

Class Actions: A New EU Directive to Harmonize the Approach of Member States



On November 25, 2020, the EU adopted a new Class Actions Directive, covering representative actions for the protection of the collective interests of consumers. By creating at least one effective and efficient procedural mechanism for representative actions across all member states, this new Directive will enhance the protection of consumers against both domestic and cross-border “mass harm.” However, you should be aware that it could also increase the risk of litigation for your company.

Main Provisions of the New Directive

The Directive will make it possible to bring collective actions for EU law infringements that harm or may harm the collective interests of consumers in a variety of areas such as data protection, travel and tourism, financial services, energy, telecommunications, health and environment.

According to the Directive, representative actions must be brought by “qualified entities” as designated by the member states. For purely domestic actions, each member state can unilaterally decide the criteria for designating these qualified entities. However, for cross-border actions the qualified entities must comply with the criteria set out in the Directive.

Member states must ensure that qualified entities are entitled to seek injunctive measures (aimed at stopping or prohibiting a practice deemed to constitute an infringement) and/or redress measures (such as compensation, repair, reimbursement, price reduction or contract termination).

The Directive introduces a number of safeguards to prevent the system from being abused, such as a “loser pays” principle, which requires the unsuccessful party to pay the successful party’s procedural costs.

Member states have until December 25, 2022 to transpose the Directive into national law, and until June 25, 2023 to apply the implementing provisions.

What Are the Implications for Class Actions under Belgian Law?

Belgian law already allows a group representative to bring an action for the collective redress of consumers, the self-employed, or small and medium-sized companies in relation to alleged contractual breaches or violations by companies of certain specified Belgian and European laws.

As the existing Belgian class action regime meets most of the requirements set forth in the

Directive, the impact of the new Directive on Belgian law is likely to be limited. However, the Belgian legislator will need to make some amendments in order to fully implement the new rules (for example, by creating a distinction between qualified entities entitled to bring domestic actions and those entitled to bring cross-border actions).

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