



**THE INTRODUCTION
OF CLASS ACTIONS
IN BELGIUM**



The position of the Belgian insurance sector on Collective Redress

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About Assuralia

Assuralia is the representative body for mutual, co-operative and joint-stock insurance and reinsurance companies in Belgium, representing more than 98% of the Belgian market.

More information: www.assuralia.be

Preliminary remarks ...

- Judicial collective redress is the last resort solution to guarantee satisfactory redress (injunctive and compensatory) of harm suffered by customers (private consumers as well as businesses, incl. SME's)
- In a first phase Alternative Dispute Resolution (ADR) is a preferable solution, because it is:
 - faster
 - cheaper
 - due to its voluntary and consensual character less confrontational than a courtroom battle

... Consequently

- ADR should be exhausted first before going to court, whereas a judicial collective redress procedure should be possible if really necessary.
- Assuralia is in favour of sectoral ADR schemes (e.g. Belgian Insurance Ombudsman) for the settlement of individual as well as mass claims.

5th Consumer Scoreboard reveals increasing awareness and satisfaction of ADR schemes

- Published by DG Sanco on 11 March 2011.
- 48% consumers agree that it is easy to resolve disputes with sellers/providers through ADR mechanisms <> *only 33% for courts*
- When asked to state their preference for the type of redress mechanisms, retailers favoured ADR mechanisms and individual proceedings.
- In response to the question of how would retailers prefer to settle their dispute with a group of consumers over the same problem:
 - 40% chose individual ADR
 - 14% collective ADR
 - 11% individual court proceedings
 - 5% collective court proceedings

Comments on the introduction of Collective Redress in Belgium

- Better to await the outcome of the EU consultations
 - In line with the Government's policy paper of 18 March 2008
 - Best way to be EU compliant
 - EU harmonisation is better than 27 different systems
 - Risk of forum shopping in case of cross-border mass claims
 - Risk of competitive disadvantage in comparison with foreign market players

Comments on the introduction of Collective Redress in Belgium (2)

- The out-of-court procedure should be made compulsory in the bill of Minister Magnette
 - Condition 1: consensual procedure
 - Condition 2: easy exit
- The bill of Minister Magnette should respect the basic principles of the Judicial Code (e.g. the right of defence)

Necessary common principles for judicial collective redress

- Assuralia prefers a European framework directive with maximum harmonisation regarding the following common principles:
 - ADR should be exhausted first before going to court.
 - The procedure must be based on OPT-IN, unless the defendant prefers OPT-OUT.
 - Whether legal expenses insurers, general liability insurers and reinsurers could cover the risks associated with a European/national collective redress system depends largely on the way such a system would be designed;
 - That is to say, it is important to know the number of claimants beforehand;
 - Consequently, an OPT-IN is the most workable solution.

Necessary common principles for judicial collective redress (2)

- Limitation of the scope to consumer protection law (no bodily injury) and competition law only.
- The introduction of a collective action should be reserved to persons and organisations that are representative for the group of harmed consumers.
- A specialised tribunal should be responsible for the admissibility examination, the organisation of the notification procedure and the control of the fulfilment of the representation criteria.

Necessary common principles for judicial collective redress (3)

- The collective redress method has to exclude any pursuit of gain beyond the compensation of the proved harm of identified victims:
 - No system of punitive damages
 - No recovery of unlawful profits (skimming off) beyond the compensation of the damage suffered
 - No system of contingency fees
 - No creation of war funds

The specific role of legal protection insurers (LPI)

- LPI are often the first point of contact for victims.
- LPI scrutinize a potential claim and advise their clients how to proceed best to receive compensation.
- Unmeritorious claims are filtered out immediately.
- LPI will negotiate between both parties to see if an out-of-court settlement is possible.
- LPI provides for funding of the costs of formal legal procedures (e.g. fees of technical experts, attorney fees, etc.).



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