

Houthoff Class Action Survey: Belgium

The Houthoff Class Action Survey 2024 provides an eye-opening journey into the future of class actions. It includes around 40 interviews with thought leaders from 12 different countries, preceded by an overview of the current class action regime in each jurisdiction. This is the overview for Belgium.

In Belgium, the Representative Actions Directive (RAD) is transposed by the New Collective Redress Act, published on 31 May 2024 (Law of 21 April 2024 amending Books I, XV and XVII of the Economic Code, and transposing Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers). The New Collective Redress Act applies to collective actions brought from 10 June 2024 and broadens the scope of the existing class action regime under the Collective Redress Act. This includes the legislation listed in Annex 1 of the RAD and therefore allows securities class actions.

The class actions regime was originally limited to actions initiated to compensate consumers for certain damages. As of 1 June 2018, the scope of protected persons was extended to include small and medium businesses (SMEs). Class actions can be initiated when enterprises breach their contractual relationships or a list of Belgian laws and EU regulations, including EU competition law infringements.

Class actions can be brought by qualified entities and - as under the existing law - in the interests of consumers and SMEs. A qualified entity for domestic actions for consumers or SMEs can be any legal person that is designated by the competent minister as qualified or obtains the court's ad hoc approval to bring these class action proceedings. The requirements for qualified entities that bring domestic actions and cross-border actions are in line with the RAD.

The procedure is in four stages. In the first stage, the court must decide on the admissibility of the claim. The class action must also be more effective than individual proceedings, given the size of the group, the existence of individual damage that can be sufficiently related to the collective damage and the class action's complexity and legal efficiency. The admissibility phase is capped at six months.

If the claim is admissible, there is a mandatory negotiation period to allow the parties to seek an amicable settlement (second stage). If they cannot, the procedure continues on the merits of the case (third stage), but the parties may still settle the dispute at any time before the court issues a decision on the merits. Any settlement agreement is to be endorsed by the court.

Opt-in is the rule. Opt-out will only apply in the unlikely scenario where the parties agree to opt out of a settlement. However, opt-out is prohibited in the case of physical or moral harm. Consumers or SMEs must opt in within four months after the ruling of redress.

Finally, a claims handler will be appointed to ensure the beneficiaries receive the compensation they are entitled to (fourth stage).

Third party litigation funding (TPLF) is allowed but not regulated in any way other than by meeting the RAD requirements. The rules on legal costs and the delayed opt-in mechanism make TPLF unattractive. Therefore, class actions are quite rare in Belgium.

Class actions | *Rechtsvordering tot collectief herstel*/Action en réparation collective (New Collective Redress Act)

Scope	Breach of contract or infringement of specific legislation in the Collective Redress Act regarding e.g. consumer issues, product liability, competition, GDPR and the legislation listed in Annex I RAD.
Access granted to	Qualified entities representing the interests of consumers and SMEs recognised by a competent minister; an entity without ministerial recognition can apply for an ad hoc approval by the court.
Opt-in or opt-out	Opt-in is the rule; parties can agree on opt-out in the amicable settlement. Opt-in is mandatory if the consumers and SMEs do not reside in Belgium, or in the case of physical or moral harm.
Declaratory relief or damages	Damages; no declaratory relief.
Frequently used	No.
Regulatory framework	Title 2 of Book XVII of the Belgian Code of Economic Law (inserted by Law of 28 March 2014); Law of 21 April 2024 amending Books I, XV and XVII of the Economic Code, and transposing Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers.
Alternatives used in practice	Actions for the protection of a collective interest; joined actions of multiple claimants.

Class settlements

Binding class members after court approval	The homologation decision binds all group members, pursuant to the exercise of their opt-in right.
Opt-in or opt-out	In principle, opt-in, unless the parties agree to apply opt-out in the collective settlement agreement. Opt-in is mandatory if the consumers and SMEs do not reside in Belgium, or in the case of physical or moral harm.

Third party funding

Regulated by law	Only RAD requirements which entail that a condition for being recognised as a qualified entity is being free from external influence, including the third party litigation funder.
Frequently used	No.

Good to know

Despite the RAD and the limited implementation it requires, a surge in popularity for class actions in Belgium is not expected, even though some efforts have been made to make the procedure more attractive. The system currently lacks appeal for third party litigation funding.

In October, we are holding an interactive seminar where the main results of this research will be presented.

[Read more](#) about this event on our website and [pre-order the Houthoff Class Action Survey 2024](#).

CONTACT

If you have any questions about class actions or the survey, please feel free to contact Albert Knigge or Isabella Wijnberg.



ALBERT KNIGGE
ADVOCAAT | PARTNER
T +31 20 605 65 62
M +31 6 5184 5323
a.knigge@houthoff.com



ISABELLA WIJNBERG
ADVOCAAT | ADVISER
T +31 20 605 65 09
M +31 6 5316 8462
i.wijnberg@houthoff.com