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Belgium – Introduction of class actions in Belgian law.

On 20 January 2014, a draft bill introducing a class action procedure in Belgian law was published on the website of the Chamber (see <http://www.lachambre.be/FLWB/PDF/53/3300/53K3300001.pdf>).

The draft bill introduces a new form of procedure, which will allow a (potentially large) group of consumers to obtain compensation for damages caused by an undertaking.

The main features of the class action introduced by the draft bill are as follows:

- The class action will be led on behalf of a group of consumers by an authorised representative. Measures other than monetary compensation, such as injunctive relief (“*action en cessation*” / “*stakingsvordering*”), will not be available through class action.
- The damages suffered by the consumers must be the result of a breach by the undertaking of either (i) a contract or (ii) the provisions of one of the exhaustively listed legislations. These legislations include, among others:
 - (i) a number of provisions of the Economic Law Code, including Book I (*protection of competition*), Book VI (*market practices and consumer protection*), Book VII (*payment and credit services*), Book XI (*intellectual property*) and Book XII (*electronic economy law*);
 - (ii) The Act of 25 February 1991 on liability for defective products;
 - (iii) The Act of 25 June 1992 on terrestrial insurance contracts;
 - (iv) The Act of 8 December 1992 on data protection;
 - (v) The Acts of 29 April 1999 on the organisation of the electricity market and on the organisation of the gas market;
 - (vi) A number of provisions of the Act of 2 August 2002 on the surveillance of the financial sector and on financial services;

- (vii) The Act of 3 June 2007 regarding personal guarantee without consideration; and
 - (viii) The Act of 13 June 2005 on electronic communications.
- Depending on the circumstances of each case, the group of consumers shall be constituted either by “opting in” (i.e. the relevant consumers must formally and actively join the group) or “opting out” (i.e. all consumers falling within the definition of the group shall be concerned, unless they formally request to be excluded from the group). In specific cases (e.g. if compensation for physical or moral damages is sought), an opt-out will not be available.
 - The representative shall act on behalf of the group of consumers, without any formal or individual mandate being given by such consumers. The representative, which the Court must deem adequate to fulfil its role, must be either (i) an association defending the interests of consumers which is a member of the Consumers’ council (“*Conseil de la consommation*” / “*Raad voor het gebruik*”) or which has been approved by the minister for consumer affairs or (ii) an association approved by this minister, whose purpose is linked with the damages suffered by the group, which does not pursue an economic goal, and which has been in existence for more than three years. A public mediation service for consumers may also act as representative to the extent the class action procedure only seeks the homologation of a settlement agreement. The representative can only be compensated for its own costs incurred (as opposed to making a profit based on the compensation awarded to the group of consumers); in doing so, the Belgian legislator has attempted to avoid what is traditionally seen as a pitfall in US class actions.
 - The procedure may lead either to the approval by the Court of a settlement agreement reached by the parties or to a ruling on the merits. The procedure will consist of three phases:
 - (1) The admissibility phase: During this phase, the Court will determine whether the admissibility criteria have been met. Among others, the Court will assess whether the class action is more efficient than individual procedures. The Court will also set the formal framework of the class action, including the description of the damages to be compensated, the choice between opt-in and opt-out, the deadline to exercise such option, and the description of the group of consumers.
 - (2) The settlement approval or the phase on the merits: If the parties reach a settlement agreement, either before or in the course of the procedure, the Court shall verify that the content of such agreement is adequate and shall approve or reject it. In the event no such agreement is reached, the procedure will continue on the merits.

- (3) The implementation phase: A liquidator will be designated with the task to implement either the approved settlement agreement or the court decision on the merits, to establish a preliminary list of consumers composing the group based on the option mechanism chosen and to oversee the actual compensation of the consumers concerned.

As the draft bill is the result of a political agreement, it is likely that it will be adopted by Parliament as is, with limited or no modifications. The bill is expected to be adopted in the course of February 2014. In its current version, the draft bill is foreseen to apply to damages whose cause has arisen only after its entry into force. Such entry into force will be decided by a later Royal Decree. We will inform you of any further developments.

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