

CLIENT ALERT

Belgium: Class Actions Now Available to SMEs and the Self-Employed

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As heralded by [our client alert of September 29, 2017](#), the Belgian legislator has now approved a new act to broaden the scope of the Belgian collective redress system by making class actions also available to SMEs and self-employed individuals.

The Act, dated March 30, 2018, was published in the Belgian State Gazette on May 22, 2018 and amends Book XVII, Title 2 of the Belgian Code of Economic Law as introduced in 2014.

As originally drafted, Book XVII, Title 2 of the Belgian Code of Economic Law allowed consumers who had personally suffered damage as a result of a common cause to file a collective redress action (also known as a class action) for damages through a group representative. As from June 1, 2018, this same redress is opened up to SMEs and the self-employed, who may now—through a group representative—file a collective redress action against an undertaking that breaches its contractual obligations or violates a limited list of European and domestic laws (the violation having occurred after September 1, 2014).

SMEs are defined as Belgian or foreign enterprises which employ fewer than 250 employees and have an annual turnover of less than €50 million or a total annual balance sheet of less than €43 million. As a result, the majority of Belgian companies will be able to benefit from this collective redress system. According to the Federation of Enterprises in Belgium, no fewer than 98 percent of all Belgian enterprises will now be eligible.

The procedure for SMEs and self-employed individuals to file for a collective redress action is the same as the procedure for consumers set up in 2014. They must be represented by an accredited group representative, such as an inter-professional organization recognized within the Superior Council for Self-Employed and SMEs.

From now on, only the Brussels Commercial Court will be competent to try and adjudicate collective redress actions. The Brussels Court of Appeal will remain competent for appeals filed against decisions rendered by the Brussels Commercial Court.

Although this legislative innovation should ensure the better protection and enforcement of the rights of SMEs, the extension will expose companies to an increased litigation risk. It could indeed provoke an increase in B2B claims based *inter alia* on violations of unfair market practices, competition law or the GDPR.

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