

CLIENT ALERT

Belgium Adopts Collective Redress Procedure

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Summary – Since September 1, 2014, Belgian law contains a collective redress mechanism. The procedure is available to Belgian and foreign consumers seeking redress from companies that have breached a contract or have violated certain consumer protection laws (European and domestic). Actions can be opt-in or opt-out, but consumers must be represented by a recognized nonprofit organization. The procedure, which encourages settlements, is likely to have a substantial impact on all companies active in Belgian consumer markets.

In March 2014, the Belgian parliament, following the example of many other European member states (such as the Netherlands, France, Germany, the United Kingdom, Austria, Spain, and Italy), approved a bill introducing a collective redress procedure to Belgian law. The act was published in the *Belgian State Gazette* on April 29, 2014 and entered into force on September 1, 2014.

The scope of the act is, however, limited. Collective redress will only be available in relation to contractual breaches and the violation of certain European and domestic consumer protection laws listed in the act. Where available, actions can be brought on behalf of foreign as well as Belgian consumers. Actions may only be brought in relation to loss occurring after September 1, 2014.

Jurisdiction over collective redress actions will be exclusively reserved to the courts of Brussels. This is intended to favor the specialization of these courts and guarantee uniform case law.

Consumers must be represented by a class representative. Only certain recognized consumer-centered nonprofit organizations are entitled to act as class representatives. The class representatives must also, however, be authorized by the competent court. For negotiation and settlement purposes only, the Consumer Ombudsman can also represent the class.

Having authorized a class representative, the court will also determine whether the class will be constituted on an opt-in or an opt-out basis. There are certain limits on the court's discretion: the opt-out system cannot be applied to foreign consumers, nor to claims with regard to physical or psychological damage (which are considered highly person-specific).

The act favors amicable dispute resolution, providing two resolution mechanisms, judicial, and extra-judicial. Before initiating legal proceedings, the class representative and the defendant may agree to a settlement, which is subsequently submitted to the court for ratification (this mechanism is similar to that in the Dutch Act on Collective Settlement of Mass Damages).

The class representative can also opt to file a collective action before seeking settlement. Once the court has declared the collective action admissible, it will impose a mandatory period of between three and six months, during which the parties must hold settlement negotiations. Any settlement must subsequently be ratified by the court.

If no settlement is reached during the mandatory negotiation phase, the action will be resolved by the court. If the court holds the defendant liable, it can make an award reflecting the damages suffered by the class. Punitive damages are not available.

In its judgment, the court appoints a "damage trustee," who will, under the close control of the court, be responsible for the enforcement of the judgment. A special court list of persons eligible to act as damage trustees will be drawn up, composed of lawyers, civil servants, and judicial agents. Unlike in other proceedings, the court remains active until enforcement of its judgment has been completed.

In order to inform the affected consumers, the certification order, as well as the final court judgment (either ratifying the settlement or on the merits), will be published in the *Belgian State Gazette* and on the website of the Ministry of the Economy. Additional publication measures may also be imposed by the court or the government.

Costs of the proceedings are, in accordance with the general rules on civil proceedings, paid by the losing party. This means that an unsuccessful class representative will have to pay the defendant's costs.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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