears more efficient than an action of ordinary law. In this regard, the (potential) size of the class is a factor that the judge will consider. Even though there is no minimum number of claimants required, it goes without saying that the more (potential) claimants there are, the more likely the judge will decide that the recourse to the class action is justified.

Law stated - 17 September 2021

How does a court determine whether the case qualifies for a class action?

According to article XVII.43 of the BCEL, the judge should rule on the admissibility of the class action within two months of the filing of the action. There is no sanction in case of non-compliance with this deadline and the fact that this deadline is not binding has been confirmed in several decisions, such as the Dutch-speaking court of first instance of Brussels' decision of 2 October 2017 (quoted in Taton, X and Hendrix, G, (2020) 'De Rechtsvordering tot Collectief Herstel – Overzicht van Rechtspraak (2014–2020)', R.D.C.-T.B.H, pp. 873).

In practice, given the non-binding character of the two-month deadline and the importance of the admissibility of the class action and of the defendant undertaking's rights of defence, judges allow the parties to file submissions regarding the admissibility of the class action and a hearing on this issue then takes place. The discussion on the admissibility therefore usually lasts several months or even years before a decision on admissibility is rendered.

Law stated - 17 September 2021

Consolidation

Is there a process for consolidating multiple class action filings?

When several class actions are filed in Belgium against the same undertaking, based on the same factual issue and by different group representatives, only one of these actions will be deemed admissible. Legal doctrine explains that in such a case (which has never happened in practice so far), the judge should only allow the class action initiated by the group representative that he or she deems (the most) suitable to progress (see Englebert, J et al. (2015) 'L'action en Reparation Collective', Limal, Anthemis, pp. 89).

Also, legal doctrine explains that when a second-class action is filed in Belgium against the same undertaking, based on the same factual issue, by a different group representative and after that a first-class action has been declared admissible, this second-class action should be deemed inadmissible (Englebert, J et al. (2015) 'L'action en Reparation

Collective', Limal, Anthemis, pp. 90). Again, such a case has never happened in practice so far and is unlikely to happen in the future given that the admissibility decision is published (at least) on the website of the Federal Public Service Economy, SMEs, Self-employed and Energy and in the Official Gazette.

Further, if different class actions are filed in Belgium (1) based on the same facts but against different undertakings or (2) for related facts against the same undertaking, so that there is an interest in hearing and judging them together in order to avoid solutions that could be irreconcilable if these cases were judged separately, the parties could ask the judge to consolidate these actions. The judge could also decide to do so in the absence of request from the parties.

Law stated - 17 September 2021

PROCEDURE

Discovery

How does discovery work in class actions?

There is no discovery under Belgian law. Instead, each party is responsible for the production of the evidence on which its claims rely, supplemented by the parties' duty to cooperate to some extent in the production in the other party's evidence.

However, article 877 of the Belgian Judicial Code (BJC) authorises the judge to order the production of a document where there are serious, precise and concurring presumptions that a party or a third party is in possession of a document containing evidence of a relevant fact. The judge may do so at the request of a party or even ex officio.

Finally, when a claim for damages is based on a violation of competition law, articles XVII.74 to XVII.76 Belgian Code of Economic Law also authorise the judge to order the production of pieces of evidence subject to certain conditions that are not as strict as the ones of article 877 BJC.

Law stated - 17 September 2021

Privilege and confidentiality

What rules and standards govern non-disclosure of documents on the grounds of professional privilege, litigation privilege or other confidentiality considerations?

Under the applicable rules (which are similar for class actions and other types of actions), any communication between lawyers who are members of the bar (and therefore not in-house lawyers) and their clients is privileged, together with other documents and information (eg, the client's identity). They may therefore not be used in the course of the proceedings and such use can be sanctioned.

Note that even though in-house lawyers do not benefit from the rules applying to lawyers who are members of the bar, article 5 of the law of 1 March 2000 creating an institute of in-house lawyers provides that the advice given by in-house lawyers for the benefit of their employer and in the context of their legal advisory activity are confidential.

Law stated - 17 September 2021

Testimony

What rules apply to submission of factual and expert witness testimony? In what circumstances will the court order witness-examination?

The parties can always file witness statements with their submissions. These statements must relate to facts of which

the witness has personal knowledge, and they must comply with several other requirements. The judge can also order such statements to be filed ex officio and the judge can always decide to hear the witness.

The judge can also decide, ex officio or at the request of a party, to hear witnesses. The testimony is then recorded in writing.

Finally, the judge can, ex officio or at the request of a party, appoint an expert, which is often done to help the judge to deal with technical issues. The expert will then perform the mission for which he or she was appointed and draft a report. There is no obligation for the judge to follow the expert's findings and the judge can decide to hear the expert.

Law stated - 17 September 2021

DEFENCE

Defence strategy

What mechanisms and strategies are available to class-action defendants?

Other than defending the claim generally, defendants can resist the application for class action by challenging its admissibility (eg, by arguing that the group representative is not suitable).

Law stated - 17 September 2021

Joint defence agreements

What rules and standards govern joint defence agreements? Are they discoverable? What are the advantages and disadvantages of these agreements?

Multiple defendants can, in principle, conclude joint defence agreements pursuant to which, for example, their lawyers can share privileged information in the context of the class actions.

Generally, the advantages of such agreements are that they facilitate the establishment of a common defence strategy and allow the parties to split the cost of certain measures such as expert investigations.

Law stated - 17 September 2021

SETTLEMENT

Approval of settlements

Describe the process and requirements for approval of a class-action settlement.

Several types of class action settlement are possible.

First, once a class action has been declared admissible, a compulsory negotiation phase takes place. The duration of this phase is decided by the judge, but it must last between three and six months. This phase starts at the end of the period within which the class members must exercise their option. At the request of the parties, the judge can extend the negotiation phase by a maximum of six months. The judge can only grant such an extension once, but the parties may agree to extend the negotiation phase without requesting the judge to enact this extension. Then:

- the court can approve the settlement, which will then bind the parties and the class members. Such an approval will only happen provided that the settlement satisfies several criteria (eg, the settlement must set out the modalities and content of the remedy). Then:
 - If these criteria are not met, the judge will give more time to the parties to come back with a revised settlement;
- or

- If these criteria are met, the judge will decide whether to approve the settlement. The judge will do so unless (1) the remedy is manifestly unreasonable, (2) where the admissibility decision provides for an opt-out system, the period within which class members must manifest themselves to the registry to obtain their individual compensation is manifestly unreasonable, (3) the additional publication measures of the settlement are manifestly unreasonable and (4) the compensation due by the defendant to the group representative exceeds the costs effectively incurred by the latter. In case the judge decides not to approve the settlement, he or she may invite the parties to submit a new settlement within a certain deadline.
- If (1) no settlement has been reached at the end of the negotiation period, (2) the parties did not come back to the judge with a revised settlement when he or she asked them to do so or (3) the judges decide not to approve the settlement, the proceedings on the merits will then start.

Second, the parties can reach a settlement at any time before the decision on the merits is rendered. In that case, they can file an application with the court to approve the settlement. The court will do so provided that the criteria mentioned above are met.

Third, the parties could reach a settlement even before that the class action is initiated. In that case, the parties can then petition the court to obtain the approval of their settlement. The parties must demonstrate that the conditions for the admissibility of the class action are met, and they must annex their settlement to their petition. They must also indicate whether class members will have to opt in or opt out as well as the deadline by which they must exercise their option. The judge will then decide whether to approve the settlement depending on whether the criteria mentioned above are met.

Law stated - 17 September 2021

Objections to settlement

May class members object to a settlement? How?

Class members may not object to a settlement.

Law stated - 17 September 2021

Separate settlements

How are separate class action settlements handled?

If there is more than one defendant, different settlements can be concluded with each of them. In that case, the class action will only end vis-à-vis the defendants that are a party to these settlements and the proceedings will continue for the others.

Law stated - 17 September 2021

JUDGMENT AND APPEAL

Preclusive effect

What is the preclusive effect of a final judgment in a class action?

A final judgment is binding upon the parties and all the class members except for those members who can demonstrate that they could not reasonably have been aware of the admissibility decision during the period set out in

that decision to exercise their option. Class members can therefore not bring any claim against the defendant based on the same cause as the one at stake in the class action.

Law stated - 17 September 2021

Appeals

What type of appellate review is available with respect to class-action decisions?

The parties (ie, the group representative and the defendant(s), not the individual consumers nor the small and medium-sized enterprises that are class members) can appeal both the decision on admissibility and the decision on the merits before the Court of Appeal of Brussels. A (limited) recourse to the Court of Cassation may then be possible against the decision of the Court of Appeal.

The parties can, in principle, not appeal the decision approving their settlement.

Law stated - 17 September 2021

REGULATORY ACTION

Regulators

What role do regulators play in connection with class actions?

The Ombudsman's office for consumers is the only public entity that can file a class action, but its role is limited to the representation of the group in the negotiation of the agreement. Other than that, regulators do not play any role in connection with class actions.

Law stated - 17 September 2021

Private enforcement

Describe any incentives the civil or criminal systems provide to facilitate follow-on actions.

There are no such incentives.

Law stated - 17 September 2021

ALTERNATIVE DISPUTE RESOLUTION

Arbitration and ADR

What role do arbitration and other forms of alternative dispute resolution play in class actions?
Can arbitration clauses lawfully contain class-action waivers?

Pursuant to article XVII.68, class members and the defendant can always use alternative dispute resolution (ADR) mechanisms. If they manage to settle their case, the class member(s) involved in the ADR process cease(s) to be member(s) of the group and the defendant must inform the court's registry thereof.

Also, the Belgian Code of Economic Law (BCEL) expressly provides that the judge can, at the parties' request or ex officio but with the parties' consent, appoint a certified mediator during the negotiation phase.

As for whether arbitration clauses can lawfully contain class-action waivers, such a waiver would unlikely be upheld since it is the group representative that is a party to the class action and not the consumers or SMEs whose contracts

would contain the arbitration clause. In any event, even if such clause could be effective in practice, it cannot be excluded that it would be deemed abusive and therefore unlawful.

Law stated - 17 September 2021

Court-ordered mediation

Do courts order pretrial mediation in class actions? Does the appointment of a mediator make it more likely that the court will approve a settlement?

The judge can appoint a certified mediator during the negotiation phase (ie, before the proceedings on the merits starts) at the parties' request or ex officio but with the parties' consent.

The appointment of a mediator does not as such make it more likely that the court will approve the settlement. However, such appointment may facilitate the conclusion of a settlement meeting the criteria required by the BCEL for its approval and therefore makes it more likely that the court will approve the settlement.

Law stated - 17 September 2021

FEES, COSTS AND FUNDING

Contingency fees

What are the rules regarding contingency fee agreements for plaintiffs' lawyers in a class action?

The general rules regarding contingency fee agreements apply. More precisely, fees exclusively linked to the outcome of a case are not allowed. Success fees are, however, possible provided that they complement an initial fee so that the lawyer's fee does not exclusively depend on the outcome of the case.

Law stated - 17 September 2021

Cost burden

What are the rules regarding a losing party's obligation to pay the prevailing party's attorneys' fees and litigation costs in a class action?

Other than the obligation for the losing party to bear the cost of the different publications made in the course of the proceedings (eg, publication of the admissibility decision in the Official Gazette), there are no specific rules regarding a losing party's obligation to pay the prevailing party's attorneys' fees and litigation costs in a class action. The common rules therefore apply. According to these rules, the losing party is obliged to pay all the costs of the proceedings. The prevailing party can also claim a procedural indemnity to compensate (part of) its lawyer's fee. The amount of this lump sum indemnity must be calculated pursuant to the criteria set by law.

If the class action is settled, the settlement agreement must mention the amount that the defendant undertaking will pay to the group representative. That amount can, however, not exceed the costs actually incurred by the group representative.

Law stated - 17 September 2021

Calculation

How are costs calculated? What costs are typically recovered? Does cost calculation differ in the litigation and settlement contexts?

The costs that may be recovered are listed in article 1018 of the Belgian Judicial Code and include, for example, the costs relating to the use of experts and witnesses and the procedural indemnity. If the procedural indemnity is capped and must be calculated pursuant to the criteria set by law, no such limitation applies to the other costs.

In case of settlement, the settlement agreement must contain a clause regarding the costs that the defendant must pay to the group representative. This compensation due by the defendant to the group representative may, however, not exceed the costs effectively incurred by the latter.

Law stated - 17 September 2021

Third-party funding

Is third-party funding of class actions permitted?

The Belgian Code of Economic Law (BCEL) does not contain any provision regarding third-party funding of class action. Such funding is therefore not prohibited as such, even though it is of limited interest for the third-party funder in practice. This is so because the compensation possibly awarded by the judge may be a compensation in kind. Further, even if the compensation is paid by equivalent or if a settlement is reached, the BCEL requires that the compensation be paid to the class members themselves. Finally, it is unlikely that the group representative would have sufficient funds to indemnify a third-party funder.

Based on the above, the only way for the third-party funder to be indemnified would thus be to conclude an agreement with the class members pursuant to which they would transfer to the third-party funder the monetary compensation possibly received at the end of the class action.

Law stated - 17 September 2021

Public funding

Is legal aid or other public funding available for class actions?

No such funding is available for class actions.

Law stated - 17 September 2021

Insurance

Are adverse costs, adverse litigation judgment or after-the-event insurance available?

Under Belgian law, there exists a legal protection insurance. This insurance is a before-the-event insurance by which the insurer undertakes to provide services and bear costs to enable the insured to assert their rights as plaintiff or defendant in, among others, judicial proceedings.

After-the-event insurance are also available but relatively rare in practice.

Law stated - 17 September 2021

Transfer of claims

Can plaintiffs sell their claim to another party?

Legal doctrine is divided on this question. Some authors consider that the class members can do so. Others consider that professional commercial entities cannot buy consumers' or small and medium-sized enterprises' claims.

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Distributing compensation

If distribution of compensation to class members is problematic, what happens to the award?

When the judge approves the settlement agreement or renders a decision on the merits in favour of the group representative, the judge must appoint an administrator. The administrator's mission is to ensure that the settlement or the decision on the merits is executed properly. To that extent, the administrator will prepare a list of the class members. This list can then be challenged by the defendant, the group representative and the class members who would have been excluded from the list by the administrator. The judge will then establish the final list of class members.

Once the final list has been determined, the defendant will pay the compensation to the administrator directly. The administrator must then distribute the compensation to the class members.

Note that the administrator exercises its mission under the court's supervision and must submit quarterly reports to the court.

Finally, in case of any undistributed amount, it is up to the judge to decide how this amount must be used. The preparatory works of the Law of 28 March 2014 explain that the judge has a broad discretionary power in this respect. The judge could therefore, for example, decide that the undistributed amount is returned to the defendant, that the defendant must grant a compensatory indemnity such as a discount voucher or the free distribution of a product or that the undistributed amount must be spent in any other way that the judge deems appropriate, such as a good cause.

Law stated - 17 September 2021

UPDATE AND TRENDS

Legal and regulatory developments

What legislative, regulatory or judicial developments related to class actions are on the horizon?

On 25 November 2020, the European Parliament adopted Directive 2020/1828. Belgium must now implement this directive into Belgian law by 25 December 2022. We are not aware of any legislative initiative in this regard. However, considering that Belgian law is already generally in line with the directive, the implementation thereof should not lead to significant changes to the legal regime applicable to class actions.

Law stated - 17 September 2021

Jurisdictions

	Australia	Clayton Utz
	Belgium	White & Case LLP
	Canada	Lavery Lawyers
	Japan	Nagashima Ohno & Tsunematsu
	Netherlands	Freshfields Bruckhaus Deringer
	South Korea	Hannuri Law Firm
	Switzerland	CMS Switzerland
	Taiwan	Lee and Li Attorneys at Law
	USA	Cleary Gottlieb Steen & Hamilton LLP