

Mechanisms for resolving mass problems: a Belgian perspective

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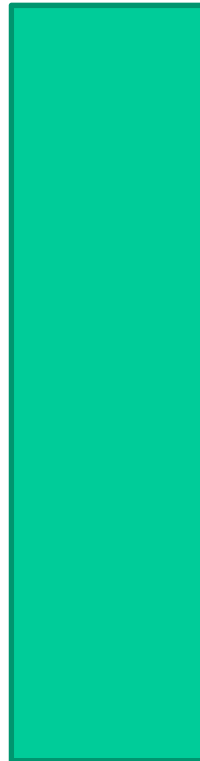
Rüschlikon (CH)

29 January 2013

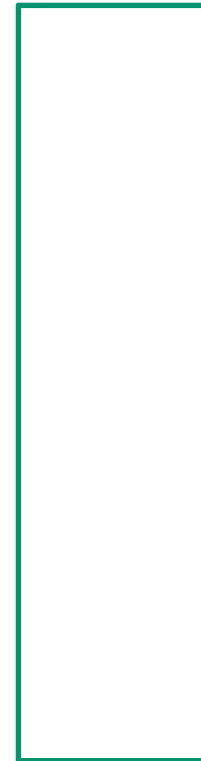
Three Pillar Model



ADR



Public Enforcement



Private
Litigation

Private Litigation

- **no class actions (yet)**
- 2009 – 2010: three class action proposals
 - government proposal
 - proposal of the Green parties
 - proposal of the Flemish Bar Council
 - all three failed
- 2013: new government proposal ???
 - consumer class action (no securities) – discrimination ???
 - exclusive standing for associations and organizations
 - mandatory process of negotiation
 - financing by a government fund (*cf.* Québec)

Public Enforcement

- energy: CREG, VREG, CWaPE, Brugel
- telecommunication: BIPT (Ombudsman for Telecommunications)
- financial services: FSMA
- environment: VMM (complaint coordinator), Spaque, BIM
- consumer policy:
 - Federal Public Service for the Economy, SME's, Self-Employed and Energy
 - DG for Market Regulation and Organization
 - DG for Quality and Safety
 - **DG for Enforcement and Mediation**
- **limited powers in dealing with (mass) damages cases**
- **in case of harm → transferal of the case to Public Prosecutor**

Piggyback technique for crime victims

Council of Europe

- Recommendation No. R(85) 11 on the position of the victim in the framework of criminal law and procedure
- Recommendation No. R(87) 21 on assistance to victims and the prevention of victimization
- Recommendation No. R(2000) 19 on the role of the public prosecution in the criminal justice system
- European Convention on the compensation of victims of violent crimes (1983)

Piggyback technique for crime victims

European Union

- Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) (see especially article 9)
- Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims
- **18 May 2011: EC Proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime COM(2011) 275 final**

Piggyback technique for crime victims

Chapter 3. Participation in Criminal Proceedings

Article 15. Right to decision on compensation from the offender in the course of criminal proceedings

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time.

The first subparagraph shall not apply where national law provides for restitution or compensation to be awarded in another manner.

2. Member States shall take measures to encourage offenders to provide adequate compensation to victims.

Piggyback technique for crime victims Belgium (and France)

- most liberal system
- formal party to the criminal proceedings
- quasi-absolute right to bring his or her civil claim during the criminal proceedings
- **gain: piggybacking the evidence of the Public Prosecutor, only proof of damages and causation**
- “criminel tient le civil en état”

Piggyback technique for crime victims

- many Belgian mass cases are criminal cases
 - Lernout & Hauspie (securities): 19,000 civil claimants
 - Spaar Select (securities): 350 civil claimants
 - Gellingen (mass disaster): 400 civil claimants
- advantage:
 - easily accessible
 - cheap
 - only proof of damages and causation (no proof of liability)
- disadvantage:
 - burdensome opt in system
 - overload of criminal court
- solution: outsourcing the civil claims to special masters ???

Case Study

Gellingen disaster

- 30 July 2004: gas explosion in Gellingen
- 24 people died – more than 150 victims
- criminal prosecution
- 14 defendants
- 400 “piggybacking” victims
- 22 February 2010: court of first instance acquits most defendants
- 28 June 2011: court of appeal convicts most defendants **and appoints two special masters (‘coordinating experts’) to try and reach an overall settlement between the defendants and victims – with success!**

Piggyback technique for crime victims

Netherlands

- before the act of 17 December 2009:
 - “clear case”-criterion
- act of 17 December 2009:
 - criminal judge can declare the civil claim inadmissible if the adjudication of this claim leads to a disproportionate burden of the criminal case
- mass cases?

Piggyback technique for crime victims

Germany

- *Adhäsionsverfahren*
- criminal judge can refuse the civil claim if this claim does not lend itself to be adjudicated in the criminal procedure
- for example when there are complex questions of civil law, or when the civil claims could slow down the criminal case
- mass cases?

ADR – CDR – ODR

- DG for Enforcement and Mediation
 - no mediation in individual cases
 - sectorial mediation
 - online mediation → **Belmed**
- **Belgian Mediation** (launched in April 2011)
- digital ODR portal (platform) on ADR
- information **and** solutions



www.belmed.fgov.be



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- » Follow the guide
- » Who can help you in the sector in which you encounter a problem?
- » (Extrajudicial) alternative settlement options

Frequently asked questions

Legislation

Tips


You are a private individual and you have a problem with a tradesman...
 You are a tradesman and you have a problem with a consumer...
 And you want to solve your problem quickly and at a lower cost.
 You have come to the right place! Belmed will help you find a solution to your dispute.

Belmed: sectors concerned

If your problem is connected to energy, to travel, to financial services, to second-hand cars, to furniture, to the building sector or if you are confronted with a cross-border dispute.

Then you can [make a request for mediation](#).

Success stories

 Have a look at [some agreements](#) already got in some sectors.

Online services

- » [Belmed – Online Mediation](#)

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Other official information and services: www.belgium.be .be

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Follow the guide

Formal notice Consumer dispute

Third party Alternative dispute resolution

A commercial transaction between a consumer and a company is often free of problems. But in some cases, it does not work as planned (non-conform products, late delivery, wrong billing...) The other party must then be informed immediately. It is sometimes enough to go there in person or to make a phone call to solve the problem amicably. However, if dialogue is impossible, other options have to be considered:

1. sending a **formal notice** by recorded delivery can be useful;
2. if this does not work, one is then faced with a **consumer dispute**. To solve it, the FPS Economy offers to call on a **third party** that can lead an **alternative dispute resolution** procedure.

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Example of formal notice
Recorded delivery with acknowledgement receipt

Formal notice
Place and date
Name and address of the sender
Name and address of the addressee
Dear Sir or Madam,
Re: purchase of (description) – invoice/order form reference – ... (date)
I have bought the above-mentioned ... from you on ... (date).
The contract (or order form) mentions a precise deadline (or date) for the delivery:
This deadline (or date) is now over.
As I still have not heard from you, I enjoin and ask you to take all the necessary measures to proceed to the delivery during the next ... days.
Yours faithfully,
Signature

General purpose registered letter
Registered letter dealing with a product breaking down
Registered letter to terminate a contract



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(Extrajudicial) alternative settlement options

- | | |
|---|--|
| <p>Arbitration</p> <ul style="list-style-type: none"> » Real Estate Conciliation, Arbitration and Mediation Board » Mediation and Arbitration Office » Arbitration Commission for Consumers and Textile Carers » Furniture Disputes Commission » Travel Disputes Commission <p>Conciliation</p> <ul style="list-style-type: none"> » Real Estate Conciliation, Arbitration and Mediation Board » Justices of the Peace » Second-hand Vehicle Reconciliation Commission » Travel Dispute Commission » Construction Reconciliation Commission <p>Mediation</p> <ul style="list-style-type: none"> » Real Estate Conciliation, Arbitration and Mediation Board » Approved mediator » Mediation and Arbitration Office » Federal mediation service 'Patient Rights' » Mediation Service Banks - Credits - Investments | <p>The Ombudsman</p> <ul style="list-style-type: none"> » Ombudsman Service for the Postal Sector » Insurance Ombudsman » The Mediator for rail passengers » Ombudsman Service for Energy » Telecom Mediation Service <p>European Consumer Centre (ECC)</p> |
|---|--|

There are various types of amicable resolution, each with its own characteristics. Authorities usually offer several different types; it all depends on what the parties trying to solve a dispute have chosen.

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Experienced or new user ?

You already have a Belmed account ...
and know how to make a mediation request. Then go directly to [MyBelmed](#)

Is this your first visit to th Belmed platform?
Keep in mind that if you want to introduce a mediation request, you **must meet the following two conditions:**

- 1)**
You have already contacted the other party (the tradesman if you are a consumer, or the consumer if you are a tradesman) to report your problem and try to solve it.
If this is not the case, here is [more information](#)
- 2)**
You have not brought the matter to a court of justice.
If this is not the case, here is [more information](#)

If you meet these two criteria, you may log in [here](#)

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Reference to consumer guide.

An application is not possible. Information on settlement.



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Authentication page

Please log in using your preferred method

Please choose one authentication method from the following. Pay attention, the authentication mode you choose will be definitive!



Federal authentication portal

Authentication with your electronic ID card or your token with the federal authentication portal

[Need help ?](#)



Personal Belmed Account

Authentication method using your personal Belmed account.

[Need help ?](#)

Please note that, by connecting to Belmed, you accept the : [Terms of use*](#) | <http://belmed.fgov.be/>



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New Belmed user

Belmed sign up form

Please fill in the form below with your details

Account type: Private individual
Private individual
Enterprise

Email *
Password *
Confirm password *
Name *
First name *
Street *
N° *
Zip code *
City *
Country *
Phone:
Language *
Gender *
Type the characters displayed here *:

[Input fields for registration details]

I am above 18 years old*
M

[Captcha input field]

If the characters are not sufficiently readable, click here for a new image



There is no capital letter in this captcha.

I agree with the Terms of use*

Save



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- CONTACTS
- Confirmation link

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- Spam
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- Attach Large Files
- Automatic Organizer
- Calendar
- Edit Photos
- Evite
- Flickr
- My Cool Fonts
- Notepad
- Stationery
- Unsubscriber

Confirmation link

Hide Details

FROM: belmed@economie.fgov.be

TO: stefaanvoet@yahoo.com

Wednesday, November 16, 2011 9:54 PM

Hello,

Thank you for using Belmed.

Your address was used to register on the website BELMED, a platform for the online resolution of disputes between consumers and companies. Its aim is to try to find an amicable solution with a third party mediator.

If you have initiated this registration, click on the following link to validate it:

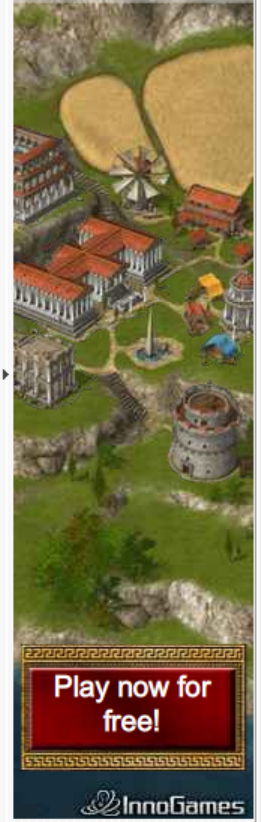
https://belmed.economie.fgov.be/belmed/faces/login/login_form.jsf?id=4978&belmed-user-language=en

This e-mail message was automatically sent by the BELMED platform, please do not answer.

Reply to belmed@economie.fgov.be

Send

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Welcome to Belmed, the online consumer dispute resolution platform.
To make a mediation request, please click on 'new request'.
To check the requests you have already made, please click on 'my files'.

Criteria:
 Value: [Search](#)

Ref.	Supplier	Mediator	Type	Sub-type	Date	Status
----------------------	--------------------------	--------------------------	----------------------	--------------------------	----------------------	------------------------



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New request

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I am making a claim as a

[Private individual](#)

[Intermediary for the private individual](#)

[Intermediary for the company](#)

If you choose "intermediary", it means that you represent the party that makes the mediation claim and you will therefore receive the notifications that will let you know of the evolution of the claim.

Applicant information * :

Last name of the private individual Voet
First name of the private individual Stefaan
Street Yzerbergstraat
N° 4a
Zip code 8750
City Zwevezele
Country Belgique
Phone 0473/712770
Language EN
I am above 18 years old* Yes
Gender M
Email stefaanvoet@yahoo.com

[I want to change my personal data.](#)

Have you contacted the tradesmen / consumer concerned to report your problem?

Yes No

Did you take the matter to court?

Yes No

Provider information :

Supplier name (company) * :
Supplier's business N° :

Request information :

Sector * : [Choose here...]
Sub-sector * : [Choose here...]
Sales method * : [Choose here...]
Type of problem * : [Choose here...]
Type of problem : [Choose here...]
Type of problem : [Choose here...]
Financial loss estimation (EUR) * : [Choose here...]

Description :

Attached files : [Add new attachment](#)

Send my documents by regular mail :
[keep and send later](#)

Based on Commission Recommendation of 12 May 2010 on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries (2010/304/EU)

consumer goods, energy & water, financial services, general consumer services, health, leisure services, etc.

distance or face to face

contract & sales, delivery of goods, invoicing, price/tariff, privacy and data protection, quality of goods and services, unfair commercial practices, etc.

between 500 & 1.860 euros
from 0 to 500 euros
over 1.860 euros

- application will be sent to competent ADR authority
 - Ministry serves as administrator / “serving-hatch”
 - no knowledge of identity, contents of applications
- only statistical information
- need for additional ADR agencies
 - mass claims detection

- Ombudsman Service for Energy
 - Mediation Service Banks – Credits – Investments
 - Second-hand Vehicle Reconciliation Commission
 - Travel Disputes Commission
 - European Consumer Centre
 - Furniture Disputes Commission
 - Real Estate Conciliation, Arbitration and Mediation Board
-

April 2011 – January 2013:

total number of cases:	514	
- sectors not covered:	232	(45,14%)
- sectors covered:	282	(54,86 %)
- still pending:	84	(29,79%)
- finished:	198	(70,21%)
- rejected:	106	(53,54%)
- stopped:	72	(36,36%)
- settled:	17	(8,59%)
- failed:	3	(1,52%)

Another approach ...

- mix of public enforcement and ADR
 - Act of 13 November 2011 on the compensation of physical and moral damages as a consequence of a technological disaster (entered into force on 1 November 2012)
 - French inspiration (loi n° 2003-699 de 30 juillet 2003 relative à la prévention des risques technologiques et naturels et à la réparation des dommages)
 - victim of a technological disaster can get a cash advantage of a government fund when the liability cannot be established immediately
-

Another approach ...

- lot of exceptions (terrorism, natural disasters, nuclear accidents, war, product liability, traffic accidents, fire and explosion in public facilities, airspace accidents, medical malpractice)
 - fund is financed by (specific) insurance companies (50 million euros a year)
 - fund is subrogated to the rights of the victim and can claim the money back from he or she who is (in the end) liable (or his or her insurance company)
-