Class, Collective, and Representative Actions: Overview (Belgium)

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Practice note: overview | Law stated as at 01-Nov-2024 | Belgium

A Practice Note providing an overview of the key practical issues concerning class, collective, and representative actions in Belgium.

Unlike a traditional lawsuit, where each party represents their own interests, a class, collective, or representative action refers to court proceedings where a single person or small group of individuals represent the interests of a larger group of similarly situated class or entities. It is a procedural mechanism where multiple claimants can seek similar relief from the courts. They are normally used in relation to certain claims, such as product liability and personal injury claims, competition law, data privacy and breach, financial services, and environmental law.

Some countries like the US have an established legal framework including case law precedents on class actions. That is not the case for many other countries where these cases are still not very common. The procedural framework and enforcement mechanisms can vary vastly from state to state. In recent years, class actions are on the rise in the UK, and across Europe. The EU's *Collective Redress Directive* (2020/1828) (Representative Actions Directive or RAD), is likely to further contribute to this increase. The RAD seeks to harmonise minimum standards for procedural rules in the collective redress for consumers in EU member states. It aims to supplement (and not replace), the existing framework (if any) of class action mechanisms in member states. It is therefore possible that some aspects of the legal framework may continue to be different in member states.

Since the availability and legal framework of such mechanisms can vastly differ across jurisdictions, it can be particularly challenging for practitioners advising on class actions and multi-party claims in an overseas jurisdiction.

This Note provides an overview of the legal and regulatory framework of class, collective, multi-party, or representative actions in Belgium. It also covers current legal trends, and procedural aspects such as:

- Recent developments in using class/collective actions.
- Special limitation periods (if any).
- The definition of class.
- The rules for bringing an action.
- Funding and costs.
- Disclosure.
- Damages and relief.
- Settlement and alternative dispute resolution (ADR).
- Appeals and proposals for reform.

Overview of Class, Collective, and Representative Actions

Definition

A collective redress action (*action en réparation collective/rechtsvordering tot collectief herstel*) (the class action under Belgian law) is a representative proceeding provided for in Title 2 of Book XVII of the Code of Economic Law that allows a representative meeting the requirements in Article XVII.39 to file proceedings against one or more companies to obtain compensation for damage suffered by a group of consumers or small and medium-sized enterprises (SMEs), without the representative having to obtain a mandate from each group member.

A collective action (or related action) is a proceeding brought under Article 30 and Article 701 of the Judicial Code, in which several different, individual, legal actions brought by different claimants arising from the same or a similar cause are joined and consolidated in the same proceedings.

A collective interest action is a proceeding brought by an organisation or group of people (such as labour unions or human rights organisations) based on a legal mandate provided by a specific law to realise a collective objective going beyond the personal interests of the individual members of the organisation or group, often to protect or promote specific rights or causes, regardless of whether they intend to achieve an objective of general interest.

Availability and Use

In Belgium, the various methods of multi-party litigation (involving multiple claimants and/or defendants) include the following.

Collective redress action. In principle, a class action is not permitted under Belgian law. For an action to be admissible, the claimant must fulfil the personal interest requirement (Articles 17 to 18, Judicial Code). An important exception is a collective redress action, as provided for in Book XVII (Special Procedures), Title 2 of the Code of Economic Law (Articles XVII.35 to 69). This is the main type of action covered in this practice note because it implements the Representative Actions Directive and resembles most closely class actions in other (mostly common law) jurisdictions.

The collective redress action was introduced into Belgian law by the Act of 28 March 2014, and the rules were amended by the Act of 21 April 2024 (amending Books I, XV, and XVII of the Code of Economic Law and transposing the Representative Actions Directive).

The Act of 21 April 2024 implemented the Representative Actions Directive and intends to improve the collective redress action following difficulties identified in case law and doctrine. The old regime applies to actions filed on or before 10 June 2024 and the new regime applies to actions filed after 10 June 2024.

A collective redress action is brought by a claimant (the group representative) on behalf of a group of individuals (who have not given a mandate to the group representative). The group representative and the defendants are parties to the proceedings, not the group members. There is no affiliation of membership between the group representative and the group members. The number of group members is undetermined at the beginning of the action.

Since collective redress actions came into force in September 2014, 11 have been brought. Most have been brought by *Testachats*, the main Belgian consumer protection organisation, against the following:

- Thomas Cook Group plc, following a major delay of a flight from Tenerife South to Belgium.
- The National Railway Company (*Société nationale des chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen*) (SNCB/NBMS), for the interruption and suspension of train services during eight days of strikes in 2014 and 2015.
- The Volkswagen Group, in the context of the Dieselgate scandal.
- The largest Belgian telecoms company (Proximus) after it introduced a renting formula for its new decoders.
- Eight websites involved in the resale of concert tickets at exorbitant prices.
- The marketing company Groupon, following a sales offer for nappies by Luierbox.
- Three Facebook entities in the context of the Cambridge Analytica data scandal.
- Six energy suppliers concerning fixed fees charged after energy contracts were terminated early (initiated by the Ombudsman for Energy and the consumer ombudsman service).
- Ryanair, in relation to flight delays and cancellations due to airline strikes in 2018.
- Apple, in relation to planned obsolescence of iPhones following software updates.
- Fédération Horeca Bruxelles (FHB) and the Syndicat Neutre pour Indépendants (SNI) against Unisono, a platform created by Sabam, Playright and Simim to simplify the collection of royalties for music played in horeca establishments.

Collective action (related action). A collective action is brought under Article 30 and Article 701 of the Judicial Code. In a collective action, several different legal actions brought by different claimants arising from the same or a similar event or contract are joined and consolidated in the same proceedings. The claimants are often represented by the same lawyer. The actions are examined by the court together but remain individual actions and each claimant's situation is addressed separately. A collective action is a common way to bring related actions before Belgian courts, especially in the areas of labour law, personal injury, and mass torts, particularly in the context of economic downturns or large-scale industrial accidents.

In particular, different actions between two or more parties can be brought by one single claim if the actions are related (Article 701, Judicial Code). Actions can be dealt with as related cases if they are so closely connected that it is desirable to consider and rule on them together, to avoid conflicting solutions if the claims were adjudicated separately (Article 30, Judicial Code). Even after the initiation of proceedings, related cases pending before the same judge can be combined on request or ex officio (Article 856, Judicial Code).

Collective interest action. This is brought by an organisation or group of people (such as labour unions or human rights organisations), not to bring individual claims, but to pursue a collective objective going beyond the personal interests of the individual members of the organisation or group, often aiming to protect or promote specific rights or causes, regardless of whether they intend to achieve an objective of general interest. For example, labour unions and qualified human rights organisations can seek injunctive relief against practices that infringe specific labour rights or non-discrimination laws. Professional organisations and consumer protection organisations can also bring cease and desist actions against unfair commercial practices.

Collective interest actions are quite common in Belgium, especially in the areas of labour law, anti-discrimination, environmental protection, and human rights. Labour unions (which are active in Belgium) frequently use them to advocate for worker rights, while human rights organisations bring them to enforce broader societal changes. These actions are an integral part of the legal system in achieving collective justice.

A collective interest action is provided for in various specific laws, for example:

- The Act of 30 July 1981 grants legal standing before courts of law to specific associations to suppress certain acts based on racism or xenophobia.
- The Act of 12 January 1993 grants the right to litigate to environmental protection groups.

Current Trends

While the number of collective redress actions remains limited (see *Availability and Use*), there has been an increase in collective actions and collective interest actions in recent years.

Collective actions. Labour law is the most common area for collective actions in Belgium. Many individual workers affected by the same company decision (such as mass layoffs or violations of collective bargaining agreements) consolidate their claims through a labour union or legal representative. Collective labour actions have increased due to economic crises, such as the COVID-19 pandemic, where many workers have been laid off or had their contracts terminated, leading to consolidated claims against employers.

Gig economy workers (such as Uber drivers) have used collective actions to challenge their employment status and demand labour protections such as minimum wage and benefits. Courts have seen a growing number of these cases as the gig economy expands.

In the environmental sector, mass harm cases involving pollution or industrial accidents (such as chemical spills) have resulted in consolidated personal injury and property damage claims, with claimants seeking joint relief.

Collective interest actions. Labour unions in Belgium frequently use collective interest actions to enforce collective bargaining agreements, challenge mass layoffs, or demand better working conditions. These actions are essential tools for unions to protect workers' rights and often lead to significant systemic changes in industries. Unions also pursue collective interest actions in relation to social security and occupational safety issues on behalf of a workforce. Labour unions have recently started using collective interest actions to address the working conditions of gig economy workers. They challenge the classification of workers as independent contractors, seeking recognition as employees entitled to social protections.

In the area of human rights and non-discrimination, organisations like Unia and other equality bodies bring collective interest actions to challenge systemic discrimination (for example, based on race, gender, or disability) in the public and private sectors. These actions often seek injunctive relief to stop discriminatory practices and enforce compliance with national and European equality laws. Belgium's focus on implementing EU anti-discrimination directives has led to more collective interest actions aimed at ending systemic discrimination in employment and public services.

In the area of environmental protection, NGOs are increasingly using collective interest actions to hold governments and companies accountable for environmental harm. These actions focus on policy change or compliance with environmental regulations, such as pushing for stricter climate action or stopping industrial pollution. Notably, the *Klimaatzaak* case, where a coalition of environmental groups sued the Belgian government for failing to meet climate targets, is an example of a successful collective interest action that led to a court ruling demanding stronger climate action (*VZW Klimaatzaak v Kingdom of Belgium and Others, Brussels Court of Appeal, 30 November 2023*). It reflects a broader European trend of using courts to hold governments accountable for climate action.

Regulatory Framework

Principal Sources of Law

See *Availability and Use*.

Principal Institutions

The Brussels Commercial Court and the Brussels Court of Appeal have exclusive jurisdiction to rule on a collective redress action (Article XVII.35, Code of Economic Law; Article 633ter, Judicial Code).

A collective action can be brought before various courts, depending on the nature of the dispute and the type of action, that is, before the specialised enterprise courts or labour courts, or before the general courts of first instance.

The appropriate venue for a collective interest action depends on the area of law and the specific law governing the action, with cases typically being heard in the labour courts, the council of state, the constitutional court, or a court of first instance.

Different Mechanisms

See *Availability and Use*.

Areas of Law

A collective redress action can only be brought for violations by an enterprise of its contractual obligations or of specified Belgian and EU laws (Article XVII. 36(1) and Article XVII.37, Code of Economic Law). These laws generally aim to protect consumers and are further detailed below.

A collective action can be brought in all areas of law, but are most common in claims involving competition law, unfair market practices, environmental law, and financial services. Not all areas are equally suited to or conducive to this type of action.

A collective interest action can be pursued in a range of areas of law (including labour law, environmental law, human rights, consumer protection, administrative law, competition law and privacy law), depending on the legal issue and the law governing it. However, these actions are not used in criminal law or family law, as those areas focus more on individual cases.

Product Liability

A collective redress action can be brought for violations of product liability legislation, in particular:

- Book IX of the Code of Economic Law on the safety of products and services.
- The Act of 25 March 1964 on pharmaceuticals.
- The Act of 25 February 1991 on liability for defective products.
- The Act of 20 March 2022 amending the Old Civil Code relating to sales to consumers (inserting a new Title VI*bis* in Book III of the Old Civil Code and amending the Code of Economic Law).

Environment Law

A collective redress action can be brought for violations of environmental law, such as *Directive 2009/125/EC* known as the Ecodesign Directive, and *Regulation 66/2010 on the EU ecolabel*.

Competition Law

A collective redress action can be brought for violations of Book IV of the Code of Economic Law on the protection of competition. In addition, following EU recommendations, the scope of the collective redress action regime was extended in 2017 to include infringements of EU competition law (Articles *101* and *102*, Treaty on the Functioning of the European Union (TFEU), including the ban on cartels and abuse of dominant position).

Pensions Disputes

A collective redress action can be brought for a violation of a company's contractual obligations and for a violation of Part 4 of the Insurance Act of 4 April 2014, which applies to any life insurance contract that applies to a pension plan.

Financial Services: Consumer Redress

A collective redress action can be brought for violations of financial services legislation, such as the Act of 2 August 2002 on the supervision of the financial sector and financial services.

Other Areas of Law/Policy

A collective redress action can also be brought in other areas of law, including for violations of:

- The Code of Economic Law relating to price developments, market practices, consumer protection, IP, and the digital economy.
- Specific legislation on data privacy, electronic signatures, insurance, health, professional liability, tour operators, passenger transport, energy, and others.

The Act of 21 April 2024 extended the scope of a collective redress action to include:

- Book XIX of the Code of Economic Law on consumer debt.
- European law listed in Annex I to the Representative Actions Directive (which include *Directive 2014/65/EU on markets in financial instruments (MiFiD II)* and the *Prospectus Regulation (EU) 2017/1129)*.
- Commercial agency agreements, commercial co-operation agreements, sales concessions, and transport agreements.
- The Act of 2 August 2002 on combating late payment in commercial transactions.

The latter two above were added to promote class actions brought by SMEs.

Although a class action cannot be brought in criminal proceedings, if a criminal court establishes a crime corresponding with a violation of a legal basis listed in Article XVII.37 of the Code of Economic Law, a follow-on class action can be brought on behalf of consumers.

The applicable procedural system does not vary depending on the area of law in which the action is brought.

Follow-On and Standalone Claims

There is no distinction between claims for follow-on damages (based on a prior decision by a regulatory authority) and standalone claims (where there is no prior decision), and a collective redress action can be brought in both cases.

Follow-on damages claims can be brought through a collective redress action for all breaches covered by the material scope (see Article XVII.37, Code of Economic Law and see *Areas of Law*).

Limitation Period

The Civil Code sets limitation periods (Article 2262*bis*) which vary depending on the nature of the action:

- Claims in tort are time-barred five years after the day on which the claimant is aware of the damage and of the identity of the person liable for the damage, and in any event, 20 years and one day after the date on which the fact, action, or negligence that caused the damage occurs.
- Most other claims are time-barred after ten years (for example, contractual liability).

These limitation periods in principle apply to a collective action and a collective interest action.

The Code of Economic Law imposes specific rules for a collective redress action. For actions filed on or before 10 June 2024:

- The limitation period for individual actions of consumers who exercise their opt-out option is suspended from the date of publication of the decision on the admissibility of the collective redress action in the *Belgian Official Gazette* until the date the consumers inform the court registry of their opt out (section 1, Article XVII.63, Code of Economic Law).
- If a collective redress action ends due to a lack of a group representative, the limitation period for individual actions of consumers who are group members is suspended from the date of publication of the decision on the admissibility of the collective redress action in the *Belgian Official Gazette* until the date the action ends (section 2, Article XVII.63, Code of Economic Law).
- The limitation period for individual actions of consumers who have been excluded from the collective redress action is suspended from the date of publication of the decision on the admissibility of the collective redress action in the *Belgian Official Gazette* until the date the consumers are informed by the court registry that they are not members of the group (section 3, Article XVII.63, Code of Economic Law).

The Act of 21 April 2024 amended these rules to implement Article 16 of the Representative Actions Directive. The new rules apply to actions filed after 10 June 2024. Article XVII.63 of the Code of Economic Law now provides that the statute of limitations for individual actions of SMEs or consumers within the description of the class in the collective redress application is suspended from filing of the collective redress application (or the application for voluntary intervention) until any of the following:

- Publication in the *Belgian Official Gazette* of the admissibility decision in which the judge declares the collective redress action inadmissible.

- Publication in the *Belgian Official Gazette* of the admissibility decision in which the judge declares the collective redress action admissible but defines the group in a way that excludes the SME and/or the consumer.
- In case of a collective redress agreement, if the opt-out system applies, notification by the SME and/or consumer to the court registry of their wish not to be part of the class (if the opt-in system applies, expiration of the period determined by the parties, without the SME and/or the consumer having expressed to the court registry their will to be part of the class).
- In case of a decision on the merits by the court leading to an obligation of collective redress by the defendant, the expiration of the deadline to opt-in without the consumer and/or SME having expressed to the court registry their will to be part of the class.
- Publication in the *Belgian Official Gazette* of the decision in which the judge determines closure of the legal proceedings.
- Notification to the SME and/or consumer that its entry on the final list of the class members who are entitled to compensation has been refused by the judge.

Procedural Framework for Bringing an Action

Defining Class

Standing in a collective redress action is governed by Article XVII.36 and Articles XVII.38 to 40 of the Code of Economic Law. A collective redress action can only be brought on behalf of a group of consumers or SMEs who have been harmed by the alleged breach by an enterprise. The action can only be brought by a representative of this group (see *Potential Claimant*). If both consumers and SMEs decide to make the same claim, the two groups must be represented separately.

An SME is defined (following EU *Recommendation 2003/361/EC on SMEs*) as an enterprise that employs fewer than 250 persons and has an annual turnover of no more than EUR50 million, and/or an annual balance sheet total of no more than EUR43 million.

The group of consumers/SMEs is decided by an opt-in or opt-out system.

For actions filed on or before 10 June 2024, the following applies:

- **Opt-in system.** Only consumers/SMEs that suffer the collective harm and expressly notify the court registry of their intention to belong to the group can be a group member.
- **Opt-out system.** All consumers/SMEs that suffer the collective harm and do not expressly notify the court registry of their intention not to belong to the group (after having knowledge of the collective redress action) can be a group member.

Once the collective redress action is initiated, the judge chooses between an opt-in or opt-out system in the admissibility decision (see *Certification/Qualification*), which then applies to the consumers/SMEs of the group habitually resident in Belgium (section 1(1), Article XVII.38 and section 2(3), Article XVII.43, Code of Economic Law). However, the opt-in system is mandatory in two types of cases:

- For consumers/SMEs who do not have their habitual residence/main establishment in Belgium (section 1(2), Article XVII.38, Code of Economic Law).
- If the action aims to restore physical or moral collective damage (section 2(3), Article XVII.43, Code of Economic Law) (for example, physical damage resulting from defective medicines).

The judge chooses an opt-in or opt-out system based on the:

- Facts and arguments submitted by the parties.
- Interest of the consumers/SMEs and of the market.
- Type and amount of damage suffered.
- Number of potential claimants.

For example, in the admissibility decision for the collective redress action brought by Testachats against Thomas Cook, the court held that, in deciding whether to apply an opt-in or opt-out system, the court must assess how the consumers' interests can be best protected in the specific case, in particular:

- If consumers are aware that they are a victim of damage and can easily get an idea of their rights, their interest in being in the group is sufficiently protected by the opt-in system, which requires an active effort by claimants.
- If compensation of the damage is not so obvious, and the consumers are not necessarily aware of the damage they have suffered or their rights are less clear, consumer interests are best protected by the opt-out system.

The court considering the admissibility of the collective redress action against Proximus applied this same analysis. The court ruled that the fact that consumers are informed about their rights through the press, or their group representative does not imply that the interests of victims should be less protected and is not decisive in assessing whether consumers are aware of their rights. However, the Court of Appeal, deciding on appeal the admissibility of the action against Proximus, reversed the lower court decision and chose the opt-in system, because the alleged damage required an individual assessment of each consumer's personal situation (the existence of damage and a causal link to the alleged breach had to be proven and decided for each consumer individually).

The court also applied the *Thomas Cook* approach in the admissibility decision in the *Dieselgate* case, where the court decided that applying the opt-out system was justified because the damage from the alleged material wrongdoing was not visible to consumers. The court found, therefore, that a higher level of protection was required to protect the "unconscious" consumers.

In the legislator's view (as reflected in the preparatory works for the Act of 28 March 2014), the opt-out system is more appropriate where the amount of damage is limited but this reasoning has not always been applied by the courts.

The number of potential claimants and the size of the group are not in themselves decisive to determine the system. In the action against Thomas Cook, the low number of potential claimants was one reason why the opt-in system was chosen. In the action against Proximus, the high number of potential claimants meant that the opt-out system was chosen in the first instance admissibility decision (on appeal, the opt-in system was chosen). In the *Dieselgate* case, the high number of potential claimants was the second decisive element for the court to apply the opt-out system.

The option is exercised according to the methods and terms decided by the court in the admissibility judgment for the collective redress action. In principle, the option period must end before the outcome of the mandatory negotiation phase to avoid any speculation on the success of the action.

The new regime (actions filed after 10 June 2024) has changed the way the class is composed in relation to opt-in/opt-out and when the class is composed:

- Generalised opt-in by default: the Act of 21 April 2024 introduced a new Article XVII.55/1 into the Code of Economic Law, enshrining the principle that, by default and without judicial intervention, the group is composed based on the opt-in system. This change (which was not imposed by the Representative Actions Directive) is justified to simplify the admissibility phase. The parties can still agree in the context of collective settlement agreements to apply the opt-out system for group members, subject to some exceptions (see *Settlement Rules*).
- Deferral of the phase of composition of the class: the new Article XVII.55/1 also changes when the class is composed. Before, the exercise of the opt-in/opt-out took place right before the mandatory negotiation phase. Now, it takes place after the decision on the defendant's liability, that is, only after the injured parties know that they will be compensated and to what extent. This aims to increase protection for consumers and SMEs and make collective redress actions more effective. The deadline to join the class is four months from the date of publication in the *Belgian Official Gazette* of the decision on the merits finding that the defendant company must pay collective compensation (see *Joining Other Claimants*).

Potential Claimant

For claims filed on or before 10 June 2024, a collective redress action is only admissible if brought by an applicant who meets the requirements in Article XVII.39 of the Code of Economic Law and is found suitable by the court (Article 36(2), Code of Economic Law). Article XVII.39 of the Code of Economic Law specifies the bodies who can be a group representative. For a group of consumers, they are:

- A consumer protection organisation with legal personality, represented in the Council for Consumption or recognised by the Minister of Economy.
- A non-profit organisation with legal personality recognised by the Minister of Economy, with an objective directly related to the collective damage suffered by the group.
- The Ombudsman's office for consumers, but only to represent the group when negotiating a collective redress agreement.
- A representative body recognised by an EU or EEA member state to act as a representative and meeting the conditions of point 4 of *Recommendation 2013/396*. Under Recommendation 2013/396, these bodies must be designated based on clearly defined eligibility conditions, including at least the following requirements:
    - the entity must have a non-profit making character;
    - there must be a direct relationship between the entity's main objectives and the rights granted under EU law that are claimed to have been violated; and
    - the entity must have sufficient capacity in terms of financial resources, human resources, and legal expertise, to represent multiple claimants and act in their best interests.

For a group of SMEs, the following bodies can act as group representative:

- A professional organisation with legal personality which defends the interests of SMEs, represented in the High Council for the Self-Employed and the SME or recognised by the Minister of Economy.
- A non-profit organisation with legal personality recognised by the Minister of Economy, with a corporate purpose directly related to the collective damage suffered by the group.
- A representative body recognised by an EU or EEA member state to act as a representative and meeting the conditions of point 4 of Recommendation 2013/396 (see above for minimum requirements).

Natural persons, commercial companies, trade unions, and law firms cannot act as a group representative. Professional commercial claimants cannot buy consumer claims in exchange for a share of the proceeds of the action. By limiting which bodies can be a group representative, the legislator aims to avoid abusive or frivolous collective redress actions.

In addition, a group representative must also be deemed suitable by the judge, for three main reasons:

- Ensuring that the group members are properly represented considering that, without having given a mandate to the group representative, the group members will be bound by the decision obtained by the group representative.
- To protect defendants by avoiding frivolous actions.
- If several candidates apply, the judge can select the most suitable representative, excluding a "first come, first served" basis.

For claims filed after 10 June 2024, a collective redress action is only admissible if brought by an applicant who meets the requirements in Article XVII.39 and whose statutory purpose directly relates to the object of the action (Article 36(2), Code of Economic Law). Article XVII.39(1) provides that the following entities can act as a group representative for a group of consumers before the Belgian courts:

- The "qualified bodies Consumers" referred to in Article XVII.1(1) to (3) of the Code of Economic Law.
- The Ombudsman's office for consumers, but only to represent the group when negotiating a collective redress agreement.

For a cross-border action filed abroad, the same entities can also act for a group of consumers before the courts of another EU or EEA member state (Article XVII.39(3), Code of Economic Law).

The "qualified entities SMEs" referred to in Article XVII.1(4) to (7) of the Code of Economic Law can act as a group representative for a group of SMEs before the Belgian courts (Article XVII.39(2), Code of Economic Law).

The new concepts "qualified bodies Consumers" and "qualified entities SMEs" are taken from the Representative Actions Directive.

A qualified entity must be accredited. An application for accreditation of the legal entity as a qualified entity is granted by the competent minister, provided that it is submitted in the way determined by royal decree and shows that the legal entity meets certain criteria, which vary according to the type of qualified entity (consumers or SMEs) but are similar, such as showing:

- 12 months of effective public activity in protecting consumer or SME interests before the accreditation application.
- The absence of profit-making motives.

- Independence and transparency about the organisation and sources of funding in general.

(Article XVII.1, Code of Economic Law.)

An entity without ministerial accreditation can still seek *ad hoc* approval from the judge when filing an application for a specific representative action in Belgium (Article XVII.1(3) and (5), Code of Economic Law). In this case, the judge competent to rule on the collective redress action examines compliance with the accreditation criteria (for entities in general) in light of the nature of the action. Although in principle accreditation is valid indefinitely, compliance with the accreditation criteria is monitored and accreditation can be revoked (Article XVII.1/1, Code of Economic Law). For cross-border actions filed in Belgium, entities accredited in another EU or EEA member state can bring a collective redress action in Belgium (Article XVII.1(2)(1) (consumers) and Article XVII.1(7) (SMEs), Code of Economic Law).

Although the condition of "suitability" of the group representative has been abolished to ease admissibility, it is still relevant if there is more than one group representative. Each group of consumers or SMEs can only be represented by a single group representative, and it is understood that several group representatives can act in the same action provided that each group representative acts for a geographically distinct group of consumers or SMEs (Article XVII.40(2)(1), Code of Economic Law). If several group representatives wish to represent the same group in the same collective redress action, the court appoints the most "suitable" among them as sole group representative for that group in the admissibility decision (Article XVII.40(2)(2), Code of Economic Law).

Under both the old and new regimes, the group representative must meet the above requirements during the entire procedure. If they are no longer met during the proceedings, the judge will appoint a new group representative. If no new group representative meeting the requirements is found, the judge will close the proceedings (Article XVII.40(1), Code of Economic Law).

Claimants Outside the Jurisdiction

For claims filed on or before 10 June 2024, consumers or SMEs of the group who are domiciled outside Belgium can participate in a collective redress action if they explicitly opt-in to the action within the time period specified in the admissibility decision, by notifying the court registry of their intention to join the collective redress action (section 1(2) and section 1/1(2), Article XVII.38, Code of Economic Law).

For claims filed after 10 June 2024, consumers or SMEs of the group who are domiciled outside Belgium can still participate in a collective redress action if they explicitly opt-in to the action within four months from the date of publication in the *Belgian Official Gazette* of the merits decision (Article XVII.55/1, Code of Economic Law) (see *Joining Other Claimants*).

Although the harmonisation of national laws on collective redress in the EU due to the Representative Actions Directive should limit forum shopping, it cannot be ruled out that specific national features may be perceived as more (un)favourable to the interests of consumers or SMEs, and therefore guide strategic choices.

Professional Claimants

Only consumers and SMEs can be represented in a collective redress action. Professional commercial claimants cannot buy consumers' claims in exchange for a share of the proceeds of the action.

Other

Not applicable.

Certification/Qualification

The first stage of a collective redress action is the admissibility phase (Articles XVII.42 to 44, Code of Economic Law). The purpose of the admissibility phase is to check whether the admissibility requirements laid down in Article XVII.36) are met:

- Whether the alleged breach suffered by consumers/SMEs falls within the scope of a collective redress action (see *Areas of Law*).
- For actions brought on or before 10 June 2024, the status and suitability (adequacy) of the group representative. For actions brought after 10 June 2024, the status of the group representative and whether its statutory purpose directly relates to the object of the collective redress action (see *Potential Claimant*).
- The efficiency of the collective redress action compared to individual actions.

The court must examine whether the cause invoked may be a potential infringement of the legal provisions or contractual obligations invoked. As confirmed so far in admissibility decisions, the claim can be rejected at this stage if at first sight it appears to be manifestly unfounded, for example because no damage is likely to be sustained, or the infringement is not proven to be likely.

In addition, if the defendant claims that the collective redress action has become without basis (devoid of purpose) because all potential claimants have already been compensated, the court can (for procedural efficiency) assess the accuracy of this statement in the admissibility phase, even though this touches on the merits of the case. The court confirmed this in the admissibility decision for the collective redress action by Testachats against Thomas Cook. The proceedings are partially/entirely without basis (devoid of purpose) if it is either:

- Not disputed that all/some claimants have been compensated.
- Manifestly clear at first sight (and therefore, it cannot be disputed) that full payment of the claim has been made.

The court indicated that in the admissibility phase the claimant cannot be obliged to show who has been compensated in full and to take a position on this issue, as this relates to the merits of the case.

A collective redress action is only admissible if it appears more effective than an individual action of ordinary law (Article XVII.36(3), Code of Economic Law). In deciding admissibility, the judge can consider the following:

- The potential size of the group.
- Whether there is individual damage sufficiently related to the collective damage.
- The complexity and legal efficiency of the collective redress action.
- The legal certainty of the group of consumers/SMEs.
- Efficient consumer protection.
- The smooth functioning of the judiciary.

The amount of damage suffered by each individual consumer/SME cannot be a decisive element in this consideration.

The Constitutional Court has emphasised that it cannot be assumed that a collective redress action is necessarily more effective for collective damage than a normal individual action (*Case 41/2016, 17 March 2016*). The judge must assess whether a collective action is appropriate on a case-by-case basis, based on various criteria (such as those listed above).

In a collective action, the general admissibility requirements apply. The claimant must have:

- Legal personality.
- Procedural capacity (be in the legal position to exercise its rights itself and independently without representation or assistance).
- The requisite standing (the claimant must be the holder of the substantive claims for which enforcement is sought).
- A present, personal, and legitimate interest.

In a collective interest action, specific laws provide some exceptions to the general admissibility requirements. For example, the claimant can bring claims based on a collective interest and so does not need a personal interest.

Minimum/Maximum Number of Claimants

No minimum/maximum number of claimants is required for a collective redress action to be brought and declared admissible. The efficiency of the action is a factor, as an action is only admissible if it appears more effective than an individual action of ordinary law. The potential number of claimants is a factor considered by the judge when examining the admissibility of the case. A collective redress action is more likely to be deemed more efficient than individual actions when a significant number of consumers is potentially affected by a common issue.

In the admissibility decision on the action initiated by Testachats against Thomas Cook, the court indicated that, if most of the potential claimants have been compensated before the action is initiated and only a limited number of potential claimants have yet to be compensated, the court can consider collective redress as not more efficient and the action inadmissible. If compensation is paid after the proceedings are initiated, the action is inadmissible in relation to the claimants who have not received compensation. It is admissible in relation to the claimants who have been compensated pending the proceedings (for these claimants, the proceedings will become without basis (devoid of purpose) because once they are compensated, they will lose their substantive right, therefore a decision on admissibility becomes unnecessary). If all potential claimants are compensated pending the proceedings, the entire collective redress action can be declared without basis (moot).

Joining Other Claimants

For actions filed on or before 10 June 2024, the judge chooses between an opt-in or opt-out system in the admissibility decision, which then applies to the consumers/SMEs of the group habitually resident in Belgium. The opt-in system is mandatory for consumers/SMEs who do not have their habitual residence/main establishment in Belgium or if the action aims to restore physical or moral collective damage (see *Defining Class*).

The option is exercised according to the methods and terms decided by the court in the admissibility decision. The option period should be between 30 days and three months and starts running the day after publication of the admissibility decision in the *Belgian Official Gazette*. In principle, it must end before the outcome of the mandatory negotiation phase to avoid any speculation on the success of the action. The option can be exercised by filing a statement within the option period at the registry of the competent court.

The admissibility decision is published in full on the Federal Public Service Economy website and in the *Belgian Official Gazette*. If the court considers these general publication measures insufficient, it can impose additional measures in the

admissibility decision. It is up to the court to determine which additional measures are useful, according to the specifics of the case. The preparatory work to the Act of 28 March 2014 provides examples of possible measures (an individual letter to all customers, an advert in Belgium's major daily newspapers, or a notice in specialised magazines when a technical matter is involved). According to legal doctrine, publication by digital and electronic means is also possible.

For actions filed after 10 June 2024, by default and without judicial intervention, the class is composed based on the opt-in system (see *Defining Class*). The option is exercised after the decision on the defendant's liability. The deadline to join the class is four months from the date of publication in the *Belgian Official Gazette* of the decision on the merits finding that the defendant company must pay collective compensation.

Article XVII.55/1 of the Code of Economic Law provides that the affected consumers and/or SMEs must "address the court registry" to join the class. The provision provides that a royal decree may determine the way the consumer and/or SME can communicate their choice to the court registry, but such a decree has not yet been adopted.

The decision on the merits is published in full on the Federal Public Service Economy website. In addition, a notice is published in the *Belgian Official Gazette* containing the reference for that decision and a link to the webpage where the full text of the decision is published. If the court considers these general publication measures insufficient, it can impose additional measures in the judgment on the merits. Specifically, when the defendant has knowledge or could easily have knowledge of the identity of the aggrieved persons, the court will order the defendant to inform, individually and at its own expense, the aggrieved persons concerned of the decision on the merits.

In practice, the group representative will also inform the persons who already (unofficially) expressed their wish to participate in the action (by registering on the representative's website) through their website and emails. "Qualified entities Consumers" and "qualified entities SMEs" (see *Potential Claimant*) must provide on their website, in a way easily accessible to everyone, clear, complete, and comprehensible information about:

- The collective redress actions they have brought before both Belgian and foreign courts and authorities.
- The status of the claims they have filed.
- The results of the claims.

This information must remain available on their website for at least five years after the end of the relevant legal proceedings (Article XVII.1/3, Code of Economic Law).

Test Cases

Test cases are not used by the Belgian courts.

Timetabling

Under the Code of Economic Law, a collective redress action has the following four phases.

Admissibility. For actions filed on or before 10 June 2024, in theory, the court must rule on the admissibility of a collective redress action within two months from filing of the action with the court. However, in the collective redress actions brought so far, due to the importance of admissibility and the defendant's rights, the timetable typically included deadlines for the parties to exchange briefs about admissibility and oral hearings on this issue, and this usually extended the admissibility phase to over several months.

For actions filed after 10 June 2024, unless the parties agree otherwise, the admissibility phase must be dealt with under the "short debates" procedure, that is, admissibility must be dealt with at the introductory hearing or at a nearby date. If the parties agree to set aside the "short debates" procedure, the court will decide the timetable for exchange of written submissions and the oral hearing and must decide the admissibility of the action within six months from filing of the application. These rules apply in first instance and appeal proceedings. It remains to be seen whether this six-month deadline will apply in practice, especially since non-compliance is not subject to sanctions.

If the court considers the action admissible, the judgment will authorise the group representative to act. The judgment must identify the group and any sub-categories. For actions filed on or before 10 June 2024, the judgment must also indicate whether the group will be formed on an opt-in or opt-out basis, and how the option will be exercised (which is postponed to the decision on the merits for actions filed after 10 June 2024). The parties can appeal against the admissibility judgment for a collective redress action (see *Appeals*).

To notify the consumers of the action, the admissibility judgment for a collective redress action is published on the *Ministry of Economy, Small and Medium Enterprises (SMEs), Self-employed and Energy* website and a reference is published in the *Belgian Official Gazette*. Additional publication measures can be ordered in the decision.

Compulsory negotiation. This phase is for three to six months after the admissibility judgment. At the joint request of the parties, the court can extend this period once for up to six months. The new regime for actions filed after 10 June 2024 explicitly provides that the judge remains seized during the negotiation period. The judge can, at the request of one of the parties, end the negotiations before expiration of the negotiation period due to passivity by the other party for a period of 30 working days (Article XVII.66(4), Code of Economic Law).

Litigation. This involves proceedings on the merits, exchange of briefs, oral hearings before the court, and a judgment on the merits.

Distribution of compensation. If compensation is awarded it is then distributed among the claimants.

Lawyer Fees

In principle, contingency fees are prohibited in Belgium. However, lawyers can charge a reasonable success fee to their client if the outcome of the case warrants this.

Belgian law and rules of ethics require lawyers to charge fees with moderation and fairness. In practice, bar regulators require the fees to be:

- Reasonable.
- Transparent.
- Proportionate to the difficulty of the case and to the dispute at stake.

Third Party Funding

Although the Representative Actions Directive allows member states to prohibit third party funding of collective redress actions, third party funding of collective redress actions is still not prohibited under Belgian law. However, this type of funding is of limited interest given that punitive damages are prohibited under Belgian law and due to the legal provisions on the distribution of compensation among consumers. The Code of Economic Law provides that a court-appointed administrator

must pay compensation to group members under the court's supervision. Therefore, a third-party funder cannot take a share of any proceeds of the action unless an agreement is made between the third-party funder and the group members before the distribution of the compensation, which is unlikely.

For actions filed after 10 June 2024, there is a mechanism to supervise third-party funding of collective redress actions. A legal entity can only be accredited as a "qualified entity Consumers" (see *Potential Claimant*) if the following conditions (among others) are met:

- Being independent and not influenced by persons who are not consumers, in particular companies, who have an economic interest in bringing a collective redress action, including in the event of third-party financing, and having procedures to prevent such influence and avoid conflicts of interest between the entity's own interests, those of its financiers, and consumer interests.
- Disclosing in clear and understandable language, by appropriate means, in particular on the entity's website, information showing that it meets the above criteria, and information on its funding sources in general, its organisational, governance, and membership structure, its statutory purpose, and its activities (Article XVII.1(1), (5) and (6), Code of Economic Law). There are similar requirements for entities to be accredited as a "qualified entity SMEs" (Article XVII.1(4), (5) and (6), Code of Economic Law).

The group representative must also now disclose in its application whether the action is being funded by a third party or parties, and if so by whom and up to what amount(s) (Article XVII.42(1) and (6), Code of Economic Law).

Financial Support

No public funding is available for collective redress actions.

Article 20 of the Representative Actions Directive provides that member states will take measures to ensure that the costs of representative action proceedings do not prevent qualified entities from bringing such actions and the original bill for the Act of 21 April 2024 proposed financial assistance through public funding, but this proposal was not included in the final version of the Act of 21 April 2024.

In addition, the Code of Economic Law does not provide for the compensation or remuneration of the group representative. In principle, the group representative cannot profit from a collective redress action. The group representative is only entitled to reimbursement of the costs and fees incurred in relation to the proceedings and to the procedural indemnity for their legal fees.

For actions filed on or before 10 June 2024, the group representative's financial capacity was a key factor in the certification of a collective redress action, specifically the assessment of its suitability (adequacy). For actions filed after 10 June 2024, to be accredited as a "qualified entity Consumers/SMEs" the qualified entity must show independence and transparency relating to its organisation and sources of funding in general, but it does not have to show that it actually has the necessary funds at its disposal to bring and complete the action. The absence of this requirement and the removal of the suitability requirement (see *Potential Claimant*) could lead to undesirable results.

Other Funding Options

There are no other funding options available.

Costs of Litigation

There is a "loser pays" principle in Belgian law, where the losing party bears all the costs of the proceedings (filing fee, expert costs, translation costs, among others).

The winning party's recoverable lawyer fees are limited to a procedural indemnity set by law. If the claim cannot be appraised in monetary terms, the basic amount of the procedural indemnity is EUR1,800. If the claim can be appraised in monetary terms, it will range from EUR225 to EUR22,500. In certain circumstances, these amounts can be increased or decreased by the court.

If the case is settled, costs and fees are set out in the agreement concluded by the parties (see *Settlement Rules*).

Unlike the defendant company and the group representative, the consumers and SMEs represented in the action are not parties to the dispute, so they do not in principle bear the costs of the proceedings. However, in line with Article 12(3) of the Representative Actions Directive, for actions filed after 10 June 2024 there is an exception to this principle to sensitise group members to not behave in manifestly unreasonable ways. The court can, in exceptional circumstances, order a group member to pay costs and expenses caused by their own intentional or negligent conduct. The group member would first have to be summoned in a forced intervention by the defendant company or the group representative (Article XVII.61(4), Code of Economic Law).

Implications of the Costs/Funding Regime

The lack of a funding regime has affected the attractiveness and frequency of collective redress actions in Belgium. Group representatives must have adequate financial capacity to undertake such actions on behalf of consumers, without any remuneration and with limited recovery of their lawyer fees.

However, indirect financial benefits of collective redress actions have increased their attractiveness for Testachats (see *Availability and Use*). Although collective redress actions cannot be brought for profit and such actions brought by Testachats can be joined by consumers without payment, collective redress actions appear to have become an important source of income for Testachats.

Disclosure and Professional Privilege

Disclosure

There is no specific pre-trial procedure for disclosure of documents in a collective redress action in Belgium. In proceedings, there is no general obligation to share evidence with the other parties and there is no disclosure process under Belgian law. However, if there is reason to believe that a party or a third party holds a document that is likely to prove a fact that is relevant to the dispute, the court can order a party or third party to submit it.

If the party or third-party refuses to produce the document without a valid reason (that the document is privileged), they can be ordered to pay a non-compliance penalty. Additionally, the court can, depending on the circumstances, infer from a party's refusal to submit certain documents that the disputed fact is proven or any other inference the court deems reasonable.

Privilege

There is no specific provision on privilege in a collective redress action. Under the general rules, communications between lawyers who are members of a bar and their clients, medical records, and some other documents are considered privileged and not allowed as evidence by courts. Depending on the circumstances, disclosing such documents or information may even be a criminal offence.

Evidence Procedure

There are no special procedures for filing factual and expert witness evidence in a collective redress action (as opposed to ordinary litigation). There is no pre-trial discovery procedure in Belgium. Witness statements and expert reports are exchanged during trial and submitted with the parties' submissions.

The parties can file witness statements (affidavits) and courts can order witness statements to be filed *ex officio*. Witness statements are subject to specific substantive and formal requirements.

The parties can request the court to order the deposition of a witness. The court can also order the deposition *ex officio*. This can take place in court or at another location, depending on the circumstances. If a witness refuses to appear voluntarily, the court can summon the witness to appear, subject to a non-compliance penalty and damages. A judge will be designated by the court to administer the oath to the witness and take the deposition. In principle, only the judge can question the witness. If the parties are present, they must not question the witness directly and must submit their questions to the judge, who decides whether to ask the question to the witness. Courts are usually flexible and will allow direct follow-up or clarification questions. In practice, witness depositions are rarely used in commercial matters.

The court can, at a party's request or *ex officio*, order an expert investigation. It will then appoint an expert who will meet with the parties, carry out an expert investigation, and submit a draft report on their findings to the parties. The parties can comment on the draft report before the expert files the final report. The court is not bound by the expert's findings. The court can decide to hear the expert, order additional investigations, ask questions to the expert, or appoint other experts. The parties can file their own expert reports and request the court to hear their expert. In this case, the procedure for witness depositions applies. There are no special considerations for depositions in a collective redress action. There are no particular reasons for a court to order a deposition nor reasons distinct to a collective action.

Defending the Action

Joining Other Defendants

Third parties with an interest in the outcome of the action (for example, insurance companies) can apply to join as defendants in a collective redress action (voluntary intervention). Defendants in a collective redress action can compel other defendants to join the proceedings (forced intervention). For actions filed after 10 June 2024, a forced intervention in a pending collective redress action is only admissible if it either:

- Emanates from the group representative, its purpose is to bring a related collective redress action against another defendant, and it is brought before the court that issues the admissibility decision (Article XVII.66(2)1, Code of Economic Law).
- Is brought by a defendant against a third party (for example, the ultimate liable party or the defendant's insurer) and its sole purpose is to have a judgment on the merits if any awarded in common to the intervening party, in particular to preserve its rights in a subsequent action against the third party (Article XVII.66(2)2, Code of Economic Law).

Defendants can request the court to dismiss the case for inadmissibility at the admissibility stage, and to dismiss the case as unfounded at the merits stage.

Rights of Multiple Defendants

Multiple defendants can conclude joint defence agreements to ensure their common interests. Defendants' lawyers can share privileged documents such as lawyers' letters. However, under the Code of Ethics, if conflicts arise lawyers must refrain from producing the privileged documents as evidence and/or from contradicting the content of the privileged documents.

Multiple defendants can instruct the same lawyers subject to the relevant provisions on conflict of interest. Likewise, multiple defendants can instruct joint experts.

Damages and Relief

Damages

Under Belgian law, the basic principle is full compensation of the actual damage suffered. The injured person must be reinstated to the position they would have been in if the injury had not been committed. In that sense, punitive damages are prohibited. Quantification of the actual loss suffered is calculated by the judge based on the parties' submissions and possibly experts' reports.

There is no cap on the quantum that can be recovered from a single defendant or overall. In principle, each defendant is jointly and severally liable for the damage suffered unless the judge rules otherwise.

Recovering Damages from Other Liable Persons

A defendant can bring a separate action against other persons responsible for the conduct complained of to recover part of the damages they have paid (contribution claim).

Interest on Damages

There are no special rules for payment of interest in a collective redress action. Specific interest rates may apply, depending on the relevant area of law. Post-judgment interest must be awarded from the date of the application that initiates proceedings, at a current rate of 5.75% per year.

Declaratory Relief

Declaratory relief is not available in specific collective redress action proceedings. However, declaratory relief (and injunctive relief) can be sought through separate cease-and-desist proceedings that qualified entities can bring to protect the collective interests of consumers or SMEs (Book XVII, Title 1, Code of Economic Law).

Interim Measures

Interim measures are available in a collective redress action, such as appointment of an expert or an order to file specific documents with the court. Such measures are usually heard at the introductory hearing before initiating proceedings on the merits. In some circumstances, such interim measures can be applied for ex-parte if the claimant can prove the absolute necessity for this.

In assessing an interim measures application, the court examines whether the requested measures are relevant for assessing the admissibility or the merits of the collective redress action (depending on the stage of the proceedings). In the *Dieselgate* case, the defendants asked the court (through an interim measures application) to order Testachats to disclose the identity of the consumers who had signed up for the collective redress action, as well as the vehicles involved and the chassis numbers.

The application was filed before the admissibility decision was given. Under the Judicial Code, if the admissibility of a claim is disputed, the court can only order interim measures after the claim is declared admissible, unless the interim measure relates to the claim's admissibility. The court decided that the interim measures application could be heard because it related to the admissibility of the action. Specifically, the requested information was necessary to assess the efficiency of the proceedings and the suitability of Testachats as group representative (which was a requirement for actions filed on or before 10 June 2024).

Settlement

Settlement Rules

A compulsory negotiation phase of between three and six months (which the court can extend once for up to six months at the parties' joint request) must take place immediately after the court's admissibility decision on the collective redress action (Articles XVII.45 to 51, Code of Economic Law; see *Timetabling*). This allows the parties to negotiate a possible collective settlement agreement within a specific timeframe decided by the court. At the end of this cooling-off period, the court will either endorse the settlement agreement by making it binding on the parties or the proceedings on the merits will start.

Otherwise, if the parties reach a collective settlement agreement before the decision on the merits, they can apply to the court to endorse the collective settlement agreement to make it binding on the parties (including all group members).

In the context of a collective settlement agreement, the parties can still agree to apply the opt-out system for group members, except for consumers not ordinarily resident in Belgium and SMEs that do not have their principal place of business in Belgium or if the legal action seeks to recover physical or moral collective damages (see *Defining Class*). In these cases, only the opt-in system can be applied.

The court can only refuse to endorse a complete collective redress agreement (containing all legally required disclosures) in the following cases:

- The agreed redress for the group or a subcategory is manifestly unreasonable.
- The time period for exercising the opt-in or opt-out is manifestly unreasonable.
- The additional measures for publication of the decision approving the collective settlement agreement are manifestly unreasonable.
- The defendant's compensation payable to the group representative exceeds the costs actually borne by the group representative.
- One or more of the agreement's provisions or the agreement as a whole are contrary to public policy or provisions of mandatory law or contain conditions that cannot be enforced.

(Article XVII.49(2), Code of Economic Law.)

If the court considers that it must refuse to endorse the agreement on one of the above grounds, it can invite the parties to revise their agreement on that point within a set time limit. The defendant and the group representative can appeal the court's decision on the endorsement of the settlement agreement.

Separate Settlements

Settlement negotiations can cover all or part of a collective redress action. Where there is more than one defendant they can settle separately, and the settlement agreement will only be endorsed by the court in relation to the defendants who have settled. The action will continue in relation to the remaining defendants.

Appeals

Parties have a right to appeal a judgment on the admissibility of a collective redress action and a judgment on the merits.

The decision on admissibility can be appealed immediately (before any decision on the merits). For actions filed after 10 June 2024, as an exception to the general rules, the Court of Appeal must remand the case to the Enterprise Court (at first instance) to rule on the merits of the claims if the Court of Appeal:

- Confirms, in whole or part, an admissibility decision issued by the Enterprise Court at first instance (whether or not on the same grounds as at first instance).
- Issues an admissibility decision when the Enterprise Court at first instance had declared the action inadmissible.

In certain circumstances, parties can file an appeal before the Supreme Court. The court does not review the facts of the dispute but only whether the lower court has properly interpreted the law and has complied with formal and procedural rules.

For actions filed on or before 10 June 2024, there is no appeal available against a court decision to endorse a collective settlement agreement of the action. For actions filed after 10 June 2024, the defendant and the group representative can appeal the court's decision on the endorsement of the settlement agreement.

Alternative Dispute Resolution

To resolve a collective dispute, the parties can use a number of types of alternative dispute resolution (ADR), including:

- Third-party decision.
- Conciliation.
- Mediation.
- Arbitration.
- Several mixed types of ADR (for example, ombudsman and mini trial).

In a collective redress action, the ADR method generally used is mediation.

The Code of Economic Law provides that parties can appoint a certified mediator during the mandatory negotiation phase under Chapter 7 of the Judicial Code dedicated to mediation (Article XVII.45(2), Code of Economic Law).

An ADR bill to settle consumer disputes was introduced into Book XVI of the Code of Economic Law and came into force on 1 June 2015. The bill implemented the *ADR Directive (2013/11/EU)* and the *Directive on Consumer ADR (2009/22/EC)* into Belgian law.

Consumers/SMEs who are group members can use ADR mechanisms in parallel to settle their dispute with the defendant. If they reach a settlement, the consumers/SMEs cease to be group members and the defendant must inform the court registry of this (Article XVII.68, Code of Economic Law).

Proposals for Reform

Belgium has implemented the Representative Actions Directive (see *Availability and Use*). There are no pending proposals for reform.

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