Country Report: Belgium

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1. Introduction and general overview

Historically, Belgium did not have a system of collective action. In 2014, the first representative action, being the Action for Collective Reparation (*rechtsvordering tot Collectief Herstel – L'Action en Réparation Collective,* "**ACR**"), was implemented in the Belgian Code of Economic Law (*Wetboek van Economisch Recht – Code de Droit Économique*, "**CDE**"). The Belgian ACR was inspired by the Spanish and Quebecker models, and envisaged one, strongly structured, venue of protection, through which not-for-profit public interest associations (NGOs), could seek injunction or reparation (in-kind or per equivalent) against mass violations of several listed national and regional provisions.

The federal lawmaker's choice was to create a general collective private enforcement ("**CPE**") venue applicable to different types of consumer law infringements, with the exception of the procedure for competition law-related matters. Up to this date, Belgium has no procedural venue exclusively applicable to mass infringements of data protection laws and regulations. The 2014 model required revision because the initial phase of the procedure posed a significant obstacle to consumer redress due to its excessive length.

Additionally, the revision was essential to ensure compliance with the Representative Actions Directive ("**RAD**"), leading to an expansion of the ACR's scope, the introduction of transnational collective actions, and the implementation of a standardised participatory regime. In essence, the modifications made in 2024 did not fundamentally alter the ACR procedure, as the country had already been largely compliant with the RAD prior to its implementation.

In terms of proceedings, at the time of writing, there has been only one collective action introduced against a big corporation (Facebook). One possible explanation for Belgium's private enforcement deficit could be the initial length of procedures, particularly the admissibility phase, which might have deterred consumer associations from bringing collective claims. It can be expected that there will be more compensatory data protection cases in Belgium as currently the length of the admissibility phase has been legally limited to six months.

In addition to the above, there are additional factors which could potentially influence CPE activities in Belgium. For instance, the play of private international law provisions and the fact that many big corporations are not headquartered in Belgium is not to be disregarded. Furthermore, it could also be possible that CPE is neglected due to the dominance of pubic enforcement routes, particularly in with the involvement of the national Data Protection Authority (*De Gegevensbeschermingsautoriteit - L'Autorité de Protection des Données,* **"DPA"**),

Section 2 of this report gives a brief description of the legal framework which applies to collective litigation also, or specifically, in the field of data protection law. It addresses three key issues: (i) opt-in regime, ((ii) recognition as a qualified entity, and (iii) funding.

Section 3 identifies the main collective actors working in the field of data protection in Belgium, either specifically, or as an element of general consumer protection.

Section 4 gives a comprehensive overview of the collective private parties' litigation in the field.

2. Legal Framework

a. National implementation of Art. 80 GDPR

Pursuant to Art. 220 of the Belgian Data Protection Law (*Wet Betreffende de Bescherming van Natuurlijke Personen met Betrekking tot de Verwerking van Persoonsgegevens* - *Loi Relative à la Protection des Personnes Physiques à l'Égard des Traitements de Données à Caractère Personnel*) qualified associations would be granted the right to represent data subjects in front of the DPA and all related civil and administrative proceedings, provided that such associations have duly been mandated by the concerned data subjects. This prerogative can be utilised only if the involved not-for-profit associations have legal personality and are incorporated in compliance with the laws of Belgium. In this context, qualified entities are also required to prove that their statutory objectives (as duly specified in their articles of association) have a direct relation with public interest goals. Lastly, said organisations ought to demonstrate that they have been active in the defence of data subjects' rights and liberties for a least three years.

b. National framework on collective redress

The RAD was (belatedly) implemented in the CDE in April 2024. At present, the CDE offers two general consumer law venues for collective private enforcement. Essentially, both mechanisms can be utilised to address personal data mishandlings by for-profit associations. Nonetheless, they differ in terms of remedies and *locus standi* requirements.

Indeed, the Collective Cessation Action (*Vordering tot Staking – Action en Cessation Collective*, "**CCA**") has a purely injunctive function whereas the ACR has both an injunctive and compensatory character. The courts and tribunals of the Brussels district are territorially and materially competent for assessing claims based on the ACR and the CCA.

As regards the funding of the CPE cases, the field is currently under-regulated. This legal vacuum has both negative and positive effects. Whereas a lack of regulation can be understood as a confirmation of the permissibility of the practices, this very void is also seen as a barrier to the fruitful development of third-party litigation funding ("**TPLF**") in Belgium.

However, the absence of oversight is not the sole cause of the unpopularity of TPLF in this jurisdiction. The Belgian market is not the most attractive for litigation funders, mainly due to its inefficient judicial system, where legal proceedings can be lengthy, as well as the prohibition of punitive damages. Up until this point, TPLF has not been used in the context of data protection CPE. For instance, the source of funds of the most active consumer organisation in Belgium (*Test Annkoop – Test Achats*) primarily stems from its own resources, being the revenues brought by its subscribers (96,6 per cent).

- ***Action for Collective Reparation (ACR)***

The ACR is a general consumer law collective private enforcement mechanism and is structured in three main phases. Data protection issues fall under the material scope of the ACR, as stipulated under Art. XVII.37/23 and XVII.37/34 of the CDE. Under the current regime, the ACR can be

introduced by qualified Belgian or European consumer organisations (see Art. XVII.1 and WXII. 39 of the CDE).

During the first phase, the courts and tribunals of the Brussels district must verify the adequacy of the chosen procedural venue, the competence of the claimant as well as the possible existence of a violation of data protection laws – the admissibility stage occurs in the form of an accelerated procedure (*korte debatten - débats succincts*). In the second phase, parties ought to attempt to remedy the dispute by means of negotiations or mediation with the prospect of reaching a settlement agreement. The Consumer Mediation Service (*Consumentenombudsdienst – Service de Médiation pour le Consommateur*) is qualified to intervene as a facilitator for the amicable resolution of this type of dispute (see Art. XVII.39§1/2, XVII.39§3/2, XVI.5 and XVII.45-51 of the CDE).

If no amicable solution is found, the courts and tribunals of the Brussels district, judging on the merits, shall determine whether a violation of the national and or regional rules occurred as well as the extent of the reparations, whilst ensuring that the final judgement is well respected by the responsible parties. As long as the final ruling on the merits has not been pronounced, the parties keep the prerogative of seeking out-of-court dispute resolution mechanisms. Since 10 June 2024, data subjects can exercise their right to opt-in within four months after the liability judgment has been published in the country's official journal (Art. XVII.55/1§1 of the CDE) – this novelty was not an obligation under the RAD, only a follow-up on EU recommendations.

Pursuant to Art. 2262bis of Book III of the old Belgian Code Civil (*oud Burgerlijk Wetboek – ancient Code Civil*) the prescription period for the ACR is established at ten years for contractual claims, commencing on the date when the fault was committed. The second paragraph of Art. 2262bis further stipulates a five-year prescription period for tort claims. If the ACR is primarily based on a tortious violation, the five-year prescription period begins from the day following the date on which the victim becomes aware of the existence of the damage (or its aggravation) as well as the identity of the perpetrator — regardless of when the damage occurred or was discovered, even if it was initially concealed.

- ***Collective Cessation Action (CCA)***

Art. XVII.1/4 of the CDE provides that the president of the Brussel's Commercial Tribunal (*Ondernemingsrechtbank Brussels - Tribunal de l'Entreprise de Bruxelles*) may ascertain, during a summary proceeding, the existence and order the cessation of an act constituting a breach of the provisions of the Code, its implementing decrees, and EU-specific regulations – including data protection law violations. Additionally, the competent judge may also order the infringer to undertake publicity measures, if they are conducive to ceasing the impugned act or its effects.

Among the entities authorised to initiate such actions are data subjects themselves, ministers and ministries protecting the interest of data subjects, and associations dedicated to the protection of the interests of data subjects and possessing legal personality, provided they are represented at the Special Consumer Advisory Committee (*Bijzondere Raadgevende Commissie Verbruik – Commission Consultative Spéciale Consommation*) or accredited by the minister. Exceptionally, cross-border actions can be initiated by persons meeting the requirements of Art. XVII.1§2 of the CDE or a group of EU-qualified consumer associations.

As regards the interaction between the CCA and the ACR, it can be said that the data subject's prescription period for the ACR shall be interrupted if an CCA for the same matters has been launched (Art. XVII.6 CDE). The suspension shall apply from the day when the CCA was

introduced until the issuance of the final ruling. Legitimately, the CCA cannot be validly introduced if the data mishandling has ceased for more than a year.

3. Main Actors

In Belgium, the main actors are only indirectly active in the field of data protection, either because their mission is broadly related to consumer law or human rights advocacy. The most active consumer association in this jurisdiction is *Test Aankoop – Test Achats*. The association deals with a variety of consumer law-related matters and data protection falls under the scope of its activities. *Test Aankoop – Test Achats* has developed significant expertise when it comes to CPE in this jurisdiction, considering that the organisation has successfully brought 3 collective claims against undertakings. In 2018, the same consumer protection association filed an ACR against Facebook, but the parties eventually decided to settle the dispute – in substance, data protection was the main issue.

Furthermore, the Consumer Mediation Service has been created to assume the function of contact person for consumers and provide out-of-court consumer dispute resolution services. The SMC has a special role in the context of the ACR as it has been authorized to represent the victims in the negotiation phase of the ACR . On the basis of Art. XVII.39§3/2, the SMC has been entitled to represent consumers in other EU member states, exclusively for matters related to out of court dispute resolution.

In the context of human rights protection, the League of Human Rights (*Ligue des Droits Humains*, "**LHR**"), supported by the French Community of Belgium, is very active in administrative and constitutional law related proceedings. Up to this date, there is no recollection of any involvement of the League in the private enforcement of mass data protection law violations in front of Belgian civil courts. Nonetheless, as data protection is inherently related to the protection of the fundamental rights (Art. 8 *EU Charter of Fundamental Rights*), it therefore latter remains a priority for the LHR.

At present, the activities of the League have mostly focused on challenging the constitutional validity of legislative proposals which could cause problems considering the right to privacy and family life as enriched under the Belgian constitution (*Gecoördineerde Grondwet* – *Constitution Coordonnées*) and regional treaties such as the *European Convention on Human Rights*, and as well as the introduction of legal claims in front the DPA – the latter playing an active role in the initiation and enforcement of data protection violations. The predominance of the public enforcement route is even more exacerbated by the current low CPE activity.

4. Legal Proceedings

The objective of this last section is to provide an overview of pending and adjudicated data protection CPE proceedings before civil law courts as per 31 August 2024.

As opposed to other jurisdictions, no data protection CPE has reached the merits phase in Belgium. Instead, one data protection collective claim, initiated by *Test Aankoop – Test Achats*, was prematurely closed as the parties decided to work on the conclusion of a settlement agreement. The above findings further support the hypothesis of a data protection enforcement deficit. This preponderance of the public enforcement route is demonstrated in cases such as *IAB Europe versus Panoptykon Foundation, Bits of Freedom and La Ligue des Droits de l'Homme*.

Test Aankoop – Test Achats vs Facebook	
Date of Initiation of the Claim	2018
Summary	Coordinated action brought by *Test Achats/Aankoop* and other consumer associations in Italy, Portugal and Spain, under the auspices of Euroconusmers, in the aftermath of the Cambridge Analytica Scandal.
Claimant	*Test Achats – Test Aankoop*
Defendant	Facebook
Type of Action	ACR
Remedies Sought	200 EUR for each individual consumer
Status/Outcome	Settled In May 2021, the consumer associations and Facebook announced a three-year collaboration starting May 28, 2021, to improve digital life and consumer value. As part of this agreement, the class action lawsuit by *Test Achat/Ankoop* (as well as those from other associations) against Facebook were resolved without any admission of wrongdoing, moving towards a cooperative relationship.