

Client Alert

Class actions: now in Belgium

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Class actions are a hot topic in Europe, and elsewhere. Various European countries have introduced, or are in the process of introducing, class action mechanisms (see for the UK, [here](#)). At the European Union level a similar development is noticeable, with proposals both in the field of consumer protection and of competition law (see [here](#)). The scale and the scope of these legislative reforms are diverse, but the trend is clear and a global trend in favour of class actions is underway.

Belgium does not constitute an exception to this. On 13 March 2014, the Belgian Parliament enacted a law providing for the introduction of class actions into the Belgian judicial system ("*loi sur l'action en réparation collective*" / "*wet over rechtsvordering tot collectief herstel*"). It will be inserted as Title 2 in Book XVII of the Belgian Economic Code and will enter into force on a date to be determined by Royal Decree¹.

Although the current law is restricted to violations of specific legislative acts and the Belgian legislators clearly tried to avoid what is viewed in Europe as the negative consequences of the US class actions system, the increased litigation risk for companies and financial institutions should not be neglected.

What role model for the new law?

The proposal includes some safeguards, in order to avoid the excesses of the US system: no punitive damages (damages exceeding the plaintiff's compensable prejudice) or contingency fees (where attorneys receive a percentage of the awards attained) are allowed. In addition, before filing a class action, parties have to go through a mandatory dispute settlement process. A class action will only be admissible once the parties have tried, but failed, to settle.

When can a class action be started?

The objective of the law is to improve the protection of consumer rights in Belgium. Only violations of a limited list of Belgian and European legislative acts, mainly centred on consumer protection, give rise to the right to initiate a class action such as Competition law (see Book IV to XII and XIV of the Belgian Economic Code [FR/NL](#)), consumer rights ([FR/NL](#)), (including sector-specific legislation such as, for example, insurance ([FR/NL](#)), travel ([FR/NL](#)), or energy ([FR/NL](#))), Financial Services law ([FR/NL](#)), Privacy law ([FR/NL](#)), and protection of electronic data ([FR/NL](#)), as well as EU legislation on the rights of train passengers ([FR/NL](#)) and airplane passengers ([FR/NL](#))².

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¹ We will inform you on its entry into force in due time.

² See the exhaustive list in Article XVII.37 of the law.

As is shown by this non-exhaustive list, many of these rules raise a substantial litigation risk to companies (e.g. with regard to consumer protection rules and competition law). Financial institutions are also directly affected by the new law, as the scope of the legislative provisions of the new law includes the rules on good behaviour on regulated markets and the prohibition of market abuse.

Who can initiate a class action?

A class action can only be initiated by a limited number of consumer associations fulfilling specific criteria (to be established by a Royal Decree) or by other associations fulfilling the restrictive conditions of the new bill. The federal ombudsman can also start a class action, but only in order to reach a settlement.

This has been criticised as limiting the right of action only to a few existing associations that fulfill these restrictive criteria (mainly Test-Achats), effectively granting them a legal monopoly on class actions. Big business should not feel relieved, however, as Test-Achats has in the past proved a relentless litigator in many fields of consumer protection.

Composition of the class action

There are two models of class actions around the world: opt-in and opt-out. The Belgian legislators did not choose one of the two, but rather left the choice to the court to decide on a case by case basis (or if an amicable settlement is reached, to the parties).

Based on the decision of the judge, the associations which can initiate a class action will then have to follow an opt-in or an opt-out procedure for the individuals who claim to be part of the group.

Opt-in: consumers who wish to be part of the class action have to identify themselves personally within a limited period of time. The opt-in system is mandatory when the claim regards physical and/or moral damages, and for consumers residing outside the Belgian territory.

Opt-out: all possible affected consumers are *a priori* part of the class action, unless they have notified to the contrary within a limited period of time.

The choice by an individual to opt-in or opt-out of a class action is irrevocable, and the judicial decision has a binding effect on all the members of the group.

Centralisation

The law grants exclusive competence to the Brussels courts, which is a logical choice, considering the fact that the potentially affected consumers are likely scattered over all three regions of the Kingdom of Belgium and perhaps even beyond. It moreover allows for a consolidated case law.

Outlook

Overall, the proposal aims to allow claims concerning violations of consumer rights and competition law to facilitate their access to the court system. At the same time, the law on class actions also takes some precautions to prevent the negative complications with class actions that have arisen in the United States. Companies will therefore have to be well aware of this new litigation risk.