

CLIENT ALERT

New in Belgium: Class Action To Be Made Available to SMEs and Self-Employed Individuals

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The Belgian Council of Ministers has taken a further step towards broadening the scope of the Belgian collective redress system. It has finalized a preliminary draft law that, if approved by the Parliament, would allow not only consumers but also small and medium-sized enterprises (SMEs) and self-employed individuals to act as class members in class actions. Currently this collective redress option can only be brought by a group of consumers.

BACKGROUND & CURRENT STATUS

The Act of March 28, 2014 introduced a collective redress mechanism into the Belgian Code of Economic Law, allowing a group of consumers to file a collective action for damages through a group representative (more commonly known as a class action).

The scope of the Act is, however, limited. Collective redress is only available in relation to contractual breaches and the violation of a limited list of European and domestic laws vis-à-vis Belgian and foreign consumers.

Consumers must be represented by a group representative. Only certain recognized consumer non-profit organizations are entitled to act as group representatives.

Having authorized a group representative, the court will also determine whether the group will be constituted on an opt-in or an opt-out basis.

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 group. Punitive damages are not available.

Alternatively, the group representative and the defendant may avoid legal proceedings by reaching an extra-judicial settlement, which is subsequently submitted to the court for ratification (this mechanism is similar to the one set out in the Dutch Act on Collective Settlement of Mass Damages).

SCOPE OF THE EXTENSION

On September 1, 2017, the Belgian Council of Ministers approved a preliminary draft law extending the class action option to make it available to self-employed individuals and SMEs that employ fewer than 250 employees and have an annual turnover of less than €50 million. As a result, the majority of Belgian companies would be able to benefit from this collective redress system.

This extension would allow a group representative to introduce an action for collective redress where a number of self-employed individuals and/or SMEs have suffered similar damage resulting from an enterprise breaching its contractual obligations or one of the listed legal provisions.

The collective redress action would have to be lodged on behalf of the self-employed individuals or SMEs by a recognized group representative, such as the inter-professional organisations that are recognized within the Superior Council for Self-Employed and SMEs.

The draft law is currently under review by the Council of State. The Parliament is expected to vote in the course of the coming months and, if it is passed, this extension should become applicable by January 1, 2018.

Although this legislative innovation would ensure better protection of the rights of self-employed individuals and SMEs, the extension – which lowers the burden attached to initiating proceedings – will, on the other hand, increase the litigation risk for companies. The extension could provoke an increase in B2B claims based *inter alia* on violations of unfair market practices and competition law. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Emmanuel Plasschaert

Partner – Brussels

Phone: +32.2.282.4084

Email: eplasschaert@crowell.com

Jules Stuyck

Senior Counsel – Brussels

Phone: +32.2.214.28.66

Email: jstuyck@crowell.com

Margaux van Steenbergh

Associate – Brussels

Phone: +32.2.214.2887

Email: mvansteenbergh@crowell.com