



**THE INTRODUCTION  
OF CLASS ACTIONS  
IN BELGIUM**



## **Belgian Draft Law on Collective Redress Procedures**

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# State of Play in Belgium

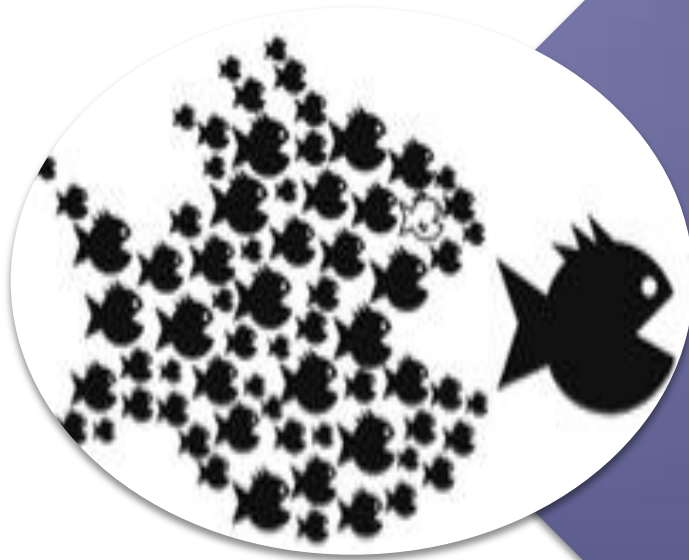
No collective redress mechanism for the time being

Only a few possibilities to bring actions in the collective interest of consumers or professionals

- Consumers' associations (or professionals' associations) may file an **injunction** on the basis of and for the collective interest they protect according to their statutes (e.g. : Act of April 6, 2010 on market practices and consumer protection)

Redress supposes that each personally interested party has to be individually involved in the proceedings and that each individual injury needs to be proved

# What is a collective redress?

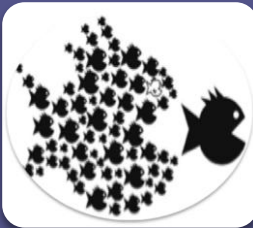


= A mechanism that allows a plaintiff to file lawsuit on behalf of a group of people, without previous mandate of the latter, and confers to the decision following this lawsuit *res judicata* in respect of all group members

# Main objectives



Access to justice and full compensation in case of mass injury



Dissuasive effect (= economic regulation tool)

# Main objectives

Cf. About anti-competitive practices - Court of Justice of the European Union, ***Courage***, 20 September 2001, C-453/99 :

“26. The full effectiveness of Article 85 of the Treaty [today : art. 101] and, in particular, the practical effect of the prohibition laid down in Article 85(1) [101(1)] would be put at risk if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition.

27. Indeed, the existence of such a right strengthens the working of the Community competition rules and discourages agreements or practices, which are frequently covert, which are liable to restrict or distort competition. From that point of view, actions for damages before the national courts can make a significant contribution to the maintenance of effective competition in the Community.

Dissuasive effect (instrument of economic regulation)”

# History of the Belgian draft

These last years: increase of cases where a great number of people claimed harmed → serious organizational problem to the administration of justice

2008 : government's announcement of an upcoming bill

Early 2009: to this end, study launched by Minister Magnette and conducted by team of professors and researchers of the Centre for Private Law at the University of Brussels (ULB)

September 2009: draft submitted for a non-binding opinion to the Consumer Council (« Conseil de la consommation ») and to the High Council of Justice (« Conseil Supérieur de la Justice »)

## Object

mechanism that confers to a representative entity the right to represent a group of injury victims

whose injury is of **common origin** and affecting a **large scale of people**

so as to achieve either a **agreement** or the **conviction** of the responsible



## Outcome of the agreement or judgment

- binding for all group members

## Broad scope of application

- not restricted to Consumer or Competition Law, but applied in all procedures implying mass injury, including businesses (such as loss resulting from breaching competition law or injury by industrial pollution)

## 2 main sources of inspiration



Dutch law  
(2005)

- Entirely based on the negotiation of an agreement
- Belgian draft : essential aspect but not the only one to be considered so as to assure the mechanism's efficacy

Quebec  
law (1978)

- Inspired by the US law but without its excesses and implanted in a civil law system
- very interesting experience (> 30 year)
- 2 steps procedure : 1) authorization ; 2) judgment

# Guidelines

Respect of the rights of the parties

Efficacy

Speed

Accessibility

## Civil Liability Law: slightly modified

- **Injury should be evaluated individually (= general law) or globally, for the whole group (= exception imposed by the need for efficacy)**
- All kinds of liability are covered
- No punitive damages
- No contingency fees
- No fee for the representative entity

# Opt-in or opt-out ?

## Opt-out :

Group members considered to be those who suffered the mass injury (object of the action) and have not expressed their desire to exclude themselves



But, if the opt-out system is not appropriate  
And, in any case, for those who do not have their residence in Belgium :



## Opt-in

Group members considered to be those who suffered the mass injury (object of the action) and have asked to be included

Proceedings : an adequate combination of amicable agreement and litigation : two main options

**First option** : out-of-court agreement with a post confirmation by the court



**Second option** : a trial with a permanent possibility to switch to an out-of-court agreement



**In both options** : prominent role of the judge in the process

## First option : out-of-court agreement with a post confirmation by the court

Parties reach an out-of-court agreement by either settling among themselves or using an **ADR mechanism** (Mediation, Conciliation, ...)

One of them can file an **application for a confirmation** of the agreement by the court

**The judge controls** whether the agreement complies with the legal requirements

- The court can refuse the confirmation if the agreement does not offer an effective compensation to the group members.
- The judge may also suggest amendments to the agreement

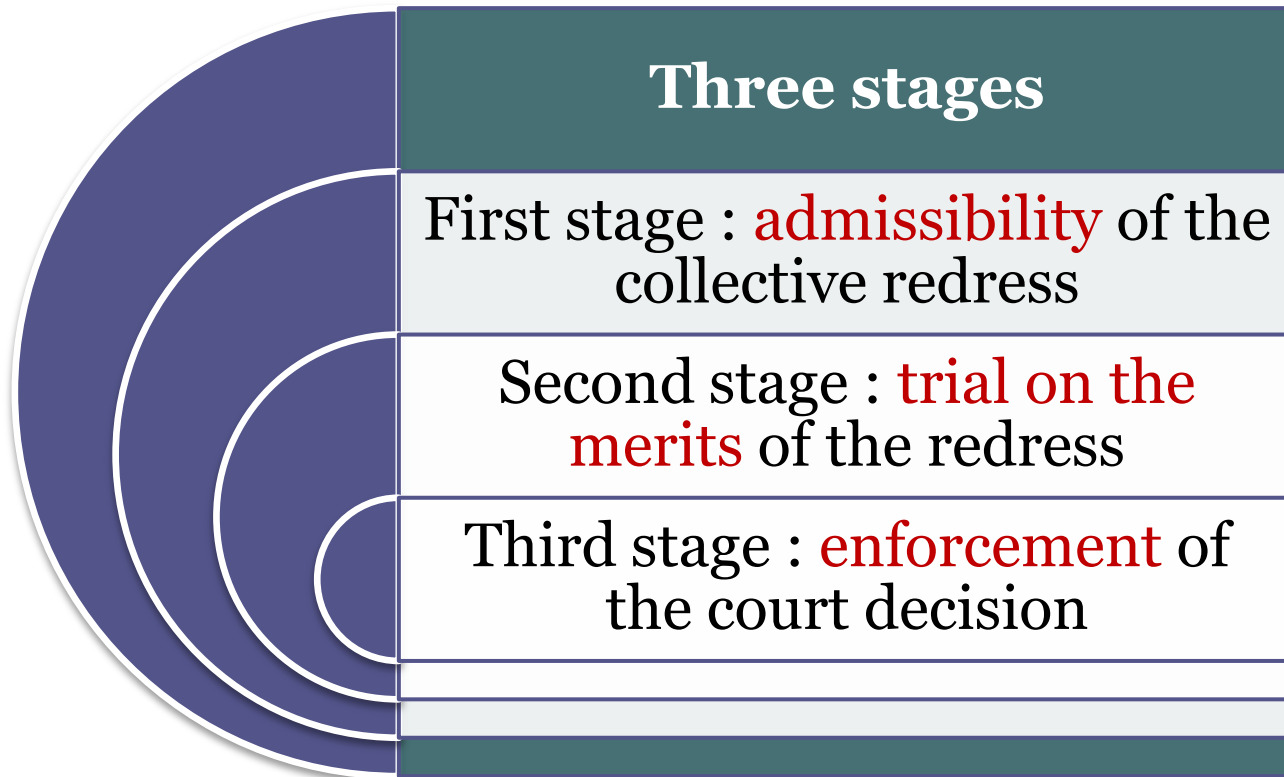
## First option : out-of-court agreement with a post confirmation by the court

Once the confirmation has been granted, the agreement is **binding for all** the group members

Neither the acceptance of the agreement, nor its confirmation by the court implies an admission of liability



**Second option** : a trial with a permanent possibility to switch to an out-of-court agreement



# Admissibility : Representative entity

Only a **representative entity** (i.e. either a group of victims or a non-profit body acting on behalf of such victims) is entitled to file a collective redress to the court

The application is published in a public **register**

**Other potential representative entities** can join the proceedings and seek for an appointment as representative for the purpose of the collective redress

# Admissibility : Court assessment

- The court verifies whether :

there is a mass injury with a common origin suffered by a multitude of victims

the collective redress is a superior vehicle to individual litigation for resolution of the disputes at hand

the representative entity bringing the collective redress is able to adequately represent and defend the interests of the group members

# Admissibility : Court decision

- **If the admissibility is granted, the court decision states :**
  - precise description of the mass injury
  - precise description of the group
  - identity of the representative entity
  - identity of the defendant(s)
  - option system applicable (opt out or opt in)
  - publicity that should be given to the court decision
  - calendar for the written and oral pleadings on the merits

# Admissibility : Appeal

Each party may lodge an appeal against the court's decision on the admissibility

A second appeal to the Supreme Court (Cour de cassation) is not possible

**In both options** : prominent  
role of the judge in the process

# Trial on the merits

Normal rules of adversarial proceedings

Some technical derogations for the sake of efficacy and speed

# Trial on the merits

At any time, each party may ask for an adjournment of the proceedings in order to attempt an out-of-court agreement – if a agreement is reached, it is submitted to the court for confirmation

Classical recourses are possible for each party : appeal and appeal to the Supreme court



# Execution of the court decision



The court may appoint a **liquidator** to share the damages paid by the defendant amongst the group members

The group members must claim the payment of the individual part of the damages within a certain deadline

The court **remains competent** to rule over any dispute that may arise regarding the execution of its decision on the merits or on the agreement confirmation

# Costs and funding

- Proceedings costs are rather low in Belgium
- Regarding the gathering of evidences, the court can sentence the defendant(s) to bear an advance on the experts costs prior to ruling on the merits
- The creation of a public fund financed by the non claimed damages is still subject to discussion

# The Belgian Draft Law complies with the five principles agreed by the EU College of Commissioners

Effective compensation

Strong safeguards against abusive litigation

Agreements or systems in addition to court proceedings to resolve disputes

Collective judgements should be enforceable throughout the EU

Adequate financing